

The Deprivation of Liberty Procedures: Safeguards for Whom?

PROGRAMME

- 9.00am Registration
- 9.30am Welcome by the Conference Chair **Professor Richard Jones** and **Sophy Miles**, Chair of the Law Society's Mental Health and Disability Committee
- 9.40am **Phil Fennell** and **Lucy Series** 'Safeguards or Just Procedures: A Human Rights Act Health Check of Deprivation of Liberty under the MCA
- 10.20am **Professor Peter Bartlett** 'The DoLs in the House of Lords: What the ad hoc Committee said, and where do we go from here?'
- 11.00am Questions and discussion
- 11.15am Coffee
- 11.35am **Paul Bowen**, 'Deprivation of Liberty after Cheshire West'
- 12.05pm **Neil Allen**, 'The Nub of the Matter: Article 8'
- 12.40pm Discussion
- 1.00pm Lunch
- 2.00pm The DoL Procedures – Solicitors Perspectives **Susan Thompson, Sophy Miles** and **Paula Scully**.
- 3.00pm The DoL Procedures - Carers' Perspectives **Roger Hargreaves, Graham Enderby**, and **Mark Neary**
- 4.00pm Questions and discussion
- 4.15pm Close



The Law Society

113 Chancery Lane,
London

13 June 2014

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It is five years since the Deprivation of Liberty (DoL) procedures under the Mental Capacity Act 2005 were introduced to comply with the ruling in *HL v United Kingdom*. They have engendered great controversy. The procedures are only to be used where there is a deprivation of liberty. There has been much debate and uncertainty about what this means in practice, leading to confusion on the part of health and social care professionals, lawyers, and the courts over when a patient will be entitled to the safeguards, as well as wide variations in their use across England and Wales.

This National Conference, jointly sponsored by the Cardiff University Centre for Health and Social Care Law and the Law Society's Mental Health and Disability Committee, will discuss the extent to which the current procedures comply with international human rights standards, and whether they offer adequate protection for the rights of service users and their carers. The Conference will focus on the implications of the ruling of the Supreme Court in *P v Cheshire West and Chester Council* and *P and Q v Surrey Council*, as well as the likely impact of the Report of the House of Lords Committee on the Mental Capacity Act. The Conference will be of especial relevance to everyone interested in or affected by the DoL procedures, be they service users, carers, advocates, health and social care practitioners, lawyers, judges, service providers and policy activists, academics.

The Conference brings together leading experts on the DoL Procedures. Professor Richard Jones, author of the Mental Health Act and Mental Capacity Act Manuals will chair the Conference. Sophy Miles, chair of the Law Society's Mental Health and Disability Committee will open the Conference. Her firm have represented many clients wishing to challenge DoL authorisations.

Phil Fennell and Dr Lucy Series offer a Human Rights Audit of the DoL procedures in the light of the considerable body of relevant Strasbourg case law since *HL v United Kingdom*, touching briefly on the United Nations Convention on the Rights of Persons with Disabilities.

This will be followed by a presentation by Professor Peter Bartlett, Professor of Mental Health Law and specialist legal adviser to the House of Lords Committee on the Mental Capacity Act on the Committee's recommendations about the DoL procedures.

After coffee there will be two presentations by barristers who appeared in Cheshire West, Paul Bowen QC, who represented the Equality and Human Rights Commission, and Neil Allen who represented the local authority. Paul will discuss Deprivation of Liberty after Cheshire West, and Neil will explain issues raised in relation to Article 8 of the European Convention on Human Rights.

The first afternoon session will offer solicitors' perspectives on DoLs from three members of the Law Society Mental Health and Disability Committee: Sophy Miles, Susan Thompson, a partner at DAC Beachcroft LLP with extensive experience in acting for health service bodies in DoL related matters, and Paula Scully an Adult Care Solicitor in Derbyshire County Council specialising in Deprivation of Liberty issues.

The final session will offer a carers perspective when Roger Hargreaves will interview Graham Enderby, one of HL's carers who brought the challenge which culminated in *HL v United Kingdom*, and Mark Neary who in 2011 successfully challenged his son Stephen's deprivation of liberty in *London Borough of Hillingdon v Neary*.



Artwork by LB a young learning disabled man who drowned in the bath in an assessment and treatment unit in July 2013. He loved life, buses and London.



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SPEAKERS

Neil Allen is a Lecturer at the University of Manchester specialising in mental health, incapacity and human rights law. Neil is also a Barrister at Thirty Nine Essex Street Chambers (Manchester and London), practising mainly in the Court of Protection, often in cases concerning deprivation of liberty issues. As Deputy Director of the Manchester Legal Advice Centre, he provides and promotes the provision of free legal advice, and also does voluntary work as a Trustee for the mental health charity, Making Space.

Peter Bartlett is Nottinghamshire Healthcare NHS Trust Professor of Mental Health Law at the University of Nottingham. He is the author of *Blackstone's Guide to the Mental Capacity Act* (2nd ed., OUP, 2007), (with Oliver Lewis and Oliver Thorold), *Mental Disability and the European Convention on Human Rights* (Martinus Nijhoff, 2006), and with Ralph Sandland *Mental Health Law: Policy and Practice* (4th Edn) (OUP, 2013). Professor Bartlett was specialist advisor to the ad hoc committee of the House of Lords on the implementation of the Mental Capacity Act in 2013-14.

Paul Bowen is a Queen's Counsel at Doughty Street Chambers. He specialises in public law and human rights law in a number of areas including healthcare, mental health and community care law. Paul was counsel in the Bournemouth litigation culminating in *HL v UK*, and appeared for the Equality and Human Rights Commission in the Cheshire West case. He is the author of the Blackstone's Guide to the Mental Health Act 2007.

Graham Enderby is the Mr 'E' of Mr & Mrs 'E', the carers for HL in the 'Bournemouth' case. They have supported other families and carers who find themselves at odds with professionals' decisions relating to MCA/DoLS. They have worked with the DH on the DoLS Code of Practice and on the External Reference Group for the Autism Strategy. They regularly speak at conferences and training courses providing insight into the impact of professionals' decisions on individual's lives and their families and carers.

Phil Fennell is a Professor of Law at Cardiff Law School, specialising in Public Law, Medical Law, Mental Health Law and Human Rights. He has written widely about mental health law. He is currently working with Dr Lucy Series on a project about health and welfare cases in the Court of Protection.

Roger Hargreaves has had a wide variety of roles in a 43 year career. He was a Mental Welfare Officer and Approved Social Worker for over 20 years; drafted BASW's evidence to the review in the late 1970s of the 1959 Mental Health Act; was one of the first members of the Mental Health Act Commission; and was BASW's lead during the protracted review of the 1983 Mental Health Act culminating in the revisions in 2007, as well as consulted on the draft DoLS proposals. He is DoLS lead for the Mental Health Alliance, and is a member of CQC's DoLS Advisory Group.

Richard Jones is a highly respected authority on mental health and mental capacity law, and member of the Law Society's Mental Health and Disability Committee. He is the author of various publications including the *Mental Health Act Manual* (16th Edition) and the *Mental Capacity Act Manual* (6th Edition). He was a member of the Department of Health's Advisory Group on the implementation of the Mental Health Act 2007. He is a Consultant on mental health and community care law at Morgan Cole Solicitors and is an Honorary Professor at Cardiff University Law School.

Sophy Miles was a founding partner of Miles & Partners LLP and is now a consultant there. She led the firm's mental health and mental capacity team for 16 years and was involved in several cases concerning the Article 5 rights of adults without capacity, including *London Borough of Hillingdon v Neary* [2011]. She is a fee paid judge of the Mental Health Tribunal.

Mark Neary is a counsellor and the father of Steven Neary who together made headlines and legal history when the Court of Protection decided that Steven had been unlawfully deprived of his liberty. Since the decision, Mark and Steven have continued to live together. Mark writes a blog (*Love, Belief and Balls*) and has written several books about his experiences as a carer grappling with adult social care. He regularly speaks at conferences on the MCA and the DoLS.

Paula Scully is an Adult Care Solicitor in Derbyshire County Council specialising in Deprivation of Liberty issues, and is a member of the Law Society Mental Health and Disability Committee. She has had extensive experience working as a Public Guardian in Australia, and for four years was Chairperson of the Hong Kong Guardianship Board.

Lucy Series is a research associate at Cardiff Law School, currently working with Phil Fennell on a project about welfare cases in the Court of Protection, funded by the Nuffield Foundation. Lucy's research interests include legal capacity, deprivation of liberty in social care settings and the United Nations Convention on the Rights of Persons with Disabilities. Prior to becoming a legal researcher, she worked in health and social care. Lucy writes *The Small Places* blog.

Susan Thompson is a partner at DAC Beachcroft. She is a member of the Law Society's Mental Health and Disability Committee. She has advised and defended NHS bodies, health and social care providers and regulators since 1987. She has acted in judicial review, habeas corpus and "best interest" cases as well as a wide range of cases under the Mental Health Act 1983.

BOOKING DETAILS

The fee per place is £150.00

To reserve a place contact Croeso Events on enquiries@croesoevents.co.uk
tel: 07891 452260



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Please note

Although the listed speakers have confirmed their intention to contribute to the Conference their attendance cannot be guaranteed.

Cancellations

All cancellations must be made in writing. If your booking is cancelled up to two weeks before the course, the full fee, less £30 administration charge, will be refunded. We regret that no refund is possible if notice of cancellation is received less than two weeks before the course date.

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CPD accreditation sought.