

Number 30

## Deprivation of Liberty Safeguards

Care homes have always attracted media attention and it is no surprise that the care industry is again in the media spotlight this week (1 April 2009). The industry has received media attention following the introduction of **DOLS**, the **CQC** together with a recent care training report noting that the training of care staff has been considered as "**inadequate**".

A major concern with regard to the care of the elderly, and perhaps what is considered as one of the most important legal considerations to the industry, is whether a person has capacity to make decisions about their treatment, their care and ultimately their own life.

The Mental Health Act 2007 introduced the Deprivation of Liberty Safeguards (**DOLS**) into the Mental Capacity Act 2005 (**MCA**). The new safeguards were introduced on 1 April 2009.

DOLS will cover patients in hospitals and service users in care homes registered under the Care Standards Act 2000, whether placed under **public or private** arrangements. The safeguards will apply to people who are aged 18 and over who:

- suffer from a "disorder" or "disability of mind; and
- lack the actual capacity to give consent to the arrangements made for their care and/or treatment; and
- for whom such care (in circumstances that amount to a deprivation of liberty within the meaning of article 5 of the ECHR is considered, after an independent assessment, to be a necessary and proportionate response in their best interests to protect them from harm.

The amendments to the MCA both **strengthen** the protection of vulnerable groups of people, and tackle human rights incompatibilities.

In essence, the groups who are covered by DOLS will be those with significant learning difficulties or elderly people suffering from **dementia**.

Deprivation of liberty can arise when a service user is not permitted to make any choices at all about issues including, amongst others,:

- (a) where they can be within the home;
- (b) what they can do;
- (c) who they can associate with; and
- (d) when and what they can eat.

On some occasions it may be essential to restrict a service users freedom and take control of aspects of their lives.

The MCA notes that institutions must not assume that a service user **lacks capacity** to make their own decisions merely as a consequence of a persons "**age, appearance or condition**". Additional emphasis is placed on service providers to ensure that service users and patients are capable of making their own decisions in so far as it is possible. Guidance produced with regard to DOLS notes that providers should use "**simple language**" and take time to provide the service user or patient with a clear explanation of particular situations affecting them.

DOLS is an important issue and it is essential that care providers ensure that their staff are aware of the new regime and appropriately trained. Providers should ensure that no unlawful detention occurs which could ultimately lead to a claim for compensation.

To assist, we have prepared a policy for healthcare staff summarising the new law and setting out the steps that need to be taken to ensure compliance. For more information in relation to DOLS or our policy, please contact Gareth Brewerton in our Care Group.



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