

# Mental Capacity Act and Safeguarding Vulnerable Adults

## **Agenda**

### **Day 1**

- 9.30 Introduction
- 10.00 Capacity and Safeguarding
- 10.30 Best interests
- 11.15 Coffee
- 11.30 IMCA
- 12.30 Lunch
- 1.30 Court of protection and deputies
- 2.00 Lasting Powers of Attorney: Safeguarding v. Empowerment
- 2.45 Break
- 3.00 Restraint
- 4.00 Any questions, recap of key points, homework
- 4.30 End

### **Day 2**

- 9.30 Quiz to recap yesterday's learning
- 9.45 Advance decisions
- 10.00 Excluded decisions and ill treatment and neglect
- 10.30 Simulation part 1
- 11.15 Coffee
- 11.30 Simulation part 2

12.15	Lunch
1.15	Simulation part 3
2.00	Simulation part 4
2.45	Break
3.00	Making it real
3.45	Action planning and any questions
4.15	Evaluation
4.30	End

# Trainers notes

## **Mental Capacity Act and Safeguarding Vulnerable Adults**

### **A training pack**

#### **Aims**

To give professionals working with people with learning disability an understanding of how the Mental Capacity Act (MCA) impacts on the safeguarding of vulnerable adults.

#### **Objectives**

- To ensure a common understanding of the key concepts of capacity and best interests as they relate to people with learning disability.
- To develop a knowledge of key aspects of the Act including restraint, deprivation of liberty, the role of a court appointed deputy and the court of protection.
- To develop an understanding of when it is appropriate to involve an IMCA in a safeguarding case.
- To explore how these aspects of the Act can assist in the safeguarding of vulnerable adults.

#### **Who is the training for?**

The training is aimed at anyone working in adult safeguarding with adults with learning disability. Although the training is aimed specifically at those working in learning disability services, many of the basic principles are also applicable to other vulnerable adults. Those undertaking the training should have a thorough understanding of vulnerable adult safeguarding procedures and some basic knowledge of the Mental Capacity Act. However, the course begins with exercises to refresh knowledge of basic concepts of capacity and best interests.

#### **How to use this pack**

The content of this training can be delivered either as a two day training course, or through using individual exercises, for instance in team meetings. Any of exercises 1 – 5 could be used in this way. This pack provides notes and information for trainers, and is based on the experience of piloting the material delivered as a two day course. The pack also contains the materials required for the exercises.

It is useful to have a copy of the Code of Practice when delivering this training. If all the participants work in the same area, it can be useful to have copies of any standard forms, e.g. assessment of capacity forms, which are in use locally. A range of other useful publications are referred to in the text and listed at the end of this pack.

What is lawful or unlawful under the MCA depends on the exact circumstances of each case. It is often not possible to give general statements about what would be lawful. Participants with specific legal queries should take legal advice.

## **Day 1**

### **Introduction**

Ground Rules – confidentiality is important since on day 2 we will be discussing real cases.

What we will cover in the two days (Aim and objectives slides).

The exercises – it is important to emphasise that for many of the exercises there are no right/wrong answers. It is impossible in such a short space of time to give enough information to decide in each particular case. In some cases it may not be clear as legal test cases will be required to clarify. The exercises are designed to get participants to think about what factors they might need to consider in order to determine the answer.

The Mental Capacity Act is a “framework” Act. In many instances it does not say what is lawful or unlawful, but what framework must be followed for decision making, so it can be harder to say categorically this is or is not lawful. It will always depend on individual circumstances.

There are two policy agendas in learning disability: Independence and safeguarding. Valuing People, Supporting People, Improving the Life Chances of Disabled People promote the idea of maximising independence and choice. No Secrets and the Safeguarding Vulnerable Groups Act focus on safeguarding. The Mental Capacity Act is perhaps unique in addressing both. It is worth returning to this theme throughout the course.

(Slide: Principles)

The MCA is unusual amongst Acts of Parliament in that it starts with five principles which underlie the whole of the rest of the Act. The first three of these address the independence agenda, protecting people from others making decisions on their behalf if they have the capacity to make those decisions for themselves. You must assume a person has the capacity to make a decision for themselves and do everything you can to support them to do so. Making what others consider to be an unwise decision does not in itself indicate a lack of capacity. However, where a person lacks capacity, the Act protects them from the consequences of their making decisions without fully understanding the consequences and from inaction because no one feels able to make a decision. It does this by providing a framework for others to make decisions on the person’s behalf. The second two principles are designed to protect those who lack capacity, by ensuring that decisions made on their behalf are made in their best interests and that the decision maker considers if there is a less restrictive alternative.

This tension between independence and safeguarding hinges on the assessment of capacity. We all make decisions that others consider unwise. We all make “wrong” decisions and learn from our mistakes. People with learning disability must be allowed to do the same **if** they have the capacity to understand the risks and to learn from mistakes.

## **Capacity and Safeguarding**

### Exercise 1

Distribute the case study and the questions associated with Exercise 1. Participants to discuss in pairs the answers to the questions. They should be encouraged to think logically through the different decisions to be made and how to assess Miss Yu’s capacity. Even people who know the definition of capacity well often struggle to work it through in relation to a real case, or get distracted by the safeguarding issues. Remind people that this exercise is about capacity. Being clear about this makes record keeping much easier. Ask them to feedback from the groups, and use this feedback to recap on the two stage test of capacity. (Slide: lacking capacity) Did people identify different decisions (Is the day centre the right place for Miss Yu, are the activities she currently undertakes there right for her, is there a possibility that she is being abused or neglected either by the day centre staff, users, her father or someone else, should her personal information be disclosed to her father?)?

Record keeping: did they write down that capacity was in question because of her learning disability (Stage 1, impairment of the functioning of mind or brain)? Did they identify that Miss Yu might not be able to understand the information, or use it to make a decision (Stage 2)?

Did they identify that Miss Yu might have capacity in some areas and not others? For instance, she might be quite happy to consent to her information being shared with her father, but unable to weigh up the different options of daytime activity available to her.

Many people ask if there are standard forms for recording this, and locally some people may have been given these. If not, recommend people take it back to basics – go through what the Act says and write an assessment under each heading. There is a typical assessment record form included for use in this exercise if there is no local version.

## **Best interests**

### Exercise 2

Distribute the additional questions which relate to the case study used in Exercise 1. Discuss in pairs and then get them to feed back. Again encourage the participants to go back to first principles and to write down their answers. What does the Act say about determining best interests?

(Slide: Best Interests)

Slide: Best Interests summarises the key areas of best interest decision making relevant to this case. People should be identifying:

How to involve Miss Yu as much as possible

How to establish her past and present wishes

Who should be consulted? This will include her father and day centre staff who work with her. Draw attention to chapter 16 of the Code of Practice which covers disclosure of information to people being consulted about best interests. Her father cannot be meaningfully consulted if he is not given the information he needs to give an opinion. But he must keep this confidential and should not be given information which is not relevant to the decision.

The first point is interesting in the context of learning disability. Obviously Miss Yu is unlikely to gain capacity to decide in this case, but does this mean that this part of the Act is irrelevant in learning disability? Some services working with people over a long period of time have interpreted Principle 2 of the Act as meaning not just doing all you can to enable a person to make a particular decision at a particular time, but also in the context of working with a person over a longer period of time to develop their decision making abilities so that they will be able to make more decisions in future.

## **Break**

## **Independent Mental Capacity Advocates**

Presentation

(Slide – circumstances under which you must involve an IMCA)

Nobody other than a paid carer who it is appropriate to consult and the decision is about change of accommodation or serious medical treatment.

(Slide: Deprivation of Liberty) - after April 2009 when the Deprivation of Liberty Safeguards come in it will also be a requirement to instruct an IMCA if an application is made to deprive someone of their liberty and there is nobody appropriate to consult other than paid carers. If a person deprived of their liberty or their representative request an IMCA, one must be provided (Deprivation of liberty is covered later on today).

(Slide: circumstances under which you may involve an IMCA)

Discretionary powers where there is a review of care hospital or care home accommodation or where the authority is considering or has taken safeguarding measures. This could be for the person who has been abused or the person perpetrating the abuse, if they lack capacity to agree to one or more of the protective measures. An IMCA should be instructed in these cases when it would be of benefit to the person. Make sure this is really clear, as people tend to get confused between the circumstances under which an IMCA **must** be instructed and those where they **may** be. In the case of

safeguarding procedures an IMCA may be involved even when there are friends and family involved.

(Slide: Role of an IMCA)

- Support and represent the person
- Consult with others
- Ascertain the person's wishes, feelings, preferences & values
- Ensure all possible courses of action considered
- Check the framework of the Act is followed

To do this they can:

- Meet the person in private
- Access relevant records
- Seek a second medical opinion

How do you decide if an IMCA might be useful in a safeguarding case? ADASS guidance advises an IMCA should be used when "other arrangements are not robust enough to support the necessary decision making." There must be some benefit to the person of having an IMCA.

(Slide: Factors to consider in deciding if a person would benefit from an IMCA)

Are there family and friends? If so, are they able to support the person in such a way that an IMCA is unnecessary? Are any of the family and friends the alleged perpetrator?

Is there already an advocate? If so, are they qualified as an IMCA? If not, are they still able to support the person through the process?

Is there serious exposure to risk? For example, risk of death, serious injury or illness, deterioration of physical or mental health or emotional distress. If so, an IMCA should be appointed.

Will the decisions made impact on the person's rights? If the alleged perpetrator of financial abuse is a paid professional and is being prosecuted, then the impact on the person's life is unlikely to be large. If, however, the proposed safeguarding measures are likely to involve change of accommodation, decisions about access to alleged perpetrators, changes in care packages or restrictions on lifestyle, then an IMCA is more likely to be relevant.

Ask people to discuss in pairs what they feel the benefits might be of involving an IMCA, and what the challenges might be for the IMCA. Ask for feedback on each question in turn.

Some of the challenges identified by IMCAs about working in safeguarding cases include:

Potential conflict between families and IMCA.

It can be difficult to assess a person's capacity around protective measures that have yet to be identified. Where people live in their own home it can also be difficult to gain access to assess capacity. In general, where it seems likely that the person will lack capacity, and it is appropriate to do so, an IMCA should be instructed. If it later becomes clear that the person does not lack capacity, the IMCA can then withdraw.

If an IMCA is instructed at a late stage in the process they may not have time to properly gather information about the person's wishes.

It is hard to know when the outcome has been achieved. This is much more obvious in, for example, change of accommodation. At what point does the IMCA role end? In general this will be when the safeguarding actions have been implemented which ensure the person's safety in a way which is proportionate and less restrictive taking account of the person's wishes.

Decision makers may be reluctant to reveal information to IMCAs if they feel this information will then be shared with family members. Clear agreements are needed about this or important information may be left out of the report to IMCAs.

Lack of resources for IMCAs may mean pressure not to use the discretionary powers.

Safeguarding proceedings are usually made up of a number of different decisions, so the IMCA role can be more complex and more time consuming than other cases.

Where the police become involved, IMCAs need to ensure they do not contaminate investigations.

If people using IMCAs in safeguarding cases are aware of such issues they can act to reduce such challenges, and it is more likely that the IMCA will be a helpful addition. Guidance on the IMCA in Adult Protection Proceedings, available from Advocacy Partners, contains a helpful checklist for local authorities to help maximise the ability of IMCAs to work effectively in safeguarding cases.

### Exercise 3

Would you instruct an IMCA in this case? Give out the list of cases and ask people to discuss these in pairs, then feed back to the group.

In the case of George, an IMCA would have to be instructed, as it is a local authority deciding change of accommodation for someone with no family or friends. In all the other cases an IMCA could be instructed if safeguarding procedures are being used. Shahid might not benefit from one as he already has an advocate, and since the police are investigating Jane's case, she may not need one. Monica and Tom might well benefit from an IMCA as possible measures include a change of accommodation which could have a big impact on their life.

## **Lunch**

### **Court of Protection and Office of the Public Guardian**

Presentation. The next part of the course looks at ways to make decisions for people if they lack capacity. Day to day decisions can be made informally by professionals or family using the best interests framework, but for some decisions, formal decision making powers are required.

(Slide: Court of Protection)

The Court of Protection is intended as a last resort if no other way can be found to resolve an issue. It has the following powers:

- Can make declarations
- Whether the person lacks capacity
  - The lawfulness or otherwise of an act done or yet to be done
  -
- Court may make a decision on behalf of a person
- Court may appoint deputy to make decisions on behalf of a person.

All of these powers are likely to be used when the framework of the Act has not been successful in allowing a decision to be made. This might be because there is disagreement, or where the legal situation is unclear. There is likely to be quite a bit of case law in the next few years which will clarify how the framework should be applied in certain situations.

(Slide: Deputies)

This is likely to happen where a series of decisions need to be made and the court does not want to have to sit every time. The Court gives powers to a deputy. The power and scope of the deputy should be as limited as is reasonably practicable in the circumstances.

A person can also apply to become a deputy if the issue cannot be addressed in any other way. Might occur if there is family dispute, or if someone is needed to manage finances but the person lacks the capacity to make an LPA.

A deputy cannot make a decision which conflicts with an LPA.

Deputies have a range of duties such as duty to act, to have regard to the code of practice, to act with due care and skill, etc.

People who were receivers before the Act came into force are now deputies for financial affairs.

(Slide: Office of the Public Guardian)

- Maintains a register of LPAs and court deputies
- Supervises deputies
- Investigates complaints
- Provides information to the public
- Can direct a Court of Protection visitor to visit a deputy and investigate.

Court of Protection visitors can visit and interview a deputy, either to support them in carrying out their role effectively, or to investigate suspected failure to carry out duties correctly. Deputies have to co-operate with the Visitor. If a deputy was suspected of misusing their powers, the Visitor could make a report to the court and the court could remove their powers as a deputy.

They will be involved in safeguarding where the issue relates to the actions of an LPA or Deputy.

### **Safeguarding and Empowerment – Lasting Powers of Attorney**

For this section it is useful to have the forms needed to take out an LPA. These can be downloaded from the PGO website:

[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk).

Presentation:

(4 slides on the key points about LPAs, the different types and how to make one out.)

Key points:

You need capacity to take out an LPA. You are giving someone potentially quite a lot of power over your life, so it is important that you understand what you are doing, and choose the right person.

The two types of LPA are Property and Affairs, which covers all decisions relating to finances and property, and Personal Welfare, which covers all aspects of health and welfare including where you live, social care support, etc. They are two separate entities, so you can have one or both. You can have the same attorney for both or different. The attorney in both cases is

required to act in the person's best interests, but they also have a duty of care. The Act does not just give an attorney the power to act; it also gives them a duty to act.

Attorneys are overseen by the Office of the Public Guardian and any suspicion of abuse of the powers should be reported to the OPG (as well as anyone else appropriate).

Taking out an LPA is done by completing a form, which can be downloaded from the website of the Office of the Public Guardian. The form includes a section for a certificate provider statement. This is intended to protect against people being coerced into taking out an LPA, or doing so without understanding the implications. The certificate provider must interview the person alone and guidance notes for certificate providers indicate the sort of questions they should be asking.

An additional safeguard is that the person can list people they wish to be notified if the LPA is used. This ensures that the attorney is not using the powers without anyone else knowing. If the form does not list anyone to be informed when the LPA is used, then two certificate providers are required.

Before use the form must be registered with the Office of the Public Guardian, for which there is a fee.

To complete the form, the person taking out the LPA must sign to say that they have read and understood the "prescribed information" at the start of the form.

This is an interesting issue about safeguarding and empowerment. A person with a mild learning disability might well be able to understand that they might in future not be able to make decisions and know very clearly that they want a particular person to decide. Should they not have as much right as anyone else to do so? But the forms are not available in easy read, as they are a legal document, so what level of capacity would a person need, and what sort of support would be appropriate for them to receive when taking out the LPA? Suggest that people look at the forms during the next break and think about the people they work with. Would they have capacity to understand the forms?

The Personal Welfare LPA can only make decisions about life-sustaining treatment if the LPA clearly states that (there is part of the form to do this). It can only be used if the person lacks capacity to make the decision for themselves.

The Property and Affairs attorney can be used when the person still has capacity (unless the person has said on the form they do not want this). They can make decisions relating to finances, access bank accounts, property including buying and selling houses.

## Exercise 4

In groups, discuss how you might be able to challenge the LPA if you felt it was not valid.

Report back to the group. The following options should be identified:

- If she did not have capacity at the time she took it out.
- Check who was the certificate provider. Could they be asked about her capacity at the time?
- Does the form list people to be informed when the LPA is used? If so, have they been informed?
- Is it registered – does the form have the correct stamp?
- Does it cover life-sustaining treatment, and would Nila have had capacity to decide about this?
- Is her mother acting in her best interests? If the LPA is valid she can make the decision, but will still be required to follow best interests, including consulting those engaged in caring for Nila (e.g. the support worker), taking account of relevant factors (what the doctor tells her about the prognosis). What records would we expect her to have kept? (Informal carers are not expected to keep detailed records, but in this case her mother is acting in a formal capacity not as an informal carer.)
- The OPG could be asked to investigate.

## **Restraint**

Presentation. (Slide: Restraint.)

The Mental Capacity Act does not authorise restraint of a person unless two additional conditions are met:

- Reasonable belief that restraint is necessary to prevent harm to the person
- The restraint must be proportionate to the likelihood and seriousness of the harm
- Restraint is defined as the use, or threat to use, force to secure the doing of an act which the person resists or restricting the liberty of movement whether or not person resists.
- In line with the rest of the Act, the restraint must also be in the person's best interests and consider if there is a less restrictive alternative.

## Deprivation of liberty

There is a distinction between “restricting a person’s liberty of movement” (e.g. not allowing a person to go out until a staff member is ready to go with them because they would not be safe alone) and “deprivation of liberty” (e.g. not allowing a person to go out at all). From April 2009 there will be new safeguards for anyone who lacks capacity to consent to arrangements made for their care and treatment and who needs to be deprived of their liberty in a care home or hospital in their own best interests. The European Court of Human Rights has described the distinction between deprivation of liberty and restriction of liberty as “one of degree or intensity not one of nature or substance”. This makes it extremely complex to decide if a particular person has been deprived of their liberty. Such a decision can only be taken by weighing up all the facts of any given case.

Every effort should be made to avoid instigating care regimes which deprive someone of their liberty. With appropriate care planning and support, it should be possible for the majority of people who lack capacity to receive care or treatment in circumstances that don’t amount to a deprivation of liberty. All alternative forms of care that fall short of deprivation of liberty should be considered before the care home or hospital considers making an application for an MCA DOLS authorisation.

Except for in the most urgent cases, those who run care homes or hospitals do not need to decide if a person should be deprived of liberty. They merely need to decide if they can only care for a person in circumstances that may amount to a deprivation of liberty. If they think no other care regime is appropriate, and deprivation of liberty is in the person’s best interests, then from April 2009 the care home or hospital will be able to make an application for a standard MCA DOLS authorisation to their local authority or PCT who have been designated as “supervisory bodies”. The supervisory body will then commission a series of assessments to determine if the deprivation of liberty is necessary to protect the person from harm, is a proportionate response to the likelihood of the person suffering harm and is in the person’s best interests. A deprivation of liberty will only be authorised by the supervisory body if all the qualifying requirements are met.

If a person needs to be deprived of their liberty urgently, in their own best interests, care homes and hospitals can issue themselves with an urgent MCA DOLS authorisation and apply to the supervisory body for a standard authorisation assessment to be completed within 7 calendar days. Urgent should be rare and should last for as short a time as possible. Equally, those working in safeguarding do not need to decide if a person has been deprived of their liberty. It is their role to understand when an application should be made and ensure it has been.

What is deprivation of liberty?

People will want to know what sort of things constitute deprivation of liberty. However, it is not possible to provide a definition of deprivation of liberty because deprivation of liberty depends on the individual circumstances of

each and every case and is ultimately a matter for the courts to determine the law.

The Code of Practice lists a number of factors to be considered. These will help to guide people's thinking. Court judgments indicate that the following factors can be relevant in identifying whether steps taken involve more than restraint and amount to a deprivation of liberty. It is important to remember that this list is not exhaustive; case law may identify additional factors to add to the list.

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- Staff exercise complete and effective control over the care and movement of a person for a significant period.
- Staff exercise control over assessments, treatment, contacts and residence.
- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts because of restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

Exactly what constitutes deprivation of liberty will become clearer as there are more test cases, but is likely to remain difficult to decide. Remind people that it is not up to them to decide what is and is not deprivation of liberty.

Key points about deprivation of liberty:

- Locked care homes - Be careful not to give the impression that all care homes with locked doors are depriving people of their liberty - It might be one of a range of factors that should be taken into account when assessing if deprivation of liberty is occurring but on its own is unlikely to constitute a deprivation of liberty. Deprivation of liberty is not something which should be commonplace.
- Deprivation of liberty can be authorised - Don't give the impression that deprivation of liberty is automatically wrong but do make clear that deprivation of liberty should only be considered where it is not possible to care for individuals in less restrictive circumstances. It is not possible to use clause 4 of the MCA, which allows a person to carry out "acts in

connection with care and treatment” including restraint if the conditions are met, to deprive someone of their liberty. However, occasionally it may be necessary for people in care homes to be deprived of their liberty in their best interests, and these safeguards allow this. They are about protective care.

- Deprivation of liberty can be abusive - Some of the actions in the Cornwall abuse case, for instance, may have deprived people of their liberty. These would not have been authorised. The safeguards should prevent unlawful deprivation of liberty.
- It is not just about physical restraint - Controlling a person’s behaviour through medication can, in some circumstances, constitute a deprivation of liberty. Again, each case would need to be decided on its own merits with all factors of the case being taken into account.
- Deprivation of liberty safeguards apply in care homes and hospitals – If it is necessary to deprive someone of their liberty in another setting, a decision by the Court would be required.

If it is considered necessary to deprive someone of their liberty, an application must be made for authorisation. This application must relate to:

A person aged 18 or over who:

- suffers from a disorder or disability of mind;
- and**
- lacks the capacity to give consent to the arrangements made for their care;
- and**
- for whom such care is considered to be a necessary and proportionate response in their best interests to protect them from harm.

People working in safeguarding are not responsible for making applications. However, a brief overview will be useful. Anyone needing more detail should refer to the Code of Practice.

(Slide: Deprivation of Liberty)

If a care home or hospital feels that their treatment of a person might constitute deprivation of liberty they must apply to the supervisory body for permission (unless it is because of an order of the Court of Protection). The supervisory body will be the PCT for a hospital and the Local Authority for a care home. All local authorities and PCTs will have a system in place by April 2009. The supervisory body must obtain 6 assessments before deciding if they will authorise detention.

(Slide: Assessments)

**1 Age assessment** – they are aged 18 or over;

**2 No Refusals requirement** - the authorisation sought does not conflict with a valid decision by a donee of lasting power of attorney or a deputy appointed for the person by the Court of Protection and is not for the purpose of giving treatment which would conflict with a valid and applicable advance decision to refuse treatment made by the person.

**3 Mental capacity assessment** - they lack capacity to decide whether to be admitted to or remain in the hospital or care home.

**4 Mental health assessment** – they are suffering from a mental disorder within the meaning of the Mental Health Act 1983 (this includes all learning disability).

**5 Eligibility assessment** - a person is not eligible if they are:

- detained under the Mental Health Act 1983
- subject to a requirement under the Mental Health Act which conflicts with the authorisation sought e.g. a guardianship order requiring them to live somewhere else
- subject to powers of recall under the Mental Health Act or
- unless the application is to enable mental health treatment in hospital and they object to being in hospital or to the treatment in question.

**6 Best Interests Assessment** - the proposed course of action would constitute a deprivation of liberty and it is:

- in the best interests of the person to be subject to the authorisation, **and**
- necessary in order to prevent harm to him or her; **and**
- a proportionate response to the likelihood of suffering harm and the seriousness of that harm

(Slide: Authorisation)

The supervisory body must tell all interested parties, including any IMCA, of the outcome. If detention is authorised this can only be for a maximum of 12 months, after which it would need to be renewed if detention is still required. If urgent authorisation is required this can last only 7 days during which the full assessment required for a standard authorisation must be carried out. A representative will be appointed (chosen by the person if they have the capacity to do so). The Best Interests assessor recommends the person to be appointed as the representative. This will usually be a family member, friend or carer. If the person is unwilling to act or if there is no such person to represent the interests of the person with the DOLS authorisation, then the supervisory body will appoint a paid representative. The representative must keep in touch with the person and support them in matters relating to the authorisation. They can also request a review, or refer the case to the Court of Protection.

More information about the deprivation of liberty safeguards can be found at:  
<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

## IMCA and deprivation of liberty

Both a person who is deprived of their liberty and their representative have the right of access to an IMCA. The supervisory body must instruct an IMCA if the person or their representative requests one. The role of the IMCA is to help represent the relevant person and, in particular, to assist the relevant person and their representative to understand the effect of the authorisation. The IMCA can also provide support with an application to the Court of Protection to appeal against deprivation of liberty. In addition, the supervisory body may instruct an IMCA if it believes that the rights and entitlements of the person with a DOLS authorisation would be better protected.

## Safeguarding

The safeguards rely on the managing authority (care home or hospital) to identify the need for an application and make the application. If they do not do so, any third party (which could include any of the participants on this course) who feels the person is deprived of their liberty without authorisation should draw this to the attention of the managing authority. A standard letter is available for this purpose. The managing authority must respond, usually within 24 hours. If the response is not satisfactory, the person can draw the case to the attention of the supervisory body. A standard letter is available for this purpose. The supervisory body can appoint someone to consider whether the person is deprived of their liberty. If you raise a concern with the supervisory body in this way it must notify you whether it has decided to commission an assessment. It does not have to do so, for instance, if the person is obviously not deprived of their liberty, or if the decision has already been made and the circumstances have not changed.

Exercise 5 is designed to get people thinking about these issues. It is important to make clear that each case must be decided individually. It is not possible to give a definitive answer to these cases. The idea is for people to discuss what factors they would take into account.

Exercise 5: The scenarios should be put onto cards, one set for each group. Indicate that in all these cases the person lacks capacity (it doesn't say this on the cards because it is too repetitious). The group are asked to sort them into 2 piles:

- Restraint
- May be deprivation of liberty - authorisation should be sought

In some cases the restraint is clearly unlawful. In others it may be lawful, depending on the circumstances. It is essential to make it clear that on the border lines we can't say what is the "correct" answer. From a safeguarding point of view you could argue that any situation which might possibly constitute deprivation of liberty, however remote that possibility, should be referred. However, lots of inappropriate referrals will not benefit anyone.

The following are all restraint. They could all be lawful restraint provided they are in the person's best interests, the restraint is proportionate to the risk of harm and they are the least restrictive alternative.

- The door to a care home is locked to stop people going out without a member of staff accompanying them.
- Someone grabs a person's arm to prevent them stepping in front of a bus.
- A person is physically restrained so that they can be given an injection (Depending how much harm the person would come to if they didn't get the injection this might be lawful, but less restrictive alternatives such as oral medication should be considered).
- A person is restrained by three staff members to prevent them injuring another person (Unlikely to be lawful unless three staff members are really required).
- A person is sedated to prevent them harming themselves. (Assuming this is short term sedation it would be restraint. If it is continuous, then it could be deprivation of liberty depending on the circumstances.)

The following might constitute deprivation of liberty. Some might be authorised, depending on circumstances.

- A person is locked in their room to stop them wandering. (This would be restraint, if short term, but if long term then could be deprivation of liberty, depending on the circumstances).
- The door to a person's care home is locked and they are never allowed out.
- A person is in a hospital. The family arrive saying they want to care for the person at home. The request is refused and they are told that the person must stay in the hospital.
- A person was deemed to be at risk when living with their family so a court decides they must be moved to a care home. The family are prevented from removing them from the home (This is deprivation of liberty, but has already been authorised by the court, so authorisation would not be needed).

### **Any questions, recap of key points, homework**

Homework is to think of a case you have been involved in where MCA is relevant. Either something you are working on at the moment or something

that happened before the Act came in where the Act would have been useful. This will be discussed with other participants tomorrow.

## **End of day 1**

## **Day 2**

### **Quiz to recap yesterday's learning**

The quiz is designed as a reminder of yesterday's information. Distribute the quiz and give time for people to complete it in pairs. Remind people that in many cases there are no clear cut answers. Share the answers as a whole group. Key points to draw out are:

#### **1. In which of the following cases would an IMCA have to be appointed if a person lacks capacity?**

A. Moving from one care home to another if the person has no friends or family.

B.

If the care home is arranged by the local authority or health authority an IMCA would have to be appointed. If it is privately arranged, e.g. by the person's family, then no IMCA would be required.

C. A family decide to move house and the person is moving with them.

D.

No IMCA is required as this is considered a private matter.

C. There is concern that a person who lives with family is being sexually abused by her brother.

If adult safeguarding procedures are used then an IMCA may be appointed, despite the fact the person has family, but this is discretionary.

E. A friend raises concerns about possible financial abuse by a court deputy.

F.

If adult safeguarding procedures are used then an IMCA may be appointed.

E. A person has been deprived of their liberty and selected their own representative, who is a Deaf sign language user.

The Code of Practice identifies the fact that a person has selected a representative who needs support with communication as a reason to consider if an IMCA should be appointed. Without support, this representative may not know how to ask for a review or make an application to the Court of Protection.

#### **2. Which of the following might constitute deprivation of liberty?**

A. Locking a person in their room as a punishment.

Probably not deprivation of liberty (punishment implies it is temporary) but very probably unlawful restraint.

B. Keeping someone sedated so that they don't cause trouble.

If it was over a long period of time this could constitute deprivation of liberty. It might be possible to gain authorisation for this if the sedation was in the person's best interests and there was no practical option that was a less restrictive, but it would not be possible if the sedation is merely "so that they don't cause trouble". It is the person's best interests, not the interests of the staff.

C. Excessive restraint for a short period of time.

Not deprivation of liberty because it is temporary, but if it is excessive then almost certainly unlawful.

D. Locking the door to care home to prevent unauthorised people from entering.

Not in itself deprivation of liberty provided people are able to go out when they want and friends and family are not prevented from visiting.

E. Telling someone's relatives they are not allowed to visit except during official visiting hours of 2pm – 4pm.

Could be a factor in deprivation of liberty if the relatives cannot visit during those times, but generally operating visiting hours does not constitute deprivation of liberty.

### **3. In which of the following circumstances might a court appoint a deputy?**

A. There is family dispute over which care home would be in a person's best interests.

The court would probably not appoint a deputy; it would make a decision about which would be best care home for the person. No further decision is required, therefore a deputy is unnecessary.

B. A person has complex medical problems and lacks the capacity to decide about treatment. There is disagreement about what would be the best course of treatment.

A deputy might be appointed in this case to remove the need for constant court hearings.

C. A person needs someone to manage their benefits.  
This would be covered by an appointee so no deputy would be required.

D. A person has inherited a large sum and lacks capacity to make decisions about how to use or invest it.

This would require a deputy. If the person had previously been on benefits and had an appointee, the deputy would be likely to take over the appointee's responsibilities as well.

E. The court has ruled that the LPA the person made is not valid.

A deputy might be required to take the decisions the LPA would have had it been valid. Alternatively this might be done informally in the person's best interests. E.g. for a personal welfare LPA, the doctor might now become the decision maker.

#### **4. Which of the following is a function of the OPG?**

A. Checking that an LPA is valid before authorising it  
Yes.

B. Deciding how much supervision a deputy needs when carrying out their duties.

Yes. Deputies, because they are chosen by the court, not the person who now lacks capacity, are subject to more supervision than attorneys.

C. Reporting a solicitor acting as finance deputy to the Law Society if there is suspicion of fraud

Yes. If an attorney or deputy are not carrying out their duties correctly the OPG can report this to any relevant agency which can include police, adult protection committee, or a professional regulating body.

D. Checking that an attorney is carrying out their duties correctly

No. The OPG has this function in relation to deputies but will normally only intervene in the case of an attorney where there has been a complaint or report of suspicion that powers are not being used correctly.

#### **5. Which of the following is a role of a Court of Protection Visitor.**

A. Check on the well-being of a person who has a deputy managing their welfare

Yes.

B. Cancel the appointment of an attorney who has failed to act in line with their powers

No. Only the court can actually cancel the appointment, but they would often act on the basis of a report by the visitor.

C. Give advice to a deputy who is not sure how to carry out their duties

Yes. Visitors can advise both deputies and attorneys who want advice or support in carrying out their duties.

D. Cancel the appointment of a deputy who has refused to co-operate with a Visitor who wanted to interview them about how they were carrying out their role as a deputy.

No, but deputies and attorneys are required to co-operate with the visitor and if they do not do so, the court could cancel their appointment if their behaviour was not in the best interests of the person who lacks capacity.

**6. The court decides to appoint a deputy to manage a person's financial affairs. Who might be appointed?**

A. The person's 15 year old brother

No. You must be over 18 to be a deputy.

B. The person's 23 year old sister

Yes. A member of the family can be a deputy.

C. A firm of solicitors

Yes, an individual professional or a company can be a deputy.

D. The manager of the care home they live in

Only under exceptional circumstances should a person already directly caring for the person be appointed as a deputy.

E. The Director of Adult Social Services in their local authority

Yes. A specific post can be made deputy.

F. Their 23 year old sister who is reluctant to take on the responsibility

No. A person cannot be made a deputy without their consent.

G. The person's parents

Yes. It is possible to appoint two deputies to act jointly or separately.

**Advance decisions**

(Slide: Advance decisions)

On day one we covered ways to make decisions where a person can't make those for themselves, including deciding informally what is in their best

interests, deputies and attorneys. Advance decisions are a way to make a specific decision in advance about what you would like to happen if you lose capacity in future. Advance decisions allow a person to refuse treatment, for instance, to say “I never want a blood transfusion on religious grounds”. If it is applicable in the circumstances then it must be upheld, and doctors cannot give you that treatment (this means if the situation changes, for instance an alternative treatment which you expected to be used instead is no longer possible, it won't be upheld). If it relates to life-sustaining treatment then it must be in writing and witnessed.

If a person is sectioned under the Mental Health Act 1983 under a section which allows treatment then an advance decision about mental health treatment won't be upheld. This is because even if a person has capacity they can be treated against their wishes under the Mental Health Act. This only applies to mental health treatment, so even if you have been sectioned, an advance decision about physical health treatment would have to be upheld.

Advance decisions can't be used to request a specific treatment because even a person with capacity can't demand a treatment that a doctor thinks is inappropriate. Although they don't have to be in writing, the more people know about your advance decision, and the clearer it is, the more likely it is that it will be followed.

Would the people you work with have the capacity to make an advance decision? Do you think it would be followed by doctors if the circumstances arose? If not, why not?

### **Excluded decisions and the new offences of ill treatment and neglect**

Presentation.

(Slide: Excluded decisions)

Most of these are fairly obvious. Highlight most important issues for safeguarding.

Marriage – no one who lacks capacity to agree to marriage can get married. People often ask about forced marriage. In this country this is a crime. Where a person lacks capacity and there is reason to suppose that they are being taken abroad for the purposes of forced marriage then the courts can prevent them from being taken abroad.

Sexual relations – is covered by the Sexual Offences Act. The definition of capacity is slightly different in this Act, and refers to persons with a mental disorder who lack the capacity to choose to agree. No-one can decide on someone's behalf. If a person lacks capacity to consent to sexual relations then no one can lawfully have sex with that person.

Divorce  
Adoption

Treatment under the Mental Health Act (MHA) – once a person has been sectioned under the MHA under a section allowing treatment then the MCA is not relevant to their mental health treatment - the protections of the MHA apply. The same would apply even if they did have capacity. This applies only to the mental health treatment. Any physical treatment or any other issue would be covered by the Mental Health Act.

Voting – you cannot vote on behalf of a person who lacks capacity.

## **New Offences**

(Slide: New offences)

The Act creates two new offences: ill-treatment of a person who lacks capacity and wilful neglect of a person who lacks capacity. These offences apply to:

- anyone caring for a person who lacks capacity – this includes family carers, healthcare and social care staff in hospital or care homes and those providing care in a person's home
- an attorney appointed under an LPA or an EPA, or
- a deputy appointed for the person by the court.

These people may be guilty of an offence if they ill-treat or wilfully neglect the person they care for or represent. Penalties will range from a fine to a sentence of imprisonment of up to five years – or both.

For a person to be found guilty of ill treatment, they must either:

- have deliberately ill-treated the person, or
- be reckless as to whether they were ill-treating the person or not.

It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the victim's health.

The meaning of 'wilful neglect' varies depending on the circumstances. But it usually means that a person has deliberately failed to carry out an act they knew they had a duty to do.

These offences make criminal prosecution possible in circumstances which might previously have been difficult or impossible, for instance, where there is no evidence of actual harm to the person.

The first prosecution under these offences was of two care workers who left three adults with learning disabilities locked in a car while they went to the betting shop. The adults in their care were released from the car by police after the alarm was raised by passers by who noticed their distress. The care workers were charged with wilful neglect, to which they pleaded guilty. They

were sentenced to community service, but the judge said they were “on the cusp” of going to prison.

### **Simulation exercise**

Most of the rest of day 2 is taken up with a simulation exercise looking at how these different aspects of the law might impact on a safeguarding case involving a person with a learning disability. If the course is being run for a group who all work within one authority, you may wish to adapt this making it more specific to the procedures in place, e.g. using any standard forms you may have or giving more specific job titles appropriate to the structure of that authority.

#### Part 1

Ensure the group is divided into groups of between 5 and 8 people. Distribute the scenario for part 1 to the groups and allow people to read through. Make sure they have all understood. In groups people should discuss the answers to the questions, identifying the key issues. Remind them to think about the safeguarding issues, but also about all the MCA issues we have covered in the course. If in doubt, go back to first principles – what decisions need to be made, does Mary have the capacity to make any, how she can be included, what support she needs, everyone must be thinking about her best interests. As with all these case studies, it is not possible in a short space of time to give definitive answers. Groups will need to flesh out the scenario and make up more details about Mary and her situation. Encourage them to do this. When feeding back to the main group, there may be different conclusions where groups have made different assumptions. Make sure this is clear, and encourage participants to be creative.

Groups report back to ensure everyone has identified all the key issues. There are issues about financial and physical abuse, and neglect. Related to the MCA there are issues about restraint, the OPG, deputies, Mary’s capacity to decide about where she lives, and what daytime activities she engages in.

#### Part 2

Give out roles to each member of the group. Each group should be no less than 5 people and should contain the following:

Court of Protection Visitor

Day Centre manager

Social worker responsible for investigating

Team manager responsible for the investigation

IMCA (in the unlikely situation that a group has decided Mary would not have an IMCA, leave this out and substitute a role from the list below. If this

happens draw out in the final discussion how groups that did include an IMCA found their role and if the group without feels it would have been useful).

Other roles for bigger groups (up to 8 people):

Mary's sister

Police officer

Care manager responsible for arranging Mary's place at the centre

Have blank cards available if groups have identified other roles as being needed.

Discuss in groups what should happen from the point of view of the role they have been given (participants don't have to go into role yet, but the exercise will work if they do). During the report back from the groups, ensure that they have covered the issues about Mary's capacity to be involved and to decide. She says she doesn't want any change. How much do we take account of her views and how much do we intervene to protect? How are the IMCA and Court Visitor going to be involved? What aspects of the Act are working to protect Mary and what to empower her?

### Part 3

A role play of a case conference. At this point, try to encourage participants to take part in their role. This is a simulation, so they need to be in role. This is important because it allows them to try articulating the capacity issues as they would have to in a real life situation, rather than just discussing them theoretically. The team manager should chair the meeting. The chair should ensure that the capacity issues in particular are drawn out. They may still need to invent new details, such as their findings in the investigation, so the exercise is like an improvisation. Participants may need to make up details and the others will have to adapt what they say to include this new information. If people finish early they can come out of role and discuss their observations on how the simulation went. Was the MCA useful? What were the relevant issues?

### Part 4

Feed back to the main group on the exercise. Start by asking each group in turn to summarise the outcome of the exercise. This may vary, depending on what assumptions they have made, and this is a useful reminder that the MCA does not give universal answers. Each case must be decided on the specific facts. Draw out the key MCA issues in what they feed back. Other issues to explore are:

What role did the IMCA play? How did other people feel about this? (Often the IMCA has done some challenging of decision making processes. Would people feel positive about this if it was a real case, not an exercise?) Why did people feel an IMCA would (or would not) be useful to Mary?

What sort of options were considered, and does Mary have the capacity to decide about these? Some interesting issues may arise around this related to ways to develop Mary's capacity. Groups may suggest, for instance, Mary staying at home with more support for her care. However, they may also talk about some support for Mary to understand the other options she might have. What support would she need to allow her to make an informed choice between staying in the home and moving out into, for instance, supported living? Could her capacity to make this decision improve over time? Do we have time to work on this?

If she has capacity to make this decision, but still decides to stay with her brother, despite the risk, she is entitled to make this decision which we might feel is unwise. How do we feel about this?

If she lacks capacity, but the decision is that it is in her best interests to stay with John and Pauline, but with more support, can she do this? Not necessarily. If Pauline is adamant that Mary must move out, then she cannot insist if the home belongs to John and Pauline, any more than she could if she had capacity.

What role did the Court Visitor play? Some will have made an application to revoke the powers. Others may have decided to offer support and guidance and monitor the situation. Either could be valid. What risks are associated with each?

### **Making it real**

This is a chance for people to relate this to real cases they have experienced and to get support from other members of their group in discussing how things might be done differently/better. Participants should bring the cases they have thought of overnight. Groups should discuss how is MCA useful/how would it have been useful? There may not be time for everyone to discuss their case, especially if groups are large.

As a whole group, share any key points from exercise. A lot of these tend to relate to capacity and best interests decisions and the fact the Act gives a clear framework. Reinforce the need to work logically through the framework, remembering that capacity is decision specific.

Sum up any key points. The Mental Capacity Act is a tool to be used in safeguarding. It is not a magic wand. People will still be vulnerable. People will still try to take decisions for those who have the capacity to make those decisions themselves. People will still commit criminal and abusive acts. They will still neglect vulnerable people. The Mental Capacity Act can empower and protect vulnerable people only if it is used. The participants on this course are in a good position to use it and to ensure that it achieves these twin aims of empowerment and safeguarding.

### **Action planning and any questions**

Distribute the action plans and give people time to complete these. Take any final questions.

## **Evaluation**

Evaluation forms are included in this pack if you wish to use them.

## **Useful documents**

It will be useful to have some of the following to hand when delivering the training.

Association of Directors of Adult Social Services (2005). *Safeguarding adults: A national framework of standards for good practice and outcomes in adult protection work*. London, ADASS.

*Code of Practice: Mental Capacity Act (England and Wales) 2005*. The Stationary Office, 2006.

*Teresa Gorczynska, 2008, Guidance on the IMCA in adult protection proceedings*, Advocacy Partners

*Mental Capacity Act Deprivation of Liberty Safeguards: Code of Practice (2008)*. The Stationery Office

[www.publicguardian.gov.uk](http://www.publicguardian.gov.uk) for a range of booklets, documentation and forms related to the MCA.

# Exercises

## **Mental Capacity Act and Safeguarding**

### **Miss Yu – case study for exercises 1 & 2**

Mr Yu's daughter has a learning disability. Now aged 35 she lives with her father. Miss Yu has begun to attend a day centre, but her father has become concerned about the ability of the centre to meet her needs. She has begun to display challenging behaviour and he suspects she may not be getting enough stimulation, or worse, may have been abused by staff. He asks the day centre for information about what his daughter has been doing at the centre and how she has been behaving. The manager of the centre refuses this request, saying that he is prevented from disclosing personal information in respect of Miss Yu because of the Data Protection Act. The father asks social services to review the service.

#### **Exercise 1: capacity**

Identify all the decisions that may need to be made.

How might you determine if Miss Yu has the capacity to make these decisions for herself? What do you need to consider in making this assessment?

What information would you expect to find in any record of this assessment?

**Record of assessment of:**

**Why is an assessment of capacity being carried out?**

**What decision does this assessment relate to?**

**Is there an impairment of, or disturbance in, functioning of the person's mind or brain?**

**Yes**       **No**       **Temporary**       **Permanent**

**Details**

**Does the person have the ability to understand the information related to the decision to be made?**    **Yes**       **No**

**Details**

**Does the person have the ability to retain information related to the decision to be made?**    **Yes**       **No**

**Details**

**Does the person have the ability to use the information when considering the decision?**    **Yes**       **No**

**Details**

**Can the person communicate their decision by any means?**

**Yes**

**No**

**Details**

**Is the person likely to regain capacity in the future?**

**Yes**

**No**

**If yes, can the decision be delayed until then?**

**Yes**

**No**

**Details**

**Assessment carried out by:**

**Date:**

**People consulted:**

## **Exercise 2: Best interests**

The centre manager argues that the problems are just because attending the centre is new. Once she settles in Miss Yu will get a lot out of the activities. Moving her at this time would simply make matters worse and not be in her best interests. In order to make this decision, what would need to be done?

What do you need to do in order to decide what is in Miss Yu's best interests?  
Who do you need to consult?

### **Exercise 3: IMCA**

Would you instruct an IMCA in this case? What factors did you consider to decide this?

Jane is 37 and has moderate learning disabilities. Her father is a court appointed deputy for her finances, which are considerable because of a compensation payment which was meant to fund her care. He is suspected of taking the money to pay for his own holidays. The police are investigating.

Shahid is 27 and has a learning disability. He has communication difficulties and is difficult to understand if you don't know him well. He has recently moved out of his family home into his own flat. His advocate, who has supported him for three years, has raised concerns about the support staff, who she believes are neglecting him, as the flat, including the kitchen, is dirty and she is not sure he is eating properly.

Monica is 42 and recently moved out of the family home into a residential service for people with complex needs. The placement doesn't seem to be working and her behaviour is becoming increasingly challenging. The manager of the current services says they just need more time to work with her. Her mother says her challenging behaviour is a sign that the staff are mis-treating her in some way, and there is enough concern about this to merit investigation. Alternative services have been suggested but there is no agreement on what would be best.

George is 56, and has been living in a residential service for some years. He gets on well with many of the staff, but has no contacts outside the home. After a member of staff made an allegation of physical abuse against a colleague, George's funding authority has decided to move him to an alternative home.

Tom is 35 and has a moderate learning disability. He lives with his parents who are now getting older. His father is not well and his mother is struggling to cope with caring for both of them. His mother feels she cannot leave his father, so Tom no longer goes out in the day and the home is becoming increasingly unhygienic. His mother is reluctant to allow social services to visit, but the one social worker who did gain access reported serious concerns about Tom's wellbeing.

#### **Exercise 4: LPA**

Nila is 37 and has learning disability. She lives with her parents, who receive direct payments, which they use to employ a support worker who goes out with Nila to enable her to take part in activities she enjoys. She goes swimming, shopping, and is about to start a work placement in a local cafe. Things are going well, until Nila is involved in a road traffic accident and is unconscious in hospital. The doctor needs to make decisions about her treatment, and since she is unconscious, will decide what is in her best interests. He talks to the support worker who came in with Nila, and telephones Nila's mother. Nila's mother arrives at the hospital with a completed Personal Welfare LPA giving her the power to make decisions about her daughter's treatment. She tells the doctor that if Nila should need resuscitation, she would not want this. The support worker doesn't believe this is what Nila would have wanted as she was enjoying life and looked forward to starting at work.

Is the LPA valid and if not, how could it be challenged?

## **Exercise 5: Restraint**

Print the following situations onto cards, one set for each group.

- A person is locked in their room to stop them wandering.
- The door to a person's care home is locked to stop them going out.
- The door to a care home is locked to stop people going out without a member of staff accompanying them.
- Someone grabs a person's arm to prevent them stepping in front of a bus.
- A person is sedated to prevent them harming themselves.
- A person is restrained by three staff members to prevent them injuring another person.
- A person is physically restrained so that they can be given an injection.
- A person is in a care home. When the family arrive asking to see them they are told they may not come in. The person later says they want to see their family and are told this is not possible.
- A person in a care home is told they will not be allowed to go home so don't bother asking.
- A person was deemed to be at risk when living with their family so a court decides they must be moved to a care home. The family are prevented from removing them from the home.

## Quiz

### 1. In which of the following cases would an IMCA have to be appointed if a person lacks capacity?

- A. Moving from one care home to another if the person has no friends or family.
- B. A family decide to move house and the person is moving with them.
- C. There is concern that a person who lives with family is being sexually abused by her brother.
- D. A friend raises concerns about possible financial abuse by a court deputy.
- E. A person has been deprived of their liberty and selected their own representative, who is a Deaf sign language user.

### 2. Which of the following might constitute deprivation of liberty?

- A. Locking a person in their room as a punishment.
- B. Keeping someone sedated so they don't cause trouble.
- C. Excessive restraint for a short period of time.
- D. Locking the door to care home to prevent unauthorised people from entering.
- E. Telling someone's relatives they are not allowed to visit except during official visiting hours of 2pm – 4pm.

### 3. In which of the following circumstances might a court appoint a deputy?

- A. There is family dispute over which care home would be in a person's best interests.
- B. A person has complex medical problems and lacks the capacity to decide about treatment. There is disagreement about what would be the best course of treatment.
- C. A person needs someone to manage their benefits.
- D. A person has inherited a large sum and lacks capacity to make decisions about how to use or invest it.
- E. The court has ruled that the LPA the person made is not valid.

**4. Which of the following is a function of the OPG?**

- A. Checking that an LPA is valid before authorising it
- B. Deciding how much supervision a deputy needs when carrying out their duties.
- C. Reporting suspicions of fraud by a solicitor acting as finance deputy to the Law Society
- D. Checking that an attorney is carrying out their duties correctly

**5. Which of the following is a role of a Court of Protection Visitor.**

- A. Check on the well being of a person who has a deputy managing their welfare
- B. Cancel the appointment of an attorney who has failed to act in line with their powers
- C. Give advice to a deputy who is not sure how to carry out their duties
- D. Cancel the appointment of a deputy who has refused to co-operate with a Visitor who wanted to interview them about how they were carrying out their role as a deputy.

**6. The court decides to appoint a deputy to manage a person's financial affairs. Who might be appointed?**

- A. The person's 15 year old brother
- B. The person's 23 year old sister
- C. A firm of solicitors
- D. The manager of the care home they live in
- E. The Director of Adult Social Services in their local authority
- F. Their 23 year old sister who is reluctant to take on the responsibility
- G. The person's parents

## **Exercise 6: Simulation exercise**

Mary is 27. She has a moderate learning disability and lives with her older brother, John, and his wife, Pauline. She attends a day centre. John was a receiver, so is now a deputy for financial affairs and manages her finances. This situation seems to have worked well for some time, but two different incidents have recently given rise to concerns.

The day centre workers notice that recently Mary has been arriving at the centre unwashed and occasionally in dirty clothes. One day a member of staff noticed bruises on her upper arms which Mary tried to hide.

Mary's sister, Jane, who visits occasionally, rings social services to say that on her most recent stay she felt John was taking Mary's benefits and using them for his own use. Mary is fed and clothed, but when she is not at the centre she just sits in front of the television all day.

When asked about this, John says he is not using her money except for Mary's legitimate living expenses. He and his wife care for Mary every evening and all weekend so why shouldn't they take some money for themselves? He says she is clumsy and always spills her food. Sometimes she doesn't want to wash and what is he supposed to do? Force her? Then there really would be bruises for people to complain about. He gets quite aggressive.

### Part 1 – Discussion in groups

In group discuss:

What are the issues?

What should happen?

What should social services do?

What should the day centre staff do?

What are the issues related to capacity and other aspects of the Mental Capacity Act?

Should Mary have an IMCA?

## Part 2

Mary says she is happy where she is and she doesn't want anyone else coming into the house. She loves her brother and his wife is nice to her.

Pauline says she doesn't think Mary should be staying with them. Jane lives too far away to help them much. John isn't able to look after her properly and doesn't know how to deal with her effectively when she is upset. One day last week she came back from the cinema with a friend to find he had gone out leaving Mary alone. When he got back he said he'd only gone down the road to get some cigarettes but she thinks he was probably in the pub with his mates.

## Part 2

Think about the role you have been given.

Discuss:

What would you expect to happen?

Would you expect to be involved at this stage?

Would you expect to be at any case meeting?

What actions would you expect to happen as a result?

Who is going to do what?

What will be your role?

### Part 3:

Hold a case conference. Play the role that you have been given. The meeting needs to decide:

What action needs taking – legal, service provision, intervention?  
Who will take steps to put these in place?

Obviously some investigation has taken place, and you may need to invent more details, so this exercise is part improvisation.

Although you should play the role you have been given in the meeting, during the exercise also take note of what decisions are being made and what capacity/Mental Capacity Act issues need to be taken into account. Where is the MCA helpful in the process? Are there any ways in which it is unhelpful?

Roles for parts 2 & 3 which need printing onto cards:

IMCA

Court of Protection Visitor

Day Centre manager

Team manager with responsibility for the investigation

Social worker responsible for carrying out the investigation

Care manager who arranged Mary's place at the day centre

Police officer

Mary's sister



# Powerpoint presentation

(see separate document)

# Evaluation

## **Adult Protection and the Mental Capacity Act – pilot evaluation**

**For each part of the day, please give any comments about the usefulness of the presentation and exercises, any ways in which they could be improved.**

### **Day 1**

Capacity and Protection  
Presentation:

Case study exercise:

Best interests  
Presentation:

Case study exercise:

IMCA  
Presentation and discussion of the challenges:

Card exercise:

Lasting Powers of Attorney: Protection v. Empowerment  
Presentation:

Exercise:

Court of protection and deputies  
Presentation:

Restraint  
Presentation:

Exercise:

## **Day 2**

Quiz to recap yesterday's learning

Advance decisions, excluded decisions and ill treatment and neglect  
Presentation

Simulation exercise – parts 1, 2, 3

Making it real

Any general comments about the course overall

**Adult Protection and the Mental Capacity Act – pilot evaluation**

**For each part of the day, please give any comments about the usefulness of the presentation and exercises, any ways in which they could be improved.**

**Day 1**

Capacity and Protection  
Presentation:

Case study exercise:

Best interests  
Presentation:

Case study exercise:

IMCA  
Presentation and discussion of the challenges:

Card exercise:

Lasting Powers of Attorney: Protection v. Empowerment  
Presentation:

Exercise:

Court of protection and deputies  
Presentation:

Restraint  
Presentation:

Exercise:

## **Day 2**

Quiz to recap yesterday's learning

Advance decisions, excluded decisions and ill treatment and neglect  
Presentation

Simulation exercise – parts 1, 2, 3

Making it real

Any general comments about the course overall

This work has been commissioned by the Department of Health and Social Care Institute for Excellence as part of a programme of work on implementing the Mental Capacity Act 2005.