Please note the content of this training scenario is correct as of September 17. It is up to individuals using the scenario to confirm if there have been any subsequent changes in case law or guidance requiring inclusion prior to use.

Scenario 10 (Acute Hospital based)

Jane is aged 27: Jane has an acquired brain injury and as a consequence has some impairment to hearing and eye sight. She has been living alone with a small package of care (POC) and support from family. Jane is independent with all activities of daily living. Jane needs help to plan shopping and manage finances.
Jane is Pregnant, 34 weeks gestation at the point of first contact for advice by midwife. Jane is unable/unwilling to disclose the name of the father.
Normal delivery anticipated and planned for Jane who is cooperative with ante natal care. Advice requested by midwife as to how to manage Jane in the event of caesarean section being necessary. Concern that Jane may lack capacity to consent.

Questions

What would you do?
What legal implications might there be?
What do the procedures tell you?

Trainers notes

What Issues should be considered at this stage?

Capacity to consent to treatment.
Possible formal assessment of mental capacity if it is believed that Jane may lack capacity to consent to aspects of care and treatment.
Just because Jane has impairment to the functioning of her mind/brain through the acquired brain injury it does not necessarily mean that she lacks capacity to consent to a caesarean section.
First principle of the Mental Capacity Act is a presumption of capacity.
Is it more likely than not that the patient lacks capacity?
There would be a need to identify who would assess capacity and who would be decision maker in the event of Jane being deemed to lack capacity. In respect of a possible caesarean section the most appropriate decision maker would be the obstetrician or doctor carrying it out.
If Jane had been assessed to lack capacity then referral for an Independent Mental Capacity Advocate (IMCA) would need to have been considered as caesarean section could be viewed as serious medical treatment. Although Jane is not unfriended, family members could be considered as inappropriate to consult with due to the safeguarding concerns.

Several weeks later

Jane is admitted to hospital at due date and has healthy baby by normal delivery.
Children's social care services in the process of instigating care proceeding for the child.
Request by social worker for DOL's application to be made by the hospital to prevent Jane from leaving hospital.

What issues should be considered at this stage?

Safeguarding Concerns raised by social services:
Jane is considered to be a vulnerable adult and is at risk of significant harm from family members.
Family said to be controlling and to be coercive.

Social services have restricted contact by family to Jane whilst she is in hospital.
Social services have arranged independent specialist assessments which state that Jane lacks capacity to consent to sex and the Jane lacks capacity to consent to relationships with men.
Plan for Jane to go to residential placement on discharge baby to go to short term foster care.
Social services paying for 1:1 support 24 hours whist Jane is on post-natal ward.
Outcome: Jane is considered to be ineligible for DOL's by hospital on advice of MCA/DOLs lead.

Rationale for hospital decision in respect of DOLs.

Jane is judged to have capacity to consent to placement in hospital and at the point of assessment was happy to stay whilst baby still required inpatient care.
Jane is not ill and did not need to be in hospital to receive care or treatment. Were it not for the safeguarding concerns Jane would have been discharged.
Hospital concerned that the restrictions imposed on Jane by social services constitute an unlawful deprivation of the patient's liberty which fall outside of the DOLs scheme. Social services advised to make COP application in respect of the safe guarding concerns.

Outcome:

Urgent application to Court of Protection made by social services.
Short term order made by judge to deprive Jane of her liberty in hospital and to prevent contact by family.
Full hearing took place over 2 days the following week. Jane was discharged to own accommodation with POC and renewed support from selected family members. Baby placed in short term foster care.
Subsequently Jane and baby reunited in mother and baby foster placement. This should provide the opportunity for a full assessment of Janes parenting capacity within a safe and supportive setting.

What were the challenges for all partners here?

Multiple agencies and teams within agencies
Need to establish responsibilities and agree leadership on key actions.
Maintain communication with all parties.
Implications for Out of hours and weekends services.

Local authority:

Adult Social Care
Childrens Social Care.

Police:

If criminal activity was suspected police involvement would be required.

Health:

Maternity
Obstetrics
Childrens safeguarding
Adults Safeguarding.

Independent Mental Capacity Advocate (IMCA)

There would have been a duty to refer Jane for support from an IMCA as a consequence of the safeguarding concerns in relation to family members. This would need to have been made by the Local Authority.