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Those who lack capacity

Obviously capacity is decision specific so is there an up to date assessment about the relevant decision - care and residence?

Remember the 5 principles of the [Mental Capacity Act](#) (MCA), is there an IMCA or similar for P so their wishes are being factored in?

If you can't act in line with the person's or their family's wishes then explain why not e.g. due to their care needs and the risks to the person. If it is not possible to resolve dispute then you will need an application to the Court of Protection

Consider the specific risks of the conveyance to the placement and how you would mitigate these, in the least restrictive way possible:

Practicalities of transport - does P need support for the journey?

Would restraint or sedation be needed?

Can familiar staff go with them to minimise distress?

Does the new placement know enough about P's risks? Have they met them? How will they be greeted to minimise distress?

Helpful checklist provided by DJ Avis in March 2018 - if you would like to see a copy please contact Clare Shepherd or Victoria Colclough - their contact details are at the end of this note.

What if restraint is needed?

S. 4A MCA - You cannot authorise restraint by way of a best interest decision - you need a court order

S. 4B- MCA - unless it's a vital act or done to sustain life (e.g. someone walking out in front of a bus you can absolutely restrain them). If you are making a treatment plan it is worth considering if restraint will be needed and whether a Court

As a firm we deal with cases of both transfer to and from hospital – need to consider what is necessary e.g. an ambulance or police involvement and the steps to take on arrival.

Transition plans can be done in a rush but try to take a step back and consider what the person wants, what the family wants and consider what you will need. Think about whether this will need an application to Court – better to think of this at the beginning of the process rather than later down the line.

Always consider:

1. Recognise where a deprivation of liberty may be
2. Be honest about what the steps will be
3. Pause – are the steps proportionate or can the outcome be achieved in another way?
4. If necessary seek authority

Case Study

We sought an order in the High Court for authority to bring a patient who lacked capacity to make decisions about care and treatment into hospital for investigations and treatment, which were believed necessary to save his life. Appended to the draft Court Order was a very detailed care plan taking the Court through the day of the procedure in great detail, including the full conveyance. This is useful for all types of cases considering details such as:

Engagement with P – so continuing MCA

Transfer from Place A – If refused, restraint would be minimal possible to achieve the aim. Asked first, if says no then Lorazepam, if refused IM sedation.

Transport? Who would go with him? How long is the journey? Is sedation needed – if so what and what dosage? On the morning P would not be given breakfast so not to affect GA

Arrival at the hospital – Who will meet P? Taken to anaesthetic by the shortest route – minimise distress

Procedure

When he wakes up – who will be with him? Team on hand if case restraint needed when wakes up

In the plan set out all contacts – names, emails and numbers

Key takeaways

Communication

Planning and documentation

Involving the patient and family where appropriate

Consider capacity – if lacking capacity consider the prompts DJ Avis provided

Always seek support and ask questions in your organisation

Each patient has to be considered on case by case basis

Lisa is the Named Professional in Safeguarding Adults and Mental Capacity Act at United Lincolnshire Hospitals NHS Trust. She set out some examples of how she and her colleagues have managed different situations and her practical tips

During the call, a number of issues were discussed and addressed by the speakers, including





Lorna Hardman

Simon Tait

Damian Whitlam


