

Social Work Forum 8th December 2020 – part B

1. What are your observations on Miller's approach to the placement? What records would you look for?

- a) A breach of Article 8, re distance from Ernest's home/ wife?
 - Depends on individual circumstances (both Ernest's and his family's would need to be taken into account)
 - If there is an interference, such must necessary and proportionate to the legitimate aim pursued e.g. the need to preserve social care budgets for the benefit of all (Miller references costs). See for e.g. the case of Elaine McDonald, whose claim that being obliged to rely on NHS continence pads instead of night-time carers was a breach of her Art 8 rights, failed; the Court held that some interference with her rights was necessary and proportionate in the context of the legitimate aim of preserving the local authority's budget
 - If there are no records evidencing that Ernest/ the family's circumstances have been considered, justification of any interference could be unlawful - how will anyone know such is necessary/ proportionate in pursuit of a legitimate aim etc?
 - How can Ernest's/ the family's rights be championed if they are not identified/ there is a lack of clarity regarding what is happening e.g. a discharge decision v a MCA assessment? Clarity would enable all to understand which relevant rights/ legislation must be taken account of
- b) What are the implications of allowing Ernest to use the cost of his residential placement to buy care at home?
 - Is it safe, given that Miller says the maximum that could be provided is 4 domiciliary calls per day which would be inadequate? There are refs to him needing 24/7 care
 - Would expect a further needs and risk assessment to be undertaken before allowing the cost of the residential placement to be used in this way, (have Ernest's needs dramatically reduced from the need for 24/7 care?) and
 - A carers' assessment for family members making up any 'shortfall' in funded care, where relevant – is this sustainable? Are the family informed, willing and able?
- c) Rights of accommodation for more expensive placements only apply where a person is willing/ able to pay any additional sums, and the LA is satisfied that such is affordable
 - There is no evidence Miller considered affordability/ sustainability – in fact the family initially said they could not pay the top up
 - There is no evidence that Miller formally recorded the agreement to pay the top up between the family, LA and care home