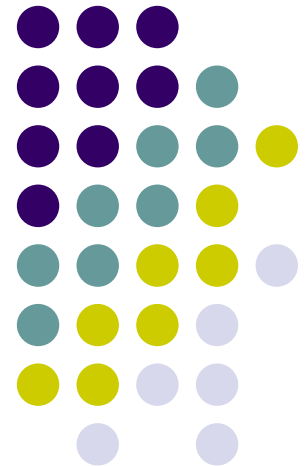
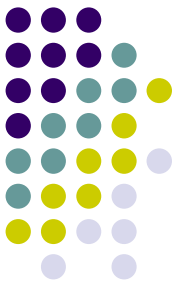


Mental Capacity and Safeguarding Adults

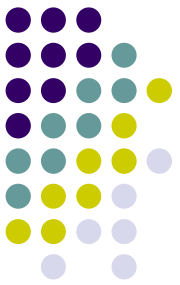
Sue Cooper, Deputy DNS and
Safeguarding Adults Lead



Introduction – presentation will cover



- The legal framework
- Main principles of the Mental Capacity Act
- The Safeguarding Vulnerable Adults Act
- Lasting Power of Attorney
- Independent Mental Capacity Advocates

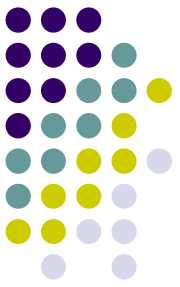


Legal Framework

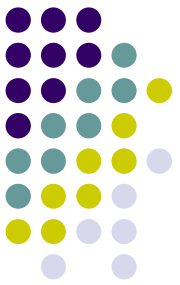
Mental Capacity Act 2005 – comes into force from April 2007 –code of practice published

*The Safeguarding Vulnerable Groups Act 2006 – comes into force 2008
(Vetting and Barring lists)*

Mental Capacity Act 2005 – 5 key principles



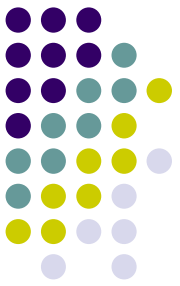
- A presumption of capacity – *every adult has the right to make decisions*
- The right for individuals - *to be supported to make their own decisions*
- Individuals must maintain that right - *even if the decisions might be seen as eccentric or unwise*
- Best interests – *always in clients best interest*
- Least restrictive intervention



Mental Capacity Act 2005

A person's ability to make decisions might be affected by:

- An impairment or disturbance in the functioning of the person's mind or brain
- If so, does that affect the persons ability to make a decision at that particular time?



Mental Capacity Act

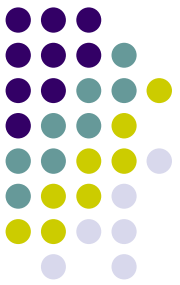
- The two –stage test must be used in the assessment of capacity
- It **MUST** be recorded clearly in the patients medical /nursing notes
- Lack of capacity for one decision does not mean that blanket decisions can be taken for the person



Mental Capacity Act

Excluded from the MCA are:

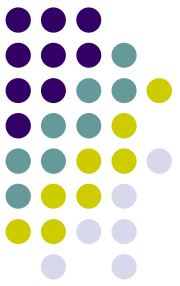
- Consent to sexual relations
- Consent to divorce or civil partnership
- Consent to a child being placed for adoption
- Voting



Mental Capacity Act 2005

A new Independent Mental Capacity Advocate to represent vulnerable adults (IMCA)

- Provides for vulnerable adults to plan ahead using Lasting Power of Attorney by appointing someone to act for them.
- ‘Bournewood’ Safeguards - changes to Mental Health Act 1983 but also to amend the Mental Capacity Act 2005

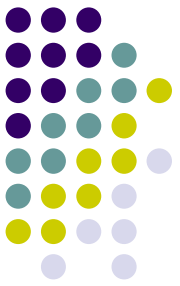


Mental Capacity Act

Using restraint:

Can be used on someone with no or limited capacity but:

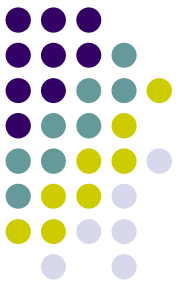
- It must be in the 'best interests' of the patient/client for safety reasons
- It must be proportionate
- It must not deprive someone of their liberty
- The plan must be discussed with the family/carers.



Mental Capacity Act 2005

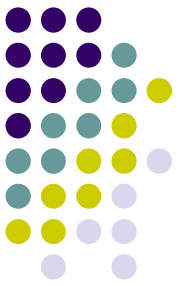
- Families and main carers must be consulted by professionals e.g. to discuss treatment options etc.
- **New criminal offence of ill treatment or wilful neglect of someone who lacks capacity**

The Safeguarding Vulnerable Adults Act 2006



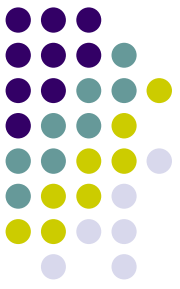
- Comes into force 2008
- Sets up two new Vetting and Barring lists for adults and children to replace the existing ones
- Came about because of the Bichard Enquiry - 2004 (Soham)
- Sets up an Independent Barring Board that will maintain the lists

The Safeguarding Vulnerable Groups Act 2006



- Automatic inclusion on the list for individuals cautioned or convicted of offences
- Where evidence suggests 'significant risk' of harm to adults or children the individual may be placed on the list
- A 'barred' individual will not be able to work in regulated activities as set out in the Act

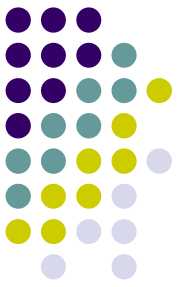
Mental Capacity and Lasting Power of Attorney



- What is Lasting Power of Attorney?

An individual can, whilst they still have capacity appoint someone to make decisions for them about financial, welfare or health matters

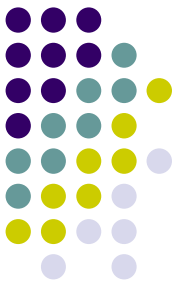
Mental Capacity Act – Lasting Power of Attorney



- There are two different forms of LPC:
personal welfare, including healthcare
property and affairs (financial matters)

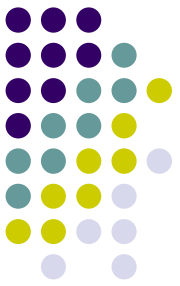
The person making the LPA is the DONOR the
person appointed is the ATTORNEY

Mental Capacity Act – Lasting Power of Attorney



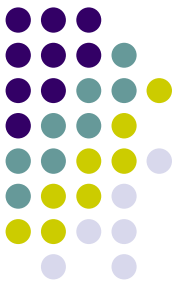
- To be valid the arrangement must be set out on the right form and registered with the Office of the Public Guardian.
- An LPC is a formal and legal document
- If not registered , it cannot be used.
- An Attorney must be over 18yrs old and must not be bankrupt

Advocacy

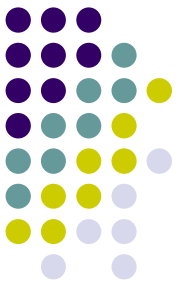


- Most Local Authorities have appointed an agency – Advocacy Partners to provide advocacy services
- Advocates are called Independent Mental Capacity Advocates - IMCA

Advocacy

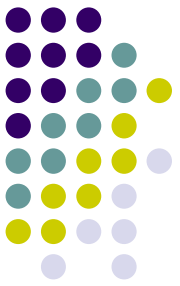


- IMCAs are there to act in the BEST INTERESTS of the patient/client
- Commonly used for patients who lack capacity, but are NOT there to make decisions for them but to support and represent them.



The Court of Protection

- Where there is a dispute or challenge to a decision taken under the Mental Capacity Act, the Court of Protection decides on such matters
- The C of P might appoint a Deputy to make 'best interest' decisions on behalf of the patient/client.



Summary

- There is a legal framework
- The Mental Capacity Act has 5 main principles
- Changes to Vetting and Barring
- Provision for Lasting Power of Attorney
- Provision for Advocacy