



# Are the Safeguards disappearing for those Deprived of Liberty

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Last year - We were in our little boat waiting to be overwhelmed



This year - we've definitely sunk

# 2014/15 a double whammy for DoLS

**House of Lords** “The level and breadth of criticism of the Deprivation of Liberty Safeguards, including from the judiciary, demonstrates that the legislation is not fit for purpose. Better implementation would not be sufficient to address the fundamental problems identified.”

**Supreme Court**  
“A gilded cage is still a cage”



Is it all .....



# Great support tools

<http://www.scie.org.uk/mca-directory/>

<http://www.local.gov.uk/search?q=mental%20capacity%20act>

<http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>

<https://www.adass.org.uk/mental-health-Drugs-and-Alcohol/public-content/New-DoLS-Forms/>

# Clarity of the acid test

- P must lack capacity for accommodation decisions – then its easy as 1,2,3
  1. Free to leave?
  2. Subject to complete or continuous supervision? and
  3. Subject to complete or continuous control?
- Not a blanket decision
- Training for practitioners and providers is clear

The numbers of applications  
evidence the clarity of the test

Year	2013/14	2014/15
Applications	13, 700	137, 540

- This is predominantly a financial challenge not a practice based challenge
- Re-emphasis on MCA though MCA steering group/Implementation group /new National Forum
- Re-emphasis on MCA principles throughout care management
- Greater focus on supported decision making

- DoLS is key tool in embedding less restrictive practice
- Social workers embracing the concepts of deprivation and restriction through community DoLS applications
- Wider use of Court of Protection in welfare decisions is driving improved social work practice
- Case Law such as A.J. case (respite) is driving improved social work practice

# Beware complacency .....

There may be trouble ahead....

- Everyone here is deprived of liberty
- No point looking at options
- MCA principles eroded
- All residents are the same
- Confusing community settings



# Need for return to basics



# MCA central to empowerment and protection

“The MCA ...will empower people to make decisions for themselves wherever possible, and protect people who lack capacity by providing a flexible framework that places individuals at the heart of decision making”

*Foreword to the MCA Code of Practice*



# How can we empower AND protect



Are the two incompatible? Is there a role for  
DoLS

# Case examples

Mrs W is 95 she is deaf and “practically blind” she is very prone to falls. After a recent fall she was persuaded to have a stay in respite. She then insisted on a return home. A DoLS request was submitted. It was quickly noted that Mrs W had no mental impairment.

The BIA had a discussion with her, she demonstrated full understanding of her care needs and actually described a desire to remain the care setting. The most recent fall had persuaded her that “she couldn't look after herself any more” However the BIA was able to ensure the care setting were aware of her capacity and that she must not be subject to any restrictions that she does not consent to.

A 40 year old man with severe learning disability and epilepsy. Has 2:1 care at all times during the day. He was able to indicate by his actions that he found this intrusive. The DoLS authorisation highlighted that the 2:1 was mainly due to risk of seizures although only two had happened in the last 12 months. The care home were required to monitor frequency and consider reducing support at some times of the day.

<b>Restrictions</b>	<b>Indirect restrictions</b>	<b>Less restrictive options</b>
<p>The person is, or would be, prevented from leaving the premises (some or all of the time).</p>	<p>Although free to come and go, the person is expected to ask “permission”.</p>	<p>Can changes be made to the environment which will enhance the person’s freedom of movement?</p>
<p>The person is not, or would not be, allowed to go to certain places without an escort.</p>	<p>The person is discouraged from going out for the convenience of staff or the provider.</p>	<p>Could a programme be put in place which will mean at some point in the future the person will be free to come and go</p>
<p>Bed rails or other equipment (e.g. tipping chairs) are used to keep</p>	<p>Access to gardens or outdoor areas are restricted due to</p>	<p>Does a risk assessment simply need reviewing?</p>

# Limbo period

- Blanket applications water down MCA principles
- A sense that DoLS is on the way out so principles no longer matter
- A sense of the impossible in dealing with the DoLS challenge resulting in hopelessness
- Vast numbers of people waiting for authorisation who have no safeguards
- A feeling of the whole scheme disappearing loses the importance in the here and now

# Suggestions for practice

- Don't give up - revisit the MCA principles
- Less restrictive practice is key – to a measured approach to applications and to empowering P
- Apply best practice in best interests decision making
- Think outside the box
- Use existing resources
- Share good practice



Don't hang in limbo -  
Don't let safeguards disappear  
whilst we wait for the replacement

