

Chapter 15: The Court of Protection and Deprivation of Liberty Safeguards

This lecture looks at the role of the Court of Protection and the highly contentious Deprivation of Liberty Safeguards, soon to be replaced by the Liberty Protection Safeguards. Unlike the last lecture, this one is roughly evenly split into the two halves. For this edition the final slides have been updated to take account of the new law, but note it is not due to be implemented until April 2022, and even then DOLS will run alongside it for a period. We have not chosen to do anything specific on Covid 19 in this lecture, but there are some things you could add from the textbook if you wished. No doubt as time goes on the problems in this area caused by Covid will be revealed.

The first 4 slides after the outline are about the Court of Protection – its role and its relevance to social work practice. You should stress that it is not normally the role of the court to decide on capacity – that is for those working closely with the service user who have been properly trained. However the CofP will get involved if necessary as slide 4 shows.

Slide 7 introduces the need for some sort of legal intervention around issues of restraint. Slide 8 raises the difficult issue of when restraint turns into deprivation of liberty. Slide 9 explains the legal background and the principles informing the DofL safeguards. The important point is that if someone is to be deprived of their liberty when they are in a residential care setting application must be made to a local authority or primary care trust to make that decision.

Slide 10 looks at the Cheshire West case and the difficulties that introduced for local authorities. Before someone can be lawfully deprived of their liberty in a community or domestic setting an application must be made to the Court of Protection. You can ask the students why this has caused such difficulties and why the Law Commission was given the job of reform.

Slide 11 outlines the Law Commission project and recommendations.

Slide 12 then outlines the changes brought about by the Mental Capacity (Amendment) Act 2019 which introduces Liberty Protection safeguards.

Slide 13 explains the benefits to local authorities.

Slide 14 sets out the criticisms of the proposals.