

Proposed changes to DoLS and the Mental Capacity Act

David Thornicroft

St Thomas Training



Law Commission

- Law Commission published report, and draft Bill, on 13th March 2017
- Law Commission recommends:
 - Abolish DoLS, and bring in completely new system - “Liberty Protection Safeguards”
 - Amend the wider Mental Capacity Act



Liberty Protection Safeguards

- No re-definition of “deprivation of liberty”
- Urgent authorisations to be abolished
- Advance consent to being deprived of liberty
- Abolish “Managing Authority” and “Supervisory Body”



Liberty Protection Safeguards

- Apply to 16 years old +
- Authorisation can apply in any setting, or in multiple settings
- Can include arrangements for transport
- Can include arrangements to ensure the return of a person to a placement
- Specific arrangements need to be set out in the care plan



Conditions for authorisation

- Person lacks capacity to consent to arrangements for their care
- There is a medical assessment that the person is of unsound mind (doesn't have to be done by a S12 doctor)
- The arrangements being proposed are “necessary and proportionate” due to the risk of harm to self or others
- Assessments done by a minimum of 2 assessors, who are independent of each other
- Assessors will mostly be employees of the “Responsible Body”



Approved Mental Capacity Professional

- Replaces the Best Interests Assessor role
- Deals with more serious situations
- Either where the person clearly objects to their care or treatment arrangements
- Or where the risk is of harm to others, rather than to self
- This is getting close to the scope of the Mental Health Act



Responsible Body

- Has the power to authorise the deprivation immediately ...
- ... or up to 28 days ahead
- Authorisation can last for up to 12 months, then another 12 months, then another 3 years
- Renewals are allowed, ie don't need full re-assessment
- Authorisation will continue through short periods of capacity (ie fluctuating capacity)
- Authorisation can be suspended during short periods of detention under the Mental Health Act



Monitoring of the authorisation

- Person has right to regular reviews
- Person has right to an advocate or appropriate person (can opt out of this)
- Person has right to appeal (to Court of Protection, or possibly to a Tribunal?)
- Duty on prescribed bodies (eg CQC, Ofsted) to report on the operation of the scheme



Interface with the Mental Health Act

- Law Commission has recommended that the Government review this area ...
- ... with the possibility of a "fusion" law covering mental health and mental capacity (similar to Northern Ireland)
- To be clear, the Liberty Protection Safeguards cannot be used to authorise treatment for mental health in hospitals



Reform of the wider Mental Capacity Act

- Amend the Best Interests Checklist to give greater weight to the person's wishes and feelings
- Person's wishes and feelings must be documented clearly, especially when making a best interests decision which goes against those wishes and feelings
- Section 5 defence will not apply unless professional documents that they have attempted to help the person to make the decision, offered them advocacy, carried out a formal capacity assessment
- Introduction of a supported decision making scheme - ie the person formally appoints someone to help them make decisions



When will this all happen?

- Needs to go to Parliament for debate, then voting, then implementation
- Difficult to say how long this will take
- Until then, must continue with existing system
- ...
- ... Except that deaths under DoLS no longer need to be referred to Coroner (as of 3rd April 2017)



More info

- Feel free to browse our website (lots of free DoLS resources there)
- Call 02380 970 914 or email david@stthomastraining.co.uk for advice about DoLS or LPS
- We deliver training at your venue, on a date to suit you
- Briefing sessions 29th June
Southampton

