

Survey Results: The Deprivation of Liberty Safeguards

The Deprivation of Liberty Safeguards are due to come into force in April 2009. Where an individual is deprived of their liberty as a result of their care plan, it will be necessary to apply to the local authority or PCT for a formal “*authorisation*”.

The government variously estimate that between approximately 5,000 and 20,000 applications per annum are likely to be needed. We had thought that this would be an under estimate and have therefore undertaken a survey to try and estimate the likely number of applications.

A survey of clients and contacts running independent hospitals and care homes shows that there is a great demand for information on the proposed regime. 91% of respondents felt that more information and training was needed on this. Only 75% felt that they understood the new regime.

It is difficult to calculate precise numbers of those likely to be affected by authorisation applications. However 68% of respondents confirmed that their residents were not free to leave the unit when they wished (which was

how the court has defined a deprivation of liberty) although interestingly only 40% felt that this care plan amounted to a deprivation of the resident’s liberty.

If this is a fair reflection of the numbers likely to be affected by the deprivation of liberty safeguards, then clearly there are likely to be significantly more of these than the government anticipate. The government have estimated that there are approximately 50,000 people who lack capacity. On that basis over 30,000 applications could be expected in the first year. Much will depend on the extent to which a resident’s care plan does indeed amount to a deprivation of their liberty.

Clearly there has been some success in communicating the need to regularise the position because the same percentage of respondents who recognised that the circumstances might amount to a deprivation of liberty acknowledged that they would need to apply for an authorisation when the Deprivation of Liberty Safeguards become effective next year. Pending that legislation coming into force, application could be made pursuant to

Section 15 of the Mental Capacity Act for a court order authorising deprivation of liberty. 37% of respondents

indicated that they were proposing to make such applications.

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