

# CFU Carers' Support Group



**For carers and relatives of people with fronto-temporal dementia and semantic dementia**

## **Newsletter**

**May 2008**

**[www.cfucarers.org.uk](http://www.cfucarers.org.uk)**

# Welcome

Welcome to the May edition of the CFU Carers' Support Group newsletter! Many thanks to all of you who attended our last support meeting in April. Margaret Seed, solicitor and regular speaker at our meetings, gave an excellent and simple outline of personal welfare decisions under the new Act and what this means for carers. We've

included a quick summary of her talk in this newsletter. In case you would like further information, we've included contact details of the Public Guardianship office, which has published some excellent booklets for carers on these issues. We look forward to seeing you at our next meeting in May.

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# **Personal welfare decisions under the Mental Capacity Act 2005**

**Margaret Seed, Solicitor**

## **What the Act does not cover**

First of all, it's worth mentioning that the Act does not cover decisions concerning family relationships, such as consenting to marriage / divorce or voting rights.

## **Why have a new Act?**

The previous Mental Capacity Act said nothing at all about personal welfare decisions so the new Act has opened up a new area of law. Although the new Act is of great importance to health care professionals and lawyers it should not in my view change the way carers look after a loved one in a family situation.

## **What is a personal welfare decision?**

This is a decision relating to the care or treatment of another person who lacks capacity to make that decision. This can be something as simple as helping with eating and drinking but also covers moving somebody into a care home (personal care) and providing medical treatment (healthcare and treatment). All these decisions require the consent of the person affected, and if he/she lacks capacity to give consent then there is a potential legal problem. The Act solves the problem by protecting the person who makes the decision

from liability as long as they reasonably believe that the person affected lacks capacity and that they are acting in this person's best interests.

### **Personal care decisions**

To use the example of a change of residence, the Code of Practice says that if the person lacks capacity to consent to a move, the decision-maker(s) must consider whether the move is in the person's best interests. This includes considering all the relevant circumstances, the person's past and present wishes and feelings, as well as the views of other relevant people.

If the person objects to the move, force or restraint can be used (e.g. to transport the person to their new home) where this is necessary to

protect the person from harm and the restraint is in proportion to the risk of harm.

### **Independent Mental Capacity Advocacy (IMCA)**

Under the new act, the NHS Local Authorities have a duty to provide advocacy and representation service for people who lack mental capacity and for whom the following applies:

- They are due to receive serious medical treatment
- An NHS body is proposing a stay in hospital for the person for more than 28 days or more than 3 weeks in a care home
- A local authority is proposing to move a person to a care home for longer than 8 weeks.

A person has a statutory right to an IMCA in the above circumstances if they have no family or friends, or if their family/friends are inappropriate. You can find more information about this scheme at the end of the newsletter (Further information section).

### **Healthcare and treatment**

Major healthcare and treatment decisions need special consideration and the Code of Practice gives guidance to healthcare staff. It mentions that multi-disciplinary meetings are often the best way to decide on a person's best interests.

### **Role of the Court of Protection**

Some treatment decisions are so serious that the court has to make them unless the person has appointed a personal

welfare attorney or they have made a valid advance decision to refuse the proposed treatment. Examples of such decisions are withdrawal of treatment for a person in a permanent vegetative state and cases where there is a dispute about whether a particular treatment will be in the person's best interests. Usually an application to the Court of Protection will be made by the NHS.

### **Advance decisions to refuse treatment**

A person can make an advance decision under the Act if they have capacity to make the decision. They must say what treatment they want to refuse and they can cancel their decision or part of it at any time. If the advance decision

refuses life-sustaining treatment  
it must:

- be in writing (it can be written by someone else or recorded in healthcare notes)
- be signed and witnessed, and
- state clearly that the decision applies even if life is at risk.

Nobody has the legal right to demand specific treatment either at the time or in advance. However, people can make a request or state their wishes and preferences in advance. Healthcare professionals should then consider the request when deciding what is in the patient's best interests if the person lacks capacity.

Healthcare professionals must assess whether an advance decision is valid and applicable at the time a decision is made. This may result in the advance

decision being treated as an expression of wishes only. This may be prevented by having the advance decision drawn up by a solicitor.

### **Property and affairs deputy/attorney**

A property and affairs deputy and/or attorney has no special status in relation to personal welfare decisions. However, because they are involved in looking after the person's affairs they may well be a decision maker in relation to personal welfare decisions. Provided therefore that the deputy/attorney check that the person lacks capacity and can show that they are acting in the person's best interests they will have the statutory protection referred to above.

# *Further information*

The Public Guardianship Office has lots of resources and information on the new Mental Capacity Act and Lasting Power of Attorney. You can print booklets directly from their website or order them over the phone.

Tel: 0845 330 2900

Web: [www.guardianship.gov.uk](http://www.guardianship.gov.uk)

To find out more about IMCA, contact North West Advocacy Services: Tel:  
0845 680 0513

Web: <http://www.nwas.org.uk/imca.html>