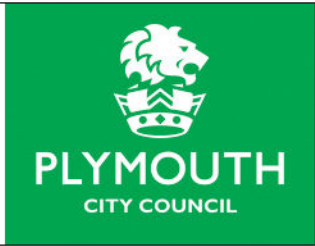


APPENDIX E

Vulnerable Adult Risk Management Meeting Process



Capacity or lack of capacity is a vital element in care planning with, or for, adults at risk of self-neglect.

Once established, planning can then follow one of two routes, either:

- i) in the case of lack of capacity, a decision to follow Safeguarding Adults Guidance to work in the individual's 'best interests', or
- ii) in the case of capacity, to follow the Safeguarding Adults Risk Management Process.

If the Client is assessed and as having the capacity to understand the consequences of refusing services, then a Risk Management meeting should be called to ensure the following:

1. Establish capacity and record when, where and by whom the assessment was carried out.
2. Critique the Care Plan and discuss with a network of professionals alternative options for encouraging engagement with the Vulnerable Adult, i.e. consider which professional is best placed to successfully engage, - would the vulnerable adult respond more positively to a health or a voluntary agency professional? (The Serious Case Review written following the murder of 'F' revealed a lifelong history of negative involvement from both the Mental Health services and from the Social Services Children and Families department. She had been held under Section on several occasions and all her children had been removed from her care. In planning an approach towards 'F', this information would have been vital as she would have been unlikely to engage positively with either the Mental Health Services or Social Services in the first instance)
3. Having established an alternative / holistic Care Plan, the adult at risks' resistance to engagement should be tested by the re-introduction of the new plan by the person or the agency most likely to succeed (this would be decided at the Risk Management meeting).
4. If the plan is still rejected, the meeting should reconvene to discuss a review plan. The case should not be closed just because the adult at risk is refusing to accept the plan. Legal advice must be taken as to a reasonable review plan, including time scales.

In summary, the following formulae / process should be applied:

- Test capacity
- Alternative Care Plan
- Test Resistance
- Review

This process will not affect an individual's human rights but it will ensure the department extends its duty to care in a robust manner and as far as is reasonable.

The dilemma of managing the balance between protecting adults at risk from self-neglect against their right to self-determination is a serious challenge for the Community Care Services.

Applying this robust formulae should ensure all reasonable steps are taken to ensure safety; ideally by a multi-disciplinary group of professionals.

This model has been discussed with H.M. Coroner and has received a positive response. His comment was that this model, applied robustly, appears to be a positive development. He also acknowledged that there will be occasions when individuals make capacitated lifestyle choices with tragic consequences.

Capacity

The Mental Capacity Act 2005 is to be implemented April 2007. The existing law relating to mental capacity and decision making pertains until the Act is brought into force.

The following principles are set out in Section 1 of the Act and will be a future Best Practice for Plymouth City Council and Plymouth Primary Care Trust:

- A person must be assumed to have capacity unless it is established that he lacks capacity.
- A person is not to be treated as unable to make decisions unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made for or on behalf of a person who lacks capacity must be in his interests.
- Before the act is done, or the decision made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Section 2 of the New Act provides that a person lacks capacity if at the material time he/she is unable to make a decision for him/herself in relation to the matter because of an impairment of, or a disturbance in, the functioning of the mind or brain. It does not matter whether the impairment or disturbance is permanent or temporary. This is a diagnostic test which the notes to the Bill explain 'could cover a range of problems, such as psychiatric illness, learning disability, dementia, brain damage or even a toxic confusional state, as long as it has the necessary affect on the functioning of the mind or brain, which causes the person to be unable to make a decision'. Each decision must be considered separately. General assessments of capacity are not accepted. The question of whether a person lacks capacity must be decided on the balance of probabilities i.e. more likely than not.

In section 3, being 'unable to make a decision' is explained:-

- The person is unable to understand the information relevant to the decision,
- Unable to retain the information,
- Unable to use the information as part of the process of making the decision,
- Unable to communicate the decision

Best Interests

All circumstances must be considered in deciding whether something is in a person's 'best interests'. The new Act gives further guidance on particular factors to be taken into account in section 4. None of the factors carry any more weight or priority than another; the list is not exhaustive but should enable an objective assessment of what is in the person's best interest to be made. Consideration as to whether the person is likely to have capacity at some time and if so, when, must be given. This suggests the non-urgent decisions can be left if there is a likelihood of the person regaining capacity. The person in question should also be as fully involved as possible.

Factors to be considered:

- The ascertainable past and present wishes and feelings of the person (including relevant written statements)

- The benefits and values that would be likely to influence his/her decision if he/she had capacity (religious beliefs and cultural values)
- Other factors the individual would be likely to consider if able to do so (this might include a sense of family obligation)
- The views of others if it is considered appropriate to consult them, including anyone so named, carers, and other appropriately 'interested' people. Whilst this list should help to structure decision making, the concept of 'best interests' is likely to remain very difficult to apply in many cases.

