Safeguarding Adults Review
7 Minute Learning Summary

West of Berkshire
Safeguarding Adults Board
Reading, West Berkshire & Wokingham

John

John had a formal diagnosis of dementia. He used to live with his wife before his condition deteriorated and his needs could no longer be met in the home environment. John had a son and a daughter Rose. Rose was John's Lasting Power of Attorney (LPA) for health & welfare. John was not estranged from his wife and son.

John was placed into residential care by the Local Authority (LA) in spring 2017. John did not have the capacity to make this decision. Rose was not in agreement with his placement and a court application was filed by the LA, in early 2018, for a decision to be made in John's best interests, as to where he should live. In late 2018, a best interests decision was reached by the Court.

The outcome was that John moved into a LA bungalow with Rose as his main carer with a condition for the court order to be reviewed within 1 year. John received 2 care calls a day, funded via direct payments (DP). This was until the provider withdrew as they could not meet John's needs and because there was a breakdown in the relationship between the care agency and Rose. There were concerns raised by the care agency regarding Rose and John's son-in-law's use of restraint, which the LA did not respond to appropriately.

In summer 2019, after a fall at home, John was admitted to hospital. When John was fit for discharge the hospital and Rose did not agree on the discharge plan. It was recommended by professionals that John move into a nursing home but Rose disagreed and believed that John could come home with a package of care. An application for NHS Continuing Healthcare funding was made. Attempts were made to complete the application but due to John's change in medical condition this could not be completed.

During this period of disagreement , John became unfit for discharge and Rose made attempts to discharge John, against medical advice. John passed away in hospital.

Findings from the SAR

1. John's voice was not heard in care and support planning. By treating Rose as his representative in the care and support process and relying on her for assurance about the success of the care plan, a potential conflict of interest was introduced. Independent advocacy and/or discussions with other members of John's family would have been beneficial to John and Rose.
2. Agencies, apart from when John was in hospital, dealt exclusively with Rose who was his LPA and main carer. An individual may have many reasons for selecting a particular family member(s) for a role as LPA. The selection of one family member and not others should not be taken to mean that the person did not want other members of their family involved in their future care.
3. Across the health and social care system there is a strong emphasis on working closely with families, respecting autonomy, and self-determination, and minimising the interference and footprint of the state in a person's private and family life. This emphasis on family involvement, representation and advocacy should not be achieved at the expense of professional curiosity. Professional curiosity is not about undermining a person's family relationships but about achieving a balance between reliance on family members and direct assessment, contact and triangulation of experience with the person themselves.
4. That there was a lack of understanding/confidence of professionals understanding of the legal rights of a LPA and the routes to challenge the LPA's actions and decision making if there were concerns about them acting in John's best interest.
5. John's support plan did not contain adequate detail on how the allocated personal budget (PB) would be used to meet John's needs.
6. The LA failed to set up John's DP correctly and therefore funds were not paid in advance of care being delivered. This led to Rose thinking she was not able to commission care on John's behalf due to lack of funds.
7. The lack of expenditure of John's PB was not identified by the LA as an indicator that John may not be getting the support required to manage his complex needs.
8. The underlying reasons for the withdrawal of care from the care agency were not explored, which may have identified that the current support plan was not meeting John's needs and therefore there was a requirement to go back to the Court of Protection (CoP).
9. There are gaps in the understanding of accountability for recognising and responding to unmet need when a DP is in place. Statutory duty remains with the LA, regardless of how services are purchased.
10. Organisations involved in CoP hearings should ensure that formal mechanisms are in place to review the effectiveness of interventions for which they are responsible, the impact of the order on the adult and seek assurance that the arrangements authorised by the Court are operating as they were to be intended.
11. Allegations around unlawful restraint were not adequately responded to. Professionals took a light-touch approach offering advice to family members, without any attempt to engage John. There was a failure to address the core issue of the use of restraint to enforce care, that it may be unlawful and amount to a criminal offence, breach of human rights and a safeguarding matter.
12. Lack of consideration for 'was not brought'. There may be occasions where the reason for non-attendance to appointments is not a persons choice but because of their dependence on another for support to attend and a failure of that support.
13. There was a delay in making a DoLS application when John was in hospital and Rose attempted to discharge John against medical advice.
14. Communication by professionals with Rose, in regards to John's Health and Social Care Needs was not always clear.

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Safeguarding Adults Review John

Lasting Power of Attorney (LPA) – Health and Welfare
John had allocated his daughter Rose as his LPA. This meant that in the event that he lacked capacity to make decisions in regards to his health and welfare, that if he had capacity he would be able to make for himself, Rose could help to make or make these decisions on John's behalf.

Health and Welfare decisions include:
- Daily routine – for example personal care
- Consent to medical treatment or request second opinions
- Where the person lives

With permission from the person in charge of the individual's funds, LPA's for health and welfare can spend money on things that maintain or improve the individual's quality of life.

LPA's can't always make decisions about the individuals treatment for example if the individual has a living will or has been detained under the Mental Health Act.

An LPA has the same rights in decision making that a capacitated person has.

LPA's must always make decisions in the individuals best interests and professionals have a duty of care to challenge any decisions that they believe are not being made in the individuals best interests. Decisions made via an LPA can be challenged via the Court of Protection (CoP).

An individual can appoint more than one LPA.

Just because an individual has decided on an LPA does not mean that there are not other people close to them who would have a view on decision making.

Independent advocacy remains an option to support the individual and the LPA.

NHS Continuing Healthcare (CHC)
An application for NHS Continuing Healthcare was made on John's behalf, however a decision was not made on John's eligibility as he became unfit for discharge during the process.

NHS Continuing Healthcare is a package of continuing care provided over an extended period of time, to a person aged 18 years or over, to meet significant and complex physical or mental health needs that have arisen as a result of disability, accident or illness.

It is not means tested like adult social care services and is managed by the Clinical Commissioning Group (CCG).

Individuals will go through a two stage assessment process to check eligibility: CHC Checklist and a full assessment.

CCG's are required to follow the National Framework for NHS continuing healthcare.

It is not good practice to carry out CHC assessments when a person is in hospital however a CHC Fast Track Pathway is available to those individuals due to a rapidly deteriorating condition that may be entering a terminal phase.

NHS England have produced an information video for individuals and their families to explain the CHC process. This can be found here.
For more information please go to Berkshire West CCG Website.

Advocacy
LA's have a duty under the Care Act 2014 to provide independent advocacy, when someone lacks capacity or has substantial difficulty being involved in the process of care and does not have an appropriate individual to support them.

The learning from this review suggests there may have been a conflict of interest in Rose supporting John in relation to some of the safeguarding concerns. Due to the conflict of interest - independent advocacy should have been sourced in this respect.

Monitoring of Direct Payments/Personal Budgets
The LA had the duty to meet John's needs for care and support and Rose's needs as John's carer.

LA's remain accountable for recognising and responding to unmet need when a Direct Payment is in place.

John was allocated substantial Personal Budget to enable John to live with Rose. Direct payments were to be provided in order for Rose to commission support required. However the support plan did not provide sufficient detail on how John's needs will be met.

On John's behalf, Rose commissioned two 30 minute personal care calls a day. However the provider pulled out stating that due to John's refusal and behaviours, they were unable to deliver care. There was a disagreement around the use of restraint, with Rose's views on how to support John going against the principles of care.

John did not receive DP funds in timely way although this did not impact on his delivery of his care. Due to an oversight, that was not identified until this Safeguarding Adult Review was completed.

'Was not Bought'
There can be lots of reasons why vulnerable people do not attend appointments and professional curiosity should be applied to understand the reasons for this.

The Royal Devon & Exeter NHS Foundation Trust have produced a informative video on the possible reasons why vulnerable adults may not attend appointments, encouraging that the term did not attend is replaced with 'was not brought'. The video can be found here.

Thankyou for reading. If you would like to provide any feedback or have any questions regarding this learning summary please contact: Lynne.Mason@Reading.gov.uk