

Members Network Event

Welcome!



Sharon Davis
Chief Executive Officer
HCPA

Three quick updates!





GOOD CARE MONTH

July 2019

*What are you doing for your service users and staff this Summer?
Share the great care you provide!*

- Find out more and register your events at www.hertsgoodcare.com/campaign/
- Follow us on twitter @hertsgoodcare to follow the campaign throughout July
- We will attend your events, take photos, and publicise your events for you
- Advertise your vacancies in time for Good Care Month via www.hertsgoodcare.com



New Benefits

These are some tantalising tasters of what awaits you when you reach the next Tier with Herts Care Professionals Academy...

Tier 1 - Money off hundreds of High Street and online stores with Herts Rewards!

Here is just one example - Earn up to 5% savings on your weekly shop at Sainsbury's

Tier 2 - Transport Related Offers

Such as discounts on car servicing at specified garages within Hertfordshire

Tier 3 - Benefits for your health, well-being and leisure!

Here are just a couple for you to try - Discounted membership cost at Anytime Fitness and 2-for-1 offers at Watford Comedy Club

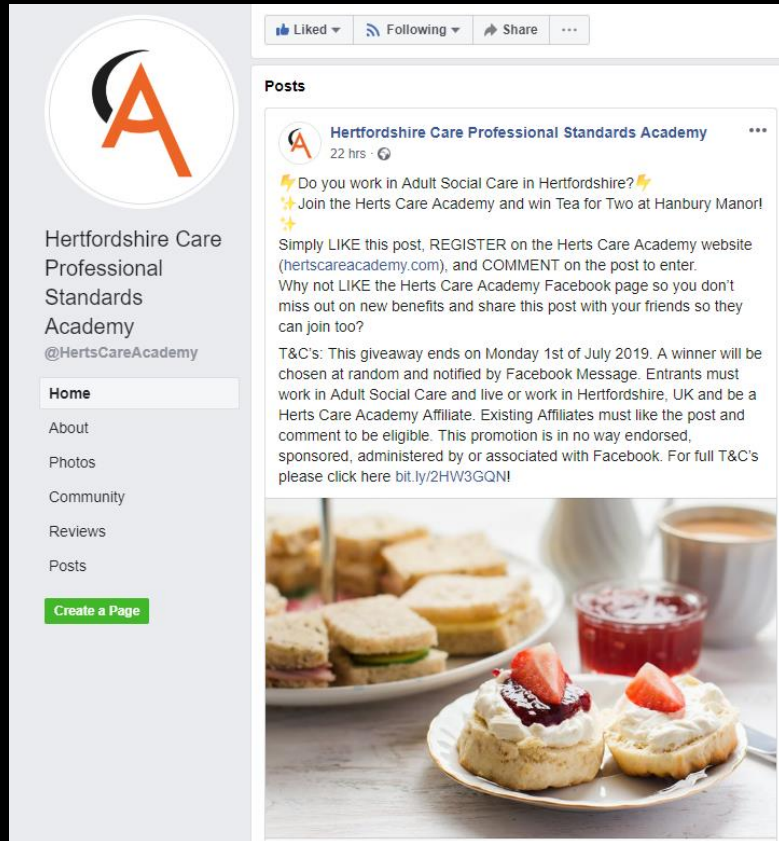
Tier 4 - Eligibility to receive your own NUS (Totum) Card!

*Here is a great bonus you could unlock with a Student Card - 10% off **all** shopping at the Co-op, including wine and spirits!*

Tier 5 - Special luxury deals and time-limited offers

Our June time-limited offer - If you reach Tier 5 by 30th June 2019 we will send you a luxury box of Hand Finished Chocolate Truffles!

Get Involved! Your chance to win... Facebook@hertscareacademy Register, Like & Comment



Liked Following Share ...

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@HertsCareAcademy


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Hertfordshire Care Professional Standards Academy
22 hrs · 🌐

🌟 Do you work in Adult Social Care in Hertfordshire? 🌟
🌟 Join the Herts Care Academy and win Tea for Two at Hanbury Manor 🌟

Simply LIKE this post, REGISTER on the Herts Care Academy website (hertscareacademy.com), and COMMENT on the post to enter. Why not LIKE the Herts Care Academy Facebook page so you don't miss out on new benefits and share this post with your friends so they can join too?

T&C's: This giveaway ends on Monday 1st of July 2019. A winner will be chosen at random and notified by Facebook Message. Entrants must work in Adult Social Care and live or work in Hertfordshire, UK and be a Herts Care Academy Affiliate. Existing Affiliates must like the post and comment to be eligible. This promotion is in no way endorsed, sponsored, administered by or associated with Facebook. For full T&C's please click here bit.ly/2HW3GQN!



And now introducing the HCPA Skills Audit



- Quick and easy survey to establish how staff feel in terms of **confidence**, **competence** and **knowledge** providing an overall skills gap
- Measures against the **Skills for Care Core Care Standards for Care Practitioners**
- Measures against the **Skills for Care Leadership Standards for Managers**
- **Checks for any gaps** in relevant training over the past 12 months and 36 months – as relevant

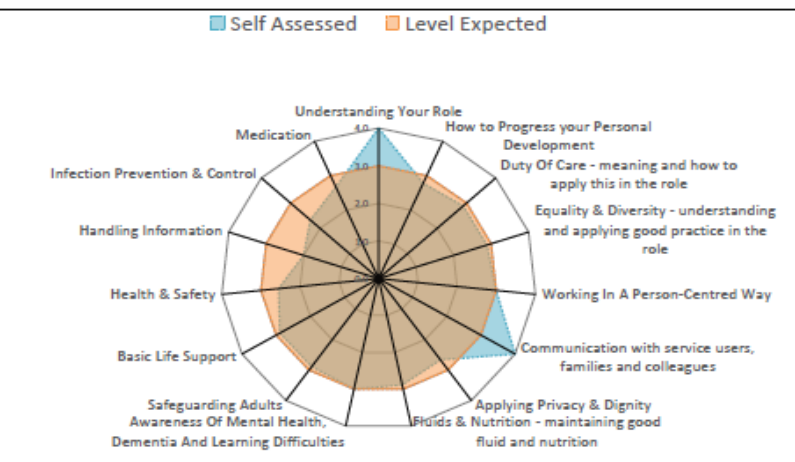
Staff Skills Self Assessment Report for Quality Care Homes - Care Practitioners



Number of Surveys Sent	9
Percentage Returned	100%
Date	December 2018

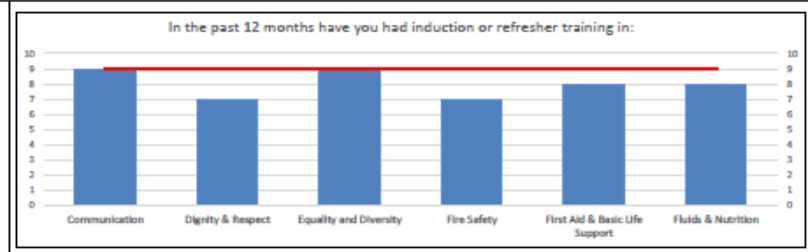
General Care Standards - Including Induction Standards

Are you confident in:	Expected Level	Self Assessed	Status
Understanding Your Role	3	4.0	Above Expectation
How to Progress your Personal Development	3	2.8	Development Opportunity
Duty Of Care - meaning and how to apply this in the role	3	2.9	Development Opportunity
Equality & Diversity - understanding and applying good practice in the role	3	2.9	Development Opportunity
Working In A Person-Centred Way	3	3.0	Okay
Communication with service users, families and colleagues	3	4.0	Above Expectation
Applying Privacy & Dignity	3	2.7	Development Opportunity
Fluids & Nutrition - maintaining good fluid and nutrition	3	2.9	Development Opportunity
Awareness Of Mental Health, Dementia And Learning Difficulties	3	3.0	Okay
Safeguarding Adults	3	2.9	Development Opportunity
Basic Life Support	3	2.9	Development Opportunity
Health & Safety	3	2.6	Development Opportunity
Handling Information	3	2.0	Development Opportunity
Infection Prevention & Control	3	2.3	Development Opportunity
Medication	3	2.7	Development Opportunity
SKILLS GAP		73%	

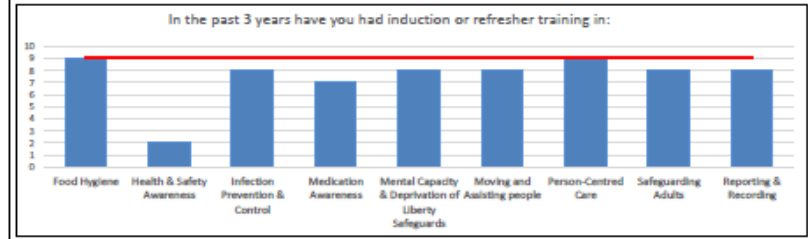


Mandatory Subjects

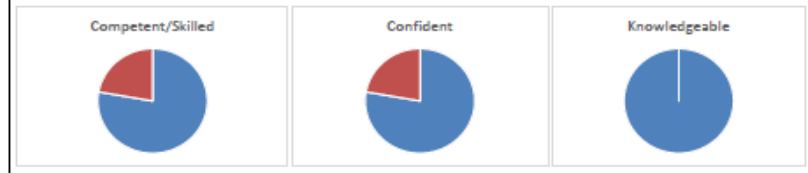
Subjects	No. Of Expected Responses	Total No. Receiving Training	Status
Communication	9	9	Okay
Dignity & Respect	9	7	Development Opportunity
Equality and Diversity	9	9	Okay
Fire Safety	9	7	Development Opportunity
First Aid & Basic Life Support	9	8	Development Opportunity
Fluids & Nutrition	9	8	Development Opportunity



Subjects	No. Of Expected Responses	Total No. Receiving Training	Status
Food Hygiene	9	9	Okay
Health & Safety Awareness	9	2	Development Opportunity
Infection Prevention & Control	9	8	Development Opportunity
Medication Awareness	9	7	Development Opportunity
Mental Capacity & Deprivation of Liberty Safeguards	9	8	Development Opportunity
Moving and Assisting people	9	8	Development Opportunity
Person-Centred Care	9	9	Okay
Safeguarding Adults	9	8	Development Opportunity
Reporting & Recording	9	8	Development Opportunity



Staff feel:	Yes	No
Competent/Skilled	7	2
Confident	7	2
Knowledgeable	9	0



HCPA SKILLS AUDIT SUMMARY

Hertfordshire Nursing Home – April 2019

Returns

Care Practitioners	85%
Senior Staff	86%
Manager/Leadership Team	100%

Care Practitioners:

Overall Skills Gap = 0%

Potential development opportunities are identified on the charts, medication scored lowest. Working in a person-centred way and applying privacy and dignity within the job role are areas where staff feel particularly strong. Areas specifically identified by staff for further development opportunities were:-

- Dementia
- Palliative Care and End of Life – including communicating with families
- Medication
- Food Hygiene
- Fluids and Nutrition
- Fire safety

All of the above can be accessed free of charge or at low cost via your HCPA membership

Senior Staff

Overall Skills Gap = 0%

There were a number of areas where staff identified themselves as feeling particularly confident in. The lowest area of confidence is the Personal Development which scored lowest, staff did not seem aware of their personal development plans. Training around mental capacity scored low. All felt competent, confident and knowledgeable in their job roles. Areas specifically identified by staff for further further development opportunities were:

- Care Plans – to address the new system
- Peg Feeding
- Wound Care

- End of Life
- Syringe Drivers
- Mental Health/Dementia/Learning Disability
- Supervision

This training can all be accessed free of charge or low cost via your HCPA membership with the exception of the update relating to your Care Plan system. There are some Leadership Courses available for senior staff including Supervision and Appraisal available across the year.

<https://www.hcpa.info/wp-content/uploads/2019/04/HCPA-Training-Planner-201920-V-1.0-.pdf>

Managerial Staff

Overall Skills Gap = 0%

The Managers reported a high confidence level in all subjects except for Governance and Regulatory Processes. You may wish to review the Skills for Care Manager Induction Standards – Standard 2 Governance and regulatory processes here :

<https://www.skillsforcare.org.uk/Documents/Standards-legislation/Manager-Induction-Standards/Manager-Induction-Standards.pdf>

You can utilise the Skills for Care document to benchmark practice within your organisation and as a reminder of what the standards involve. The HCPA Leadership Suite is available as part of your membership and Leading and Recognising Excellence in Care will cover the elements required to refresh. In addition you may wish to review the HCPA Training Calendar here <https://www.hcpa.info/wp-content/uploads/2019/04/HCPA-Training-Planner-201920-V-1.0-.pdf> to view more courses that are available to you via your HCPA membership.

Other areas where there may be an opportunity for professional development were in resources and entrepreneurial creativity, skills and service innovation. In terms of resources and planning Leading and Recognising Excellence in Care will cover this area and Leading a Compassionate Care Service and Strategies for Retaining a Competent Workforce will both be useful in terms of staffing resources. HCPA run Managers Forums which could be useful in terms of networking and service innovation.

HCPA are currently working on a new programme for Leaders called Inspire. This will contain a pick and mix range of qualifications and bite sized training that can be developed bespoke to an organisation. We are currently seeking funding opportunities to cover the full cost of this, if we are unsuccessful there may be costs involved but these will be kept to a minimum. Please watch out for the HCPA E-news and training updates or if you would like to express an interest then please contact Elena Catalin elenacatalin@hcpa.info

Peter Bullen
Integration Project Manager
HCPA
NHS Email



Free, secure NHS Email

Avoid GDPR fines

Don't risk CQC issues

Don't get left behind

Don't lose £££s

Now **MANDATORY** for NHS contracted services



Wesley Strahan-Hughes
Head of Operations
HCPA



ALLIANCE

- Challenge
- Rationale
- HMRC, Pensions, Additional Elements
- The True Cost of Care
- New Frameworks
- Low Pay Commission
- Working in Partnership

GET INVOLVED

- Anonymised Exercise
- True Costs
- Please Get Involved
- Information Sharing



General Information

Number of Beds *

Number of Staff *

Occupancy *

Number of Care staff you employ through an agency *

Number of Nursing staff you employ through an agency (if applicable) *

Food for Residents *

Utility Bills *

Catering and Laundry Staff *

Repairs and Maintenance *

Insurance *

Supplies and Rentals *

Rent / Mortgage *

Corporate Buildings Overheads *

fees@hcpa.info



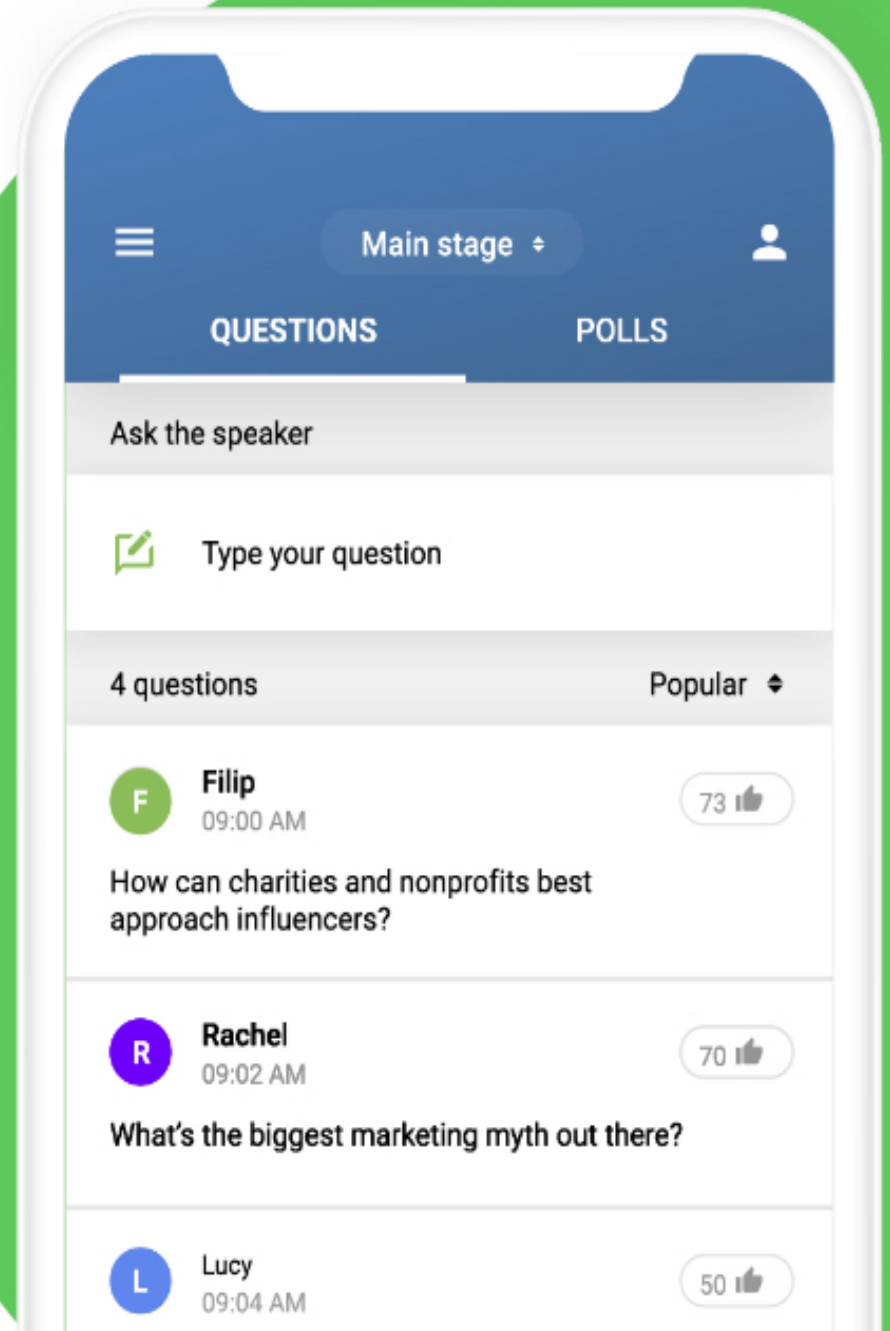
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Join the conversation.

**Ask questions &
vote in live polls.**

Event Code: HCPAJNE

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Hertfordshire's new Adult Safeguarding Team

Keith Dodd

Head of Adult Safeguarding, Hertfordshire County Council

www.hertfordshire.gov.uk



Quiz!

www.hertfordshire.gov.uk



Quiz

What does HSAB stand for?

- a) Hertfordshire Safeguarding Adults Board
- b) Health and Safety Board

Quiz

The answer is.....

a) Hertfordshire Safeguarding
Adults Board

Quiz

How many categories of adult abuse are there under the Care Act?

a) 10

b) 12

Quiz

The answer is.....

a) 10

Quiz

What is the MASH?

- a) Making Adults Safer at Home
- b) Multi Agency Safeguarding Hub

Quiz

The answer is.....

b) Multi Agency
Safeguarding Hub
(Children's Services)

Quiz

Section 44 of the Mental Capacity Act 2005 makes it an offence to “ill treat or wilfully neglect an individual who lacks capacity”??

- a) True
- b) False

Quiz

The answer is.....

a) True

Quiz

Which one of the following is NOT a category of abuse under the Care Act?

- a) Hate Crime
- b) Self-neglect

Quiz

The answer is.....

a) Hate crime

Quiz

Who has primary responsibility for safeguarding arrangements under the Care Act 2014?

a) The Police

a) The Local Authority

Quiz

The answer is.....

b) The Local Authority

Tie Breaker

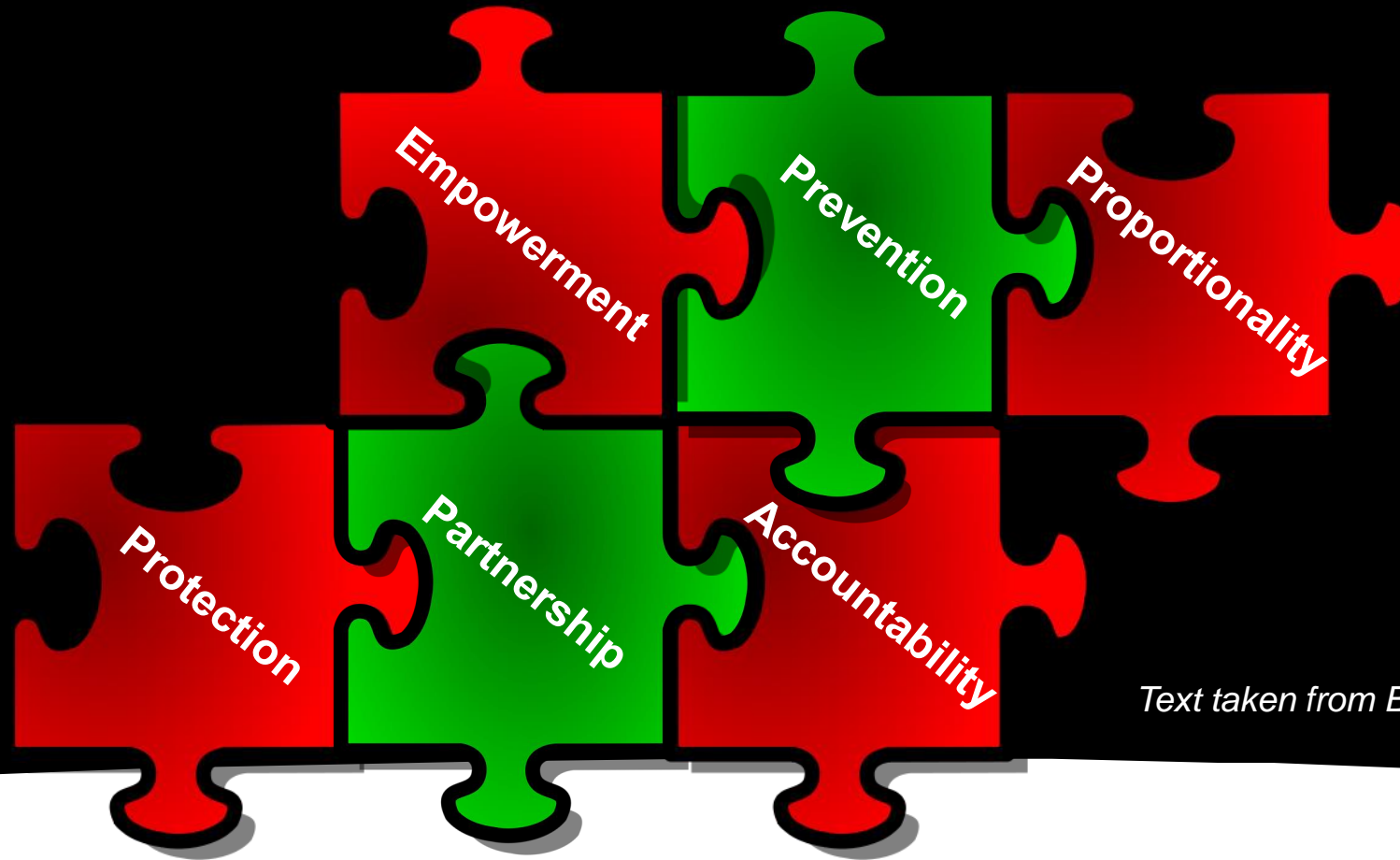
To the nearest 50, how many safeguarding concerns were reported in Hertfordshire last year?

Tie Breaker

And the answer is.....

9500

Key principles



Text taken from Bradford SAB website

Key principles – principle 1



*Text taken from Bradford SAB
website*

Key principles – principle 2



*Text taken from Bradford SAB
website*

Key principles – principle 3



*Text taken from Bradford SAB
website*

Key principles – principle 4



*Text taken from Bradford SAB
website*

Key principles – principle 5



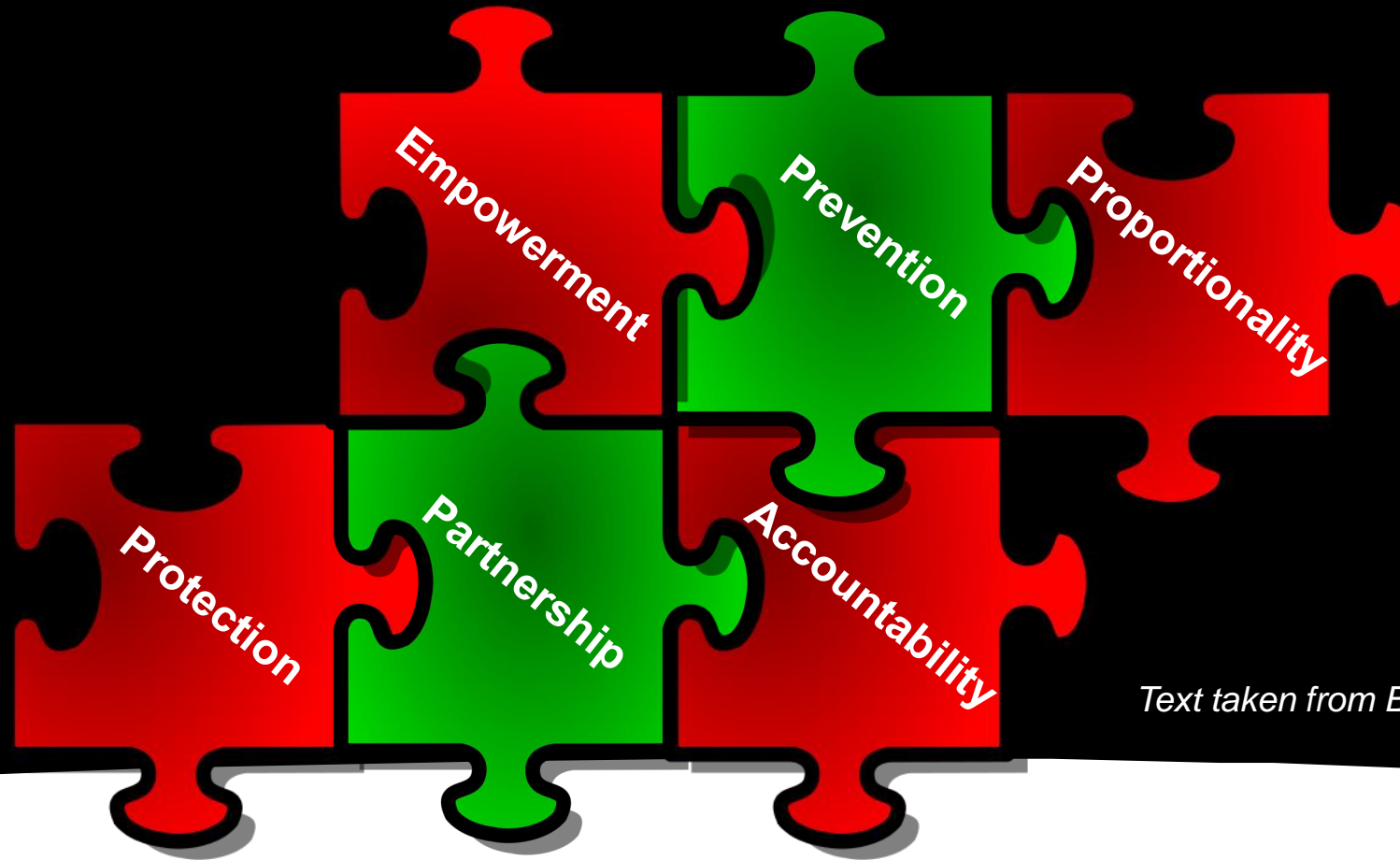
*Text taken from Bradford SAB
website*

Key principles – principle 6



*Text taken from Bradford SAB
website*

Key principles



Text taken from Bradford SAB website

Hertfordshire Safeguarding Adults Board

- Use Safeguarding Adult Reviews & performance data from key agencies to update and deliver effective safeguarding practices in Hertfordshire
- Challenge current safeguarding practices in Hertfordshire

Hertfordshire Safeguarding Adults Board

- Make sure safeguarding practices are followed by key organisations to a high standard
- Agree and oversee a strategic plan and publish an annual report.

Hertfordshire Safeguarding Adults Board



www.hertfordshire.gov.uk



Our Vision

- A single adult safeguarding service across Hertfordshire, building strong relationships with citizens, providers and partners
- Intrinsic to the service will be Making Safeguarding Personal principles

Our challenges as a new team

- Feedback to referrers
- Building relationships
- Timeliness
- Information sharing

Our challenges as a new team

- Consistent & robust decision making
- A skilled workforce producing high quality safeguarding practice

What role can you play?

- Clear, concise information in the referral
- What safeguarding (protection) plan has been put in place
- What outcome does the adult at risk want and do they consent to the safeguarding enquiry

Future developments

- We are looking to develop an online portal for all safeguarding referrals
- This will help with data security, data quality and ensure referrals follow the appropriate path.

How to contact us.....

Adult.Safeguarding@hertfordshire.gov.uk

0300 123 4042

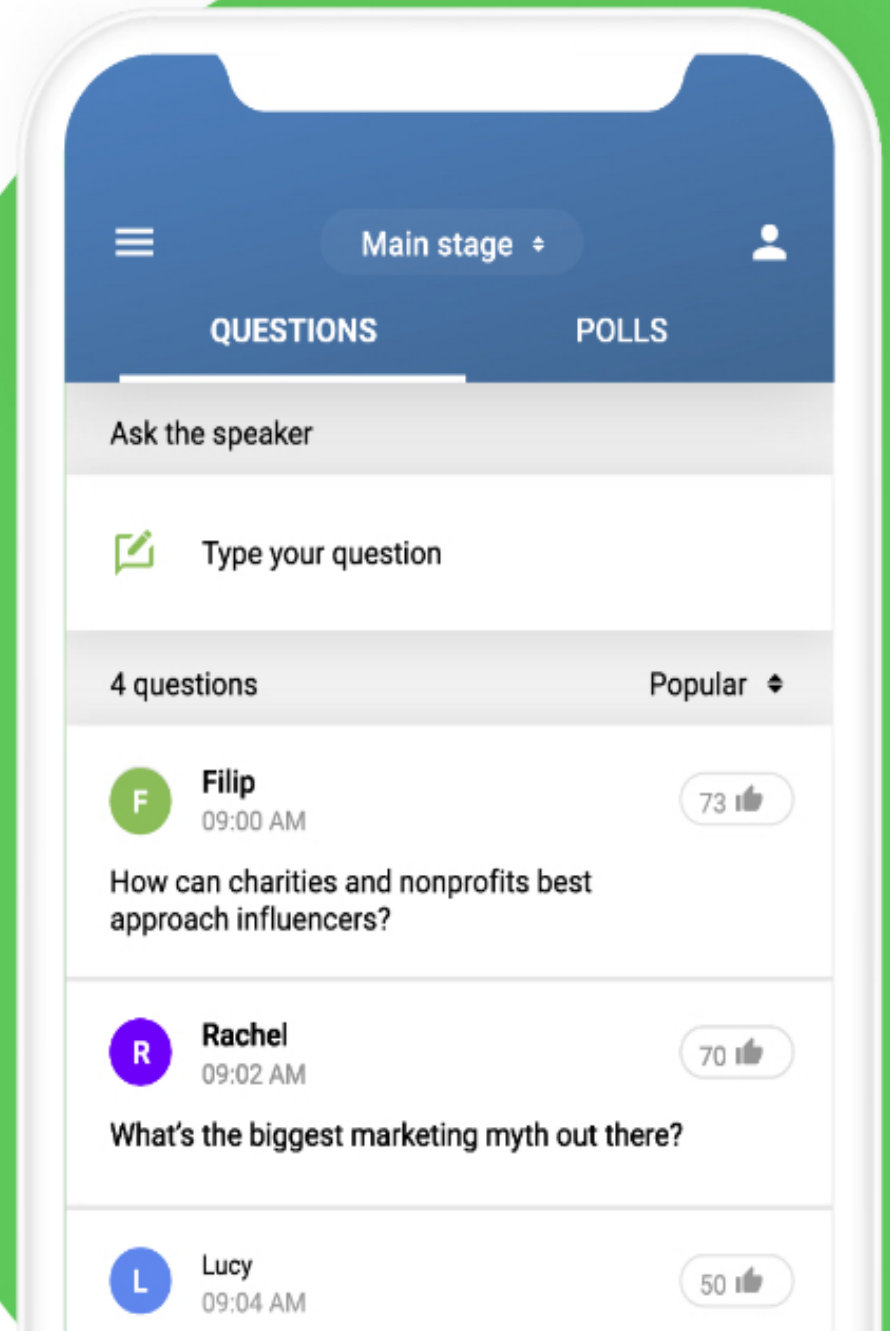
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RID  OUTS

Developments in Safeguarding

Presented by

Jenny Wilde
Director, Solicitor

5 June 2019

Contents

1. The Care Act 2014

- What did safeguarding used to look like?
- What does this mean for providers?
- Examples of abuse
- An even playing field...
- Empowering providers

Contents

2. Proposed changes to MCA and DoLS: the new Liberty Protection Safeguards

What did the safeguarding system look like?

- No fixed process
- Each local authority had its own policy
- Arbitrary
- Lack of accountability
- Unfair to providers
- Easy to abuse a system that is fluid

Section 42

section 42: Duty of enquiry by Local Authority applies when there is a reasonable belief that an adult in its area (a) with care and support needs (b) is experiencing, or at risk of experiencing abuse and neglect (c) and is unable to safeguard themselves as a result of their care and support needs.

When these conditions are satisfied the Local Authority *must* make, or cause whatever enquiries it deems necessary to determine what actions (if any) are necessary to safeguard the adult. The Local Authority cannot delegate its duty under S42 and when it causes an enquiry to be made by an external partner, it *must* satisfy itself that the enquiry has been concluded effectively and determine if it needs to undertake any further enquiries under S42 of the Care Act 2014.

The Care Act: an attempt to address inconsistency

The Care Act 2014 sets out a clear legal framework for how local authorities and other parts of the system should protect adults at risk of abuse or neglect.

Local authorities have new safeguarding duties. They must:

- lead a multi-agency local adult safeguarding system that seeks to prevent abuse and neglect and stop it quickly when it happens
- make enquiries, or request others to make them, when they think an adult with care and support needs may be at risk of abuse or neglect and they need to find out what action may be needed (s42)

The Care Act: an attempt to address inconsistency

- establish Safeguarding Adults Boards, including the local authority, NHS and police, which will develop, share and implement a joint safeguarding strategy
- carry out Safeguarding Adults Reviews when someone with care and support needs dies as a result of neglect or abuse and there is a concern that the local authority or its partners could have done more to protect them
- arrange for an independent advocate to represent and support a person who is the subject of a safeguarding enquiry or review, if required.

- **Enquiries aren't necessarily the same as investigations. The act requires councils to make "whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult's case". So an enquiry may not lead to any action and could in principle be quite short.**

- **Prior to the Care Act being introduced in April 2015, there was no threshold in law for when a safeguarding concern should be investigated. Councils were expected to follow the No Secrets guidance, which was designed to protect ‘vulnerable adults’.**

- **A vulnerable adult was defined as a person “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 take care of him or herself, or unable to protect him or herself against significant harm or exploitation”. So it would be likely that, in many councils, prior to the Care Act this was the threshold for a safeguarding referral.**

Impact

The Local Government Association's first Care Act stocktake found that councils handled 103,900 safeguarding referrals in the full 12-month period up until April 2016, when the Care Act came into force.

This was almost double what would normally be expected in that period

Problems associated with Section 42

- **Can be misinterpreted by the local authority**
- **Some see it as a “legislative power”**
- **Used as a threat**
- **Entitlement**

What does this mean for Providers?

- Formalisation of the system has not necessarily resulted in an immediate improvement in safeguarding processes
- Safeguarding investigations have a huge impact on a business
- It is likely that the contract between the care provider and the commissioning authority entitles entry to representatives of the commissioner where there are safeguarding concerns but this is not automatic – check terms.

What does this mean for Providers?

- REMEMBER – safeguarding allegations and the results of any subsequent investigations will be fed back to the CQC
- You will be subject to increased scrutiny which could trigger a focussed CQC inspection or enforcement action
- Media interest

Potential outcomes of safeguarding investigations

- **Founded / Substantiated:** Evidence was able to prove that what was alleged did happen
- **Unsubstantiated:** There is insufficient evidence to prove that the allegation did or did not happen
- **Unfounded:** Evidence was available to prove that what was alleged didn't happen or couldn't have happened or information has been misinterpreted

Potential outcomes of safeguarding investigations

- **Malicious:** A deliberate act to deceive. For an allegation to be classified as malicious, it will be necessary to have evidence which proves this intention

Key points

- When is an issue a safeguarding matter? Consider the commercial impact – proportionality
- Subjectivity of safeguarding team members – beware the chair!
- Delays in the process – providers in limbo
- Use of legal representation / note takers
- Anecdotes from the frontline

An even playing field

- **You have the right to be represented**
- **Ask for specific details of the allegations – safety and well-being of service users is your primary responsibility so you are entitled to understand the perceived risks**
- **Conduct a detailed investigation if the situation allows – police involvement will mean that you are unable to investigate until they give you permission**

An even playing field

- **If you are able to investigate, take detailed statements the appropriate people (depending on nature of allegations and the identity of the person making the allegation)**
- **You are entitled to be supported at safeguarding meetings**
- **Note takers**

Empowering providers

- Challenge the efficiency of the investigating authority
- Check minutes for accuracy
- Assist as much as possible with an investigation as long as what the investigating authority is asking for is relevant
- Try and keep clear lines of communication open – investigations often disappear into the ether!

Whilst the safety and well-being of your service users is paramount you are still entitled to ensure that you are treated fairly and transparently by local safeguarding teams

Proposed changes to MCA and DoLS:
The new Liberty Protection Safeguards

The Law Commission's Proposals

- In March 2017, the Law Commission produced its final proposal on a replacement for the Deprivation of Liberty Safeguards (DoLS), and suggested amendments to the Mental Capacity Act itself. The changes to the act are to incorporate the new scheme, called the Liberty Protection Safeguards (LiPS), and to strengthen people's rights in areas such as best interest decisions.

The reasons for change

Since the Cheshire West judgment in 2014, the number of DoLS cases has skyrocketed, leading to mounting backlogs and many thousands of people being left deprived of their liberty without authorisation.

The proposed system is designed to address this situation by radically reducing burden placed on local authorities and ensuring service users receive the requisite protections without undue cost or bureaucracy

Now becoming law

- On 16 May 2019, the Mental Capacity (Amendment) Act 2019 was given Royal Assent and it is hoped that it will come into force in Spring 2020.
- The Act amends the Mental Capacity Act 2005 in relation to procedures in which a person may be deprived of their liberty where the person lacks capacity to consent.

- The explanatory notes for the Mental Capacity (Amendment) Act 2019 have now been published. These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area:
- http://www.legislation.gov.uk/ukpga/2019/18/pdfs/ukpgaen20190018_en.pdf

Liberty Protection Safeguards

- The reforms seek to:
- introduce a simpler process that involves families more and gives swifter access to assessments
- be less burdensome on people, carers, families and local authorities
- consider restrictions of people's liberties as part of their overall care package
- get rid of repeat assessments and authorisations when someone moves between a care home, hospital and ambulance as part of their treatment

Increased role for care homes

Under the Bill, the assessment and authorisation process would still have been the responsibility of a local authority, in relation to social care settings, and of hospitals or health commissioners in relation to health cases.

However, while the government's bill retains this approach for cases outside of care homes, within homes it could give the responsibility for arranging assessments and co-ordinating the process to the manager

Increased role for care homes

An impact assessment has estimated that the new system will save over £200 million per annum on the current spend.

Strong focus on local authorities saving money but perhaps not enough focus on the individual?

Increased role for care homes

The manager must then confirm, in a statement to the local authority, that:

- the arrangements give rise to a deprivation of liberty;
- the person lacks capacity to consent;
- the person is of 'unsound mind', meaning that they have a mental health disorder;
- that the arrangements are necessary and proportionate;
- whether the person is objecting to the arrangements;
- that consultation with named people close to the person has taken place;
- whether an independent mental capacity advocate should be appointed.
- It is then up to the local authority to determine whether a deprivation of liberty should be authorised.

Increased role for care homes- concerns

There are a number of concerns about these proposals:

- Workload impact on managers
- Levels of competence and confidence required (training)
- Critics say conflict of interest – e.g. these proposals undermine the safeguards that protect people who lack capacity to make decisions about their care. Providers may face allegations they are depriving someone of their liberty to fill a vacancy.

Criticism

- Critics have argued that this responsibility would create a conflict of interest between managers' duties to protect the reputation of their homes and retain the income from service users' placements, and those to ensure cared-for people subject to LPS receive adequate safeguards.
- But Minister for Care Caroline Dinenage said that the system had been constructed with "a system of checks and balances" in place to protect against such a conflict. This included the condition that anyone with a connection to the care home, as defined by regulations, would not be able to conduct assessments under LPS where the process was being overseen by a care home manager.
- She added that the government was committed to producing the LPS code of practice, which would provide statutory guidance to practitioners on implementing the system, in partnership with the sector, and invited the signatories to the open letter to take part.

- **Judy Downey, Chair of the Relatives and Residents Association said:**
- “It is neither fair nor appropriate to give care home managers these new responsibilities for vulnerable and often isolated people. It requires them to be judge and jury about decisions in which they themselves could be involved. Our helpline hears too many stories of conflicts of interest within families or with care homes, which benefit from the independent professional oversight now provided by Best Interest Assessors. Care home managers are already overburdened with a range of ever-increasing responsibilities in what is a demanding and challenging role.”

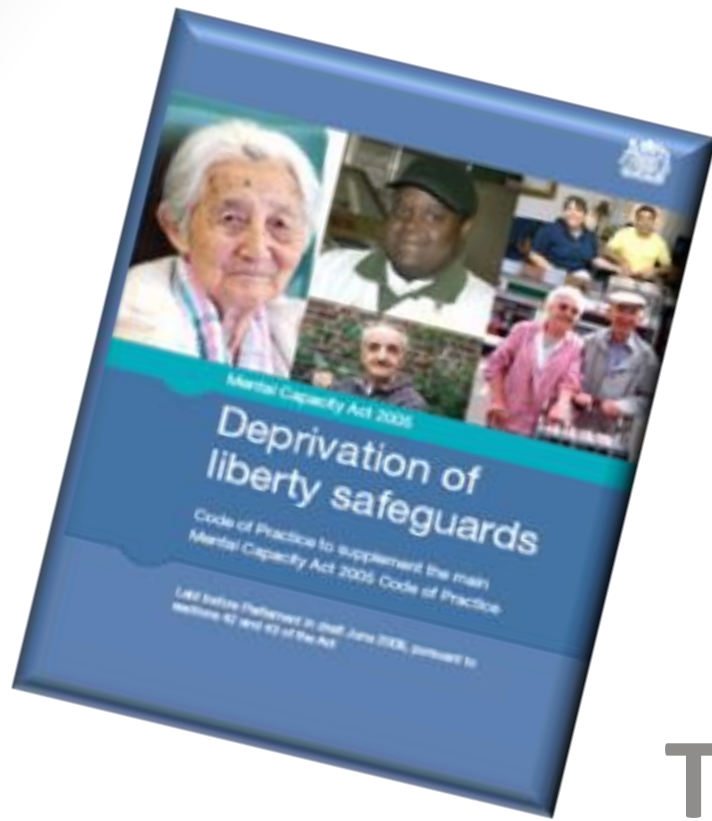
Jenny Wilde

Senior Associate Solicitor

jenny@ridout-law.com



Refreshment Break



MCA DoLS & The Future



Andy Chapman-Amey & Carolyn McIntosh DoLS Team

Front line staff are very busy people

I'm juggling so many day to day things - now I have to add "Capacity"

But "Capacity" isn't an "add-on" - it should be a part of ALL the things you're juggling

graham@ogilviedesign.co.uk

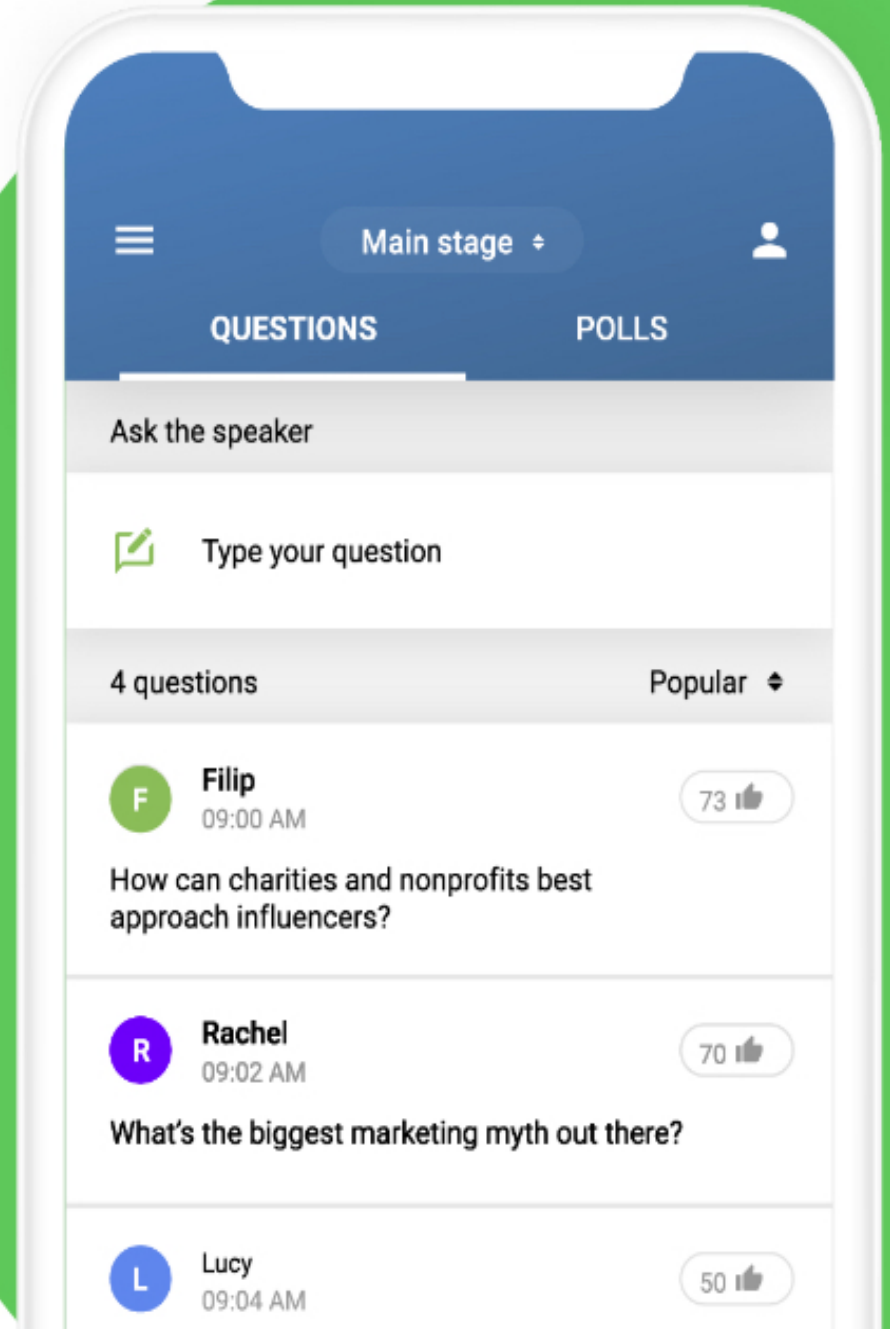
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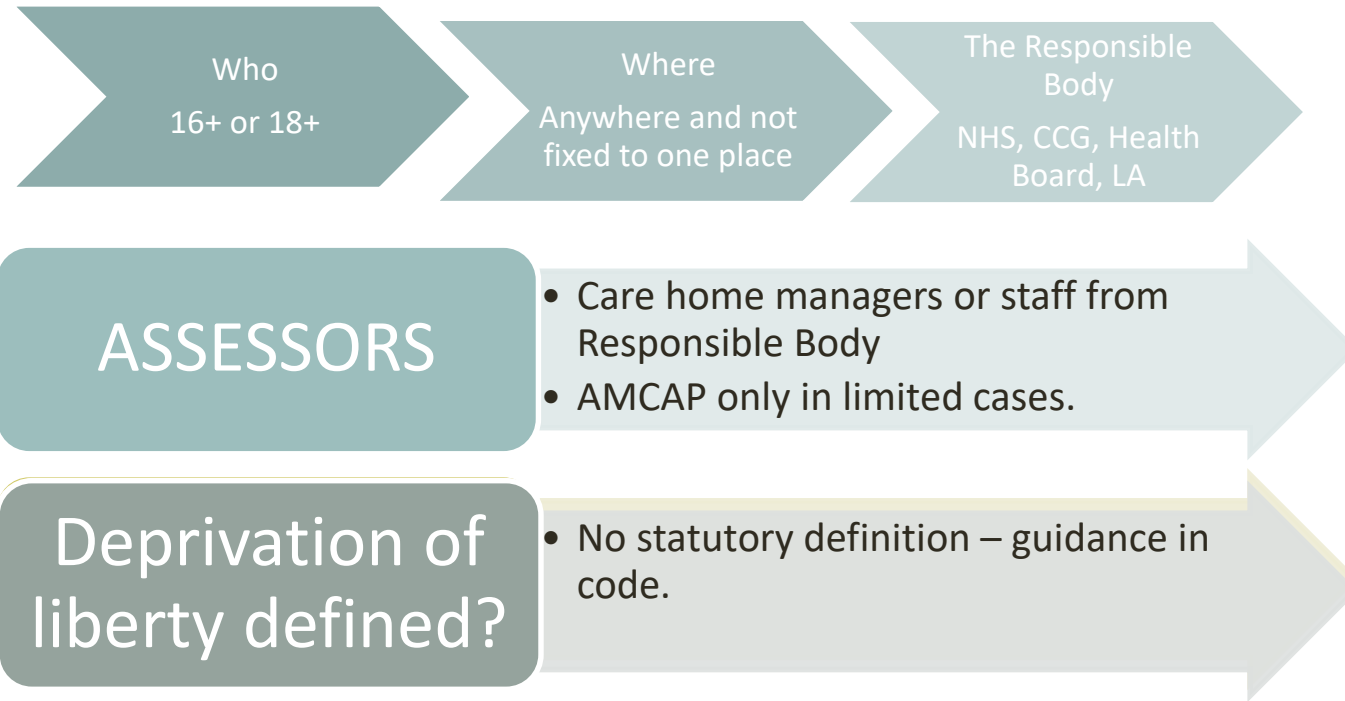
slido



Quiz

1. Name The 5 principles of the MCA?
2. What 4 things must you be able to do to have capacity?
3. What age group does MCA cover?
4. If you want to provide care and support to someone and they don't consent you can still go ahead? True or False
5. If someone has Lasting Power of Attorney for you and you lack capacity they can make your decisions? True or False
6. You should apply for a DoLS for everyone if they are in a care home? True or False.
7. If there is a DoLS in place staff can decide when the person goes out and who with? True or False
- 8 Care providers will be responsible for authorising their own DoLS under the new scheme? True or False

Liberty Protection Safeguards (LPS) – overview slide 1



Liberty Protection Safeguards (LPS) – overview slide 2



Liberty Protection Safeguards PROCESS



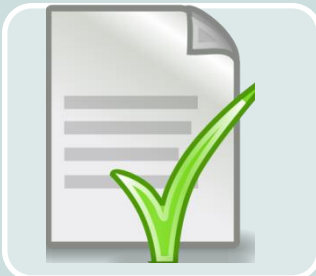
ASSESSMENT

- **Care homes** – the care home manager or local authority may have to organise, manage, collate and send assessments to the local authority.
- **All other care settings** – any person considered appropriate by the Responsible Body (NHS, CCG, LA). There will be details about professional status , etc in due course.



PREAUTHORISATION REVIEW

- Carried out on behalf of the Responsible Body by someone not involved in the day to day care or treatment of the person (any member of staff). They do not have to meet the person.
- In limited cases an AMCAP will do the review. They must meet the person and consult others, but only if considered appropriate and practicable to do so.



Authorisation

- The Responsible Body (LA, NHS, CCG).
- No final details on profession or qualification yet.

The Future & LPS



shutterstock - 186676523

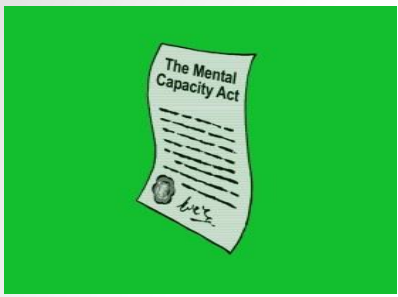
- DoLS will be replaced by LPS Liberty Protection Safeguards as part of the Mental Capacity Amendment Bill.
- This should come in to force 2020 (either April or October)
- Until then continue with the current scheme
- New scheme will be from age 16 (Previously 18)
- LPS will cover community settings as well as hospital and care home
- The body that funds the care will be responsible for arranging the assessments under LPS.
- Care homes and providers will be required to provide information (Similar to DoLS in that the BIA would ask to see the care plan). Care home will be required to be involved in formulating and submitting plans for their residents
- The new scheme is thought to be a more streamline assessment
- Initially can be authorised for 1 year and then a further year and then up to 3 years



What providers can do in preparation for LPS



- Ensure care plans are up to date and clear (Follow the guidance in the care planning toolkit).
- Ensure that MCA 2005 is followed and where necessary Capacity Assessments and Best Interest Decisions are recorded
- Consider and evidence whether care is necessary and proportionate
- Make sure your staff are all familiar with the principles of the MCA 2005
- Record views of the service user, if they lack capacity consider views of family friends and advocates.
- Record past views, wishes and feelings within the care plan.
- Be aware of any LPA, Advanced decision etc.



Mental Capacity Act 2005

- The Mental Capacity Act came in to force in 2005. It provides a statutory framework for people:-
- Who lack capacity to make some or all decisions for themselves
- Who have capacity but want to prepare for a time when they lack capacity in the future.

Two stage test of capacity

- Does the person have an impairment or disturbance affecting the way their mind or brain works (whether temporary or permanent)
- Does the impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made



5 statutory principles

- Assume capacity
- Take all practical steps to enable person to make their own decision
- Don't treat person as unable to make their own decision merely because they make an unwise decision
- Decision must be in person's best interests
- Consider if there is a less restrictive option



Establishing lack of capacity

If the person is unable to do one or more of the following they lack capacity

- 1) **Understand** the information relevant to the decision
- 2) **Retain** the information
- 3) **Use and Weigh** that information as part of the process of making a decision
- 4) **Communicate** their decision (either by talking, using sign language or any other means)

Remember



Capacity is
time and issue
specific

The decision maker
should be the person
who will carry out the
task. Eg Dentist for
dental treatment

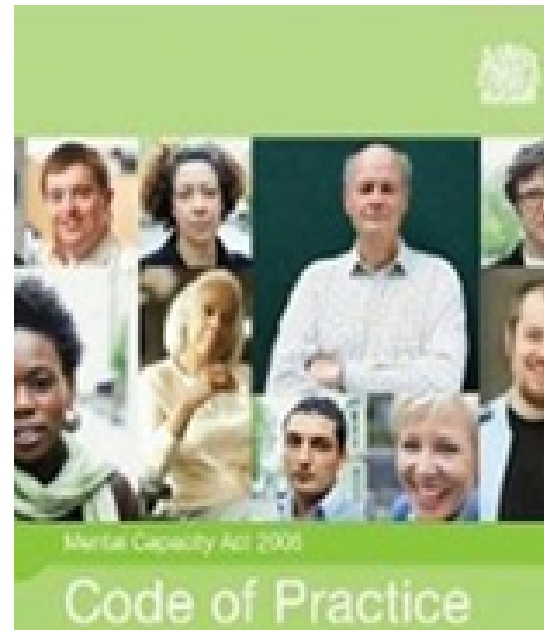


James

- James lives in Flexicare accommodation, he is 45 with a learning disability. James' mother is worried about the risks of him going out alone and wants staff to stop James leaving and only allow him out if someone can accompany him.
 1. Discuss your thoughts on this
 - 2 If you were to stop James leaving what would you need to do.

A few things to think about

- Do not consider whether it makes the job easier
- You **MUST** consider what is in Ps best interests only.



Best interests checklist

- Do whatever is possible to permit and encourage the person to take part or improve their ability to take part in making the decision
- Find out their views, their past and present wishes and feelings, beliefs and values (e.g. religious, cultural moral or political)
- Any other factors that they would have considered



BI Checklist Continued

- Avoid discrimination (on the basis of age, appearance, condition behaviour etc).
- Assess whether the person may regain capacity. If so and the decision can wait then wait.
- Must not be motivated by the desire to bring about the person's death.
- Consult with others for their views concerning the person's best interests. They may also have information about the persons past and present wishes, views values, beliefs and feelings.
- Consider – Is there a less restrictive option?

Janet

- Janet has Dementia, she also has a UTI and has been incontinent. You are the supervisor of the carer attending to Janet who needs to support her to change her clothes and freshen up. When they try to support Janet she refuses their help.

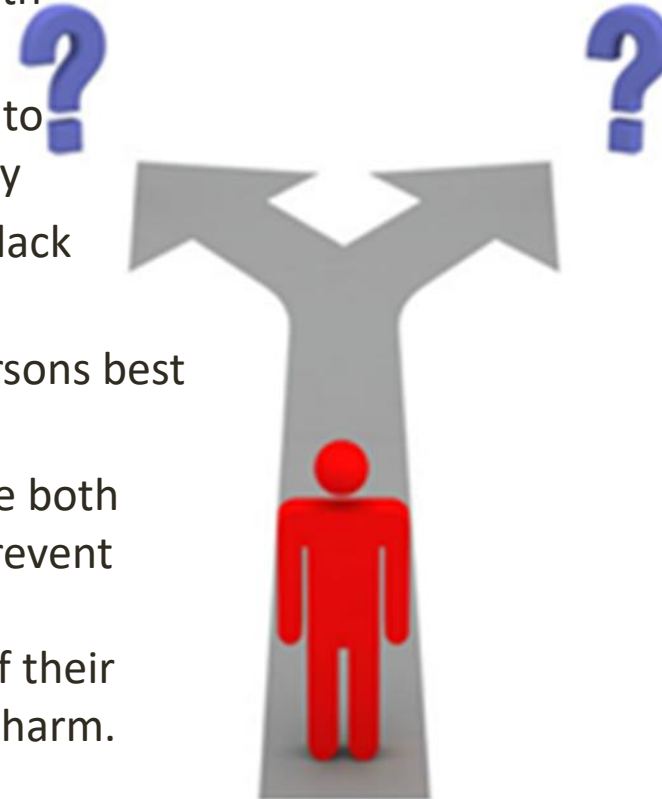
Janet Continued

- As the supervisor for Janet's carer they have approached you and tell you that they have assessed Janet's capacity to consent to have help and she can't understand the risks of staying in wet clothes and is still refusing to accept help
- What now???
- What would you be advising your staff member to do???



S5 offers protection from Liability for those providing care and support for incapacitated people when:

- The act is one undertaken in connection with another person's care or treatment
- The person doing it takes reasonable steps to establish whether the recipient has capacity
- They reasonably believe that the recipient lack capacity
- They reasonably believe that it is in the persons best interests for the act to be done
- If they use restraint they reasonably believe both that it is **Necessary** to the act in order to prevent harm to the person and that the act is a **proportionate** response to the likelihood of their suffering harm and the seriousness of that harm.



Why should it matter



- MCA was a visionary piece of legislation
- Marked the turning point for people who lacked capacity
- Places Individual at centre of decision making
- Support individual as far as possible to make own decisions
- Unwise decisions not an indicator of lack of capacity
- Empowers those with impairments to entitlement to make poor decisions
- If lacking capacity Best Interests principle means that wishes and feelings are central to decision making process.
- Provides protection from harm for Vulnerable adults.

It's The Law



DoLS brief user guide

- 2014 “The Acid Test”
- DoLS applies to anyone who lacks capacity who is in a care home or hospital
- Is under continuous supervision and control.
- Is not free to leave (to live elsewhere)
- Even if the person does not seem to be objecting



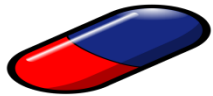
Applying for DoLS

- Complete Form 1 (If this is the first application or the person has had a DoLS before but it has expired)
- Complete Form 2 (if the person has an existing DoLS).
- If in doubt contact the DoLS Team On 01438 843800.





What to tell us:-



- If the person seems unhappy with the arrangements made for them
- If their family are unhappy with the arrangements made for them
- If the person is packing their bags, trying to leave, asking to leave (even to somewhere that is no longer available)



- If the person is refusing to let you support them with most everyday tasks
- If the person needs medication to manage their behaviour
- If the person is taking covert medication



- If the person is receiving 1-1 support for (not just for personal care)
- If the person receives all their care and support in bed
- If they have a greater level of monitoring (e.g tracker, CCTV etc)
- Use of restraint (e.g arm splints, holding techniques)
- Anything else you think the team need to know





Covert Medication



A judge has decided that Covert Medication is such an infringement on someone's human rights that to use it the following steps must be followed on line with Human Rights Act Article 8 (Right to private and family life). All decision to administer covertly should be followed by:-

An Assessment of Capacity

A Best Interest Decision (if the person lacks capacity) which includes any views the person may have expressed and views of friends and family and the GP.

A care plan stating why this is required

A regular review (Usually monthly) of this decision

For advice and support to be sought from the Pharmacist and recorded.

BACK THE FUTURE

- LPS is coming. It now has Royal Assent
- There will be a greater emphasis on plans being produced by providers and evidence of following MCA 2005
- This could be as early as Spring 2020
- Spend 5 minutes on your table talking about how you will start to plan for implementation of LPS.



Answers to Questions

- 1) Assume capacity, take all practical steps, consider unwise decisions, Actions in best interests, Consider less restrictive options.
- 2) Understand, Retain, Use and Weigh & Communicate.
- 3) 16+
- 4) False unless they lack capacity then could proceed in Best Interests.
- 5) True, they make decision as if they were you with capacity.
- 6) False – only if they lack capacity and the “Acid Test” Applies
- 7) False, although DoLS allows staff to stop person from leaving the care home alone it does not allow decisions about Contact.
- 8) False – Although they may be asked to provide copies of assessments and plans that prove care is necessary and proportionate.

Sources of useful information

- The Mental Capacity Act code of practice is available at :

<https://www.gov.uk/government/collections/mental-capacity-act-making-decisions>

- The DoLS Team

dolsteam@hertfordshire.gov.uk

Tel 01438 843800

- SCIE

www.scie.org.uk

- POhWER

Provider of Advocacy and IMCA services for Hertfordshire via:

Tel 0300 456 2370

www.pohwer.net

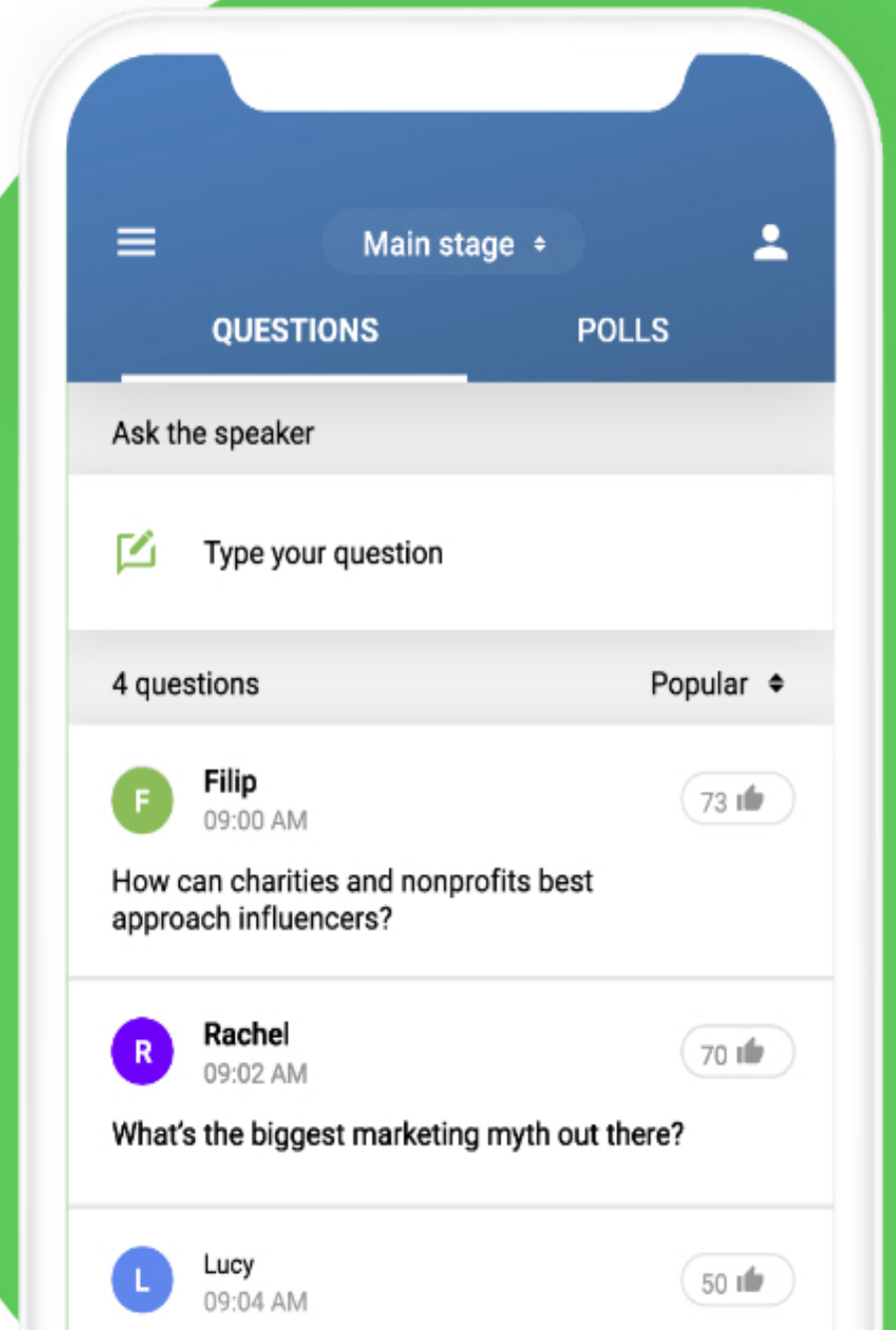
Reminder to use Slido during this presentation to ask questions

Join the conversation.

**Ask questions &
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 MORE INSURANCE EXPERTISE
IN MORE PLACES





Care Division Overview

Simon Shaw

Towergate Insurance

Care Homes & Domiciliary Care



- ❖ Originally GR Patrick
- ❖ Formed in 1982, so we have over 30 years experience in providing specialist insurance for the care industry
- ❖ Our clients range from large corporate businesses to private individuals and are located throughout the United Kingdom
- ❖ Became part of Towergate in 2006
- ❖ Work closely with UKHCA, Care England, London Care Forum, Surrey Care Association, HCPA, OACP, Care and Support West, etc



Covers include

- ❖ Buildings
- ❖ Contents
- ❖ Loss of Registration
- ❖ Employers liability
- ❖ Public liability
- ❖ Business interruption
- ❖ Legal protection
- ❖ Loss recovery

It can also cover directors and officers insurance, medical malpractice, personal accident and employee dishonesty



What do Insurers look for:

- ❖ Outstanding/Good/Requires Improvement/Inadequate
- ❖ Action Plans in place with actions and timescales
- ❖ Have there been any incidents / claims
- ❖ Look from a Liability perspective

More than just an Insurance Broker



❖ Health and Safety

- Care Plans
- Health and Safety policies
- Storage of medicines
- BCP

❖ Cyber Liability / Crime

❖ Underinsurance

- CPA Adjusting

❖ Access to Care Specific solicitors and barristers

- Ellis Witham Solicitors

❖ Legal portal you can access (Markel Law)

Protecting Your Interests



- ❖ Make the most of your relationship with your insurance broker
- ❖ Good brokers want to work with you to help you to reduce risk in the first place, with a robust approach to risk management.

ANY QUESTIONS ?

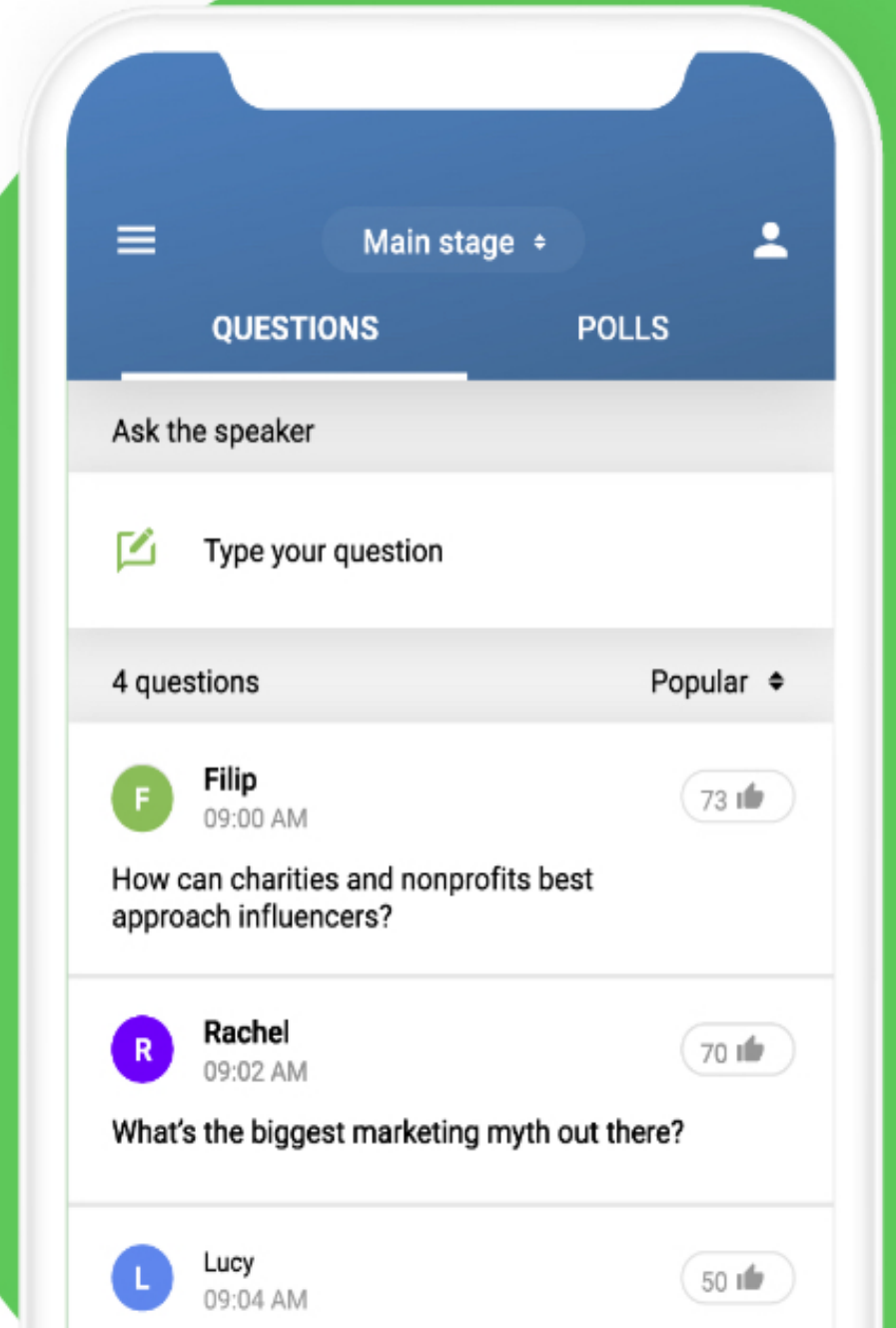
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CMA Advice for Care Home Providers

Joe Tyler & Susie Helliwell
Hertfordshire Trading Standards

CMA Guidance

- The CMA, The Competition and Markets Authority, carried out a review of the care home sector back in 2017.
- The review found that some care home residents were at risk of being treated unfairly and the review recommended urgent action to reform the sector.

CMA Guidance

- As a result of the sector review, the CMA published guidance for care home providers.
- The guidance gives examples of how consumer protection legislation applies to the care home sector, but is also relevant to the care sector as a whole.

CMA Guidance – Four Main Areas

- Upfront information for potential residents
- Treating residents fairly
- Quality of service
- Handling complaints

Upfront Information

- Provide clear and upfront “key information” to potential residents at the earliest opportunity.
- This includes information about residents fees, what services the home does and doesn't provide, the size of the home and what staffing arrangements are in place.
- This key information could be provided in a brochure you give to prospective resident, and could also be available on a

Treating Residents Fairly

- Ensure that terms and conditions are clear, easy to understand and fair for both the provider and the resident.
- There are specific references to terms relating to how long a home can charge after a resident's death (3 days), and how long you can charge fees while their room is waiting to be cleared (10 days, although this can be individually negotiated at the time).

Treating Residents Fairly

- The guidance also covers terms in relation to charging residents who are temporarily absent from the home e.g. where the resident is away with family, has an extended hospital stay etc.
- If terms are judged to be unfair, then providers won't be able to enforce these terms. This could also lead to possible enforcement action by the CMA/Trading Standards.

Quality of Service

- Providers must carry out their services with “reasonable care and skill” – as set out in the Consumer Rights Act 2015.
- If providers don’t act in the way they should or don’t provide the service as per the contract, then residents may be able to claim compensation from the provider. This could result in time and money spent dealing with a possible small claims court case.

Handling Complaints

- Residents should have an easy way of making a complaint if they are unhappy, and this complaint should be treated fairly.
- There should be a written complaints procedure that is clear and easy to understand.
- Providers should not treat residents unfairly if they have lodged a complaint.

CMA - Enforcement Action

- The CMA has already taken action against providers, with Sunrise Senior Living agreeing to pay £2million in compensation to residents.
- Maria Mallaband agreed to stop charging a month's fees after residents has passed away.
- Both signed undertakings agreeing to follow the law. If they breach these undertakings this could lead to further enforcement action in the courts

CMA – Review of the sector

- The CMA will review the care home sector again later this year and assess the impact of the guidance.
- If providers are found to not be complying with the guidance/legislation then they may be further action considered by the CMA.

CMA – Guidance Documents

- Guidance documents available from the CMA website.

<https://www.gov.uk/government/news/consumer-law-advice-sets-out-obligations-for-care-homes>

- Shorter, explanatory guidance leaflets are available via Business Companion.

<https://www.businesscompanion.info/sites/default/files/Care-home-summary-sheets.pdf>

Hertfordshire Trading Standards

- We have a business support team who support both local and national businesses on how to comply with complex legislation.
- We have a duty officer available Monday to Friday, 9am to 5pm who can advise on the law.
- Trading Standards Business Advice Line – 01707 281401.

Q&A Slide

Questions?

Thank You



Hertfordshire

Reminder to use Slido to fill in HCPA's Evaluation Form

Join the conversation.

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