Admission to Hospital

Guidance for all Medical and Clinical Staff following the Supreme Court Judgement

The Supreme Court Judgment in the cases of P&Q and Cheshire West was delivered on the 19th March 2014 and will have a significant impact in relation to deciding which legal framework is used to admit and provide care and/or treatment for individuals who may lack the capacity to consent to their admission and informal admissions to hospital.

The new working definition of ‘Deprivation of Liberty’ must now be applied and the use of any other definition or the exercise of any personal or professional discretion is highly likely to be unlawful. There are three parts to the new definition and all three must exist together for the situation of the patient to be a deprivation of liberty. The three parts are: the person is subject to continuous supervision and control and the person is not free to leave.

When assessing individuals for admission to hospital, staff need to be aware that a Deprivation of Liberty is not to be confused with the Deprivation of Liberty Safeguards. The Deprivation of Liberty Safeguards are the legal framework set out within the Mental Capacity Act which authorises the deprivation of liberty of a person in a hospital or care home when the person lacks the capacity to consent to stay and is subject to continuous supervision and control, and not free to leave.

Continuous supervision and control refers to oversight even when the patient is not in the line of sight, it must amount to supervision and have a clear element of control.

Free to leave – the person may not be asking to go or showing this in their actions but the important factor is how staff would react if that person did try to leave or if a relative or friend asked to remove them.

This guidance is, provided to assist all staff in determining which legal framework is being used to admit a patient all inpatient areas within RDaSH.

Consent
Consent is the voluntary and continuing permission of a patient to be given a particular treatment, based on sufficient knowledge of the purpose, likely effect and risk of that treatment, including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not consent. Patients who lack capacity to consent cannot consent. Compliant acceptance of any intervention, including admission to hospital is not consent.

**Assessing Patients and Admission to Hospital**

There are only 3 lawful ways in which an assessing clinician can admit a patient to hospital (without the intervention of the Courts)

a) Informal (patient gives fully informed consent)

b) Under the Mental Capacity Act 2005

c) Under the Mental Health Act 1983

Therefore, assessing clinician need to be clear which of the above legal frameworks they are using to admit a patient to any inpatient area.

**Assessment**

When it comes to assessing a person’s capacity to consent to admission to RDaSH inpatient wards it is not necessary for that person to comprehend every detail relating to their expected stay, however, they must be able to understand and weigh up the relevant details to their decision to consent to the admission and in order to consent to the admission the assessing professional must ensure that the person they are assessing is able to understand and weigh up the following:

1. That they are being admitted to hospital to receive care and treatment
2. The nature of the care and treatment for example they may be varying levels of supervision and control, prescription and administration of medication and physical restraint
3. That they may have to seek permission of the nursing staff to leave the hospital, and until staff decide otherwise, will only be able to leave the ward under supervision.
4. That if they did decide to leave the hospital without permission and/or with supervision, the staff may take steps to find and return them, including contacting the police.
5. That the staff at in the hospital may be entitled to carry out property and personal searches;

**Admissions to Wards for Treatment of Mental Disorder**

When admitting a patient for treatment for Mental Disorder across the Trust, the assessing professional needs to consider whether the patient is objecting to admission or treatment for mental disorder (or would do so if they could.) If the patient is objecting the professional must arrange for a Mental Health Act assessment to take place prior to admission.

**NOTE:** Professionals should not assume one regime is ‘less restrictive’ than the other and in coming to a decision they must always consider what the purpose of admitting this patient to hospital is.
Recording Your Assessment

There is an increased importance of placed upon the assessment of capacity. Therefore, it is essential that staff are clear about what forms a good capacity assessment and that they are able to document this accordingly on the MCA 1. It is not acceptable for staff to tick the box and write does not understand on the form for example.

When recording your assessment the key things to remember and record are:

- Clarity about the capacity decision being assessed
- Make sure that you and the person being assessment have the particulars and realistic details of the choices available
- Make sure the person is given the relevant details they need to understand/comprehend
- Avoid overprotection
- Demonstrate in the document the efforts you have taken to promote the person’s ability to decide
- Evidence each part of your assessment
  - What is the impairment/disturbance? Is it temporary or permanent?
  - Why could the person’s not understand, or retain, or use and weigh, or communicate in spite of the assistance given?
  - How is the person’s inability because of the impairment/disturbance (as opposed to something else)?
- And why is this is an incapacitated decision as opposed to an unwise one?

In all cases it is vital that you document the causal link. In other words, are you satisfied that the persons’ inability to make the decision is because of the impairment of the mind or brain?

Best Interest (MCA 2)

If it established that the person being assessed lacks capacity to consent to their admission to hospital and they are being admitted in their Best Interests under the Mental Capacity Act, then the decision maker should complete the MCA 2. When completing this form all relevant factors that it would be reasonable to consider should be documented thoroughly.

Remember the MCA 1 and MCA 2 is the legal evidence on which the decision has been made.

Training

There will be a series of training sessions for all community staff who admit patients to hospital. This will cover the procedural and legal requirements of staff, and their practical application.