**‘Developments in Implementation of the Mental Capacity Act ‘**

**Report from the Lunchtime Seminar**

28th September 2021

**Introduction**

Since the introduction of the sections of the Mental Capacity Act 2016 (MCA) relating to Deprivation of Liberty (DoL) in December 2019, there has been an intensive programme of work to ensure its implementation in front line services. Representatives from the Association of Executive Directors of Social Work and NIPSA had raised concerns with the Social Care Council about pace, capacity and training needs to effectively implement the legislation. Following engagement with a range of stakeholders including the Department of Health (DoH), RQIA, Directorate for Legal Services, and the Council’s Registrants’ Forum it was agreed that a co-hosted lunchtime seminar on this topic would be hosted for social workers.

**Seminar**

The seminar, entitled ‘Mental Capacity Act – Deprivation of Liberty’ was delivered on 28th September 2021, with 243 people attending. The Vice Chair of the Council’s Registrants’ Forum welcomed attendees and provided an overview of the work of the Forum. The co-hosts for the presentation were: Phil Hughes, Professional Advisor to the DoH for the Mental Capacity Act; Karen Harvey, Interim Director of Assurance and Professional Adviser Social Work, RQIA**;** Diane Williams, MCA Implementation Officer, NHSCT;Steph Kerr, Service Manager, MCA, BHSCT.

The aim of the seminar was to support improved understanding of:

* Mental Capacity Act
* Stages involved in authorisation of a Deprivation of Liberty
* Level of activity across the region
* Challenges in the system
* Processes established
* Learning across the system
* Training available
* Quality Improvement Activity perspective

**Presentations and Supporting Information**

The PowerPoint presentation and a ‘Mental Capacity Act’ fact sheet is available on the Social Care Council’s website: <https://niscc.info/lunchtime-seminars-presentations-and-videos/>

The seminar was scheduled to include a Question and Answer session. The time allocated for questions and discussions was cut considerably short due to overrun of the presentation. It was agreed all questions would be answered by way of this follow up report, which will be shared with participants and published on the Social Care Council’s website.

Participants were invited to submit questions and comments prior to and during the presentation.55 participants submitted comments and questions. These have been grouped into key themes along with answers and references to further sources of information:

* Training and resources
* Practical application of the legislation
* Involving service users and their families
* Social Care Council – Registration, Fitness to Practise and Guidance for Registrants

**Questions and Comments from Participants**

**Participant’s questions and comments have been grouped into key themes along with answers and references to further sources of information.**

**Participants have indicated they would like further discussion and support around the Mental Capacity Act. These comments and requests will be taken forward by the Social Care Council’s Registrants’ Forum as noted in the responses below.**

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| 1. **Training and Resources** |
| * 1. **Is there guidance/training for Responsible Persons with providers in the independent sector and their discharge of their duties (Form 15)?**   *Independent sector staff can access the mandatory training on the DoH website. Equally they can approach the Trust Implementation Leads if they need support with additional training.*   * 1. **Is there any training which is co-produced with service users and carers?**   *This is an element which is being developed by the regional training group.*   * 1. **When will the revised training be rolled out across the region and will these be taught programmes or on-line?**   *There will be a combination of both online and face to face training when it is safe to do so with the COVID 19 restrictions. Revised Modules 3, 4 and 5 will be forwarded to DoH for their approval in November 2021.*   * 1. **Is it possible to get the leaflets/info about the criminal liability aspect?**   *Yes, for ease of access this is available along with the seminar materials on the Social Care Council’s website:* <https://niscc.info/lunchtime-seminars-presentations-and-videos/>   * 1. **Can we get a booklet of all questions and answers from the session?**   *This booklet provides details of all of the comments and questions posed before and during the session along with answers.*   * 1. **Will there be a follow up series of workshops to look at working through the issues?**   *The Social Care Council’s Registrants’ Forum will hold an extra-ordinary meeting with DoH representatives to further discuss the issues raised and consideration will be given to workshop support.*   * 1. **Can a survey monkey be developed in the absence of hearing about the issues of unsafe staffing levels, inadequate training from initiation, lack of resources and an unsustainable workload?**   *The Registrants’ Forum will have the opportunity to develop a survey for issue to the Council’s Registrants.* |

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| 1. **Practical Application of the Legislation** |
| * 1. **Across the legislation it uses term “immediately”. Trusts are telling staff “immediately” cannot be met in acute hospital & as such there is a 48hour window for medic to complete the Form 11 yet authoriser has completed form 8. Where did this timeframe of 48 hours come from & where do Social Workers sit with liability on those occasions?**   *The 48 hours referenced in the question refers specifically to the Form 12 Further Admission Report completed – i.e. if the Form 11 Admission Report has not been completed by the responsible medical practitioner/alternative medical practitioner. In these instances the Form 12 is required within 48 hours. The Form 11 states this at the bottom and this timescale is further referenced on p66 COP. There is a section detailing reports during a short-term detention for examination or examination followed by treatment or care, including timescales, on p73 COP. If the DoL process has commenced the protection from liability is already in situ.*   * 1. **What is the process for families to have information pertaining to a family member amended in line with GDPR?**   *There are no different processes under the MCA. All requests in relation to information would be managed with the Trust information processes.*   * 1. **What are the expectations regarding the provision of 'evidence' in supporting assessments, i.e. actual risk as opposed to concerns? Is there staff guidance to inform and assist staff?**   *This is covered in the POSH training and also in the flow chart – the Risk Matrix which guides staff to consider both likelihood and harm, which is also covered in the training.*   * 1. **Is a new care plan always required for an Extension of an Order?**   *No, a new care plan is only required if the patient’s needs have changed. The original care plan can be resubmitted with a statement typed on it that there are no changes.*   * 1. **Is there any experiences/impact for those under 18 years?**   *Yes, young people over the age of 16 can be subject to a DoL if the threshold is met. The majority of young people who currently have a DoL in place have a learning disability.*   * 1. **Will a register be required for day services also?**   *Yes, where there are people in that type of facility who are subjected to a DoL*   * 1. **19 Short term detention orders trust wide currently live trust seems a low number is this only acute hospital numbers?**   *Due to the unprecedented pressures on acute hospitals during to the Covid-19 surge – where there is reasonable belief that a service user requires a deprivation of liberty under the Mental Capacity Act (NI) 2016 however it is not practicably possible to put all safeguards in place and waiting until a full Short-Term Detention is authorised would create an unacceptable risk of harm, Trusts are relying on the emergency provisions under the Act. These figures are not captured in the presentation – only full authorisations at that point in time (19 live full authorisations as at 31 August) are captured.* |

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| 1. **Involving Service Users and their Families** |
| * 1. **Is there feedback available from family members (nominated persons) on their experience of the process, involvement and understanding?**   *There has only been a small sample of nominated persons feedback collated to date and this is an area for future research. It is reassuring that the feedback was very positive and families found the information and support provided by the social workers involved to be supportive and clear to understand. They however were not always in agreement that there was a need for this legislation as their experience of the care their relative received was positive and their view was that the patient could not be cared for in another place.*   * 1. **The direction on spending time with the individual on helping them understand Rule 7 and that a legal representative could be involved is very welcome, this however, will this mean more demands on the worker's time and capacity?**   *As this is discussed as part of the overall capacity assessment the additional time is small, generally approximately 10 minutes.* |
| 1. **Social Care Council – Registration, Fitness to Practise and Guidance for Registrants** |
| * 1. **As the regulating body for social work practice and training and, given that the Mental Capacity Act was implemented without appropriate funding, resources and training to ensure legal compliance, what is NISCC doing to escalate the concerns of and protect its registrant’s?**   *The Social Care Council has engaged with a range of stakeholders to understand the impact of the implementation of the Deprivation of Liberty (DoL) sections of the Act. We have to date met with NIPSA, Executive Directors of Social Work representative, Dept. of Health, Directorate of Legal Services (DLS) at the Business Services Organisation (BSO), RQIA and the Social Care Council’s Registrants’ Forum which has representation from NIPSA, UNISON, BASW, NAPO, QUB and UU.*  *As a result of these engagements and in further discussion with DoH and RQIA we co-hosted a Lunchtime Seminar to provide Registrants with access to up to date information and to answer questions both on the day and in this follow up publication of Questions and Answers. As further follow up to the seminar our Registrants Forum will hold an extra-ordinary meeting in November with representatives from DoH. The Registrants Forum will also consider the development and issue of a survey to registrants to ascertain further views on the impact of the implementation of the DoL sections of the Act. A second seminar is also in planning.*  *We have also indicated that we will be willing to provide support to develop further training or guidance materials From our engagement we understand that NIPSA have initiated a Judicial Review process in relation to the legislation and so we await the outcome in order to further understand the impact of the DoL sections of the Act.*   * 1. **If a registrant is facing criminal liability as a result of being unable to complete Mental Capacity Act Procedures (as a result of lack of adequate resources, staffing and training to meet MCA demands) what will NISCC’s position be if that registrant is referred to a fitness to practice panel?**   *In these circumstances the Council would not take any action until criminal proceedings were concluded. All Fitness to Practise investigations take account of the wider context in which the Registrant is working.*   * 1. **There are staff who are being told to carry out Mental Capacity Work while having only received e-learning training with no face to face or interactive element. Those who attended face to face training arranged by the Department have reported that it was inadequate and did not prepare them for the reality of MCA work. Given the NISCC Code of Conduct states registrants should “work within the limits of your knowledge, skills and experience”, what is NISCC’s advice to those registrants and what is NISCC doing to ensure its registrants are receiving adequate training?**   *It is the responsibility of employers to provide training and support to their staff to enable them to carry out their work safely. Under the Standards of Conduct and Practice it is a registrant’s responsibility to raise their concerns with their employer where they feel they cannot carry out their work safely – due to lack of training or resources. The Council has produced guidance for registrants on raising concerns which was co-produced with NIPSA, UNISON and BASW. This is available on our website,* [27102021-Raising-A-Concern.pdf (niscc.info)](https://niscc.info/app/uploads/2021/03/27102021-Raising-A-Concern.pdf)   * 1. **Very disappointed that not enough time facilitated for questions for proper discussion considering this has had a massive impact on staff on the ground.**   *We appreciate that there was limited time for discussion and questions following the presentations. To address this we have published this booklet of the Questions and Comments submitted on the day, including those that were answered on the day and some where we have provided additional response for this record. A second seminar is in planning and our Registrants’ Forum is meeting with representatives from DoH in November.* |
| 1. **Additional Comments** |
| * 1. Appropriate training is what is required. Short online courses are insufficient to allow staff to comply with the legal responsibilities they are being required to meet.   2. Thanks for this important update- I do think we as assessors do need refresher training sessions to keep abreast of any changes, thank you.   3. NIPSA have provided guidance to members in relation to raising issues with management   4. I am keen to know more about refresher training arrangements and updates.   5. We require further and more adequate training than the current E-learning offered.   6. This Seminar is very important for Social Workers to hear information and to raise their many concerns, Would appear that training and resource remain issues of concern that NIPSA would ask be followed up with Trust Employers and DOH. The issue of Criminal Liability only in NI remains a huge issue for NIPSA and members.   7. Would be good to have further meetings with smaller numbers of registrants to promote further feedback and meaningful discussion with registrants   8. I really hope we can have face to face training in the near future, given the highly complex and sensitive nature of this work.   9. The other area where staff can be held legally responsible for decision making is the Mental Health Officer - where staff follow an intensive one-year training programme. A more extended training is required for staff completing MCA DOLs assessments   10. I look forward to getting copies of the slides to share with my team. |

Presentations from Social Care Council Lunchtime Seminars are available online at: <https://niscc.info/lunchtime-seminars-presentations-and-videos/>

Details of upcoming Lunchtime Seminars are posted on the Social Care Council website at <https://niscc.info/events/>