Summarised Minute of the Capacity and SDM Advisory Group Meeting

Date: 24th May 2021

Location: MS Teams

Present:	Jill Stavert (chair), John Scott, Arun Chopra, Joanne Dymock, Becky Leach, Pearse McCusker, Jan Killeen, Marianne Morritt, Ben Baldock
In attendance:	Sandra McDonald, Sophie Ryder
Apologies:	Simon Bradstreet,

Objectives of Meeting

- To be able to offer in principle views to the Exec Team on Advanced planning
- To be able to offer in principle views to the Exec Team on deprivation of liberty
- Agree how we wish to use our last meeting

Advanced Planning

Focus was very much on Advance Statements (AS) rather than advance planning more broadly.

The general view seemed to be to retain the concept but further strengthen.

Current uptake of AS very low. Amongst other things because so frequently and readily overridden, they lack credibility, people didn't know they could make one, were offered to make one, no real time scrutiny of their use, distrusted.

Feel there are things we can do now [on AS] whilst awaiting primary legislation to mandate changes.

Comments capture

- Person's voice paramount
- Recognise person as individual
- Holistic views – decisions affected by many factors
- Deliver on real needs at right time
- Capacity is not binary
- Role of SDM in AP
- Make a distinction between AS of wishes and feelings and an advance refusal of treatment

- Should be a requirement for scrutiny eg by MWC if you wish to override an AS unless in an emergency
- Mixed views on whether AS need to be wider than care and treatment for mental disorder
- Confusing/too many terminologies – AS, personal statements, life stories, advanced care planning, anticipatory care plan, wellness recovery action plan
- Too many places/Forms within which a refusal preference can be recorded – can mean it's not obvious to clinicians if/when the situation arises. Need a single Form, possible prescribed format so clinicians can readily identify it.
- Too complicated a process – need to make it administratively easy
- Need to suggest the making of an AS at the optimal time – when ready for discharge after first admission
- Who offers this? Mandatory requirement?
- AS need to be jointly written with clinician – so do not include things which the clinician cannot [lawfully] comply with
- Has to be meaningful to both individual and to clinician
- Process for review and updating of ones AS, needs to be easy to change ones mind.
- Distinction between treatment and detention
- Don't co-locate AS with a personal statement – too much information to assess at a critical time
- Separate info about what a person does want from what they do not
- Anyone should be able to do one, people admitted (for what?) should e offered one
- What is link to short term detention and to treatment in an emergency dept?

Power of Attorney as a form of advanced planning

Sandra McDonald's comments – group did not discuss.

Originally a PoA deed, and specifically the powers therein, were so legalistic their meaning - as to how they could be used, or not, when, by whom, what reliance could be placed on them by a third party etc was lost on most lay people, so reducing the PoAs effectiveness as a form of protective advance planning.

More latterly efforts made to simply the language which has led to powers being so are so abridged there is often insufficient clarity on the power(s) they intend to confer. So still not as effective as could be.

Move to try to encourage more DIY drafting. Those which create most dubiety are DIY versions.

Little promotion of personal statements, so wishes of person often not clear.
Little knowledge by attorneys of their role and responsibility
Attorneys tend to see capacity as black or white, when they feel the person is now incapable they tend to take over and make all decisions, often substituted decisions, little evidence of SDM.

The benchmark for incapacity, as judged by an attorney, is low, so they take over decision making early.
Have tendency to be risk averse so don't encourage person's own decision making

Conclusion: a PoA is a form of 'advance plan' but the system within which it operates needs to be strengthened, to deliver it within a human rights based framework and so increase its general effectiveness as a method of advance planning – but this is eminently feasible, in line with all the discussion we have had in the cap/SDM AG over these months.

Deprivation of Liberty
Have to accept that wishes and feelings can be overridden in crisis, to protect wider rights?
Key is how the person's voice is heard
Seems to be accepted that incapacity, in whatever agreed formulation, will present the trigger.
Accept that a DoL, however authorised, has to be reviewed – what is timeline for review, by whom?
Framework for review to be as robust as initial assessment

In summary
Accept we need something
Need to define it – do we use SLC definition or something else?
Does it extend to 'freedoms' 'rights' more generally?
With a lack of capacity as a trigger – whatever capacity may mean
Framework for review to be as robust as initial assessment

Comments capture

- DoL is about infringement on autonomy
- Is it the degree of infringement / imposition?
- What is meant by "liberty" - where do wider restrictions sit? Eg if a person is content with their accommodation but they are not being permitted to see whom they would wish. Is this infringement on their autonomy a DoL?
- Should we call it deprivation of rights?
- Is there a difference between an act of omission and one of commission? Eg an in patient is free to leave the ward, they are not locked in but they someone to be with them in order to leave, there is insufficient support workers to accommodate this so the person is unable to leave the ward. Are they deprived of their liberty?
- If there is a distinction between omission and commission where is the 'tipping point'? When does an omission become so severe, so negligent, careless etc that it amounts to an act of commission?
- Discussion on border between DoL and compulsion – protective custody, protection of individual, or of society

Last Meeting

Review and agree wording of recommendations that will be made to Exec Team, see seperate note.