Introduction and today’s focus

• Practice focus – no need for researchers to say ‘it is all very complicated’, ‘more research needed’ – this builds on Evidem and LoCS studies.

• Focus on MCA but not Deprivation of Liberty Safeguards (keep eye on this - consultation paper due summer 2015 from Law Commission)
2005 – so near and yet so far...
Prior to MCA

- What was hard?
- What was easy?
- Who sorted problems?
- What sort of problems were about?
- (use imagination if too young or forgetful)
- What would be easier without MCA and what more difficult?
MCA key points - refresher

• Five principles
• 2 stage test
• LPA and advance decisions
• IMCAs
• Best interests assessments
• Criminal abuse and neglect
Case work

- Section 44 (media account)
- Lasting Powers of Attorney (Sykes)
- Best Interests decisions
Two young women filmed their sickening abuse of old people to entertain their friends. A court was told how the two former care home workers tormented their victims, both suffering from severe dementia, pinching them, pulling and contorting their faces, pushing a mobile phone at one woman’s face and putting their fingers in the mouth of another.
Criminalising abuse and neglect S44

- Has this been positive?
- How?
- Any problems?
- Possible amendments?
Lasting powers of attorney (LPA)

Steady rise in numbers but while 40% of the adult UK population has a will less than 1% has an LPA – and most are about finance.

COM-B model of influences on behaviour:
- identifies three broad factors that combine to produce behaviour -
  Two are internal to the individual (capability and motivation), while the third (opportunity) describes external factors that influence behaviour.

‘The importance of individual liberty is of the same fundamental importance to incapacitated people who still have clear wishes and preferences about where and how they live as it is for those who remain able to make capacitous decisions. This desire to determine one’s own interests is common to almost all human beings. Society is made up of individuals and each individual wills certain ends for themselves and their loved ones, and not others, and has distinctive feelings, personal goals, traits, habits and experiences. Because this is so, most individuals wish to determine and develop their own interests and course in life, and their happiness often depends on this. The existence of a private sphere of action, free from public coercion or restraint, is indispensable to that independence which everyone needs to develop their individuality, even where their individuality is diminished, but not extinguished, by illness. It is for this reason that people place such weight on their liberty and right to choose.’
Case work experiences of LPAs

• Awareness?
• Misunderstanding?
• Recording?
• Helpfulness?
• Recommendations?
• Best source of help?
• Overlap with Advance Decisions? Advance Care Planning?
Best interests and IMCA

• It was established that Mr A lacked capacity around major decision making such as accommodation and finances; following this an advocate was instructed to support with best interest decisions.

• Mr A wanted to maintain his relationship with his wife and daughter but not his son. He wanted to be in a safe and supportive environment where his care needs could be adequately met. As a result of a best interest assessment, and assessment of all of the risks, the outcomes were negotiated and Mr A moved to a care home.

‘The function of the Court of Protection is to take, on behalf of adults who lack capacity, the decisions which, if they had capacity, they would take themselves. The Court of Protection has no more power, just because it is acting on behalf of an adult who lacks capacity, to obtain resources or facilities from a third party, whether a private individual or a public authority, than the adult if he had capacity would be able to obtain himself.’ Sir James Munby P, giving the lead judgment of the Court of Appeal In the Matter of MN (Adult) [2015] EWCA Civ 411
Experiences of IMCA

• Any?
• How has one helped?
• Cost-effective?
Addressing change and challenge

The charge sheet

• Various legal points (many related to DOLS)
• House of Lords review (expectations not met, practice variable)
• Legal points or fundamental problems?
• Implementation errors?
Government response and resources

Following Government's response to the House of Lords report on the MCA, the Department of Health (DH) and partners:

• Held a Chief Social Worker Seminar (March 2015)
• Added new SCIE Directory materials
• Set up National Mental Capacity Forum.
Specifics of current & planned changes

1) DH to review current **guidance and tools** to determine what represents the 'gold standard' that can then be widely disseminated.
2) National event to **raise awareness** of the Act and to hear views of professionals and the public.
3) Government to **improve professional training**.
4) NHS England and the Association of Adult Directors of Social Care to examine **role of commissioning** in encouraging MCA principles.
5) Care Quality Commission prioritising MCA in its **regulation and inspection** model.
6) Office of the Public Guardian increasing **awareness and understanding of Lasting Powers of Attorneys** (LPAs) – and CQC to ensure questions on LPAs feature in **inspections** of health and social care providers.
7) Increase Court of Protection staff and revise Court of Protection Rules.
8) Law Commission to **consult on** and potentially draft new legislative framework to allow for the authorisation of a best interests deprivation of liberty in supported living arrangements.
What would have most positive outcomes?
Summary and next steps

- Ten years on – new language + ethos
- An area of case law development but underpinned by MCA
- Look out for changes
- Better informed public?
- Key part of social work repertoire? Being MCA literate
- Recommend SCIE materials
Acknowledgement and Disclaimer

This presentation presents independent research funded by the Department of Health. The views expressed in this presentation are those of the authors and not necessarily those of the Department of Health. Thank you for listening.