Homelessness and multiple disadvantage: Understanding factors that affect decision making during the Covid-19 crisis

Thursday 21st May, 11am – Starting shortly

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Let’s end homelessness together
Homelessness and multiple disadvantage: Understanding factors that affect decision making during the Covid-19 crisis

With:
- Chair: Jo Prestidge, Homeless Link
- Bruno Ornelas, Voices of Stoke
- Fiona Bateman, CASCAIDr

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Homelessness and multiple disadvantage: understanding the factors that affect decision-making during the COVID-19 crisis

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What we will cover

- Why is not everybody able to stay in?
- Core underlying legal principles
- The application of core statutory functions
- Evidencing capacity
- Effective support transitioning from temporary accommodation
Why is not everybody able to stay in? Overlapping factors

- There are many factors, often complex and overlapping
- People experiencing multiple disadvantage often have intersecting needs linked to homelessness, physical and mental ill health, addiction and histories of institutionalisation.
- The person’s institutionalised understanding of risk. Fear of reprisal / harm from others etc. Informal exploitative support / coercion and control. A lack of information.
- Individual factors and/or systemic and structural challenges
Why is not everybody able to stay in? Hidden reasons

Some factors are often ‘hidden’ and undetected, like:

- Brain injuries (assessed at around 48%) in homeless adults
- Executive impairment
- Trauma, losses, complex grief, and a lack of choice regarding the position they find themselves in.
- A need for information and clarity (specific knowledge) but at best being provided with generic and possibly abstract information.
Why is not everybody able to stay in? Self-care

Factors linked to self-care:

- **Demotivation**: self-image, negative cognitions
- **Different standards**: indifference to social appearance
- **Inability to self-care**: physical and practical challenges
Why is not everybody able to stay in? Environment

Factors linked to environment:

- **Influence of the past**: childhood, loss, abuse, bereavement
- **Positive value of rough sleeping**: emotional comfort, a sense of connection, utility and familiarity
- **Beyond control**: mental and physical ill health, executive impairment, addiction, lack of space
Core underlying principles

Every case must be assessed on the facts of that specific case, taking into account the duties in legislation, regulations and guidance. Practitioners must also be confident they can demonstrate, in Court if necessary, they have:

- Upheld principles that decision making is lawful, reasonable and fair
- Protected against breaches of the adult’s human rights and advanced the principles of the Equality Act 2010
- All decisions respect autonomy, where there is reasonable cause to believe a person lacks capacity all decision are made with regards to the duties set out in the Mental Capacity Act 2005, practitioners also need to be mindful of external pressures than can impair free will
- Met obligations under the Data Protection Act 2018 and regulations
Legal framework: Core statutory functions

- Housing Duties
- Adult Social care, which includes the Wellbeing Principle (section 1, Care Act 2014) and applies to:
  - assessment and care planning – including under the Care Act easements
  - safeguarding adults
- Health provision
Poll (1)

How you make a decision?

- Pray someone else makes the decision
- Think rationally
- Flip a coin
- Panic
Mental Capacity Act 2005 (MCA) and Defensible decision-making

The Court of Protection is clear ‘views of a capacitous person are by definition decisive in relation to any treatment that is being offered to him so that the question of best interests does not arise.’

- S1(5) MCA requires that acts done on behalf of an incapacitated adult must be in their best interests, see s4 MCA /chapter 5 of the Code. Ultimate responsibility for working out best interests (and the weight to be placed on the person’s wishes and feelings in determining this) rests with the relevant decision-maker for the issue in question. It is therefore a matter of professional judgement, but reasons must be in line with professional standards of care, documented and evidenced based.

- Acts/decisions made without reference to best interests won’t benefit from protection from legal liability under s5 MCA: LB Hillingdon v Steven Neary [2011] the LAs failure to appoint an IMCA or immediately refer matter to the court and conduct an effective review of best interests amounted to a breach of art 5 and 8 ECHR.

- Alternative remedies: Public Health powers and Inherent Jurisdiction
So, what is relevant information?

This depends on the decision to be made:

- Social distancing / self-isolating / consequences of non-compliance
- Where to live
- Medical Treatment

You can ask the question ‘Do you understand why I am concerned about the level of risk to your wellbeing?’
How can you best evidence that someone may not have capacity to be involved?

A need for information and clarity (specific knowledge) and avoid generic and possibly abstract information. How do you check if the person has understood what you are telling them?

Be aware that:

- Information in and of itself, even if understood by the individual, recognised and wholly accepted is not comparable to insight; it equates to an intellectual awareness only (Crosson et al., 1989)

- Failure to integrate intellectual awareness into action, where knowledge becomes part of the person’s ‘new’ reality.
How can you best evidence that someone may not have capacity to be involved?

The use of an ‘articulate-demonstrate’ model:

- The person is first asked questions and then asked to show how they would actually implement their decision, or specific components of this decision, may be helpful.

- This might include showing how they would do social distancing or other practical things like, phone for help, get out quickly if there was a fire or this might involve obtaining reports from others who might have witnessed these actions.

- This is like “Tell me, show me” questions when doing a driving test i.e “Tell me and show me how you would check if the brakes are working before starting a journey?”
How to provide effective support in the individual’s transition from temporary accommodation?

- Integrate your own knowledge of brain injury (including trauma) and develop communication plans i.e. for communicating accommodation rules, COVID-19 social distancing and future re-housing plans. This could involve linking in with specialist professionals like Speech and Language Therapists and Occupational Therapists, Clinical Psychologists, Brain Injury specialists.

- Do “tell me and show me” checks / ‘articulate and demonstrate’ models of assessment.

AND....
Poll (2)

Where might it help for you to have a bit more legal know-how to provide effective challenge (and/or advocacy)?
Some time for questions...

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Useful Links & Resources


NRPF Guidance: http://www.nrpfnetwork.org.uk/guidance/Pages/default.aspx


Mental Capacity – the key points – webinar by Alex Ruck Keene: https://www.mentalcapacitylawandpolicy.org.uk/capacity-the-key-points-webinar/

Capacity in the time of Coronavirus: https://www.ncbi.nlm.nih.gov PMC/articles/PMC7151525/
Further reading

- Ornelas, B., Bateman, F., and Cornes, M. (2020). Coronavirus (COVID-19) and changes to the Care Act 2014 – A briefing for homelessness providers and practitioners. Stoke-on-Trent: VOICES
- Ornelas, B., Schwehr, B., Davies, G. (2020). Unwise choices or uniformed decisions regarding housing options? The duty to make enquiries and the implied duty to support decision making. Stoke-on-Trent: VOICES.
About

CASCAIDr is a charity aiming to open the floodgates to legal literacy, in the health and social care sector

The CASCAIDr website is found at www.CASCAIDr.org.uk

CASCAIDr can be contacted on info@cascaidr.org.uk if you’d like to volunteer to help in any way

VOICES is a part of the Fulfilling Lives programme which is a £112 million investment over 8 years supporting people who are experiencing multiple disadvantage. The programme funds local partnerships in 12 areas across England to test new ways of ensuring individuals receive joined up and person centred services which work for them.

VOICES is a partnership project led by www.brighter-futures.org.uk