Substitute decision-making

When one person decides to make a decision on behalf of somebody else, this can be called substitute decision-making. You might have had the experience of someone taking a decision out of your hands and making it for you.

Women with learning disabilities report that decisions are frequently taken out of their hands when they report gender-based violence. The individuals and authorities that do this believe that they are acting in the women's best interests, and that the women concerned lack the capacity to make good decisions for themselves.

However, in removing control and limiting individual autonomy they risk making decisions that do not reflect what people with learning disabilities want and what matters to them.

Taking someone's autonomy away by making decisions on their behalf may mirror traumatic experiences they have had within a relationship. So, workers must be particularly mindful of this. Giving people the time and support they need to make their own decisions is crucial.

Substitute decision-making can be done formally in law. Guardianship and Power of Attorney are two examples of when people are given legal authority to act as substitute decision-makers.

You can find out more about this here. *(www.publicguardian-scotland.gov.uk/)*

Activity 6

Purpose: The purpose of this activity is to improve understanding of substitute decision-making, and the effects of this on victim/survivors with learning disabilities.

Read the following statements and choose whether you think they are true or false.

To safeguard victim/survivors with learning disabilities, you should always decide what is in their best interests, as they lack the capacity to make their own decisions.

False: The law in Scotland says that you should always presume that an adult i.e., those over the age of 16, is capable of making their own decisions. This can only be overturned where there is medical evidence stating otherwise.

The Adults with Incapacity (Scotland) Act 2000 also requires professionals to encourage adults who 'lack capacity' to make their own decisions as much as possible as well as supporting them to use existing skills, and develop new skills needed to do this.

Therefore, you should always presume that, like most women, women with learning disabilities are able to make their own decisions with the right support, and adapt your practice to their support needs and preferences.

When an individual has been assessed by an approved mental health professional as 'lacking capacity', professionals are legally required to make all decisions on their behalf.

False: This is not an 'all or nothing' definition. The Adults with Incapacity (Scotland) Act 2000 recognises that:

- A person's capacity can vary over time and/or in different situations.
- Individuals may lack capacity to make some decisions while having capacity to make other decisions. It depends on the decision at hand, but their right to be included in decisions about their life never changes.

The Act aims to protect people who lack capacity to make some decisions, but also to support their involvement in making decisions about their own lives as far as they are able to do so.

Therefore, even if you know someone has a guardian you should always adapt your practice in supporting women to make their own decisions. With the right support all of us can make our own choices and decisions.

Making decisions for women with learning disabilities can lead to additional trauma and harm.

True: Women with learning disabilities report that substitute decision-making can lead to a form of safeguarding that is at least as damaging as the abuse it tries to prevent and perpetuates their risk of harm by taking away their right to make their own decisions.