

Briefing note for care practitioners and managers

April 2014

Deprivation of Liberty Safeguards

This briefing note is to advise care practitioners and managers on the Deprivation of Liberty Safeguards (DoLS) due to a Supreme Court Judgement made recently.

In the latest Supreme Court Judgement (*P v Chester West & Chester Council P & Q v Surrey CC* {2014} UKSC 19) on the Deprivation of Liberty Safeguards (DoLS) provisions, the threshold for when an individual is considered to be deprived of their liberty has been significantly lowered. The Court has provided the following 'acid test on this matter';

The person is under continuous supervision and control

AND

the person is not free to leave

AND

they lack mental capacity to consent to the accommodation for the care or treatment arrangements above.

Factors that are no longer considered relevant include:

- objection to the care or placement
- the purpose of the care or placement
- the relative normality of the care arrangements.

This will present local authorities nationwide with a considerable challenge in respect of a significant increase of DoLS assessments that they will now be expected to consider.

The Supreme Court Judgement also gives direction on those cases which fall outside of hospitals and care homes. All of the 3 cases considered in the judgement occurred within a supported living arrangement. These were found to be a deprivation of liberty despite service users having regular access to the community and staff attempting to facilitate normal life opportunities for the person.

Previous case law had suggested that 'normal' community living arrangements were unlikely to constitute a deprivation of liberty. This notion has been overturned by the Supreme Court with the assertion that "a gilded cage is still a cage". This has major implications, as supported living

arrangements fall outside the scope of DoLS, and an application for authorisation from the Court of Protection would have to be made for people deprived of their liberty in these settings.

What the judgement means

As a result of the judgement, South Gloucestershire Council is expecting a significant increase in:

- a) applications for DoLS authorisation from hospitals and care homes
- b) the need for the council to consider making an application to the Court of Protection before placing in supported living services.

An action plan is being developed by South Gloucestershire Council and partner agencies to respond to this situation. All relevant staff will need to be aware of the new definition of a Deprivation of Liberty when arranging or reviewing placements. Guidance to assist practitioners in this task will be developed.

As part of the action plan, communication will be made with relevant providers to ensure they are aware of the judgement and related responsibilities. In the meantime, it is important that practitioners are aware of the above judgement and use it to inform their work when arranging or reviewing care packages in hospital or care homes, as well as in supported living arrangements.

Department of Health Guidance

The Department of Health has advised that all relevant staff should:

- make sure they fully understand the provisions of the Mental Capacity Act, in particular the five principles and specifically the “least restrictive” principle
- when designing and implementing new care and treatment plans for individuals lacking capacity, be alert to any restrictions and restraint that may deprive them of their liberty (following the revised test supplied by the Supreme Court)
- take steps to review existing care and treatment plans for individuals lacking capacity to determine if there is a deprivation of liberty (following the revised test supplied by the Supreme Court)
- where a potential deprivation of liberty is identified, a full exploration of the alternative ways of providing the care and/or treatment should be undertaken, in order to identify any less restrictive ways of providing the care which will avoid a deprivation of liberty
- where the care/treatment plan for an individual lacking capacity will unavoidably result in a deprivation of liberty judged to be in that person’s best interests, this **MUST** be authorised.

Contact

If you have any questions regarding this briefing, please discuss with your line manager in the first instance. If necessary, they can contact the council’s MCA/ DoLS manager John White (tel: 01454 865880, email: john.white@southglos.gov.uk) for further discussion.

Date

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