

Learning Briefing

Court of Protection

Safeguarding Adults Reviews

Under the Care Act 2014, Safeguarding Adult Boards are responsible for undertaking a review of cases that involve adults with care and support needs where;

- an adult has died or suffered serious harm and abuse or neglect is known or suspected to be a factor in their death; and
- there is concern that partner agencies could have worked more effectively to protect the adult.

What happened?

Ben had a history of risks relating to self-neglect and non-compliance with medical care and treatment in relation to diabetes management. The care home raised concerns regarding his refusal to engage with treatment plans, his deteriorating physical health, and his self-neglect. Ben's behaviour was becoming more challenging, and he was beginning to refuse mental health medication. Care home staff reported that he was refusing treatment for a deteriorating heel ulcer, with consequent risk of gangrene, but he was refusing hospital admission. There were two records of consideration being given to referral to the Court of Protection, as it was proving difficult to treat Ben in his best interests. No decision was reached on whether or not to refer.

Learning Point- The challenges of non-engagement with adults experiencing self-neglect.

Ben's non-compliance with components of his care and support, and treatment, could have been escalated more often than they were. However, referral pathways were not necessarily well known. Risk assessment did not include the risks arising from his physical health needs and their impact.

Recommendation:

Legal literacy is included in single agency safeguarding training, and commissioning multi-agency training on law relating to mental capacity, mental health and care and support. Where training is provided, outcomes should be evaluated over time to ensure that learning has been consolidated in practice.

Learning Point- How the Mental Capacity Act and Deprivation of Liberty Safeguards were understood and used in practice.

Ben had declined treatment for physical health concerns but had agreed to medication for his mental health. Mental capacity had been assumed as a result of that agreement. It may not have been fully understood by all practitioners involved that capacity assessments are decision and time specific. One conclusion to emerge was that practitioners had assumed capacity too quickly. During Ben's acute presentation a referral to the Court of Protection was not done and appears to reflect a misunderstanding since emergency orders can be sought from the Court of Protection.

Recommendation:

Raise awareness of the role of the Court of Protection across health and social care services and include pathways to obtain legal advice regarding complex cases. Where different services seek legal advice independently on the same case, services should coordinate subsequent decision-making through multi-agency risk management or complex case meetings.

Making an Application to the Court of Protection

All professionals should follow their own organisation guidelines and processes regarding court of protection applications. ESCC Adult Social Care and Health has produced a quick reference guide which contains this information: *If you think you may need to apply to the Court of Protection (COP) speak with your manager in the first instance. Contact your Legal Services as soon as possible to get advice about how to make the application, and what evidence you may need. For most applications, there is likely to be several court hearings and you may need to give evidence by statement and in person.*

It is possible to apply to the Court of Protection in extreme emergencies if the circumstances warrant it. You should contact your Legal Services immediately so they can provide advice and support to enable you to make an urgent application. You may need to take protective action whilst the Legal Services makes an application to the court e.g for out-of-hours urgent decisions.

Examples of good practice:

There are several examples of good practice available to view in the Deprivation of Liberty Safeguards (DoLS) area on the Social Care Institute for Excellence website [Putting DoLS into practice | SCIE](#) .

- **Case example-MAVIS**

The local authority is following safeguarding proceedings for Mavis, a woman with dementia who is currently living at home with her husband. They are concerned her needs are not being met because her husband is refusing the support that is being offered. It is believed that he has untreated mental health needs. Mavis was assessed as lacking capacity to decide on her residence, though clearly communicates a wish to remain in her own home.

It has been proposed that a placement in a care home would be in Mavis's best interests. It is also believed that in the care home she will need a high level of restrictions to give her appropriate care and treatment.

Because the move is against Mavis's wishes and those of her husband, the local authority makes a fast-track application to the Court of Protection to make a decision in her best interests. If the court authorises a move to the care home, an application will be made by the home for a standard authorisation under the Deprivation of Liberty Safeguards.

- **Case example- FRED**

Fred has advanced throat cancer. He had capacity to make the decision about starting chemotherapy to treat his cancer but his condition has now progressed and he has been assessed as lacking capacity to make a decision about whether to continue with this treatment. The medical staff believe that further chemotherapy is not in Fred's best interests, particularly because the prognosis is not good, and in order to receive the treatment he has to be restrained, causing him a great deal of distress. His son and daughter disagree and state that their father would want the medical staff to do everything they could to treat his cancer. The NHS trust responsible for Fred's treatment applies to the court for a decision.

Further resources:

[Mental Capacity Toolkit](#)

[The Mental Capacity Act 2005 - YouTube](#)

[Court of Protection - GOV.UK \(www.gov.uk\)](#)

[A basic guide to the Court of Protection - PDF Free Download \(docplayer.net\)](#)

Bournemouth University have produced a number of useful leaflets: [Guidance on the use of the Mental Capacity Act for decisions regarding clinical treatment and care: An introduction - NCPQSW](#)

[The Mental Capacity Act requirements for clinical decisions regarding treatment and care - NCPQSW](#)

[The Liberty Protection Safeguards - NCPQSW](#)