



Deprivation of Liberty Chat box Transcript

Guest: Remember AZ where Judge said 45 minutes could meet deprivation

Hugh Constant: *Indeed: it all hinges on the intensity of the deprivation*

Julie Morrison: what is the website for the guide?

Hugh Constant: *It's here: <http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/>
Also, a lot of general DoLS information on the MCA Directory:
<http://www.scie.org.uk/mca-directory/dols.asp>*

Catherine Jones: Can you not have an emergency authorisation? Although I understand you have to apply for a standard authorisation at the same time

Hugh Constant: *Yes, a care home or hospital can grant itself urgent authorisation for seven days, if someone's deprivation needs to be OK-ed in an emergency, but they must apply to the supervisory body (local authority) for a standard authorisation at the same time.*

Becki: If a person is subject to a DoLS in hospital, do they need a separate one for hospital transport to a residential home?

Hugh Constant: *The answer would be yes if it were an unusually long transport, but a local journey would almost certainly fall into the category of a negligible amount of time, so probably wouldn't need an authorisation. The Law Society guide (the link is above) has a helpful section on deprivations in ambulances and other transport.*

Philo A Daniell: Where does 1-1 support fall if the person is deemed to lack capacity and is in a general ward

Hugh Constant: *I think this would fall into the category of continuous supervision, and would indicate that it's likely there is a deprivation*

Guest: I do not know many s12 Doctors who do the age and no refusals assessments

Hugh Constant: *True, but the option is there.*

Guest: in terms of the elements do you feel mention of the Guzzardi assessment is warranted

Hugh Constant: *The Guzzardi case was an important one in defining a deprivation: he was a suspected criminal kept on an island, with numerous restrictions on his liberty, that were held to amount to a deprivation.*

Terry Wills: I would like to know your thoughts on the Supreme Court ruling that said the DoLS now applies to 16 and 17 year olds or did I miss this because I don't have sound?

Hugh Constant: *The recent court case didn't extend the DoL Safeguards themselves to 16 & 17 year olds – the safeguards remain for those 18 and above. But the judgement did suggest that more deprivation applications will need to go to the Court of Protection, because it clarified the position on whether parental consent was adequate to authorise a deprivation for that age group – with a clear no.*

Maria Emilsson: does the procedure you have outlined apply to Northern Ireland or is there separate guidance

Hugh Constant: *No – NI (for now) has no mental capacity legislation, and no DoLS. There is legislation due. For now, my understanding is that there is a DHSSPS circular advising on deprivation issues.*

Guest: Terry has no sound so your reply will fall on deaf ears

Philo A Daniell: my connection has been very poor so hope this will be posted somewhere

Becki: Does he have capacity

Guest: Assessment of capacity

Beth Peakall: Can he refuse to return?

Philo A Daniell: Did he choose to be in the care home

Maria Emilsson: Does he consent to being returned

Pranav Vaidya: Has the person been assessed to have capacity

Julie Morrison: How long before they contact police

Catherine Jones: He is free to leave so he is not subjected to continuous supervision

Lucy: If someone lives in a care home and has an escort in the community but gives reasons that they don't feel safe going out on their own and want someone with them does this constitute a DOLS?

Hugh Constant: *I think it would. Providing s/he lacks the capacity to consent to be in the home, then it would seem to me to be that s/he is under continuous supervision. It might be that s/he is free to leave (their lack of ability to do so not being a factor), but*

people being genuinely free to leave a care home is rather rare. Best to check with your local DoLS team to be clear whether they'd want you to apply.

Guest: I believe clarity on capacity is needed some of the responses indicate that DoLS is allowable for capacious people?

Hugh Constant: *Good to be clear that DoLS never applies when someone has the capacity to decide to be in the care home or hospital.*

Guest: I feel uncomfortable with lay people depriving a person for up to 28 days

Hugh Constant: *Many people who replied to the Law Commission consultation felt the same*

Richard Irwin: How often should we challenge the findings of assessors? We are finding they often say someone has capacity when the treating team disagrees.

Hugh Constant: *I guess the answer is that whenever you're convinced they're wrong.*

Philo A Daniell: A medical practitioner is not lay, or are they?

Hugh Constant: *They would be considered lay in DoLS terms, unless they had done the BIA training.*

Susan Tibbitts: If someone live in care home, does NOT have capacity and is limited in their walking abilities, i.e. can easily fall if not supported when walking, would bedrails to keep them safe be a Deprivation of Liberty?, if used to stop person from getting out because if they did at night they could fall and hurt themselves?

Hugh Constant: *They would if they part of a general care regime that met the acid test: continuous supervision and not free to leave. That test has largely superseded more particular issues such as bed rails or other restraints. That of course doesn't mean the bed rails are wrong; in the case you describe, they sound like they might be a proportionate response to the likelihood of harm. Just be sure it's documented properly in the care plan, and any less restrictive measures have been considered.*

Rebecca: I'm concerned that people can be deprived of liberty even for an hour...and it's a mistake. How would you get that lost hour of liberty back?

Hugh Constant: *Well, you can't; a good reason to be as sure of your ground as possible, so mistakes can be minimised.*

Philo A Daniell: Capacity fluctuates and capacity is not global so people may be capacitated in some areas and not others

Hugh Constant: *It's a very good point, and one that's important to keep always in mind*

Annette Thompson: If someone has a DoLS in place in a care home but admitted to hospital? Shouldn't the hospital put a DoLS in place?

Hugh Constant: *Yes. Authorisations are not transferable. If the person needs one in the hospital, then the hospital has to apply.*

Julie Morrison: If a health issue is a concern and could lead to death through unwise eating, how can this be dealt with?

Philo A Daniell: As long as people have capacity you cannot enforce eating

Rebecca: If they eat unwisely to the point that it could kill them, then this is a suicide...does someone considering suicide have capacity???

Hugh Constant: *As Philo says, the key is capacity. If someone truly understands the implications of what they are doing – and that it may lead to death – then they would be judged to have capacity to make that decision.*

Eleanor Sherwen: Thank you for an excellent presentation

Catherine Jones: Thank you very helpful

Nicola Dean: Thank you, very clear presentation

Philo A Daniell: Thank you to all and presenter

Liz Wheeler: Thank you - really helpful and clear presentation

Rebecca: Thanks....I realise how much more I need to learn