

The deprivation of liberty of autistic people: what matters and why does it matter?

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Who does this affect?

- People who are cared for in circumstances where their freedom of choice is so restricted as to mean they are being deprived of their liberty
- Wide range of people but includes many Autistics
- Includes people who don't object and seem 'happy'
- Includes situations where the care is in the person's best interests



Surely if they are happy and it's the best thing for them?

- This is about who gets to decide that!!!!
- It's also about recognising that Autistic adults have the same rights to freedom and self-determination as anyone else
- So there needs to be a independent check on whether it is justified to curtail an adult's freedom



Does it really matter?

- Surely those who care for someone are best placed to decide what's best for them?
- Doesn't it just create more layers of bureaucracy that are in nobody's interests?
- Power corrupts and mistakes happen – without protection in law for fundamental rights, there is nowhere to go for help



Who is in control?



The current English situation

“The empowering ethos has not been delivered. The rights conferred by the Act have not been widely realised. The duties imposed by the Act are not widely followed.”

[Select Committee post-legislative scrutiny, House of Lords \(2014\)](#)



The current English situation: 7 of 13

Deprivation of Liberty Safeguards (DOLS)

- A statutory scheme since 2009 (Mental Capacity Act 2005 Schedule A1)
- Care homes and hospitals only
- DOL must be authorised by ‘supervisory body’ (usually the local authority), reviewed at least once per year and can be appealed to Court of Protection
- DOL in community settings (e.g. supported living, own home etc.) must be authorised by Court of Protection



The current English situation: 2014 onwards

2014 – Supreme Court decision in ‘Cheshire West’ broadened definition

“a gilded cage is still a cage” (Lady Hale)

Many thousands more placements (including many in community settings) need formal authorisation in order to be lawful

DOLS system – lots of paperwork and no resources

Community Settings – going to Court of Protection expensive and lots more paperwork, issues over representation of P



The current English situation



The current English situation: Reform Proposals

Law Commission:

Comprehensive multi-level
“Protective Care”

Government response: “priority
... real, tangible benefits ...
should not be about ensuring
legal compliance purely for the
sake of legal compliance.”

Law Commission:

“concluded new scheme should
focus solely on ensuring that
those deprived of their liberty
have appropriate and
proportionate safeguards”



Why is this an autism issue?

- Large numbers of Autistic adults are affected - although no-one knows how many
- DOL can be lifelong so different needs from larger elderly group
- Capacity assessment and care issues due to poor levels of autism knowledge, so independent review particularly important



The key issues

1. On what basis should a decision be made to infringe someone's liberty? Is having a disability a good reason?
2. a) How to create legally robust protection for such a large group of individuals in such a variety of settings which is manageable administratively and in terms of cost?

b) Ensuring that progress so far is not undone by current political climate



Which way to go?

