View from the Coalface

Every 2 months, Browne Jacobson solicitors host regional MCA/DOLS Forums where practitioners, MCA/DOLS and safeguarding leads from across health and social care meet to share common points of interest and concern.

The East Midlands Forum meets at Browne Jacobson's offices in Nottingham and is financially supported by the East Midlands Adult Safeguarding Board ("EMASB"). Discussions typically consider service delivery issues in each locality, training and topical concerns. It is about making improvements, learning and sharing lessons, and a chance for some benchmarking. In addition topical information including case updates are circulated via EMASB MCA/DOLS Forum web based 'BaseCamp'.

Though there's usually a short presentation at each Forum on a legal issue, or case law update, the main benefit for the practitioners attending the forum is to engage with each other and share best practice (while the lawyers get a chance to understand better what it really happening at the coalface in practice).

Here's what practitioners have been talking about recently at the East Midlands Forum, for example:-

- There continues to be a higher number of DOLS authorisations in this area, compared with other regions.

- But there is concern that statistics about the number of DOLS authorisations can reveal little about the quality of the assessments / authorisations. More qualitative analysis would be better to help people understand the strengths and weaknesses of their own approach, rather than just how many there are in different areas.

- Because even raw data about numbers of referrals are not published at the level of individual Hospitals, emias – East Midlands Internal Audit Services - had recently carried out a survey of acute hospital trusts to help benchmarking, and it was agreed that this was a useful resource:-

  http://www.emias.nhs.uk/article/news

- The typical length of DOLS authorisations is becoming shorter. This has been, in part, influenced by the BIAs deliberately wanting to keep the focus and pressure on the service provider so that care plans evolve to minimise restrictions as much as possible for the service user.

- The current Court of Protection process is felt to be lengthy and costly. Some practitioners think that consideration should be given to reviewing MCA matters, and especially 221A appeals, with something more like the First Tier Tribunal system, which they feel works well for people detained under the Mental Health Act.

- In practice, it is felt that confidence in decision making is undermined by a perception that the law is complex and fast changing, especially around DOLS. This is understandable, but can discourage some clinical and social care staff from engaging with the issues appropriately or at all. It is vital

that staff are reassured that they don't have to know everything, but are given the confidence through training and clear communication to feel that they are kept reasonably up to date, and to know where to go, and who to contact to find out more if they need to.

- There is huge risk for an organisation getting things wrong, with incidents likely to be high profile and damaging to the reputation and brand, in an increasingly competitive marketplace in health and social care provision. Some feel that this is not yet fully reflected in the level of training or engagement with these issues within their organisations.

- Across the board, responsibility for managing care plans is being pushed from the managing authority back to the supervisory body. There is a need to help empower the care provider to consider reducing the restrictions within individual care plans where there is a concern that the regime may be too restrictive, rather than making a DOLS referral straight away.

A Local Authority Adult Care solicitor who attends the forum, has presented on some of the key questions and issues arising when a Relevant Person's Representative ("RPR") may also wish to act as Litigation Friend ("LF"). The judgment in AB v LCC (A Local Authority) [2011] EWHC 3151 allows the RPR in a s21A appeal against an authorisation under DOLS to act as LF for P instead of the Official Solicitor. With the exception of the judgment above, no guidelines have been developed for a RPR acting as LF. It may not have been anticipated in the IMCA/RPR contract with the Local Authority that they would have to take on this role.

Live issues:-

1. RPRs have to consider whether there is any conflict between their statutory advocacy role under the MCA and their role as LF.
2. The RPR has to consider whether they are willing to act in the duel roles of RPR and LF.
3. It is unclear how an RPR obtains independent legal advice as no is no guidance from, for example- the LSC, Court, and Department of Health.
4. It would be helpful to have a list of Court of Protection specialist solicitors from across the various regions that are able to advise the RPR on their role and represent them as Litigation Friend.

If you would like to learn more about the East Midlands MCA/DOLS Forum, please contact Robert Nisbet EMASB Programme Manager: rock.nisbet@gmail.com

The EMASB have published two MCA e-learning tools, for health and social care practitioners: http://www.el4c.org

If you are interested in attending a regional MCA/DOLS Forum in Birmingham, Exeter, London, Manchester or Nottingham, please contact Browne Jacobson for more information. Ben Troke – ben.troke@brownejacobson.com, 07970 615 452.