

A County Council v MB [2010] EWHC 2085

Lessons to be learned / guidance / good practice

- Care needs to be taken in setting out the periods for which urgent and standard authorisations are given.
- Authorisations do not run from the beginning of (or from an earlier time on) the day on which they are given.
- It would be good practice to record the actual time at which an urgent authorisation and a standard authorisation (which does not run from the expiry of, or a specified time before the expiry of, an existing standard authorisation) was given on the form recording its grant.
- In any event a record of the exact time on which all authorisations are given should be kept.
- An approach that includes the whole of the day on which the relevant period starts, and ends at the end of the last day, would produce a result that the maximum period(s) allowed for urgent authorisations and their extension of 7 days, and allowed for standard authorisations, if that is set by a period of days, months or a year, were not exceeded.
- In the case of an “existing detention” there can only be one urgent authorisation and therefore after the end of the first urgent authorisation it can only be authorised by either (a) a standard authorisation, or (b) a court order.
- All involved should be very aware of the relevant periods of an existing authorisation and time the steps to be taken to continue it, or address problems as to the continuation of a deprivation of liberty, before it expires.
- The “period of grace” or extension to the end of the existing standard authorisation (see paragraph 62(3)) is the period provided by DOLS to take appropriate steps if the supervisory body is precluded from giving a standard authorisation if all of the assessments are not positive. It is therefore the period provided to the supervisory body and the managing authority to take the appropriate steps to address a difference of opinion with an assessment.
- Assessors should have regard to the alternatives that are practically available and in the case of the best interests assessor their ability to set the maximum length of any standard authorisation (see paragraph 51(2)). This is relevant to the continuation of a standard authorisation, for a short time, whilst changes or assessments are considered or carried out.
- The court is the forum identified by DOLS and the MCA to resolve (i) a breakdown of the authorisation of a deprivation of liberty by the authorisation process set by Schedule A, and (ii) whether P can lawfully be deprived of his liberty if an authorisation (or a further authorisation) cannot be granted or is disputed.

- Applications can be made to the court under s. 21A in respect of authorisations that have been granted and the section specifies the limited extent of the relief that can be given thereunder.
- It is unlikely that s. 21A will be applicable where the problem is that an authorisation or a further authorisation cannot be given. But then, and in other circumstances, an order that authorises a deprivation of liberty can be sought under ss. 4A, 16, 47 and 48 from the court.
- If they are urgent, such applications to the court can be brought before the High Court Judge in the Family Division designated to hear urgent applications in and out of court hours.
- Supervisory bodies and managing authorities should take steps (i) to bring the statutory provisions relating to applications to the court to the notice of their decision makers, and (ii) to ensure that they are aware that pending a court decision they can either:
 - i) rely on s. 4B, and that to do so they should expressly address the test set out therein and record their reasoning as to why they believe it is satisfied, or
 - ii) seek an interim order from the court to authorise a continuation of an existing detention.
- An application to the court can be made and dealt with as a matter of urgency and supervisory bodies and managing authorities should take steps to ensure that their decision makers know, or have easy access to the current methods to contact (i) the Court of Protection and the DoL team at the court (as to which the telephone number in the Practice Direction supplementing Part 10A of the COP Rules is out of date), and (ii) the Family Division of the High Court to make an urgent application to the Applications judge during court hours and the Duty judge out of court hours.

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