

A Joint InPractice and Healthcare Conferences  
UK Advanced Masterclass

# Deprivation of Liberty Safeguards

Monday 22 January 2018

De Vere West One Conference Centre, London



InPractice



## Learning Objectives:

- Provide an overview of the Mental Capacity Act and the legislative framework for Deprivation of Liberty Safeguards
- A thorough examination of the judgment in Cheshire West and its implications
- Examination of the changes proposed by the Law Commission, including the use of First Tier Tribunals, Approved Mental Capacity Professionals and the interface between the MCA and MHA in hospital settings
- Step by step review of the current procedure for obtaining urgent and standard authorisations
- Documentation under the new regime



The June Masterclass will be facilitated by

**Simon Robinson**

Barrister

Five Paper Chambers

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*"The Law Commission recommends that DoLS are repealed as a matter of urgency, and are replaced by a new scheme called the Liberty Protection Safeguards. This intends to streamline the process for assessing whether a deprivation of liberty is necessary, and obtaining the required authorisation. The Liberty Protection Safeguards would also authorise particular arrangements and conditions for a person's care or treatment, rather than simply authorising a deprivation of liberty... Under the new scheme, when there is a potential deprivation of liberty, the responsible body – the NHS body or local authority - arranges three assessments: a capacity assessment, a medical assessment, and a 'necessary and proportionate' assessment. They must also consult with friends and family of the relevant person. Each case is verified by an "independent reviewer", and those where the placement are contrary to the person's wishes are referred to an Approved Mental Capacity Profession (AMCP)." House of Commons Briefing Paper, 2nd October 2017*

The Deprivation of Liberty Safeguards (DoLS) scheme is coming under increasing scrutiny.

In its interim statement the Law Commission gave some background to the current position: "The DoLS have been subject to considerable criticism ever since their introduction. In March 2014, two events inflicted significant damage. First, the House of Lords post-legislative scrutiny committee on the Mental Capacity Act published a report which, amongst other matters, concluded that the DoLS were not "fit for purpose" and proposed their replacement...A few days later, a Supreme Court judgment (usually referred to as "Cheshire West") gave a significantly wider definition of deprivation of liberty than that which had been previously understood to apply in the health and social care context...The judgment laid down an "acid test" for deprivation of liberty: whether a person is subject to continuous supervision and control and is not free to leave. The practical implications of this judgment for local authorities and the state have been significant. For example, there has been a tenfold increase in DoLS applications in England and a 16 fold increase in Wales since the judgment, and it is estimated that only half of these have been processed owing to the resulting pressures on local authorities and local health boards."

This masterclass will explore the DoLS as they currently stand and examine the practical implications from restrictions to deprivations and capacity assessments through to seeking authorisations.

It will look at the implications of the case of Cheshire West, the House of Lords Select Committee Report Act and the Law Commission's proposals for changes to the current DoLS regime to make the application process more streamlined and to include a focus of ECHR Article 5 and 8 rights.

This one day masterclass will also cover the Law commission's report on Deprivation of Liberty Safeguards published on 13th March 2017. Following public consultation, the Law Commission is recommending replacing the law with a new scheme, called the Liberty Protection Safeguards.

Delegates will have the opportunity to raise issues and concerns specific to their own practice.

## Programme

- 10.00** Overview of the Mental Capacity Act and DoLS legislation
- 10.15** Discussion of Cheshire West, case law and their implications.
- 11.00** Coffee
- 11.15** The Law Commission proposals for change and their interim statement
- 12.00** Capacity Assessments, best interests and case study
- 12.30** Completing the forms
- 13.00** Lunch
- 14.00** The application process: urgent authorisations and applications for standard authorisations
- 15.00** Tea
- 15.15** Good practice in documentation, the forms and communication within teams.
- 16.00** Close

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**Date**

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- £395 + VAT (£474.00) for NHS, Social care, private healthcare organisations and universities.  
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