Capacity, unwise decisions & best interests: exploring practitioner and public views on the Mental Capacity Act 2005

Maddie Tait, ‘Think Ahead’ Social Work Masters Student Social Worker, Cambridgeshire and Peterborough NHS Foundation Trust
Government launches consultation to revise Mental Capacity Act code of practice

Revision is designed to take account of case law and practical lessons learned since code's publication in 2007.

by William Samuel on January 30, 2018 in Adults

Mental Capacity Act 2005

The Court of Protection
Overview of Research

Inconsistency in use of MCA
- Ruck-Keene, 2017
- Clerk et al, 2018
- Williams et al, 2014
- Hinsliff-Smith et al, 2017

Service user/public views
- Manthorpe et al, 2008
- Tan & Hope, 2008
- Cox, 2016
Research question:
‘What are the perspectives of the public and mental health practitioners on capacity, unwise decisions, and best interests?’
Methods
Methods

**Design and Procedure**
- Semi-structured interviews
- An hour in length
- Two different interview schedules for practitioners and members of the public
- Interviews took place at participant homes, workplaces, NHS buildings, and community spaces.

**Analysis**
- Interpretative phenomenological analysis
  - Descriptive
  - Semantic
  - Analytical
- Two transcripts were coded by another researcher to validate the findings.
- Superordinate themes and subordinate themes identified.
Results

Defining the terms used in the MCA

- Struggles with the language of the MCA
- Risk and harm
- Rights and choice
“What’s meaningful to me is if we use the word understanding – so does the person really understand what is happening and what we’re asking them to decide on” – Sue (Practitioner)

"These terms are what people use in their everyday language anyway, so when we're thinking of it in that formal way ... I think that's when it can..become a little bit trickier..." - Lisa (Practitioner)

"An unwise decision would be something I suppose that a lot of people wouldn’t agree with, it might not be in the person's best interests" - Isabel (Public)

“Sound rational judgement, or capacity.” – Sarah (Public)

Struggles with the language of the MCA
“Rights to autonomy and to have basically to live your life without anyone questioning the decisions you make, is a general given usually, ... but that kind of gets constrained more and more the less capacity you show for certain decisions, and I think rights can be eroded quite quickly.” – David (Practitioner)

“You have to make interventions, it’s the responsibility that we all bear to each other ... is this liberty that this person has actually causing them harm...If it’s causing them harm then it needs to be curtailed.” – Tina (Public)

“At the end of the day it boils down to ... it’s their right to choose, whether to go and see professional help or not” – John (Public)
"It’s about keeping people safe really, it is about risk if we’re honest." – Amy (Practitioner)

"To do things for their own good, as they used to say. Rather than doing harm or making the situation worse " - Tina (Public)

“I suppose any decision that could result in negative consequences that cause harm, maybe to anyone or anything, is perhaps an unwise decision." - Sarah (Public)
Results

Personal and Societal influences

- Personal experiences
- Social norm
- Distribution of resources
“That is partly influenced by me being disabled as well, that I know that a lot of assumptions are sometimes made, regarding capacity, by people that don’t know me” – David (Practitioner)

“I had some experience with the mental capacity act when I was uh trying to put safeguarding measures in for my father, who was uh had dementia” – Tina (Public)

“My best interests, as for all of us, are to ... never give up on equality” – Ian (Public)
“I’m sure there’s plenty of people who say “don’t agree with the religion”, they’d say “of course it’s unwise”, they’d say “there’s no wise decisions in religion”” – David (Practitioner)

“People in their wisdom are deciding that they’ve got to make all these decisions, but it feels like it’s completely wrong, they haven’t really understood the family, and they haven’t factored in what’s normal” – Sarah (Public)

“If it’s outside the social norm then I would imagine that would be classed as an unwise decision...” – Amy (Practitioner)
"As we’re going through the core assessment does this person have capacity, it does actually ask – which is stupid as it doesn’t actually say capacity for what." – Amy (Practitioner)

“"We have to take funding into consideration; we can't give everyone 24 hour care at home sadly"” – Jane (Practitioner)
Results

Who should contribute to decision-making

- The person’s voice
- The role of the family
- The role of professionals
"That person has lost their voice... we can’t always get the persons ...what they want or what’s in their best interest, but we’ll try near as damn it to get near to that as we can" – Sue (practitioner)

"She was remembering when she was a child going to visit an aging relative in a home and that was awful" – Sarah (Public)
“Strong emotions produce very biased thoughts sometimes ... that’s why it’s best that doctors and social workers and people in those kinds of roles, they’re best to do it, cos they are not emotionally involved.” – Isabel (Public)

"You can rely on potentially from family or friends, taken with obviously the professional grain of salt as needed, because they put their own best interests ideas forward rather than the actual person." – David (Practitioner)

"There’ll be some bias as they’ll love or care for these people, they do love and care for these people so they do want to support them to make decisions that are in the whole families best interests” – Sarah (Public)
The role of professionals

"I suppose my job is always about making judgements, but it's also about supporting people to the best of their ability .... it doesn't quite go together does it? ...What that does give me is the power to try and make sure that we fight for as near to what they would have wanted as possible" - Jane (Practitioner)

"We were trying to involve social workers, his GP, police, and the vulnerable adult protection unit ...they all had their own individual interpretations of the mental capacity act, or how it related to my father.” – Tina (Public)

"I don’t think we’re all on the same page, I don’t think we’ll ever be on the same page. But as long as there’s an arena where we can kind of thrash things out and help each other out, that’s what’s important” – Sue (Practitioner)
Conclusion:
Practitioners and members of the public had a diversity of perspectives on the key terms used in the MCA.

Contribution:
Exploring some of the “tensions” in more depth - presenting the MCA as something inherently subjective.

Limitations

- Small sample
- Lack of racial and cultural diversity in sample
- Service user perspective?
Implications

Government launches consultation to revise Mental Capacity Act code of practice
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by Mintro Samuels on January 25, 2019 in Adults

Mental Capacity (Amendment) Act 2019
Type of Bill: Government Bill
Sponsors: Lord O'Shaughnessy - Baroness Blackwood of North Oxford Health and Social Care
Matt Hancock Health and Social Care
Thank you for listening - any questions?

References

- Cox, S., 2016. Decision making and dementia –a service user perspective. The Journal of Dementia Care, 24(2), pp. 21-23


