

Deprivation of Liberty Safeguard in Intensive Care

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Mental Capacity Act

- Deprivation of Liberty Safeguard authorisation is required under the Mental Capacity Act 2005
- P vs Cheshire West

JICS

- “Most patients in intensive care would fit the ‘acid test’ criteria

Council Advice – What is deprivation of liberty?

- Objective component of confinement in a particular restricted place for a not negligible length of time.
- The SUBJECTIVE component of lack of consent and
- The attribution of responsibility to the STATE

ACID TEST

- A person will be 'objectively confined' if they are
- A) under continuous supervision and control and
- B) if they are not free to leave.

Particular factors that might well lead to deprivation of liberty in ICU

- When a patient is alert enough to express an objection (albeit incapably so) to remaining on ICU, or is by their actions trying to leave and being prevented from doing so.

Particular factors that might well lead to deprivation of liberty in ICU

- When significant forcible physical or chemical restraint is required to get or keep a patient in ICU, (ie not merely sedating them to ease discomfort or to allow for easier ventilation but for example physical restraint or chemical sedation in excess of that which would usually be required

Particular factors that might well lead to deprivation of liberty in ICU

- When the patient is unable to maintain social contacts because significant social restrictions have been put in place by the hospital staff – such as curtailing the attendance of those who might wish to visit the patient

Particular factors that might well lead to deprivation of liberty in ICU

- Where a request by family or carers for the patient to be discharge to their care is refused.

D o H View

- The Department of Health does not consider a state of unconsciousness in itself as being a mental disorder. As such, we would not consider that an individual who is inconcsious and who does not have a mental disorder would be eligible for a standard authorisation

Law Society

- Identifying a deprivation of liberty: a practical guide
- Examples.