



briefing

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Mental Capacity Act

Best interests case update

A recent case gives an insight into the approach being taken by the Court to the assessment of 'best interests'.

The case (A PCT and P v H and a Local Authority [2008] EWHC 1403 (Fam)) involved an application by a PCT under the Mental Capacity Act for an interim order enabling it to conduct an assessment of the health needs of an epileptic male at risk of brain damage by virtue of his fits (P) living with his mother and carer (H). H was reluctant to accept medical advice in respect of P with which she did not agree, and in consequence reduced the prescribed dosage of his treatment.

An interim declaration of incapacity was made in respect of P and it was found that it was in his best interests for his health and social care needs to be assessed. Two assessment options were available either in the local community, or as an inpatient under the direction of a clinician.

Although H partially supported one of the options, the PCT submitted that P's medical needs were so urgent, and H was not likely to allow treatment to proceed without some interference, and as such P should immediately be admitted to his local hospital for inpatient assessment.

The following principles were applied:

1. P's interests should be assessed 'holistically' as an individual patient over a period of time, rather than assessed on the basis of information provided by H.
2. P's best interests should be applied on the basis of the approach in R S (Sterilisation: Patient's Best Interests) [2000] EWLR 1288 and City of Westminster v IC and Others [2007] EWHC 3096 (Fam) and the MCA Code of Practice at para. 5. 62).

3. The real need to act upon the medical evidence of the serious risk to P's health if his condition was not immediately reviewed outweighed the distress likely to be caused to P and H in the event of his removal without consent.
4. The best interests of P lay in his admission to hospital provided that a bed would be available within a week. However, if for any reason, including H's failure to co-operate, P was not admitted to hospital within a week, he should be admitted immediately to the local hospital.
5. Any such admission would be under 'Bournewood' principles, and the use of force to effect the above would be lawful if reasonable and proportionate in degree (in accordance with the principles set out in Sunderland City Council v P (2007) EWHC 623 (Fam), (2007) 2 FLR 1083).

For further information please contact:



Eve Piffaretti, Partner

T: 029 2038 5917

E: eve.piffaretti@morgan-cole.com



Tom Walker, Legal Consultant

T: 029 2038 5543

E: tom.walker@morgan-cole.com