

MENTAL CAPACITY ACT: DEPRIVATION OF LIBERTY SAFEGUARDS

- Addition to the Mental Capacity Act:
 - Schedule A1
 - Regulations (not yet published)
 - Appendix to MCA Code of Practice (not yet published)
- Addresses deprivations of liberty under Article 5 not covered by MHA or an order from the Court of Protection
- Managing authorities must apply for authorisations
- Supervisory bodies:
 - arrange assessments
 - issue authorisations on recommendation of assessors
 - appoint relevant person's representative (either a relative, friend or IMCA) on recommendation of best interests assessor
 - oversee and review

CONCERNS

- Numbers underestimated
- Costs underestimated
- Overcomplicated procedures (adding to costs)
- Overlaps with Mental Health Act processes
- Most cases likely to be in care homes
- Shortage of assessors

NUMBERS AND COSTS

- Limitation of existing data
- Likely effect of JE v DE and Surrey CC
- Regulatory Impact Assessment “worst case” –
 - initially 21,000 - 17,000 in care homes, 4,000 in hospitals
 - average per local authority 144
 - (cf. 72,000 MHA assessments per year - 500 per l.a)
- RIA recurring estimate 5,000 p.a

NUMBERS AND COSTS continued

- My estimate (pre JE) 9,000 p.a (63 per l.a)
- Likely profile - few to begin with, then sudden blip, then dropping to steady figure
- RIA overall cost per assessment £500 i.e average for local authority initially £72k
- My estimate (cost of assessors alone) £496

OVER-COMPLICATED PROCEDURES

- Lengthy, impenetrable statute:
 - Original MCA minus schedules 60 pages, Schedule A1 50 pages
 - But all the detail is in the Regulations!
 - MCA CoP 302 pages, Appendix 69 pages (and counting)
- Two supervisory bodies
- Supervisory body is care commissioner or authority of ordinary residence
- Variable time limits
- Lengthy reporting requirements

PRIORITIES FOR FURTHER WORK

- Standardisation of practice across supervisory bodies
- Local agreements between I.as and PCTs
- Educating owners and managers of independent care homes
- Expanding AMHP recruitment into other adult services (older people, learning disability, brain injury)

OVER-COMPLICATED PROCEDURES

continued

- Interface with MHA - different provisions for:
 - Qualifications of, and conflicts of interest between assessors
 - Renewals
 - application/decision-making procedures

WORKFORCE IMPLICATIONS

- Minimum of 2 assessors
- “Best interests” assessor AMHP or equivalent
- Mental health assessor S12 doctor or equivalent
- Need to provide for initial blip
- My estimate (pre-JE) 10% addition to AMHP workforce
- Problems if I.as transfer AMHPs to Trusts

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