2nd National IMCA Conference

Making Decisions in Hospital Settings

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Outline

- Vulnerable adult
- Recent case law
  - Serious medical treatment
- Inherent and situational vulnerabilities
- Decisions in hospital settings
- Implications for IMCAs

‘Construction’ of the vulnerable adult

Dunn et al, Legal Studies, 2008, 28, 234-253

Lord Chancellor’s Department
‘Who Decides?’

- ‘A vulnerable adult is defined as someone over the age of 18 who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to care of him/herself or unable to protect him/herself against significant harm or exploitation’

‘Construction’ of the vulnerable adult

Dunn et al, Legal Studies, 2008, 28, 234-253

Mumby, J. in the case of Re S.A. Vulnerable Adult with Capacity: Marriage [2006] 1 FLR 867

- ‘in the context of the inherent jurisdiction I would treat as a vulnerable adult someone who, whether or not mentally incapacitated, and whether or not suffering from any mental illness, or mental disorder, is or maybe unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation, or who is deaf, blind, or dumb, or who is substantially handicapped by illness, injury or congenital deformity’

‘Construction’ of the vulnerable adult

Dunn et al, Legal Studies, 2008, 28, 234-253

- Vulnerable adult defined as follows;
  - Inherent to that adult (in receipt of services)
  - Individual characteristics
    - Age
    - Gender
    - Illness
    - Disability
- Inherent vulnerability may lead to situational vulnerabilities (e.g. in the case of Ms SA the environment she might live in) – ‘doubly vulnerable’
- An adult may be vulnerable not due to ‘inherent vulnerability’ but only as a consequence of the environment he/she finds him/herself in (Re SK);
- ‘Vulnerability’ does not necessarily equate to lack of capacity to make decisions
- The potential for harm and the occurrence of actual harm

Conditions associated with incapacity

Capacity is decision-specific & assessed functionally

- Unconsciousness (e.g. anaesthetic, illness related)
- Sedation (e.g. on ITU)
- Dementia and other severe brain disorders
- Mental illness (e.g., depression, psychotic illness)
- Anxiety disorders (e.g., phobias)
- Dyphasia (e.g., inability to communicate)
- Post head injury (e.g., confusional state, brain damage)
- Intoxication and/or severe alcohol withdrawal (DTs)

The ‘vulnerable adult’ in hospital

- Hospital is by its very nature an environment where all individuals are potentially vulnerable due to their situation;
  - Outpatients
  - A & E
  - Ward
  - ICU
- Particular individuals may be inherently vulnerable due to a pre-existing condition;
  - Dementia
  - LD
  - Mental health problem
  - Substance abuse
- Circumstances particular to the present circumstances may compound the above
  - Pain
  - Confusion
  - Anxiety

Prevalence of incapacity in medical in-patient settings

Raymont et al, Lancet, 2004

- 302 consecutive acute medical in-patients
  - 72 (24%) unconscious, severely mentally impaired, unable to express a choice
  - 71 (24%) did not agree to undertake the research
  - Of 159 patients assessed 31% judged as lacking capacity
- In total estimated 40% lacked capacity

Self-harm, capacity and refusal of treatment

Jacob et al, Emerg Med J, 2005, 22: 799

71 referrals to A & E – self harm
28/71 (39.4%) were judged to have capacity

After information given in a written manner

45/71 (63.4%) were judged to have capacity

Those lacking capacity:

- More likely to refuse treatment
- Associated with cognitive impairment
- Severe psychiatric disorder

Message for hospitals settings

- Concept of vulnerability covers a wide spectrum – not just those lacking capacity to make healthcare decisions;
- Realisation that hospital environments in combination with the effects of illness may contribute to vulnerability and also to impaired decision-making capacity;
- Vulnerability and capacity relevant in different hospital settings and circumstances
- IMCAs must expect to work in different hospital settings, wide variety of illnesses and issues - ?have a wider responsibility towards the vulnerable

Definition of ‘serious medical treatment’

- Serious medical treatment as defined as treatment which involves giving new treatment, stopping treatment that has already started or withholding treatment that could be offered in circumstances where:
  - If a single treatment is proposed there is a fine balance between the likely benefits and the burdens to the patient and the risks involved.
  - A decision between a choice of treatments is finely balanced, or
  - What is proposed is likely to have serious consequences for the patient.
- ‘Serious consequences’ are those which could have a serious impact on the patient, either in from the effects of the treatment itself or its wider implications.

Serious Medical Treatment Decisions

'Good idea but ...'

- Practical problems
- Deficiencies with MCA
- Current Practice

Ms PS
Judgement of the Court of Protection

- A significant impairment of intellectual function
- Lacks the capacity to make healthcare and treatment decisions
- Intense dislike of hospital and phobic of needles
- Cancer of the uterus – likely to spread and lead to her death

Ms PS
Judgement of the Court of Protection

- Transport to hospital
- Investigation (MRI scan)
- Surgery
- Post-operative care
- Sedation (at home and in hospital)
- Restraint
- Deprivation of Liberty

Issues raised

- Competing human rights
  - Right to life
  - Protection for inhumane treatment
- Balance of views
  - 'Patient'
  - Relatives
  - Health staff
- Reasonable adjustments
  - Proportionality
  - Risk of harm
  - Restriction and deprivation
- Role of IMCAs

Summary so far

- Expanding case law
- Inherent vulnerability
- Situational vulnerability
- Conditions leading to hospital admission associated with incapacity to varying degrees
- Issues to do with capacity are likely to be common in hospital settings – not all recognised

Hospital study

- To determine the extent and nature of decisions people are asked to make as in-patients;
- Whether staff observed the principles set out in the MCA, Dignity in Care campaign etc

'Acts of care and treatment'
226 'acts' observed on two wards over 50 hours of observation

Nature of acts observed on hospital wards: Purpose of act and demands made on patient

% of acts

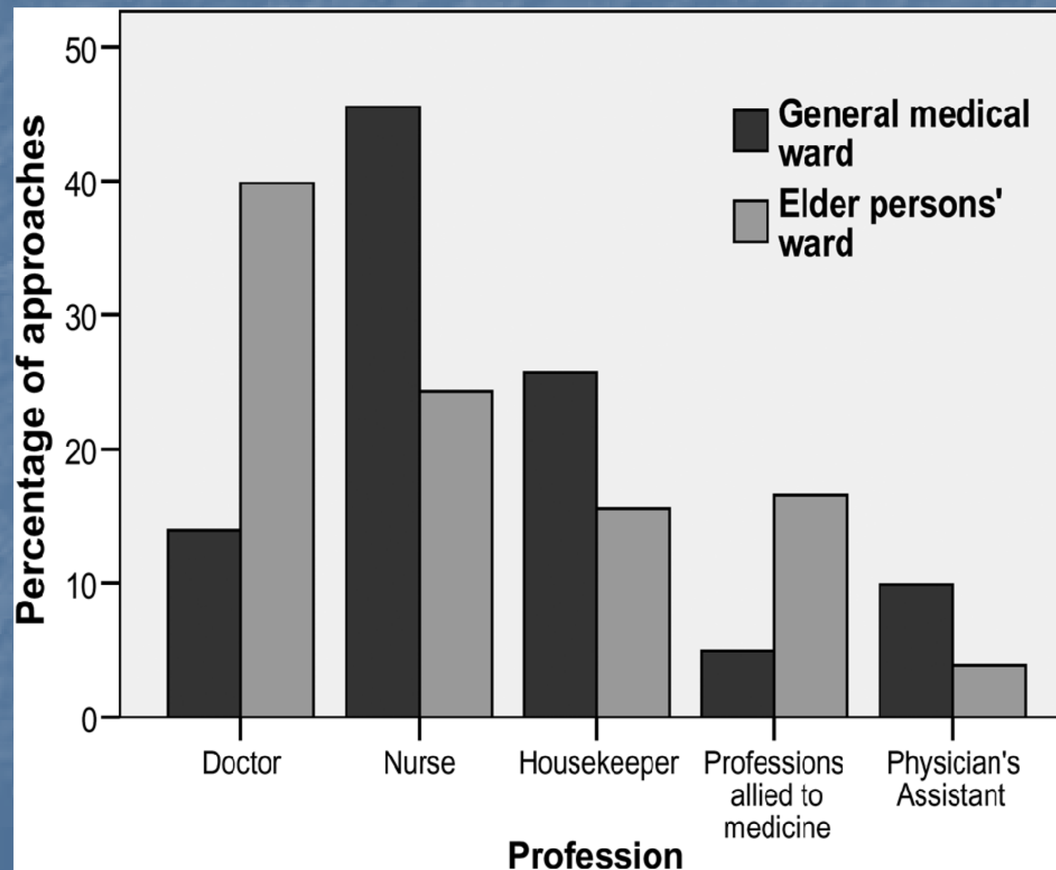
30
20
10
0

Nutrition
General nursing / Personal care
Assessment
Investigation
Treatment
Discharge

Purpose of act

Demands on patient
- Swallow
- Touch / movement
- Answer questions
- Needle puncture
- Off ward procedure
- Urine/stool sample
- Leave hospital
- Other

'Acts of care and treatment'
226 'acts' observed on two wards over 50 hours of observation



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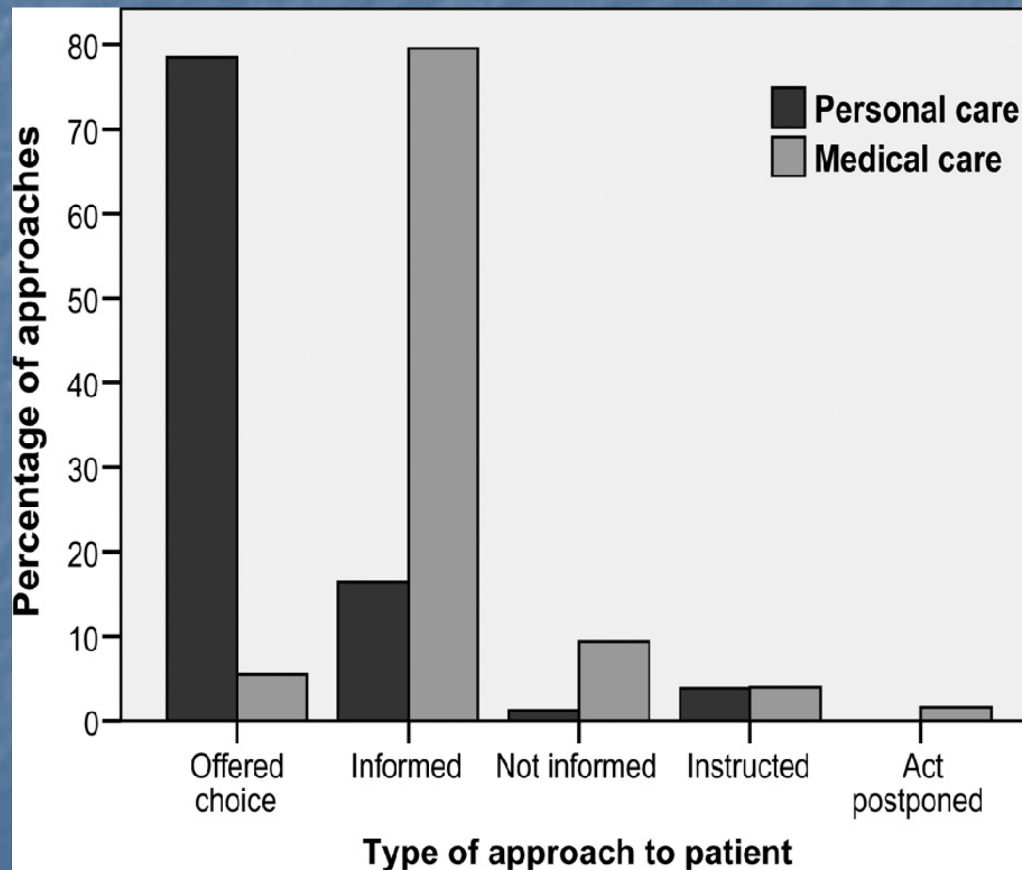


Conclusions

- When it cam to acts of personal care patients were generally given a choice;
- When it came to acts of medical treatment advised what was going to be done?
  - How to understand this difference?

Conclusions

- An assumption that people in hospital agree to be there as they want to get better and are willing to comply to whatever is requested;

- An assumption that patients have consented to a course of intervention – thus a duty to explain but essentially decision rests with the doctor/nurse etc

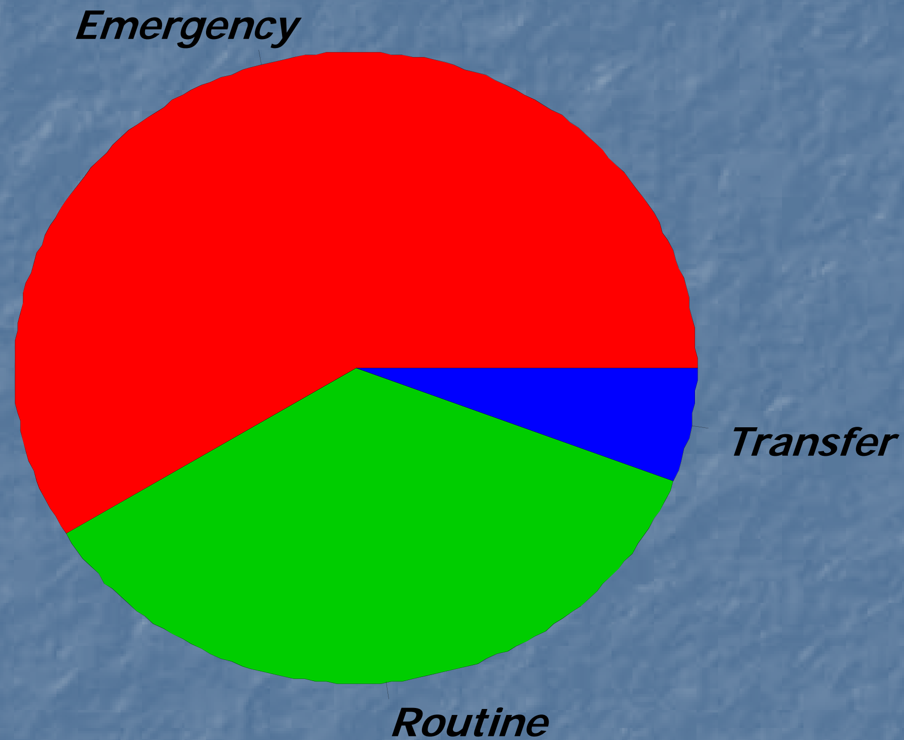
Counting 'patients' with learning disabilities

7 weeks

10 wards

- **17 patients** with learning disabilities were identified.
- The entire number of other patients on the 10 wards over the 7 weeks was **1,750**.
- This shows that the number of patients with learning disabilities is **low** in proportion to the total.

Type of Admission



Emergency: 10 patients
Routine : 6 patients
Transfer: 1 patient

Findings from the interviews

1. Responsibility for health is distributed across mainstream and specialist health services.

2. Men and women with LD find it difficult to recognise when they are unwell.

3. The provision of care and treatment in hospitals can often be poor.

4. Paid carers feel that general practitioners (GPs) provide a very good service.

Final thoughts

- Hospitals potentially provide the greatest challenges for IMCAs
  - Uncertainty by staff as to role of IMCAs
  - Complexities of conditions and situations
  - Numerous and varied decisions to be made
  - Vulnerable people in vulnerability-inducing settings
- Potential for complex situations
  - End of life
  - Competing human rights
  - Urgency
- For people with LD
  - Small numbers
  - Emergency admissions
  - Many services involved