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Legal Literacy Change Project

Shadowing experienced practitioners in the exercise of their legal role

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The roles and responsibilities of Best Interest Assessors (BIA) and Approved Mental Health Professionals (AMHP) are specified in law and supported by guidance, for example the:

- ***Mental Capacity Act 2005*** and **Code of Practice 2007**, and
- ***Mental Health Act 1983*** as amended by the ***Mental Health Act 2007*** and ***Code of Practice updated 2017***.

People in these roles work within explicit legal mandates. ***The Mental Capacity (Amendment) Act 2019*** introduces a further legally mandated specialist Approved Mental Capacity Professional role, which will come into being in 2022. As a result of the post-qualifying training they receive, consolidated by their experience, practitioners undertaking these roles bring a heightened legal literacy to their practice (Hubbard 2018).

Shadowing Best Interests Assessors, Approved Mental Health Professionals and/or Approved Mental Capacity Professionals during assessments and when they are taking decisions involving the use of legal rules, will provide valuable learning opportunities for colleagues to witness the law in action. This template tool enables practitioners to:

- prepare for shadowing experiences
- capture observations during visits
- debrief afterwards.

Such shadowing activities, followed by discussion and reflection in individual or group supervision, will support practitioners to develop understanding of the:

- skills involved in applying legal rules as part of a decision-making process
- processes involved in applying the legal grounds for action in a specific area of practice
- power differential of the individual's practitioner identity/role in proceedings (positive and negative).

Task 1: Initial preparation

Using the following table, identify and read the legislation, practice guidance or codes of practice relevant to the specialist role you are planning to shadow and answer the questions:

What are the relevant legislation, practice guidance and codes of practice?	
How do the relevant policy guidance, practice guidance or code of practice outline the role and its responsibilities?	
What specialist training will a practitioner fulfilling this role have received?	
What is the status of the practitioner in this role? What authorisation do they have? Do they act on instruction from their employer or as an independent decision-maker?	

Meet with the specialist practitioner you will be observing to discuss and agree expectations for the shadowing session. This should include:

- What the specialist practitioner is seeking to achieve with the person who is the focus of the intervention.
- How they will go about their task.
- How you should act.
- Whether you may take notes and how agreement will be sought from the person.

Task 2: The shadowing session - non-participant observation

While observing what takes place during assessment and decision-making, you should focus on points of interest, such as how the specialist practitioner:

- introduces their role to the person and any family members involved
- manages the emotions present in the encounter
- works alongside others who may be involved
- gathers information and seeks to understand the situation
- explains their decision and the reasons for it.

Specific note should be made of law talk during the visit. If note-taking has been agreed, observations may be written down during the session - if not, notes should be made immediately afterwards. The following questions are useful guides:

What were the legal issues to be decided on?	
How was the person involved in the process/ discussion?	
How was information provided to the person and how did the practitioner make sure this information met the person's communication needs? Did they need support to understand and be involved? How was this provided?	
How did the practitioner ensure they consulted the relevant people, including family or friends (where the person was keen for them to be involved)?	
Which human rights were explicitly mentioned during the visit?	

Which human rights were implicitly referenced during the visit?	
Which legal rules were explicitly mentioned in conversations?	
Which legal rules were implicitly referenced in what was said?	
Which value principles were explicity mentioned during the visit?	
Which values were implicit in what was said and done during the visit?	
What knowledge was drawn on to help make sense of the situation?	
Who did the practitioner consult before making a decision?	
How did the practitioner explain why others were asked for their views?	
What reasons were given for the practitioner's decision?	
How was the least restrictive alternative articulated in this situation?	

Task 3: Post-visit debriefing

Human rights, especially the right to liberty and the right to family and private life (articles 5 and 8 of the European Convention on Human Rights), are central to the work of Best Interests Assessors, Approved Mental Health Professionals and Approved Mental Capacity Professionals. Their work engages with issues of autonomy and self-determination, risk, and a duty of care. Debriefing with the specialist practitioner can support clarification of your understanding of what you have shadowed. During the debriefing:

> Use your notes to share your observations about:
  - the law in action
  - your perceptions about the assessment and decision-making of the specialist practitioner.

> Tease out the key learning points on assessment and decision-making in relation to using:
  - the legal rules
  - statutory authority.

  These may include exploration of the feelings that acting with statutory authority can evoke and the importance of reflective supervision and supportive work environments.

> Use the table below to discuss and record the specialist practitioner's reflections on the encounter.

Was this assessment typical in your experience or did it differ and, if so, why?	
What legal knowledge was influential in your practice and final decision?	
What values were influential in how you practised?	
What rights were engaged?	
What was influential in how you balanced rights and risks in this instance?	
How was the person's needs, wishes, feelings and overall wellbeing kept central to the decision-making process?	

Task 4: Post-shadowing supervision

The shadowing session should form the focus of a subsequent meeting between you and your supervisor, or of a team development session, in order to:

> Reflect on the experience and learning.

> Consider its implications for making the legal mandate in any role explicit.

> Consider what further actions are necessary to consolidate or extend learning. These could include activities such as:

- Further reading on the legal mandates being followed in the observed session.
- Discussion with team colleagues about the implications of the observed session for practice in the context of the team's work.
- Further shadowing of the same or different specialist colleagues.

References

Hubbard, R. (2018). Best interest assessor role: An opportunity or a "dead end" for adult social workers? *Practice*, 30 (2), 83-98.

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