

# Essential Legal Information For Carers

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# Issues for Carers

- Assessing Incapacity
- Principles
- Pro- active Measures
- Re-active Measures
- Conflict of Roles

# Assessing Incapacity

- Adults with Incapacity (Scotland) Act 2000
- Definition :- A person is incapable for the purposes of the Act if he or she is unable to take a relevant decision because of mental disorder or cannot communicate because of physical disability
- Cannot act, make a decision, communicate a decision, understand or remember a decision because of mental disorder

# Assessing Incapacity (2)

- No assumption of incapacity
- No all purpose test of incapacity
- Test is related to the task involved  
c/f routine v. significant risk
- Maximising capacity – Avoid communication barriers and use of independent advocacy

# Principles

- Ethical Basis for intervention
- Benefit
- Least restrictive option
- Ascertaining adult's views past and present
- Consider views of relevant others eg nearest relative and primary carer
- Participation of adult using existing skills and encouragement to develop new skills

# Pro-active Measures

- Welfare power of attorney
- Continuing power of attorney
- Interaction with Mental Health ( Care and Treatment) Act 2003 – advance statements
- Advance Statements Generally ( Living Wills)
- Wills and Trusts

# Re-active Measures

- Guardianship Orders – Welfare and Financial
- Intervention Orders
- Availability of Legal Aid
- Access to Funds – Withdrawal from Bank Accounts
- S.47 Medical certification

# Re-active Measures (2)

- Disability Discrimination – 1995 Act
- Mental Health (Care and Treatment) Act 2003 – Compulsory Treatment Orders and The Mental Health Tribunal
- Direct Payments for community care services

# Conflict of Roles

- Management of Money
- When to intervene eg welfare guardianship
- Named person/nearest relative
- Joint bank accounts
- Questioning continued capacity

# Conclusion

"She obsessed about certain topics and conversations became laborious as she repeated herself incessantly. She drove the wrong way down a one way street. Multi-tasking became impossible. Affection for everyone in the family diminished. A trip to the shops yielded 24 cans of shaving cream and the towels the family didn't need. Unable to monitor her eating her weight fluctuated dramatically."