

Protecting the rights of people with dementia; laws and safeguards

The Mental Welfare Commission (2003 Act)

- Monitoring its operation
- Promoting best practice, including the principles
- Specific duties to visit, investigate, give advice, publish etc
- Other duties around safeguards

And we still have duties under the Adults with Incapacity Act

- General safeguarding role
 - Investigating welfare issues
 - Duty to visit people subject to welfare powers
 - Second opinions under sections 48 and 50
- ...but nobody monitors the rest of part 5!

Some of the laws that apply

- Human rights Act 1998
- Adults with Incapacity (Scotland) Act 2000
- Mental Health (Care and Treatment) (Scotland) Act 2003
- Adult Support and Protection Act 2007

ECHR article 5

RIGHT TO LIBERTY AND SECURITY

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

ECHR article 5 continued

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

What is deprivation of liberty?

- The degree and intensity of control over the adult's movements.
- The length of time for which such controls might be needed.
- The intentions of those controlling the adult
- How the control is exercised: physical restraints can amount to detention, as can the use of sedation and observation.
- The extent of the adult's access to the outside world.
- Whether the cumulative effect of restrictions on the adult's life could amount to detention.
- Whether the adult is likely to indicate that he or she wishes to leave.



The Adults with Incapacity (Scotland) Act 2000

What's in the Act?

- Principles and definitions
- Powers of Attorney
- Accounts and funds
- Residents' funds in hospital/care homes
- Medical Treatment and research
- Intervention orders and guardianship



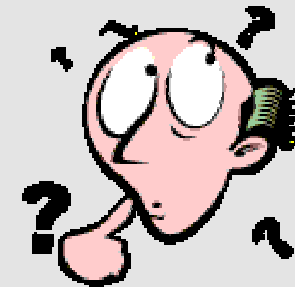
Principles

- Benefit
- Least restriction of freedom
- Views of the adult
- Consult others where practicable
- Encourage use of existing skills and development of new skills



Incapacity = being incapable of

- Acting, or
- Making decisions, or
- Understanding decisions, or
- Communicating decisions, or
- Retaining the memory of decisions



By reason of mental disorder or inability to
communicate because of physical disorder

Power of attorney

- Financial and/or welfare
- Make sure you know the powers
- Make sure you consult where the attorney has powers to decide
- No enforcement power for attorney's decision

Medical treatment

- Section 47 certificate
- Duty to get consent of welfare proxy
- Force/detention only if urgently necessary
- Safeguarded treatments
- Dispute resolution if welfare proxy refuses consent

Intervention orders/guardianship

- For significant welfare or financial management
- Needs court authorisation – Sheriff can grant whatever powers are necessary
- You need to know the guardian's powers and consult as appropriate
- Can be enforced

Mental Health Act

- Hospital detention or compulsory community treatment
- Approval and review of orders by Tribunal
- New safeguards – named persons, advance statements and right of access to advocacy

Adult Support and Protection Act

- Protection for vulnerable people
- Adult protection committees
- Duties to inform and cooperate
- Range of protective interventions – assessment, removal, banning

Our advice

Best practice
guides

www.mwcscot.org.uk

Ask us for
help

0131 313 8777

Enquiries@mwcscot.org
.uk

Mrs Green

Mrs Green is 80 and has moderate to severe dementia. She lived with her husband until his death 2 years ago. She was unable to live on her own and went to a care home where she settled well. However, she has no concept of being in a care home, thinks she is at a club and can get restless in the evening and talks about going home but is easily dissuaded,

Over that last two months, she has become more unsettled. She constantly wants to go home because her husband will be getting in from work and she needs to collect the children from school. While she can be distracted for short periods, she frequently states her wish to leave and tries to get out the front door, which is always locked. On two occasions, she has managed to get out via a fire door and has had to be brought back by staff.

Is it appropriate to manage her without legal authority?

Ideas on Mrs Green

- She seems to lack capacity to decide where she lives
- She is being prevented from purposefully leaving the home, so seems to be deprived of her liberty
- There is a strong case for welfare guardianship
- Having a welfare guardian solves the legal situation but doesn't make her distress any better. Need continued attempts to distract, occupy and redirect her to reduce her level of distress.

Mrs Gray

Mrs Gray is in her 70s and had moderate dementia. She misidentifies a male resident of the care home as her late husband. He has a mild degree of cognitive impairment but knows what he is doing. They have been seen kissing and hugging. One day, they are found in a bedroom in a state of undress.

Do you intervene? If so, how and what authority do you have or do you need?

Thoughts on Mrs Gray

- She is not capably consenting to a sexual relationship
- She gets comfort from contact with someone she believes is her late husband
- Find ways to encourage and support each others' company but without sex
- Vulnerable adult procedures may help
- Follow the principles and you won't go far wrong

Mr Black

Mr Black is in a care home. He has a mild degree of dementia and loses things regularly. He believes that someone is coming into his room and stealing his possessions and frequently calls the police. The lost items always turn up and it is clear that he has mislaid them. He does not accept this and all efforts to help him have failed. He is on several medications for physical conditions. He has taken these for many years and is fully aware of what he is on and why. He is seen by an Old Age Psychiatrist. She thinks that antipsychotic medication might help but he adamantly refuses this. She considers using Mental Health legislation to give compulsory treatment in the form of a depot injection. The care home staff are unhappy about the trauma that removal to hospital and forcible treatment will cause. They ask if they can give him covert medication.

Ideas on Mr Black

- This is a specific refusal of mental health medication. In any other situation (e.g. a person with schizophrenia), we don't think covert medication would be considered.
- Staff should continue to work with Mr Black to help him find and organise his possessions. If medication to reduce his level of suspicion (a last resort) is needed, we think the mental health act should be used.

Mrs Jones

Lady with moderate dementia has suffered a stroke. She cannot swallow. It is still too early to be certain, but chance of recovery is slight. Family want her to be artificially fed but medical staff are reluctant as to start this means they'd need to continue.

You are the expert in medical ethics they ask for advice. What do you suggest?

Ideas on Mrs Jones

- Follow the principles – prospect of benefit, advance wishes, views of others
- It's good to talk – get everyone together
- They could start and then withdraw if there is no prospect of benefit
- **There is no legal or ethical difference between withholding treatment and withdrawing it**

Mr Smith

Made an advance statement refusing life sustaining treatment if he has a severe dementia and needs permanent care. This specifically includes a refusal of influenza vaccination and antibiotics for a chest infection.

He has a severe dementia of frontal type, is happy in his care home, enjoys outings and visits. Do you obey the advance statement?

Thoughts on Mr Smith

- Follow principles, discuss etc etc
- Could treat if you think the conditions that exist are not what he anticipated
- **Ultimately, you would not be liable for harm as a result of obeying a competent advance statement but could be prosecuted for assault if you override it**
- **Exception is treatment for mental disorder under the 2003 Act – clear override procedure**

Contact the MWC (advice, information, raise concerns)

By phone 0131 313 8777

By e-mail enquiries@mwscot.org.uk

Via website www.mwscot.org.uk

By post at Thistle House

91 Haymarket Terrace

Edinburgh EH12