



Royal College of Nursing

Legal Seminar - 1 February 2016, 16:00 – 18:30

RCN HQ, 20 Cavendish Square, London W1G 0RN

Capacity, Consent and Supported Decision-Making

Support for decision-making is one of the key principles of the Mental Capacity Act 2005. Despite this, a 2014 House of Lords report found it to be a rare occurrence in practice. It is increasingly important given the obligations of the UK under the UN Convention on the Rights of Persons with Disabilities, which specifically requires the replacement of substitute decision-making processes with supported decision-making.

In response to these developments in the law relating to capacity and decision-making, the RCN Legal Services team has organised a free seminar, which brings together leading experts on the law and ethics of this evolving and important subject.

This subject is important for all health professionals who care for those who lack the capacity to make decisions about their treatment, as well as legal professionals working in healthcare regulation or representing vulnerable clients.

Programme

- 16:00 – Reception
- 16:15 – Presentations from:
 - Professor Genevra Richardson – King’s College, London
 - Dr Jill Craigie - King’s College, London
 - Victoria Butler-Cole - 39 Essex Chambers
 - Amanda Keeling - Leeds University
- 17:10 – Q and A

The seminar is free to attend, but places are limited. Please email Isaac Joory at legal.services.events@rcn.org.uk to reserve your place.

1.5 hours of CPD points are available for solicitors and barristers.



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We are used to thinking about ‘mental capacity’ in the sense of something which can be tested, and when found absent a decision is made in the individual’s best interests. This is the procedure set out in sections 2-4 of the Mental Capacity Act 2005 (MCA), and has for the best part of a decade been the foundation of legal, health and social care practice for decision-making for people with mental disabilities.

However, this process is called ‘substitute decision-making’, and is now increasingly under scrutiny in light of the UN Convention on the Rights of Persons with Disabilities (CRPD). Article 12 of the CRPD makes several revolutionary statements. Firstly, it declares that the right to legal capacity should be afforded to all, irrespective of mental or physical disability. Secondly, it states that States have an obligation to provide support for the exercise of that right. The CRPD Committee, in their General Comment No. 1 on article 12, declared that this move to a support model meant that substitute decision-making procedures were not compatible with the CRPD and should be phased out. Instead, we should implement ‘supported decision-making’, a process which provides support to individuals to enact their will and preferences and this right should not be contingent on their mental ability to make decisions.

This clearly challenges the central provisions in the MCA and professional practice as regards disabled people more widely. However, the UK has both signed and ratified the CRPD, so this is a challenge with which we need to begin to grapple. This seminar will discuss: the legal background to the CRPD against the background of human rights for disabled people; the ethical implications of the idea of universal capacity and the challenge to our understanding of autonomy; how the Court of Protection is approaching capacity assessments and how the MCA can be worked with to provide a greater compliance with the CRPD.

If you would like to attend please RSVP to Isaac Joory at legal.services.events@rcn.org.uk. Places are limited and allocated on a first come first served basis. *1.5 hours of CPD points are available for solicitors and barristers.

Kind regards,

Isaac Joory
RCN Legal Officer