



Department
of Health

Deprivation of Liberty Safeguards (DoLS)

Community Care Live
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March 2014 Cheshire West Judgment

“Acid test”:

Individual is deprived of their liberty if they

- Lack capacity to consent to arrangements
- Under continuous control & supervision
- Not free to leave

Lack of objection/ compliance, “relative normality” irrelevant: *“gilded cage still a cage”*

Such a DoL must be authorised through DoLS or the Court of Protection (or through Mental Health Act if appropriate)





DoLS – before and after the SC judgment

Pre – March 2014

Post – March 2014

13,000 cases per annum

130,000 cases per annum

CQC reported this as 'lower than expected'

Significant impact for local authorities and providers

Majority in Care Home settings

Further implications – coroners, palliative care

Community settings

Overall DH Guidance:

- Full compliance a journey
- Do-nothing unacceptable
- Must have a plan and be adhering to national guidance
- Degree of prioritisation inevitable
- If following national guidance and providing good, quality MCA-compliant care, should not be harshly treated

Palliative Care

- In last few days/ weeks of life, consent before losing capacity can be taken to be consent to the conditions of care (providing no subsequent major change)

Coroners DoLS

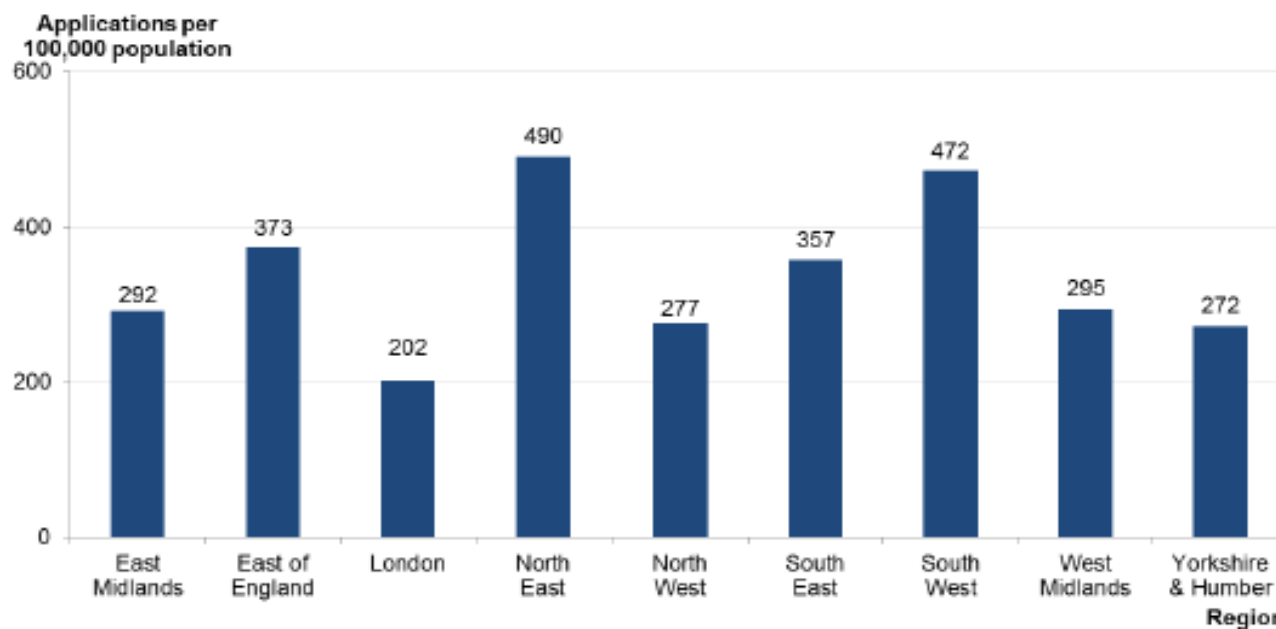
- This is not, for families, a death in “state detention” and so professionals should act appropriately . Working with police, providers, GPs to ensure families are kept informed before the event - good communication absolutely key

Eligibility

- All of this only applies to those who have a mental disorder, lack the specific capacity to consent the accommodation and who meet the acid test. [NB. Unconsciousness in itself not a mental disorder]

DoLS – Spreading best practice important

Figure 1.2: Received DoLS applications per 100,000 by region, England, 2014-15



Source: Deprivation of Liberty Safeguards (DoLS) data collections for 2014-15

Population data source: Office for National Statistics - 2014 mid-year population estimates

Based on 137,540 applications

Only includes applications received within the reporting year, where the date is a valid entry

Lots of helpful guidance materials including from Law Society, ADASS and DH. Easily found: <http://www.mentalcapacitylawandpolicy.org.uk/resources-2/cheshire-west-resources/>

The future of DoLS – the challenge



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Supreme Court
judgment: ten-
fold increase in
cases. DoL no
longer rare

Severe criticisms from
Parliament: complexity
of legislation and
variability in use

Difficult fit in
today's health
and care system
and with key
priorities

The challenge: a system that delivers real benefits for individuals and their families (encourages their engagement), best use of health and care system funding, complements (does not duplicate) other safeguards in the health and care system



Legislative Change?

Determined legislation should be considered in the round – “quick and dirty” changes may lead to more problems. Law Commission engaged as experts in law reform.

Law Commission has completed its public consultation. Achieved enthusiastic engagement. Await their suggested reviews – provisional report spring 2016. Final report and draft legislation end December 2016.

Final decision lies with Government. If legislative change preferred, will need to identify Parliamentary time and subject it to debate and scrutiny.