

## ANSWERS – Part A

### Social Work Forum 8<sup>th</sup> December 2020

#### 1. If you were looking to clearly understand Miller's approach to the MCA, what are your observations? What records would you look for?

(Pre-DST)

- a) DST meeting may be conflated with discharge decision meeting? The two may happen together, but if so, this should be clearly spelled out
- b) What do the attendees think the purpose of the meeting is?
- c) What has triggered consideration of capacity? Presumably Ernest's communication issues were sufficient to prompt investigation (although the LA subsequently claims Miller relied on the statutory presumption, and didn't assess)
- d) The ref to excluding Mariel from the capacity assessment because she may influence her fathers' decision perhaps conflates the decision about capacity with the decision about discharge?
  - does Miller mean Mariel may influence her father to have capacity? If so, isn't this positive i.e. a reasonable adjustment/ supporting Ernest to 'achieve' capacity?
  - Or does Miller mean influence her father to make a different discharge decision? If the latter, this isn't a capacity assessment – it's a discharge decision
    - Should record why a family member who wants to be included is excluded
- e) Did Ernest know his capacity was being assessed (if it was)? This should be explained, as it may change the way the assessed person responds

(Post DST)

- f) Agreement to the outcome of the DST may suggest again that the DST decision is conflated with the discharge decision:
  - There is no requirement to agree the outcome of a DST
  - There is a requirement to at least try to agree how to meet need, but the language used calls to mind a best interests meeting. Why would the meeting be conducted as a best interests decision if Ernest had capacity?
  - If Ernest does have capacity, where is his voice in this? How is he supported to participate?
  - It isn't clear when (as Mariel contends) Ernest points at a care home and says "no" – within the DST meeting or otherwise?

g) Does the confused approach to the MCA and/ or recording of it indicate that there is:

- A dispute as to capacity (e.g. it is important to Mariel to have a copy of the assessment)? NB if unresolved, such disputes should be referred to the Court of Protection
- A dispute as to best interests (if best interests are relevant – Ernest lacks capacity) i.e. there is no consensus at the DST meeting after all (Ernest doesn't want to go to the home/ family disagree as to which home?) NB if unresolved, such disputes should be referred to the Court of Protection
- An objection to Ernest's placement? If Ernest lacked capacity and his placement would amount to a deprivation of liberty, a DoLS authorisation is required – and potentially a s21A application if Ernest or his representative objects