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Care England webinar

Demystifying Court of Protection and Deprivation of Liberty Safeguards for Care Home Managers

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Content

1. Introduction to the law
2. Case study discussion

Deprivation of Liberty Safeguards

- Deprivation of Liberty Safeguards - Schedule A1 to the Mental Capacity Act 2005
  - Introduced as a framework to provide lawful Deprivation of Liberty for patients/residents in hospitals or care homes.
  - Provides “managing authority” (ie hospital or care home) authority to deprive an individual (“P”) of liberty.

- Separate from Mental Health Act

Basic structure

- The process is the Managing Authority applies for authorisation from a Supervisory Body (local authority) for authorisation

- P has to have six qualifying requirements:
  1. **Age -** 18 +
  2. **Mental health** – suffering from a “mental disorder”.
  3. **Mental capacity** – ie lacks capacity to make decisions on accommodation and care.
  4. **Best interests** – ie it is in P’s best interests for him/her to be a “detained resident”.
  5. **Eligibility criteria** – ie not ineligible under the Mental Health Act.
  6. **No refusals** – ie P has not made an Advanced Decision prior to losing capacity refusing to be a detained resident or donee of a Lasting Power of Attorney (Welfare) objects or a deputy Court approved deputy.

Basic structure (cont'd)

- Application by Managing Authority either at the time or 28 days prior to becoming a resident in a care home.
- Standard authorisation or urgent authorisation (up to 7 or 14 days) gives authority to deprive of liberty.
- Various assessments undertaken to determine eligibility (most importantly best interest assessment). If all assessments are positive, Standard Authorisation must be given.
- Can impose conditions - valid up to one year. Can be renewed after this.
- Urgent authorisation (up to 7 days) to be made by Managing Authority where application for Standard Authorisation required, but immediate Deprivation of Liberty required. Can be extended for a further 7 days by request to supervisory body.
- Once Standard Authorisation given the Supervisory Body must appoint a "relevant person's representative" (RPR) who represent the interests of P.

When the Deprivation of Liberty Safeguards do not apply?

- Any Deprivation of Liberty outside of care home or hospital setting.
- Examples: Supported living, living with family etc.
- Age under 18 (Inherent Jurisdiction of the Court).
- In these situations, authorisation of Deprivation of Liberty must come from the Court of Protection (adult) or Inherent Jurisdiction of High Court (child).

Court process: two routes for authorisation

- **Route one**:
  - COP DoL 11 (“Re X”) – this is a “paper” based decision of the Court, where the Court authorise Deprivation of Liberty for up to one year on the basis that everyone (including P) agrees. Court does interrogate, requires detailed care plans and lengthy document, as well as consultation with family, carers, etc.
  - Intended to be a relatively quick process, without the need for Court hearings etc.

Court process cont'd

Route two:

- Used in all cases where COPDOL11 cannot be used
- The Court has authority to make a Deprivation of Liberty in other settings (section16 Mental Capacity Act)
- Deprivation of Liberty Safeguards to be challenged under section 21A of the Mental Capacity Act and these are frequently seen challenging Standard Authorisations

Practical implications for care home managers

- Frequent use of Deprivation of Liberty Safeguards.
- Less frequent use of Re X/section 16 as applications will be by Funders (usually NHS or local authority).
- Supported living.

Case study

- Discussion with Emma Edwards, Director of Operations and Quality at Together for Mental Wellbeing (TMW) exploring a recent case involving a resident who lacked capacity at one of TMW's residential settings.

Resources

- Guide to the Court of Protection and Deprivation of Liberty Safeguards for the busy care home manager
- Guide to serving notice on a resident for care home managers
- Mental capacity | Legal advice | Mills & Reeve (mills-reeve.com)
- Health and care blog | Mills & Reeve (mills-reeve.com)

Thank you

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If you have any questions or would like to speak to one of our team, we'd love to hear from you.

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