Capacity Legislation and the Challenges of Implementation

Peter Bartlett
Nottinghamshire Healthcare NHS Trust
Professor of Mental Health Law
School of Law and Institute of Mental Health
University of Nottingham

Lack of Knowledge of Act

- problem among service users, professionals, carers.
  - Lack of advance planning
- Problem of Scale
  - Capacity issues can cover virtually any decisions in any setting: who is in charge of implementation?
    - Professional regs/guidance
    - Inspection/audit criteria
    - Public awareness campaigns?
  Can’t rely on P to enforce.

- Flexibility of Language
  - ‘use and weigh’ information; ‘all relevant circumstances’ for BI [Irish Act: will and preferences if ‘practical’]
  - ‘wishes and preferences’
  - ‘concertina’ effect
- Professional Colonization
  - Nuances of language glossed over
  - ‘collegiate’ decision-making
  - Professional ethos and risk aversion
  - Training issue???

- Courts
  - Costs and delays
  - Time and situation specific decisions?
  - Conflicting jurisdictions
- Role of P in Court
  - Jurisdictional threshold
  - Role of litigation friend
  - P’s evidence
  - P’s presence in court

- DOLS
  What are they for?

  Cf *Trust A v X* [2015] EWHC 922 (Fam).
Good luck.

[and thanks for listening]

A video of this talk is available. Follow the links at www.ucc.ie/law/docs/mentalhealth/conferences/capacity-2016.shtml