Locally Commissioned Service: Dementia. Workshop 4/12/13

Legal Aspects of dementia Care

Topics

- Safeguarding
- Mental Health Act
- Mental Capacity Act
  - Lasting Power of Attorney
  - Advanced Decisions
- Deprivation of Liberty Safeguards (DoLS)
- Restraint

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Safeguarding Vulnerable Adults

Background

- 2000 No Secrets DoH and home office tasked LAs responsibility of coordinating development and implementation of safeguarding adults policies and procedures https://www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care
- 2005 Safeguarding Adults: A National Framework of Standards for Good Practice and Outcomes in Adult Protection Work http://www.adass.org.uk/old/publications/guidance/safeguarding.pdf
- 2002 first multi agency policies for safeguarding adults published.

  *www.**manchester**.gov.uk/.../**manchester**...**safeguarding** adults **policy** 2*

- Founded on inter agency co operation and the sharing of information, skills and regulatory powers to promote the safety and well being
- Policy acknowledges risk is integral part of choice and decision making but ensure that risk are assessed, discussed, recorded and where possible minimised
- Continuation of right to independence of vulnerable adults by ensuring risk assessment and appropriate support are provided

Who does it apply to?

- Over 18
- A person who is or may be in need of community care services by reason of mental or other disability, age or illness, or is unable take care or his or herself, or unable to protect him or herself from significant harm or exploitation

Types:

- Neglect
- Physical
- Psychological
- Sexual
- Discriminatory
- Institutional
- Financial

If reported:

- Take seriously
- Reassure
- Listen
- Preserve evidence
- Explain absolute confidentiality can't be assured Write down as soon as possible exactly what is said

Would these scenarios raise safeguarding vulnerable concerns:

- Jack is 89 years old. He has a diagnosis of dementia. He is unkempt, eating a very limited diet, living in a sparsely furnished flat, large credit card bills are noted on the coffee table. He is happy and settled. His daughter manages his finances.
- Mavis who has a longstanding diagnosis of anxiety, diagnosed more recently with dementia. She has been in residential care for 2 months. Has been unsettled for the duration. She is prescribed anti-coagulants. She reports that she hates living where she is. She states that the staff 'abuse her'. Bruising is noted on her forearms.
- Fred and Karen (residents of a care home) diagnosed with dementia who are known to be engaging in sexual intercourse.
- Brian who is requesting sedating medication for his father on a more regular basis than is prescribed.
- Betty 79 years old who reports that weekly she is paying £50 to a lovely 'odd job man' who is sorting repairs to her property.

Mental Capacity Act 2005

- Assume capacity unless established that s/he lacks capacity. All practicable steps need to be taken to help somebody make a decision An act done or decision made need to be done in Best Interests Least restrictive
- Does person have an impairment or disturbance in functioning in mind or brain? Does this prevent them from being able to make this specific decision
- Understand
- Retain
- Weigh up
- Communicate Back
- http://www.legislation.gov.uk/ukpga/2005/9/pdfs/ukpgacop_20050009_en.pdf

What to do?

- Immediate Concern 999

Otherwise:

- Manchester City Council Contact Centre by phone 0161 234 5001
- PPIU 0161 856 4444

Referrals

- If you know the individual is under secondary care mental health services call the team directly or call MMHSCT Gateway 0161 882 2400
- Because we are a health and social care trust we have a duty not only to report abuse if suspected but to investigate.
- For individuals under the care of A Community Mental Health Team a member of the team will investigate.
- We may have additional information to your referral and make a decision that a situation does not fall under Safeguarding of Vulnerable Adults. Decision only made by a manager.
- If we feel your investigation requires further investigation we are required to hold a safeguarding strategy meeting. We may wish that you attend or provide additional information.
- Following the strategy meeting a list of actions are likely to be made. This is then reviewed at 4 weeks at a case conference.

1) **MCA or MHA**
   a) Important cases
      i) GJ v The Foundation Trust & Ors [2009] EWHC 2972 (Fam)
      ii) AM v (1) South London & Maudsley NHS Foundation Trust and (2) The Secretary of State for Health [2013] UKUT 0365 (AAC)
   b) It is becoming so complicated that the lawyers are beginning to question whether the currently laws are in fact legal. (Section 5(4) compliance; This has to do with a requirement that …*all law be sufficiently precise to allow the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action might entail …*")
2) **Deprivation of Liberty:**
   a) There are three components to Deprivation of Liberty.
      i) Confinement to a certain place for a "not negligible length of time"
      ii) Lack of consent to the confinement (has to have capacity to consent)
      iii) The confinement is imputed to the state. That is, in an institution regulated, overseen or in some way controlled by the state. i.e. not a private house.
   b) Deprivation of Liberty: Nb. The regulations around freedom of movement were not incorporated into the UK act, so "kettling" was not a deprivation of liberty.
   c) Consider all the facts
   d) No single definition or indicator
   e) What are the measures, for what period, what are the effects, why are they necessary, what objective do they seek to meet?
   f) Does anyone object? Did the person's relatives, or carers who live with the person, object to them being admitted?
   g) Were there restraints used at admission? Was restraint or sedatives used because the person was resisting being admitted? This does not include the use of benign force, such as gently guiding someone by the arm.
   h) Was the person misled to make sure they co-operated? For instance were they misled into believing that they would return home the next day?
   i) Does the person make <u>persistent</u> or <u>purposeful</u> attempts and/or requests to leave? A locked door does not constitute deprivation on its own, even if its purpose is to prevent residents from wandering. Likewise for the use of benign force, such as gently guiding someone by the arm to return them when they are wandering. This test is met only if the person's attempts to leave are persistent and/or purposeful, whether physical, verbal or by any other means.
   j) Is the Person sedated to prevent them leaving? Use of sedatives does not in itself mean that a person is deprived of liberty – it is only relevant if the purpose is to prevent the person from leaving the establishment.
   k) Is restraint used to treat the person when they are expressing resistance or refusal, other than in an emergency? Use of benign force to administer medication, or to feed or dress someone, does not deprive someone of liberty. Emergencies could include disturbed, threatening or self harming behaviour.
   l) Have relatives or carers asked for the person to be discharged to their care, and has this request been refused?

m) Have relatives or carers been refused access to the person, or had severe restrictions put on their access? Reasonable restrictions such as visiting hours etc. are not relevant.
n) Has the person been prevented from spending time with the people who matter to them? This would for instance include preventing the person from spending time with friends inside or outside the home/ward. It would not include guiding the person away from casual acquaintances who appear to be abusing or exploiting the person, or reasonable restrictions on the times when a person can socialise with friends, for instance because of the establishment's daily routine.
o) Is the way the person's care is organised, severely restrictive in what they can do in other ways? An example of severe restriction could be placing the person for a large proportion of their waking time in a position which prevents them from moving (e.g. using furniture which they cannot get up from). It would not be a severe restriction to keep the person safe; if they are usually able to get help when they show a persistent or purposeful desire to be less restricted.
p) Is the person subject to continuous supervision and control?
q) Has the person's access to the community been severely restricted because of concerns about public safety? It is not deprivation of liberty to require someone to be escorted on trips out of the care home/hospital, if this is in the best interests of their own safety rather than that of others, even if this means that the person is sometimes temporarily not permitted to leave.
r) Are there less restrictive options?
s) The home has to inform the CQC of the application

3) Advanced Decisions

a) Made by someone who has capacity to do so
b) Patients are advised to discuss their plans with their doctor
c) Legally binding
d) Must specify the treatments being refused and in what circumstances, may be verbal or in writing.
e) If relates to life sustaining treatment, it must be in writing signed and witnessed, and clearly state that the refusal stands even if it puts the individuals life at risk.
f) See cases: Kerrie Wooltorton
http://www.39essex.com/resources/cases.php?id=2987
    i) A local authority v E and others. 2012 EWHC 1639 (COP)

4) Lasting Power of Attorney

a) https://www.gov.uk/power-of-attorney
b) You do not have to have a solicitor
c) There has to be a certificate provider, who confirms that you have the capacity to make an LPoA.
d) You can download the forms (http://www.justice.gov.uk/forms/opg)

5) **Restraint**: http://www.rcn.org.uk/__data/assets/pdf_file/0007/157723/003208.pdf

a) Intentional restriction of a person's voluntary movement or behaviour
    (1) Stopping a person doing something they appear to want to do.
b) Section 6(4) of the MCA states that someone is using restraint if they:

i) use force – or threaten to use force – to make someone do something that they are resisting, or
ii) restrict a person's freedom of movement, whether they are resisting or not.

c) Under the MCA, any action intended to restrain a person who lacks capacity will not attract protection from liability unless..
   i) The person taking the action must reasonably believe that restraint is necessary to prevent harm…
   ii) The amount or type of restraint used and the duration must be a proportionate response to the likelihood and seriousness of harm

   Situations in which restraint can be justified include where the client gives informed and voluntary consent as part of a planned programme of care. In other cases, the nurse may have a professional duty of care to restrain a client to protect that client from a greater risk of harm, or to avoid a foreseeable risk of harm occurring to others. In a situation where a nurse or other person is being attacked or is at risk of physical harm, it is possible to justify the use of restraint as self defence.

d) Types
   i) Physical
   ii) Mechanical
      (1) Mittens in intensive care
      (2) A heavy table or belt to stop a person getting out of a chair
      (3) Bed rails
      (4) Keys, locks
   iii) Technological surveillance
      (1) Tagging, CCTV, door alarms
         (a) May lead on to restraint
   iv) Chemical restraint, Medication
   v) Psychological restraint
      (1) Constantly telling a person not to do something
e) If you are concerned, then consider a Safeguarding referral.