

MENTAL HEALTH CARER REPRESENTATIVES FORUM

MINUTES OF MEETING HELD ON

Thursday 30th May 2019

At Oxlease House, Travellers Lane, Hatfield, AL10 8TJ

Carers: DW, CD, CF, JC, SL, BL, BL, NY, LF, BC, BB, DR, C, RL

Chair: Rosemarie Muldoon

Staff: Sarah Williams, Rosemarie Muldoon, Nicola Beedell (Minutes),
Rosemarie Willis

Guest Speaker: Tina Kavanagh, HPFT Directorate Manager

Item	
1	<p>Welcome: Chair welcomed everyone to the forum and introductions were made.</p>
2	<p>Presentation by Tina Kavanagh</p> <div style="display: flex; justify-content: space-between; align-items: center;">  <div style="text-align: center;"> <p>Hertfordshire Partnership  University NHS Foundation Trust</p> </div> </div> <hr style="border: 5px solid green; margin: 10px 0;"/> <p style="text-align: center;">MENTAL CAPACITY ACT</p> <p style="text-align: center;">Planning Ahead Tina Kavanagh Directorate Manager (MH Legislation HPFT)</p> <div style="display: flex; justify-content: space-between; align-items: center; margin-top: 20px;">  <div style="text-align: center;"> <p>Hertfordshire Partnership  University NHS Foundation Trust</p> </div> </div> <hr style="border: 5px solid green; margin: 10px 0;"/> <p style="text-align: center;">Planning Ahead</p> <ul style="list-style-type: none"> • Lasting Powers of Attorney (health and welfare) • Lasting Powers of Attorney (Financial) • Advance Decisions • Court appointed Deputies  <div style="margin-left: 20px;"> <p>- TK explains how advanced decisions are about planning ahead for when a person lacks the capacity to make a decision.</p> </div>

	<p><i>as one</i> University NHS Foundation Trust</p> <h3>Next of Kin (NoK)</h3> <ul style="list-style-type: none"> • What legal rights have a Next of Kin! • Consent to treatment for a relative? • Consent to DNAR? 	<ul style="list-style-type: none"> - TK explained that a person's next of kin has no legal rights without Lasting Power of Attorney (LPA).
	<p><i>as one</i> University NHS Foundation Trust</p> <h3>NoK</h3> <ul style="list-style-type: none"> • No legal basis for Next of Kin • Cannot give consent on behalf of their loved ones (unless certain legal procedures are in place) • Only time NoK is legally valid is when you die and do not leave a will 	
	<p><i>as one</i> University NHS Foundation Trust</p> <h3>Lasting Powers of Attorney</h3> <p>Two types:</p> <ul style="list-style-type: none"> • Health and Welfare LPA: Includes medical treatment and accommodation issues • Property and affairs: Includes financial matters 	<ul style="list-style-type: none"> - TK said that there always seems to be a lot of confusion around LPA, but anyone can make a health and welfare LPA, or a property LPA.
	<p><i>as one</i> University NHS Foundation Trust</p> <h3>Health and Welfare LPA</h3> <ul style="list-style-type: none"> • Allows the Attorney to make decisions to accept or refuse treatment as if they were the patient UNLESS the donor has stated that they do not wish them to make these decisions. • Even when the LPA includes healthcare decisions, Attorneys cannot consent or refuse treatment in the following situations: <ul style="list-style-type: none"> The Donor has capacity to make the specific decision The Donor has made an advance decision to refuse the proposed treatment A decision relates to life sustaining treatment (unless expressly stated) The Donor is detained under the Mental Health Act 	<ul style="list-style-type: none"> - TK advised the forum to make sure that LPA covers all scenarios, such as both mental health and physical problems.
	<p><i>as one</i> University NHS Foundation Trust</p> <h3>Financial LPA</h3> <p>Once registered the attorney is allowed to make decisions about property and affairs (including financial matters) even if the donor still has capacity unless they state otherwise.</p> <p>They could:</p> <ul style="list-style-type: none"> Buy or sell property Operate bank accounts Give access to the donors financial information Receive income inheritance or other entitlements on behalf of the donor Deal with the donors tax Make limited gifts on the donors behalf 	

	<p><i>as one</i> University NHS Foundation Trust</p> <p>What duties does the MCA impose?</p> <p>Attorneys acting under an LPA have a duty to:</p> <ul style="list-style-type: none"> • Follow the Act's statutory principles • Make decisions in the donor's best interests • Have regard to the guidance in the Code of Practice • Only make those decisions the LPA gives them authority to make <hr/> <p><i>as one</i> University NHS Foundation Trust</p> <p>Advance Decisions</p> <ul style="list-style-type: none"> • An advance decision is when someone who has mental capacity decides that they do not want a particular type of treatment if they lack capacity in the future. • A doctor must respect this decision. • An advance decision is about treatment you do not want to have and says when you do not want to have it. <hr/> <p><i>as one</i> University NHS Foundation Trust</p> <p>What an Advance Decision cannot do</p> <ul style="list-style-type: none"> • A person cannot refuse basic nursing care to keep them comfortable such as warmth, bathing and mouth care. They cannot refuse measures designed to maintain their comfort, for example pain relief • It cannot require a person to act unlawfully, for example including a request to perform euthanasia or for help in committing suicide • It cannot compel staff to perform treatment they believe to be inappropriate, clinically unnecessary or futile <p>N.B. An Advance Decision can refuse artificial nutrition and hydration.</p> <p>Our values</p> <hr/> <p><i>as one</i> University NHS Foundation Trust</p> <p>What does the law say about Advance Decisions?</p> <ul style="list-style-type: none"> • Person must be over 18 • Have capacity to make the particular decision • Anticipates a time when the person may not have capacity to make their own decision to refuse treatment • Must specify the treatment that is refused • Will only apply when the person lacks capacity <hr/> <p><i>as one</i> University NHS Foundation Trust</p> <p>Refusals of life sustaining treatment</p> <ul style="list-style-type: none"> • When there is a refusal of life sustaining treatment – extra legal requirements <ul style="list-style-type: none"> - Must be in writing - Must be signed - Signature must be witnessed - will include a statement that it will apply to the specific treatment even if life is at risk 	<ul style="list-style-type: none"> - Advanced Decisions is the correct term to use. It used to be referred to as a "living will" or "advanced directives". - You cannot demand treatments, as this decision can only be made by a doctor. Also, a person cannot refuse basic nursing and hygiene care, because it may pose a risk to other people. - People have to be specific with their advanced decision. For example, the statement "I do not want to be resuscitated" is invalid, because it does not give enough detail.
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	<p>Standard of Proof Required</p> <ul style="list-style-type: none"> • Existence of an Advance Decision • Validity of an Advance Decision • Applicability of an Advance Decision <p>Criminal Prosecution or Civil Liability</p> <p>If healthcare professionals do not follow a valid and applicable advance decision, <u>they could face criminal prosecution or civil liability</u></p> <p>Must be valid and applicable</p> <p>Will not be valid if</p> <ul style="list-style-type: none"> - Subsequently withdrawn - Overridden by subsequent applicable LPA - P has acted in a way clearly contrary to the decision <p>Will not be applicable</p> <ul style="list-style-type: none"> - If Person has actual capacity - To treatments or circumstances not specified - If circumstances exist which were not anticipated and likely to have affected decision <p>If valid and applicable this has the effect of contemporaneous capacitated refusal.</p> <p>Involvement of the Court</p> <ul style="list-style-type: none"> • Cases of doubt referred to Court. In meantime treatment necessary to preserve life or prevent serious deterioration may be given <p>Mental Health Act & Advance Decisions</p> <ul style="list-style-type: none"> • Does not affect Advance Decisions unless Part 4 of MHA applies for treatment of Mental Disorder • All other aspects of the refusal still apply 	<ul style="list-style-type: none"> - An advanced decision only applies when someone lacks capacity. - If there are any doubts over the advanced decision, then it will go to court. Also, HPFT need to know where the advanced decision is kept. They will not search for it.
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	<p>HPFT Policy on Advance Decisions and Advance Statements</p>  <p>Advance Statements</p> <ul style="list-style-type: none"> • Advance Statements are not legally binding but • if you write down what your wishes and feelings are • then anyone who has to make a decision for you will use this list to help decide what is in your best interests should you not have capacity to make a decision  <p>Court appointed Deputies</p> <ul style="list-style-type: none"> • Where a number of decisions need to be made for a person who lacks capacity on an ongoing basis the Court may appoint a Deputy to act on that person's behalf. • A Deputy may be a family member, a professional (such as a solicitor or accountant) of the relevant local authority. <p>THE END!</p> 	<ul style="list-style-type: none"> - There is no statutory form for an advanced decision, but HPFT do provide their own forms. HPFT also write to people once a year in case people want to change anything. - Advanced statements are about the individuals preferences. For example, how a person likes to be dressed. They are helpful because it helps HPFT to work in a person's best interest.
<p>3.</p>	<p>Questions to put forward to Tina Kavanagh</p> <ul style="list-style-type: none"> - A carer said that a lot rides on capacity, but capacity can fluctuate. So who decides if a person has capacity or not? TK explained that a person cannot be labelled as wholly lacking capacity and that there would need to be multiple capacity assessment i.e. over a person's healthcare needs, accommodation etc. 	

	<ul style="list-style-type: none"> - A carer questioned what should happen when they know the person they care for is not making rational decisions. TK said that everyone can make unwise decisions if they still have the capacity to do so. - A carer mentioned that the issue with mental health is that people can fake capacity, as they know how to act and what to say to professionals. TK replied that professionals have to take into consideration the carers opinion during a capacity assessment. - SW raised the issue of consent being withdrawn from families when a person has a breakdown or a psychotic episode. TK replied that a person can state in their advanced decision to keep family members involved throughout their care and treatment in these events. - SW said that carers aren't always aware of the option to have an advanced decision, and that it could be promoted more. TK said that new material is going out to HPFT staff members, and that the subject of advanced decisions will become bigger with upcoming changes to the mental capacity act. - RM asked what the statements are attached to? TK replied that they are sent to her to check over to see if they are valid, and then they are uploaded to a person's electronic patient record and an alert will come up for staff to see. HPFT records are not linked with physical health records, but HPFT offers to send copies of the advanced decision onto other agencies. TK recommends always sending one to your GP. There used to be a card system (similar to a donor card), but this isn't used anymore since everything is electronic. A carer questioned whether they should be linked to a persons drivers licence or passport. - A carer said that they are unsure how to make a LPA, and if they were to go into hospital, nobody would know how to reach their family. SW said that this is a contingency plan, and advised the carer to speak with a CSA about this in further detail. - A carer questioned what would happen if a person's suicide attempt failed. Would they be allowed to write an advanced decision about being allowed to refuse treatment? TK replied that a person can refuse treatment if it not linked to a mental disorder, but suicide is usually linked to this, so it will probably be rejected.
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	<p>SW and TK confirmed that Carers In Hertfordshire can be telling people about advanced decisions, and that anyone can request a form from HPFT.</p> <ul style="list-style-type: none"> - A carer said that it also might be worth circulating the information around drug and alcohol services, as many may also be suffering from a mental health problem. TK said that places such as CGL are welcome to hand out HPFT forms. - A carer also questioned whether advanced decisions should be included in the dual diagnosis protocol. RM is going to look into this. <p style="text-align: center;">10 Minute Break</p>
4.	<p>Minutes: The forum went through the minutes from the last forum. No amendments to be made.</p>
5.	<p>Any Other Business</p> <ul style="list-style-type: none"> - A carer said they are interested in procedures around guardianship. - A carer is concerned that there doesn't seem to be much around discharge from inpatient units, and would like more information on the role of Healthwatch. SW suggested that we invite someone from Healthwatch and/or Viewpoint to the next forum as a guest speaker. If this is not possible, then possibly someone from HPFT. - SW reminded the forum about carers week, and that all information about what is running will be on the Carers In Hertfordshire website and E-bulletin. Also, that HPFT will be holding their carers week prior to Carers In Hertfordshire. - A carer raised concerns over the lack of people involved in viewpoint surveys. - Carers discussed the recent HPFT outstanding CQC report and questioned whether there was a way of writing to the CQC to say that they disagree with their report. - A carer said that they recently attended the Coping with Loss

	<p>and Change course. However, the name may be changing as it implies that it is for people who are struggling with grief after death. The course includes resilience, relationships and mindfulness. They also look at the process of grieving.</p> <ul style="list-style-type: none"> - A carer reminded the forum about two Guidepost carers support groups that run in Watford (the last Monday of each month) and South Oxhey (the second Monday of every month). - A carer shared a family members experience of in an inpatient unit and there was a discussion about poor practice within inpatient units, care homes and the importance of whistleblowing. <p>The Chair thanked everyone for attending</p>
6.	<p>Next Forum:</p> <p>Tuesday 16TH July 2019 7:00pm-9:00pm</p> <p>Oxlease House Travellers Lane Hatfield AL10 8TJ</p>