



Recording and Compliance

Emma Overton

Policy and Practice Development Lead





Professional standards & recording

- https://www.socialworkengland.org.uk/media/1640/1227_socialworkengland_standards_prof_standards_final-aw.pdf
1. Promote the rights, strengths and wellbeing of people, families and communities
 2. Establish and maintain the trust and confidence of people
 3. Be accountable for the quality of my practice and the decisions I make
 4. Maintain my continuing professional development
 5. Act safely, respectfully and with professional integrity
 6. Promote ethical practice and report concerns
- **What have the standards got to do with recording?**





Professional standards & recording (II)

- 3.11 **Maintain clear, accurate, legible and up to date records, documenting **how** I arrive at my decisions**
- 4.3 **Keep my practice up to date and record how I use research, theories and frameworks to inform my **practice and professional judgement****
- 4.7 **Record my learning** and reflection on a regular basis and in accordance with Social Work England's guidance on continuing professional development
- 5.3 **I will not falsify records** or condone this by others





Case Study: Ernest Hemingway

<https://www.lgo.org.uk/decisions/adult-care-services/assessment-and-care-plan/19-006-800>





Ernest: background

- In August 2019, Ernest was living independently at home with his wife, Mary, when he suffered a stroke and was admitted to hospital
- In October 2019, a SW, Miller, met Mary at the hospital to discuss discharge options. Miller's case notes record that Ernest needs help with most aspects of daily living due to right-side paralysis. Ernest also struggles with communication
- Mary says Ernest needs to improve before coming home: she would not be able to cope with his current level of need, due to her own health issues
- Mary says if Ernest does not improve, he will need a residential placement. She asks Miller to liaise with daughter Mariel about further discharge arrangements
- There is no LPA in place



Ernest: the issues (MCA)

1. Miller arranges a DST meeting. Prior to it, Miller's notes say "completed a capacity assessment of discharge destination and it indicates that [Ernest] had the capacity to choose his discharge destination of being discharge home but also expressed the fact he won't mind going into a care home due to the stress of care by his wife. [Ernest] was able to express himself using single words and pointing to pictures."
2. Mariel had asked to be present for the capacity assessment; she says Miller refused because she "might influence" her father's decision
3. Miller records that all present agreed with the way the DST was completed, and with the decision for Ernest to move to residential care due to Mary not being able to manage him without 24/7 care at home
4. Mariel says her father clearly said "no" when pointing to a picture of a care home; she asks for a copy of Miller's capacity assessment but does not receive one





Questions (part A)

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





Ernest: the issues (placement)

1. Miller tells Mariel that Ernest is eligible for FNC
2. Miller's needs assessment concludes Ernest requires nursing care. He provides Mariel with a list of suitable homes, although these aren't within easy reach
3. Mariel asks if Ernest can use his PB to contribute to 24/7 care at home; Miller explains FNC can't be accessed at home, but Ernest could access community nursing
4. Mariel/ Mary wish to chose a home not on Miller's list; it is more expensive but they can't afford a top-up. Mariel says LA should pay as their chosen home is closer for Mary
5. Miller records his explanation to Mariel that the funding panel will not approve their chosen home as it isn't cost effective. The maximum level of care at home (4 calls per day) would be inadequate for Ernest
6. Mariel tells Miller the family will pay the top-up; Miller arranges for Ernest to be placed in their chosen home





Questions (part B)

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





Ernest: the complaint

1. By December 2019, Mary tells Miller that Ernest is unhappy at the home. Miller arranges for Ernest to move to Mariel's, with 4 care calls per day
2. Mariel complains to the LA that they were pressured into paying a top-up for the only home suitable for Ernest (those offered by the LA were too far away). She complains about lack of timely support from Miller, and his failure to involve her in the capacity assessment. Ernest had spent time in care against his wishes
3. The LA replied that the family had been provided with a list of affordable care homes and distance was only one factor to be considered. It said Miller had considered Ernest's capacity but hadn't actually carried out a capacity assessment – Miller had relied on the statutory presumption
4. The LA reported Miller to SW England regarding his conduct of the capacity assessment, to consider whether there was a breach of the code of conduct
5. The family remain unhappy and complain to the LGO





Questions (part C)

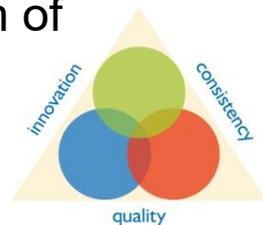
1. Do you rate Miller's chances with the LGO?
2. Can you guess what price the LGO attaches to the failure to record a capacity assessment?





The LGO said:

- “There are two separate principal issues: the choice of care home, and the mental capacity assessment” (*we shall mainly focus on capacity issues*)
- “there were significant faults in the way the social worker acted in terms of assessing [Ernest’s] capacity to make his own discharge destination decision”. Miller may have assessed capacity but failed to record it
- Although efforts were made to facilitate Ernest’s participation, the presence of family is likely to have been helpful
- “There were clearly many shortcomings in the way the social worker acted. The Council has acknowledged the faults and taken appropriate action to refer the matter to the social worker’s professional body.”
- **“the faults in undertaking the assessment have left the family with a considerable sense of distrust** and concern about the lost opportunity for a different decision. The Council should acknowledge that and offer a payment in recognition of the distress caused.”
- “Within one month of my final decision, the Council will offer a sum of **£500** in recognition of the distress caused by [Miller’s] failings”





Questions (part D)

1. How would Miller's failings have been avoided in NEL?!?
2. How do you rate Miller against the professional standards?

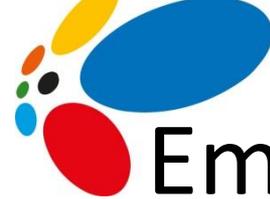




Professional standards & recording

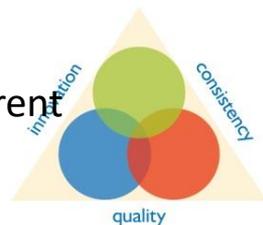
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Emma's top tips for recording

1. Clarity of purpose: what are you doing and why e.g.:
 - A Care Act assessment to establish need, impact on wellbeing, and desired outcomes
 - A mental capacity assessment to establish whether P has capacity in respect of one or more clearly defined decisions
2. Who are you doing it with: P and (e.g.) their carer, advocate, attorney etc. Explain 1.
3. If you are making a decision, record:
 - a) What that decision is e.g. discharge decision
 - b) What your conclusion is e.g. how will the identified needs be met
 - c) What you have taken into account in arriving at your conclusion
 - d) What happens next e.g. referral for preventative intervention
4. Remember to evidence consideration (CDMT) of wider duties, such as:
 - Human Rights Act 1998 (e.g. necessary and proportionate infringements)
 - The Mental Capacity Act 2005 (e.g. supported decision making)
 - The Equality Act 2010 (e.g. reasonable adjustments)
 - Accessible Information Standard 2016 (e.g. communication requirements)
5. Consider proportionality: the level of recording required is likely to depend on
 - a) The context (e.g. less is likely to be required in an emergency)
 - b) The impact (e.g. the more serious the implications for P/ your employing organisation, the more extensive recording is likely to be required)
 - c) Your 'audience' the way you record information for sharing with P may be different from how you record information used in court proceedings (NB implications)





Last word: even judges get it wrong

- “Finally, and importantly, when evaluating the judge's decision, this Court is hindered by the absence of any indication of the **reasons for the judge's decision**. It is often impractical to deliver a judgment in these circumstances when sitting out of hours, but practitioners who submit draft orders, and judges who approve them, **should record in the order at least a summary of the reasons for the decision, for the benefit of any party not present and any subsequent court conducting the next hearing or considering the matter at a later stage** in the proceedings. In this case, the recitals in the court order **do not spell out in any or any sufficient detail the reasons for the judge's decision. There is therefore considerable uncertainty as to precisely why the judge decided to make the order.**” [60]
- “Neither the recitals nor the body of the order, however, contain any reference to the jurisdiction which the judge is being asked to exercise, namely the inherent jurisdiction with regard to vulnerable adults, nor does it specifically refer to the fact that the order would deprive Mr Mazhar of his liberty. In the absence of a judgment, it is **impossible to know whether the judge addressed his mind to the question of jurisdiction and the powers which could be exercised under that jurisdiction** in respect of vulnerable adults.” [66]
- *Noted in the context of an appeal against an OoHs order under the IJ (order set aside): <http://www.bailii.org/ew/cases/EWCA/Civ/2020/1377.html>*

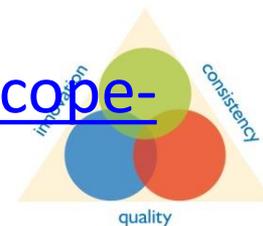




Browne Jacobson article on public law: reduce the scope for challenging your decisions

- “public bodies will always be in a better position to defend a challenge if they ensure that their decision-making process is thorough and fair, the decision can be justified on the evidence and the reasons given for it are adequate. Ultimately, this is something that public bodies should be concerned about irrespective of the threat of legal challenge - after all, good decision-making is a public good in itself and something that public bodies should strive towards in all cases”

<https://www.brownejacobson.com/training-and-resources/resources/legal-updates/2020/11/public-sector-robust-decision-making-how-to-reduce-the-scope-for-an-irrationality-challenge>





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