Case discussion - Issues to Consider

Questions for the committee to consider in the case of Betty

1. Is Betty competent to refuse medical treatment?
2. If so, has she made an informed decision – does she understand the implications of not having the treatment?
3. If she is not competent, what course of action is in her best interests?
4. To what extent is patient autonomy relevant in this situation?
5. To what extent should the views and wishes of Betty's daughter/ son be taken into account?

Discussion of the issues

Firstly establish the clinical facts – what is the prognosis without further active treatment?
Has contact been made with her GP?
Has her competence been assessed – if so by whom and how recently?
Has she made a written advance statement?

Betty is a vulnerable patient because of her long term chronic ill health. Her views about how she wants to be cared for are in conflict with the views of her daughter and she may feel vulnerable to potential influence on the treatment she receives.

Respect for Autonomy

If Betty is competent she has autonomy to make treatment decisions. If the principle of respect for autonomy is given the highest value then her refusal to consent to insertion of the intravenous line should be respected despite the fact that without active treatment she can only be kept comfortable and her condition will deteriorate. She has been admitted to intensive four times in the past year, so she has recent experience of the treatment she is now refusing and it could be said that she is making an informed refusal of treatment. Where a patient makes a decision about treatment that is not objectively in her best interests care should be taken that the patient has been informed about the treatment and the implications of refusing it. It would be useful to know if Betty objected to treatment on the previous occasions and if so what were her reasons.

It is important for an assessment to be made regarding Betty's capacity to refuse treatment. If Betty has been assessed to have capacity then her refusal must be respected - otherwise a battery may be committed. If she lacks capacity, then any treatment must be in her best interests.

Beneficence and Best Interests

A competent patient can refuse treatment even though objectively such refusal is not considered to be in her best interests – the patient is her own judge of what is in her best interests. However, even if Betty lacks capacity her views about the care she receives are important in determining her best interests. The clinician may feel that he is not acting beneficently towards his patient if he allows her to die for lack of

treatment. There is a tension between beneficence and non-maleficence in such a case.

The views of her son are also relevant in ascertaining Betty's past and present wishes regarding the type of treatment she is willing to accept. As his mother's main carer he has had the opportunity to discuss with her how she feels about the treatment she has received. In his view 'she has been through enough' but it should be established that this is what Betty would have wanted, not what her son wants for her. This seems to be commensurate with Betty's views - she is refusing to have an intravenous line inserted. It will be important to establish that she doesn't feel under any pressure to refuse treatment, perhaps because she feels her care is a burden on her son.

Although Betty's daughter requests that 'everything be done' for her mother, this may not be commensurate with what is in Betty's best interests objectively assessed. Also, as Betty is refusing treatment it cannot be said that the daughter is representing what her mother would have wanted.

The Mental Capacity Act 2005 makes provision for advance decisions and the appointment of proxies. It is likely to come into force in 2007. Until then common law principles will have effect. If Betty has previously stated her wishes when she was competent, then these should be respected. At common law a valid advance decision does not have to be evidenced in writing but where life is at stake "the evidence must be scrutinised with a special care. The continuing validity of the advance directive must be clearly established by convincing and inherently reliable evidence". (HE v A Hospital NHS Trust [2003] 2 FLR 408).

The law is changed by the Mental Capacity Act 2005. An advance decision refusing life sustaining treatment must be made in writing and witnessed. The Act enables a person when competent to appoint a proxy to take healthcare decisions for that person when he/she loses capacity. This can be done through a Lasting Power of Attorney, a formal document that must be lodged with the Court of Protection.