Use and views of the Mental Capacity Act 2005

Jill Manthorpe & Kritika Samsi
Social Care Workforce Research Unit
King’s College London

EVIDEM – Mental Capacity Act
Mental Capacity Act 2005

- Implemented in 2007, the Act aims to protect and safeguard people with decision-making capacity problems, including dementia
- Applies to people with current or future potential loss of capacity
- Assumes capacity foremost and encourages respect for decision-specific capacity, enhances autonomy and choice
- New criminal offences of wilful neglect and ill-treatment
- Encourages advance planning and advance decisions, including advance refusal of treatment
- Enables the granting of a Lasting Power of Attorney, capable of making decisions on financial and personal welfare issues, keeping Public Guardian Office arrangements for others.
Research questions

1. How did the MCA affect dementia care?
2. What were professionals’ expectations of working with people with dementia about the MCA? What are their experiences? Did safeguarding arise?
3. What challenges do staff face when coming across issues of mental capacity in their practice with people with dementia?
4. How are people with dementia and carers making decisions and long-term plans?
A four phased study reflecting trajectory of dementia

- Pre-diagnosis
- Post-diagnosis
- Living with dementia
- End of life care
Sample

- Practitioner interviews = 272 (yes really)
- Well older people about approaches to long-term planning = 37
- Longitudinal interviews with older people with dementia (n=16) and carers (n=15) about making plans and everyday decisions
- + 87 survey responses (Alzheimer’s Society) and linked audit of hospital
Findings

- Great expectations of MCA – replacing legal vacuum
- Getting familiar – principles and values welcome
- Training needs to be continuous, refreshed and informed by supervision, not just one-off events
- Need to avoid ‘Information merry-go-round’
- Importance of local expertise – known in NHS Trust & councils
- Few professionals aware of MCA offences – do people with dementia have access to justice?
Findings

- Amongst well older people, financial plans common, but reluctant to think about health and social care preferences and choices
- Decision-making amongst people with dementia and carers is complex
  - Decisions are often made according to context and previous patterns
- People with dementia want to make own decisions for as long as possible
  - Those with close family may be content to rely on their support, information and advice
- Principles of the Act such as’ best interests’ decision-making were useful frameworks for carers to apply (albeit unconsciously) when deciding with/for their relatives
Decision-making amongst people with dementia and carers

**Supported decision-making**
- **Mutual**
  - Part of regular conversation
- **Reductive**
  - Providing cues and fewer options

**Decision-making discourse**
- **Restrictive**
  - Deciding what can be avoided
- **Balancing conflict**
  - Whose best interest?
- **Retrospective**
  - Past knowledge, preferences, conversations

**Substituted decision-making**
- **Negotiating substitute decision-making**

Implications

- Practitioners working with people with dementia are uniquely placed to address decision-making and longer term planning; attempts to do so should be timely and informative.
- Specific information and advice can empower people with dementia and carers and may decrease risks of abuse and neglect.
- The Act has potential to promote safeguarding and will be highly relevant to personalisation of social & health care.
- Implementation of major legal changes such as the MCA needs to be managed in all settings and, although successful in many ways, needs long-term commitment.
Take home messages

- Practitioners in dementia care need to be legally literate
- Why not make more use of MCA in training and supervision?
- The success of the MCA will be found in the next generation of people with dementia and the ways they are treated, respected and supported or not.
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Mental capacity: the force of law
Jill Mathers, Nicole Smith

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"More of a leg to stand on": Views and usage of the Mental Capacity Act 2005 among staff of local Alzheimer's Society and carer organisations
Jill Mathers, Nicole Smith

Responding to the financial abuse of people with dementia: a qualitative study of safeguarding experiences in England
Jill Mathers, Nicole Smith

When the protection becomes personal: dementia practitioners on family caregivers
Jill Mathers, Nicole Smith, Jean Chapman

Shortchanged: people with dementia from financial abuse
Jill Mathers

As People Get to Know It More: Experiences and Expectations of the Mental Capacity Act 2005 amongst Local Information, Advice and Advocacy Services
Kritika Bansal, Jill Mathers, Philip Raggatt

Outputs

Information, advice and advocacy agencies are important providers of information and support to other people in the community. This study explored the role of Age Concern half across England in providing timely information and advice relating to the enhanced decision-making capacity law. It involved semi-structured telephone interviews or face-to-face interviews with 12 key workers in 14 local Age Concerns. The study highlights key issues, such as the lack of knowledge and the confusion about the legislation, and the need for more training and support.

Background
Policy context in England relating to dementia and social support are being heavily shaped under the burden of population ageing. Care, 2008, is perceived as a public policy that should address not only the quality of life but also the quality of care. In this context, the Mental Capacity Act (MCA) is the most relevant legislation for the current study.

The Mental Capacity Act 2005 (MCA) is the legal framework in England and Wales that governs the capacity to make decisions about personal welfare. The Act came into force on 17 December 2007 and replaced the mental health legislation in England and Wales. The MCA is a statutory instrument that provides a new legal framework for making decisions about personal welfare for people who lack the capacity to make decisions themselves. The Act was designed to promote a new legal framework for making decisions about personal welfare for people who lack the capacity to make decisions themselves. The Act was designed to clarify the legal framework for making decisions about personal welfare and to provide a new set of procedures for making such decisions. The Act is a significant development in the law of mental capacity and it is considered to be one of the most important pieces of legislation passed in recent years.