



Ministry
of Justice



Department
of Health

**MCA Implementation Group (MCA IG)
Meeting Thursday 3 December, 2015**

Minute

Attendees

| Name | Organisation |
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| Paul Richardson (Chair) | Department of Health (DH) |
| Elizabeth Gibby | Ministry of Justice (MoJ) |
| Baroness Finlay | National Mental Capacity Forum (NMCF) |
| Martin Keeves | Office of the Public Guardian (OPG) |
| Alastair Pitblado | Official Solicitor to the Senior Courts (OS) |
| Lyndon Walters | Department for Work and Pensions (DWP) |
| Rachel Griffiths | Care Quality Commission (CQC) |
| Jo Earley | Court of Protection (CoP) |
| Emma Jenkins | Association of Directors of Adult Social Care (ADASS) |
| David Sallah | Health Education England (HEE) |
| Steve Christian | Merseyside Police |
| Frankie Westoby | Metropolitan Police |
| Maureen Cheung | Trust Development Authority (TDA) |
| Lorraine Currie | Association of Directors of Adult Social Care (ADASS) & Local Government Association (LGA) |
| Corrine Gray | Department for Communities and Local Government (DCLG) |
| Andrea Gray | Welsh Government (WAG) |
| Liz Eaton | Ministry of Justice (MoJ) |
| Oliver Homewood | Department of Health (DH) |
| Joanna Furlong | Ministry of Justice (MoJ) |
| Niall Fry | Department of Health (DH) |

Apologies

- Alan Eccles – Public Guardian
- Helen Journeaux – Office of the Public Guardian
- Dr Alex Lewis – Monitor
- Justine Karpusheff – NICE
- Pauline Watts – Public Health England
- Jane Lord – Department for Communities and Local Government

1. Welcome, introductions and minutes of last meeting

- The Group was content to sign off the September minutes as final.

2. National Mental Capacity Forum (NMCF) – Update on progress

- Baroness Finlay (BF), Chair of the National Mental Capacity Forum, updated the Implementation Group on progress to date. In excess of 20 meetings had taken place with key partners since the role was announced in October. What was fast becoming apparent was the misconceptions and misunderstandings which existed in relation to the MCA, exacerbated in some cases by training sessions in the mental capacity sector not being of sufficient quality and not being rooted in practice (too legalistic).
- The Forum's ultimate aim was to have people empowered on the ground and the Act firmly embedded in people's thinking. Messages would benefit from being simpler, for example, by referring to 'refusals', 'wishes' and 'plans'. The principles of the Act were good but people needed to be taught the actions the principles lead to. It was important to listen to service users and relatives, and to deal with distress first.
- With that in mind, Rachel Griffiths (CQC) had agreed to lead on the "Voice of the Person" and there were also plans to hold a "Listening Event" on 8 February to hear from those members of the public with difficult experiences of the Act. The listening event was to consist of 20-30 people, mostly service-users and their friends/ family, with a few front-line professionals. Volunteers to help facilitate would be welcome, as well as suggestions for whom to invite to attend.
- It was emphasised that the Forum had no funding and that any project work by partners would need to be on a voluntary basis.

3. In-depth

- **NHS England MCA work plan** (Moya Sutton)
- NHS England shared its MCA work plan with the Group. Following the House of Lords Select Committee report, NHS England had established an MCA Group, whose purpose was to raise awareness of the Act, embed the MCA/DoLS into general practice and to ensure that MCA/DoLS was part of the commissioning process. The Group reported to a National Safeguarding Steering Group and had a number of themes and work streams, together with formal project documentation such as a business plan, risk register and finance profile.
- In addition, NHS England had recently brought together MCA leads from across England to establish progress since the Select Committee report and to agree priorities for the next year.

- Other professional bodies may benefit from a similar work plan and governance structure with a specific focus on the MCA.
- **OPG e-learning finance tool** (Martin Keeves)
- The Office of the Public Guardian had currently approved 1.6 million registered Lasting Powers of Attorney across England and Wales, figures which were increasing at approximately 20 percent per annum. Most of these were in relation to property and affairs and one of the challenges remained to get people to think about health and welfare.
- Whilst the OPG was confident that a range of professionals knew to come to the OPG with queries, customer complaints about banks were increasing. As a result, the OPG developed an e-learning tool, with support from the banks, the trade bodies and the Financial Conduct Authority, which was targeted at frontline staff in banks and building societies.
- A demonstration of the e-learning tool was provided and other sectors encouraged to develop similar training tools.
- **Use of self-assessment/commissioning tool (ADASS/LGA)** (Lorraine Currie)
- ADASS/LGA encouraged the Group to consider utilising its self-assessment tool in order to inform relevant providers whether knowledge about the MCA was improving or otherwise. The tool could also be used to demonstrate particular strengths within an organisation and areas requiring improvement. If rolled out across all represented groups, the assessment tool could be utilised to show common trends and progress, as well as providing a baseline from which to assess the progress.
- The main themes of the assessment tool were considered broad enough to be applicable to other areas; Customers/Experiences for People, Leadership/Strategy, Service Delivery/Resource Management and Working Together, though individual organisations could decide what specifically would work for them.

ACTION 1: Member organisations to complete their version of the self-assessment tool and submit ahead of the next meeting of the MCA IG – 10 March 2016.

4. Roundtable

- **Firm actions for the year ahead**

- Members of the MCA IG were invited to describe tangible actions for their organisations in the coming year.

- These are summarised in the table in Annex A.

Action 2: MCA IG members are to provide and confirm the actions in Annex A are correct by 15 January 2016. These will then be published online for public dissemination and to help communicate national priorities to regional and local teams. If no actions are received, list will still be published, with blank spaces.

5. Next steps and AoB

- The next meeting would take place on Thursday 10 March, 14:00 to 16:00 at the Department of Health, Richmond House. Members were asked to ensure that deputies were available to attend in the absence of organisations' leads.

Annex A

MCA IG members' priorities and actions for the next year

| Organisation | Progress/ last year | Challenges/ worked planned | Firm actions for 2016 |
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| Public Health England | <p>There is some raised knowledge in patches at the front line. And some increased references to MCA in core training – but variable translation to practice. Organisations' board-level focus on MCA not great but has improved thanks to CQC emphasis on MCA.</p> | <p>Next step needs to be getting the MCA really hardwired into all training programmes. Not easy given the number of Higher Education Institutions (HEIs) that need to come on board.</p> | <p>To work with HEE and Academic Leads to review course content to ensure MCA is clearly defined in pre and post registration training.</p> <p>To link with LETBs to identify ways of increasing awareness of requirements at local level.</p> |
| NHS England | <p>NHS England allocated £6m to support safeguarding activity. MCA was identified as a key priority within this, with the following key actions:</p> <ul style="list-style-type: none"> - Promote the MCA and DoLS requirements with NHS Commissioners and providers, in particular with GPs. - The development of pathways for commissioning. - Ensure that MCA is part of the national contracts – specifically the GP contract - Ensure dissemination of information and actions | <p>NHS England has re-established the MCA Group which will be the forum for co-ordinating NHS England's MCA improvement work. The National Safeguarding Steering Group holds the MCA Group to account for delivery of the work plan.</p> <p>Engaging and improving MCA knowledge among GPs has been set as a priority</p> | <p>The MCA Sub-Group has agreed the following actions for 2016:</p> <ul style="list-style-type: none"> • To identify the key risks in relation to MCA / DoLS by undertaking a thematic review of the current reviews such as SARs, SCRs and MHR. • To raise awareness of MCA /DoLS across the healthcare system by influencing regional / national networks in relation to MCA/ DoLS. • To increase the visibility of MCA in NHS England commissioning, in particular the GP contract, by developing planning guidance and CCG assurance, in conjunction with the NHS England planning process. |

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| | <p>throughout a whole system approach.</p> <ul style="list-style-type: none"> - Develop and implement national data set for MCA. - Determine trends and triangulate with other data such as safeguarding Serious Incidents. <p>Over the last year NHS England has:</p> <ul style="list-style-type: none"> - Added the MCA duties to the NHS Standard Contract. - Increased MCA / DoLS training for GPs. - Increased the number of Best Interest Assessors trained for health. - Produced information for patients on their rights. - Engagement with Vulnerable groups. - Developed an the electronic records system in mental health - Recruited MCA clinical champions - Developed MCA/DoLS audit tools. - Published an Aide Memoire for staff on the Act and what to do. | | <ul style="list-style-type: none"> • To influence education providers to deliver MCA / DoLS awareness • By working with key health professional bodies gain assurance in the delivery in the skill development of MCA / DoLS awareness to frontline staff through development of a competency framework in relation of MCA / DoLS. • To have in place an effective communication strategy for health in relation to MCA / DoLS. • To ensure that NHS England is able to support the health organisations so that patients are not compromised in the relation to the Court of Protection process by producing a national toolkit for use across the health economy. |
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| <p>Welsh Government</p> | <p>MCA-DoLS network established to lead improvement work across Wales. A key focus being on “back-to-basics” messaging; why we have the MCA and what the positive outcomes on a day-to-day basis for individuals can be.</p> | <p>How do we determine what specific outcomes we wish to see? How do we know we have had the impact we would wish? [This issue was shared across IG members].</p> <p>Conversations with the third sector as to their role in improving MCA implementation also a priority.</p> | <p>Development of bespoke website with both public facing information, information for health and social care staff, training materials and links to other relevant sites.</p> |
| <p>ADASS/ LGA</p> | <p>A wide range of work over the last year including:</p> <p>Completing the work to review, and rewrite the entire DoLS forms reducing them significantly with guidance to accompany the forms</p> <p>Testing a MCA self-assessment tool extensively in peer challenges and focus groups resulting in resource to support local improvement appropriate for a wide range of organisations</p> <p>Producing and disseminating a guide for MCA-compliant commissioning in Adult Social Care</p> <p>Providing support to Councils experiencing a tenfold increase in DoLS applications post Supreme Court Judgement including</p> | <p>As part of the DH funded Care and Health Improvement programme:</p> <ul style="list-style-type: none"> - Continue to support to multi agency Regional Leads Group to produce resources listed, and to support to local authorities in relation to MCA including DoLS - Continue to promote use of self-assessment tool and other on line resources <p>Further commitments subject to DH funding decisions from 2016/17 onwards</p> | <p>Subject to the availability of funding the following work will be undertaken</p> <p>Good practice guide for Best Interests Assessments to be developed, consulted on and distributed nationally.</p> <p>National provider list of BIAs to be developed.</p> <p>Tool to promote less restrictive options to be consulted upon and finalised and disseminated.</p> <p>Produce a statement of rights for those deprived of liberty in conjunction with other national partners.</p> |

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| | <p>development of a priority tool for use by Councils attempting to prioritise DoLS cases.</p> <p>Collection of information on Best Interests Assessor (BIA) courses made available to the sector to improve the workforce deficit of BIAs</p> <p>New MCA including DoLS resources have been made available on the LGA website as a 'one stop shop' information resource</p> | | |
| <p>Care Quality Commission</p> | <p>Last year has seen the MCA embedded in CQC's new inspection regime. This has provided a powerful reporting tool.</p> <p>Over 60 MCA leads across the country supporting CQC inspectors.</p> | <p>Ensuring all front line inspectors understand how to apply the MCA key lines of inquiry appropriately.</p> <p>Making better use of CQC collected data to inform our understanding of areas for improvement and to support providers' efforts.</p> | <p>Continue to develop and make available guidance and resources, and provide training, for CQC's inspection teams so that they are able to recognise good and poor practice.</p> <p>Clearly define what 'good' looks like in relation to the MCA including the Deprivation of Liberty Safeguards.</p> <p>Continue to improve our own reporting and recording about the MCA, including deprivation of liberty in the settings we regulate.</p> |

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| <p>Office of the Public Guardian</p> | <p>Close working with the financial sector over the last year. Strong links with all major banks at board level as a result. Lessons from this work (getting awareness of MCA basics to front-line staff) will be of use in the MCA IG's efforts to do this elsewhere.</p> <p>Significant work with health professionals including CHC assessors, practice nurses. Work also with police, trading standards and the fire brigade.</p> | <p>E-learning materials for banking staff could be extended to other areas.</p> <p>Work planned with utility companies.</p> <p>MCA IG can play a strong role in facilitating cross-working across member organisations – ensure early awareness of planned actions so collaboration can take place.</p> | <p>1st Annual stakeholder event, focusing on MCA awareness and best practice – January 2016</p> <p>Launch of OPG twitter feed and online blog – January 2016 – will promote / re-tweet MCA issues</p> <p>Launch Lasting Power of Attorney Guidance – jointly with the Older Person's Commissioner for Wales – January 2016</p> <p>Annual Safeguarding Round Tables – England Spring 2016 and Wales Summer 2016</p> <p>Contribution to BBA task force delivering industry best practice on vulnerable adults and banking – Spring 2016</p> <p>On-going contribution to the Alzheimer's Society led Prime Ministers champion group for Dementia Friendly Communities</p> <p>Annual Customer satisfaction survey – MCA in practice - Spring 2016</p> <p>Commitment to meet with Health and Social Care national leads to see how existing e-learning materials could be</p> |
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| | | | <p>adapted for wider audiences than bank staff alone</p> <p>Commitment to meet with Utility sector national leads to promote MCA and best practice for OPG customers and others. To explore the potential for frameworks and</p> <p>Bespoke engagement with Black and Ethnic Minority groups to promote the MCA and Power of Attorney. To learn more about the user need and what channels and messages are most effective.</p> |
| Trust Development Authority | <p>Agree there is progress but variation in understanding continues across organisations.</p> <p>Internal training programme proposed to ensure consistency in advice by TDA to boards in regard to their duties re MCA and DoLS.</p> | <p>Priority would seem to be working with HEE, in particular to provide assistance to hospitals as to quality MCA training materials – given the varying quality of those currently available.</p> <p>Getting the MCA into medical professional re-validation would also be an important step forward.</p> | <p>Focus on supporting NHS Trusts to discharge their duties re MCA and DoLS within oversight framework.</p> <p>Links with NHSE (London) Safeguarding Training team and HEE now established. London team have developed a quality standard for the procurement of MCA and DoLS training</p> <p>Internal training to teams re MCA and DoLS in progress.</p> |

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| <p>Department for Communities and Local Government</p> | <p>Agree that there have been some improvements in MCA awareness but work to be done.</p> <p>The impact of DoLS on supported housing has been a particular focus for DCLG over the last year.</p> | <p>Key DCLG interests over the next year are understanding the state of social care market provision and understanding how efforts to drive MCA implementation are effected by the integration and devolution agenda.</p> | <p>DoLS – continue to work with DH and the supported housing sector on Law Commission’s proposals</p> |
| <p>National Mental Capacity Forum</p> | <p>N/A – NMCF only recently formed</p> | <p>We continue to assess the challenges but it seems at this stage:</p> <ul style="list-style-type: none"> - Lack of empowerment/ too much risk aversion - Public awareness near zero - Decision dumping/ lack of ownership - Serious misconceptions e.g. next of kin - Training scares staff/ not practice-minded - Time conflicts: acute care v MCA needs - Confusion around DNACPR notices, ADRT - Financial fraud/ grooming very difficult to detect - Confidentiality v discussing best interests decisions - Clinical staff need support to “default to life” <p>And in all of the above, a need for simple language around the Act.</p> | <p>8 February – Listening Event to gather the concerns of service users</p> <p>Mid-Feb – Leadership Group meets for the first time</p> <p>15 March – National Action Day</p> <p>April/ May – Focussed MCA events for professionals</p> <p>7/8 September – NMCF presence at the NHS Innovation Expo</p> <p>By end of 2016 – NMCF’s first annual report</p> <p>Regular newsletters throughout the year.</p> <p>Further projects expected to be identified.</p> |

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| <p>Health Education England</p> | <p>Work undertaken over the last year includes the addition of the MCA to the doctors' foundation curriculum.</p> <p>Local Education & Training Boards have put MCA programmes into place.</p> | <p>Challenge now lies not in the curriculum but in translating this to practice.</p> <p>Revalidation key – having MCA elements integrated into this.</p> <p>Review all HEE's e-learning training for MCA compliance also a priority.</p> | <ul style="list-style-type: none"> • Complete review and update learning materials – June 2016 • Work with TDA and NHSE to ensure access to on line learning materials to NHS staff • Working with NHSE agree approach to take to engage NMC (Nursing and Midwifery Council) 31st Jan 2016 to support activity in pre-registration programme and during validation. • Work jointly with partners to implement NMC decision |
| <p>Court of Protection</p> | <p>Main focus has been drawing up the Court's processes for responding to the Cheshire West judgment – namely establishing the Re X procedure.</p> <p>Managing new court rules changes, speeding up court processing times have also been a key concern.</p> | <p>Managing the increased drive to regionalisation a key priority for the next year.</p> <p>As well as bedding in the new rules and Re X procedure.</p> <p>Introducing new simplified application forms.</p> | <ul style="list-style-type: none"> • Transparency pilot commences end of Jan 16 (Implementation & management) • Case management protocol pilot due to commence Apr 16 (implementation & management) • Develop model for multiple points of entry for Health & Welfare applications across England and Wales |
| <p>Police</p> | <p>Good work undertaken on the early identification of vulnerable individuals, working closely with the College of Police. This would also be of value to other agencies.</p> <p>Work undertaken with MoJ on use of criminal provisions of the MCA.</p> | <p>Supporting front-line officers gain a greater understanding of the MCA a priority for the next year.</p> | <p>- Development of the Approved Professional Practice through the College of Policing (CoP) will include the MCA. This will ensure all officers are trained in it.</p> |

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| <p>Ministry of Justice</p> | <p>Significant work over the last year supporting the justice system responding to the House of Lords recommendations. Recently a good deal of work agreeing and preparing for the launch of the National Mental Capacity Forum.</p> | <p>UN Committee of Rights of People with Disabilities (UNCRPD) will be a focus over the coming year. As will work on issues of mental capacity and international cross-border work.</p> <p>Significant effort will be required supporting the new National Mental Capacity Forum.</p> | <ul style="list-style-type: none"> - CoP transparency pilot commences end Jan 2016 (MoJ policy and assessment lead) - NMCF “Listening Event” to be held on 8 February 2016 - NMCF first national newsletter by end February 2016 - NMCF National Action Event held on 15 March 2016 - Proposals for raising awareness amongst ethnic minorities |
| <p>Department of Health</p> | <p>Since March 2014, main focus of efforts has been on supporting the health system implement the recommendations from the House of Lords. In addition, support the system in response to the Supreme Court judgment.</p> | <p>Next year’s priorities will be to continue to support health and care partners and particularly to support the new National Mental Capacity Forum.</p> | <ul style="list-style-type: none"> - Membership of the National Mental Capacity Forum’s “Leadership Group” confirmed. First meeting held by end March 2016. - NMCF “Listening Event” to be held on 8 February 2016 - NMCF first national newsletter by end February 2016 - NMCF National Action Event held by end April 2016 - Toolkits for GPs and on Supported Decision-Making commissioned and completed by end April 2016 |

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| <p>Department for Work and Pensions</p> | <p>The defining principles of the MC Act, in particular that of acting in the in the 'best interests', have been incorporated into the appointee process.</p> | <p>We are planning to review the process, not in relation to the Act itself but in how we manage our relations with corporate appointees. It is also the intention to take a more positive approach in working with Safeguarding Boards where that is appropriate.</p> | <p>Hopefully, will move from the planning to the 'doing' stage.</p> <p>Update the Appointees guidance, including strengthening the message around safeguarding.</p> |
| <p>Official Solicitor to the Senior Courts</p> | <p>2014</p> <p>1. I gave evidence to the HoL Select Committee on the Mental Capacity Act 2005.</p> <p>2. I successfully appealed the Court of Appeals' earlier decisions to the Supreme Court: <i>P (by his litigation friend the Official Solicitor) v Cheshire West and Chester Council and another; P and Q (by their litigation friend, the Official Solicitor) v Surrey County Council.</i></p> <p>3. As advocate to the court, I instructed counsel in the procedural case <i>In re X and others (Court of Protection: Deprivation of Liberty) (Nos 1 and 2); Practice Note</i> Sir James Munby P.</p> <p>4. I was a member of the CoP Informal Rules Committee and its drafting subgroups. Two of my deputies are also members and other of my staff contribute on an ad hoc basis.</p> | <p>The function and purpose of my office is to act, subject to budgetary and staffing constraints, whether in contentious or non-contentious matters, where, either because there is no other suitable person willing and able to act, or some other reason, failure to do so would result in an injustice. I perform duties pursuant to statute, rules of court, direction of the Lord Chancellor, at common law, or in accordance with established practice. <u>I act as litigation friend</u> in the Family Court, county court, High Court, and <u>Court of Protection</u> (and on appeals from the decisions of those courts). <u>I conduct litigation</u> under section 90 of the Senior Courts Act 1983, as well as acting as litigation friend, <u>in serious medical treatment cases and in property and affairs applications</u> in the Court of Protection.</p> | <p>Continue to seek to ensure effective access to justice for persons who lack mental capacity to conduct their own proceedings and for persons who are the subject of proceedings in the Court of Protection; including (a) upholding their equal recognition before the law; (b) their enjoyment of their right to liberty and security of person, not being deprived of their liberty unlawfully or arbitrarily; and, (c) seeking to obtain funding for the same.</p> |

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| | <p>2015</p> <p>5. I was represented in the procedural the case of <i>Re X (Court of Protection Practice)</i> in the CA.</p> <p>6. I was a party by virtue of my office in the procedural case <i>NRA and others</i> Charles J.</p> <p>7. I was successful in challenges by way of judicial review to the Legal Aid Exceptional Funding Scheme, in so far it operates for those lacking capacity, in the <i>IS</i> decisions Collins J and the CA (subject to a further appeal by the Director of Legal Aid casework and the Lord Chancellor – to be heard in March 2016).</p> <p>7. I am a party by virtue of my office in the procedural case <i>JM and others</i> Charles J .</p> <p>8. I continue to be a member of the CoP informal Rules Committee and its drafting subgroups. Two of my deputies are also members and other of my staff contribute on an ad hoc basis.</p> | | |
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