



Mental Capacity Act 2005: Deprivation of Liberty Safeguards

Response from the College of Occupational Therapists

1. Introduction

- 1.1. The College of Occupational Therapists (COT) is pleased to provide a response to this Welsh Assembly Government document which has been assisted by members throughout Wales and the College's specialist section in Mental Health
- 1.2. The COT represents over 29,000 occupational therapists who are either working or studying across the United Kingdom, of which around 1,500 are either working or studying in Wales. The College also supports a number of support workers who are known as associate members. Occupational therapists (OTs) work in the NHS, Local Authority Social Services and Housing Departments, schools, primary care settings, and a wide range of vocational and employment rehabilitation services.
- 1.3. Occupational Therapists are regulated by the Health Professions Council, and work with individuals of all ages with a wide range of occupational problems resulting from physical, mental, social or developmental difficulties. The philosophy of occupational therapy is founded on the concept of occupation as a crucial element of health and wellbeing. Practice is based on holistic, person centred care.

2. General Comments

- 2.1. The profession welcomes the opportunity to undertake the new roles identified in these safeguards. Undertaking these roles will allow occupational therapists to continue to modernise and improve their services for service users. However, it is important to note that where practitioners do undertake new roles, there is likely to be an impact on available resource for undertaking the profession specific elements of their treatments/ interventions.
- 2.2. This is particularly true for occupational therapists where there are low numbers of posts in teams. For example, in the majority of mental health services there is a low capacity of occupational therapy treatment hours, often only one therapist per team. Therefore, time spent by that therapist in these new roles will mean a reduction of available time for occupational therapy. Thought needs to be given to how to replace this specialist time, especially as such roles are likely to be undertaken by the most skilled and experienced therapists.



3. Specific Comments

3.1. *Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations & Disputes about Residence)(Wales) Regulations 2008*

a. Regulation 3: Do you support the general eligibility requirements for assessors?

Yes, The College does support the eligibility requirements for assessors. Occupational therapists embrace the opportunities to become Approved Mental Health Professionals, Best Interest Assessor and relevant person's representative.

b. Regulations 4, 5 and 6: Do you support the professional qualifications and experience required for mental health, best interests and mental capacity assessors? If not, what changes would you propose?

Yes, occupational therapists are very appropriately named in this list and have all the skills and attributes to carry out these roles effectively.

c. Regulations 4, 5 and 6: Given the types of groups assessors would be expected to be drawn from, do you have any views about the availability of individuals in sufficient numbers to carry out these assessments?

We believe that widening the approved role to be undertaken by a greater number of professionals will increase the availability of individuals in sufficient numbers to carry out these assessments.

How is governance of those undertaking these roles to be assured? Will there be a central (all Wales) register of those who are approved for a range of roles or will this be held in local authority areas?

d. Regulations 7 and 8: Do you support the exclusions as to who can and cannot be an assessor? If not, what changes would you propose?

Yes, the College supports them. By implication no professional should undertake more than one of these roles for a given individual, should that be made explicit in the interests of safeguarding people?

e. Regulations 7 and 8: Given these exclusions, and any others you wish to propose, what are your views on whether there are broader issues for supervisory bodies in identifying suitable assessors?

Assessors should want to undertake these roles; it should not be a compulsory element of a post. Authorities must be prepared to release assessor to do work for other authorities. It is not clear whether an assessor can work for the supervising authority or the managing authority.

In response to Regulation 8c it is unclear whether "the hospital" refers to the specific building or location rather than the organisation (i.e. NHS Trust or Private Hospital). We are unsure as to the implications that this places the allocation of the Best Interests Assessor in a hospital where the assessor is employed by the hospital but on another site. An additional question is



raised in relation to the appointing of the Best Interests Assessor when their post is jointly funded by health and social care.

f. Regulations 9 and 10: Are the time-frames in regulations 9 and 10 appropriate and practicable given the nature and type of assessments to be carried out? If not, what changes would you propose?

The timeframes seem appropriate. Resources need to support the right action, rather than amending timescales to suit resource deficits.

g. Regulation 12: Does this regulation cover all the information reasonably expected to be provided in a request form?

Yes, this would be the minimum information required.

h. Regulations 13, 14 and 15: Do you consider that the arrangements in these regulations will work in practice? If not, what changes would you propose?

Yes, these should work, although regulation 15 is not very clear in respect of the timescales and their application.

i. Allocation of funding:

The proposed allocation of funding will need to take into account:

- i. Who is expected to administrate this process? It has been suggested that this should be taken on by the mental health act administrators, there will need to be consideration given to the increase in the workforce within the funding allocation and resources;
- ii. Remuneration for conducting the assessments
 - Who will receive additional payments for this work?
 - Discrepancy in the volume of work and payments i.e. doctors versus Best Interests assessors
 - Payment should be based on national set payments
- iii. Inequity of payment will deter the take up of Best Interests Assessors
- iv. The location of specialist units and care homes will skew funding; and
- v. Maintenance of registers will be complicated and difficult to manage at a local level. We advise that this should be managed by the holding of national registers.

3.2. Mental Capacity (Deprivation of Liberty Appointment of Relevant Person's Representative)(Wales) Regulations 2008

a. Regulation 3: Do you support the directions to Local Health Boards that they will exercise the supervisory functions for hospitals (private or NHS) in their area, and similarly for hospitals in England where the Local Health Board has commissioned the care or treatment?

Yes

b. Regulation 3: Do you support the directions to Powys Local Health Board that it will exercise the supervisory functions where Health Commission Wales, on behalf of Welsh Ministers, has commissioned care or treatment in a hospital (private or NHS) in England. If not, what changes would you propose?

Yes



c. Regulation 6: Do you support the eligibility criteria of a person for appointment as the relevant person's representative? If not, what changes would you propose?

Yes. May a health professional undertake this role?

d. Regulation 6: Do you support the definition of "close relative" for the purpose of these regulations? If not, what changes would you propose?

Yes. The typographical errors in letter bullets at 2 need correcting.

e. Regulations 8 to 13: Do you support the requirements for appointing the representative in these regulations, when read in conjunction with the guidance in Chapter 4 of the draft Addendum to the Mental Capacity Act 2005 Code of Practice? If not what changes would you propose?

Yes

4. Conclusion

- 4.1. The profession welcomes the publication of these safeguards, which should help protect vulnerable people and enhance the quality of services.
- 4.2. Occupational therapists welcome the opportunity to undertake the new roles in these regulations, the result of which will be to enhance occupational therapy services for people in Wales.
- 4.3. We reiterate that consideration will need to be given to ensuring that undertaking these new roles does not result in a reduction of occupational therapy specific time which will reduce access to services for people who need them.

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