A qualitative evaluation study on the perception and operation of Deprivation of Liberty Safeguards in Old Age Psychiatry teams in Rhondda Cynon Taff and Bridgend in Mid Glamorgan, South Wales

Dr Gray A

July 2014
Volume 6
Issue 1
Doctors Academy Publications

For residential home or hospital patients suffering from mental incapacity their decision-making position may be undermined further by inappropriate deprivation of their liberty by others. To face these issues and bring greater order in 2008, amendments were made to the Mental Health Act of 2007 and the Deprivation of Liberty Safeguards (DOLS) introduced into the operation of the 2005 Mental Capacity Act were an important and much needed response to the 2001 Bournewood judgement.

DOCTORS ACADEMY

BETTER EDUCATION. BETTER HEALTH.

DOCTORS ACADEMY
Disseminating Medical Knowledge and Skills Globally
ISSN 2052-1715

WJMER

World Journal of Medical Education and Research

An Official Publication of the Education and Research Division of Doctors Academy

- Systematic Literature Review: Do Socio-economic Barriers Exist in British Medical School Admissions?
- An Argument to Integrate Social Media into Professionalism Training in Undergraduate Medical Education
- How Can the Efficacy of Acupuncture be Assessed in Improving Chronic Pain?
- I Sing the Body Electric: a Historical Perspective of Cardiopulmonary Resuscitation

What do nurses expect from newly qualified doctors?

The Management of Transient Loss of Consciousness (TLOC) in Adults and Young Adults

Training in cosmetic and reconstructive gynaecology

Basic Principles of Electrosurgery and Energized Dissection: Monopolar, Bipolar and beyond

A qualitative evaluation study on the perception and operation of Deprivation of Liberty Safeguards in Old Age Psychiatry teams in Rhondda Cynon Taff and Bridgend in Mid Glamorgan, South Wales

WJMER

World Journal of Medical Education and Research:
An Official Publication of the Education and Research Division of Doctors Academy

Introduction

The World Journal of Medical Education and Research (WJMER) (ISSN 2052-1715) is an online publication of the Doctors Academy Group of Educational Establishments. Published on a quarterly basis, the aim of the journal is to promote academia and research amongst members of the multi-disciplinary healthcare team including doctors, dentists, scientists, and students of these specialties from around the world. The principal objective of this journal is to encourage the aforementioned, from developing countries in particular, to publish their work. The journal intends to promote the healthy transfer of knowledge, opinions and expertise between those who have the benefit of cutting edge technology and those who need to innovate within their resource constraints. It is our hope that this will help to develop medical knowledge and to provide optimal clinical care in different settings. We envisage an incessant stream of information flowing along the channels that WJMER will create and that a surfeit of ideas will be gleaned from this process. We look forward to sharing these experiences with our readers in our editions. We are honoured to welcome you to WJMER.

Volume 6, Issue 1, 2014, World Journal of Medical Education and Research (WJMER). An Official Publication of the Education and Research Division of Doctors Academy Group of Educational Establishments.

Electronic version published at	:	Doctors Academy, PO Box 4283, Cardiff, CF14 8GN, United Kingdom
Print version printed and published at	:	Abbey Bookbinding and Print Co., Unit 3, Gabalfa Workshops, Clos Menter, Cardiff CF14 3AY
ISBN	:	*978-93-80573-35-9*
Designing and Setting	:	Doctors Academy, DA House, Judges Paradise, Kaimanam, Trivandrum, 695018, Kerala, India
Cover page design and graphics	:	Sreekanth S.S
Type Setting	:	Lakshmi Sreekanth
Contact	:	wjmer@doctorsacademy.org.uk

Clinical Study
DAUIN 20140049

World Journal of Medical Education and Research:
An Official Publication of the Education and Research Division of Doctors Academy

WJMER

A qualitative evaluation study on the perception and operation of Deprivation of Liberty Safeguards in Old Age Psychiatry teams in Rhondda Cynon Taff and Bridgend in Mid Glamorgan, South Wales

Dr Angharad Gray, MA(Oxon), MB BCh, MSc
Specialty Doctor in General Adult Psychiatry, Abingdon CMHT,
Oxford Health NHS Foundation Trust
Address for correspondence:
Dr Angharad Gray: AngharadPC@doctors.org.uk

Keywords:

Qualitative, Old age psychiatry, Capacity, Law, DOLS

Abstract

For residential home or hospital patients suffering from mental incapacity their decision-making position may be undermined further by inappropriate deprivation of their liberty by others. To face these issues and bring greater order in 2008, amendments were made to the Mental Health Act of 2007 and the Deprivation of Liberty Safeguards (DOLS) introduced into the operation of the 2005 Mental Capacity Act were an important and much needed response to the 2001 Bournewood judgement.

25 professional staff from three multidisciplinary Old Age psychiatry community mental health teams (CMHT's) in the Cwm Taff and ABM NHS Trusts were recruited for interview, six of whom were interviewed in a focus group.

DOLS was overwhelmingly perceived as protective for both patients and staff in contexts and circumstances which are frequently open to differing subjective interpretations typically in the difficult area of dementia care. Most professionals had a very good understanding of the principle of capacity, although a clear understanding of deprivation of liberty, the interface between the Mental Capacity Act 2005 and DOLS, and the role of the Bournewood judgement was less common. Training issues (regarding both timing and content) were identified as important for generating awareness, greater procedural clarity and encouraging collaboration and good communication. The role of the DOLS co-ordinator and liaison with senior medical members was identified as key. Local arrangements were more readily quoted than an awareness of the national picture. It was identified however that albeit rigorous procedures in place would operate better if simplified and made less involved .

This study was conducted systematically and objectively, analysis was intentionally pursued with necessary thoroughness and reflexivity.

Recommendations for future practice include the need for further equivalent research efforts in other geographical areas of the UK and for the application of DOLS to be more widespread across certain patient populations.

Introduction

The introduction of the Deprivation of Liberty Safeguards (DOLS) into the Mental Capacity Act (2005) was an important and needed response to the 2001 Bournewood judgement. Yet according to critics, it 'remains ambiguous and the safeguards do not provide clear guidance on the circumstances in which it occurs'. Shah and Heginbotham stated that DOLS has also 'exposed some anomalies and highlighted some difficulties in its implementation and application'. These criticisms appear to concur with the findings of the National Audit of Dementia (2011) which concluded amongst other things, that the scope of DOLS was too limited; its framework was too complex and that the interface between DOLS and the Mental Capacity Act (2005) was too complicated and lacked clarity. In the light of these findings, a qualitative study of the perceptions of DOLS, its effectiveness and utility, was carried out on members of multidisciplinary Old Age psychiatry community mental health teams (CMHTs).

Methodology

The literature review for this study was undertaken using an OVID keyword advanced search of Medline, Embase and Psychinfo electronic databases for journal articles written between 2010 and 2012. The primary keyword search was as follows: (elderly OR old; age OR aged OR geriatric) AND (mental capacity OR deprivation of liberty safeguards OR mental competency OR decision making) AND (nhs OR patients OR psychiatry OR Great Britain OR Wales OR mental health services). Papers were sourced and read with a list of questions for interviewees subsequently compiled. Twenty seven papers were found through this search.

The Cwm Taff NHS Trust ethics committee were approached in September 2011 and no ethical conflicts were found. Cwm Taff

Research and Development Group and DOLS Steering group for Cwm Taff NHS Trust were approached and backing obtained. A consent form consistent with Cwm Taff Research and Development requirements was developed and signed by each person interviewed prior to interview. In between interviews, the electronic recording device was kept securely under lock and key before being formatted. At all times the anonymity of interviewees was maintained.

The study, carried out in the first half of 2012, interviewed twenty five team members, including three consultant psychiatrists, five specialty trainee doctors as well as senior specialist nurses, social workers, occupational therapists and two DOLS assessors. The participants were all members of various multidisciplinary CMHTs in Cwm Taff and Abertawe Bro Morgannwg NHS Trusts. Twenty five individual interviews were carried out, lasting between twenty and thirty minutes, with a wide range of questions being asked such as, 'what is your understanding of the rationale for DOLS?' and 'what changes would you initiate to DOLS if you were able?' In addition to the interviews, a focus group of six participants was also carried out where perceptions of DOLS were discussed and where members could interact and share their knowledge, understanding and acuities.

Most of those who took part in the research had direct and personal professional experience of DOLS, all belonging to teams that were involved in its operation. Thus a combination of 'purposive' and 'snowballing' sampling techniques were employed. The sample was taken from two NHS Trusts in South Wales and was hence a localised study.

Results

The interviews and focus groups demonstrated considerable consensus in the views and perceptions of the participants.

Training

With the exception of an F1 doctor, all of the team members had been provided with specialist DOLS training, although this varied considerably in both its length and quality; foundation trainee doctors (with specific experience of working in a CMHT) having been given the least professional training in this area. Some respondents expressed their dissatisfaction with the training, describing it as 'unhelpful' and 'didactic in nature', while others perceived it to be 'informative', 'interactive' and 'very useful'. A number of members also complained about a lack of follow-up training and stated how useful this would have been. They also noted that they would have preferred a more holistic approach so that they had a greater understanding of how DOLS may affect all those involved in the process.

Perceptions of DOLS

Overall interviewees demonstrated good knowledge and understanding of the principle of capacity. Less good was their knowledge and understanding of DOLS, the interface between DOLS and the Mental Capacity Act and the Bournewood judgement.

It was generally considered that DOLS empowered people when the vulnerable person 'needs somebody to speak up for them'. It encouraged deeper thinking, as well as providing transparency, clarity and focus. Respondents were positive about the way that it encouraged assessments to be increasingly methodical and more clearly justified. Both a Consultant and a DOLS assessor commented that it was in place 'to fill the Bournewood gap' while a senior nurse saw DOLS as 'part of the shift in how people without capacity are considered'. She noted that this involved a rethink of the 'paternalistic - we know best- sort of attitude'. A social worker perspicaciously commented,

'There are two ways in which liberty can be taken away – via a judge and via mental health services and this has been a paradigmatic shift. This is the paramount thing about DOLS as it prevents a blanket policy that because they have a diagnosis, patients should therefore be deprived of their liberty.'

When asked about the perception of DOLS within their teams, including its rationale and operation, there was a very mixed response. Whereas one participant said of their team, 'we don't have a practicable working knowledge of it', a different participant conversely said of a different team that 'we have a very good perception of it and have lots of resources'. A Community Psychiatric Nurse felt 'most people within the community team understand what it involves and why it is there but do not have much on the ground experience of it or actual practical working knowledge of it'. If such variation exists within two NHS Trusts, the disparity in perceptions at a national level is likely to be even more severe.

There was also divergence in respondents' perceptions of whether or not DOLS was user-friendly. While some members commented that its impact had been relatively minimal and had not led to the huge burden of work that had been expected, others noted how panic and over-zealousness had initially set in in response, which was only recently beginning to subside. Its user-friendliness was particularly criticised by consultants, with one describing it was 'unyieldingly long and involving a lot of work' with another suggesting that it was 'too long, fussy and repetitive'.

The Operation of DOLS

There was almost universal consensus that in its operation, DOLS contained scope for personal interpretation. This was seen positively in many cases as it provided the needed flexibility. One respondent noted that when dealing with human beings, 'it cannot be mechanical and objective; there will always be an element of the subjective'. It was also said that 'when dealing with dementia, there will always be an element of interpretation as to why people are behaving in a particular way'. Nevertheless, it was generally observed that greater uniformity in interpretation was beginning to emerge and that there is currently less personal interpretation of DOLS than had been the case immediately after its inception.

When asked about the interface between DOLS and the Mental Capacity Act (2005) many respondents struggled to articulate an answer, with one consultant stating that he had never considered this before. Perhaps the most sagacious of answers was given by a specialty doctor who observed that for her, 'the Mental Capacity Act was theoretically only determining someone's capacity to make decisions for him or herself, but gave no direction'. In contradistinction, DOLS 'extends this to bring in a practical framework on the ground to protect rights when people are deemed not to have capacity involving best interest decisions.'

For some staff the increase in workload was worthwhile as the robust risk assessments were effective. For others the process was time-consuming and bureaucratic, with a more streamlined approach needed. It was generally agreed that the DOLS co-ordinator was important in keeping everyone on track.

Overall, those who participated in the study were generally positive about DOLS, believing that it added greater transparency and enabled external scrutiny. One consultant summed up the general sentiment of respondents by saying that 'DOLS had done what it was set up to do'.

Clinical Implications

Although in many senses, DOLS has appeared to achieve a measure of success, a number of important recommendations were suggested by respondents which could have helpful clinical implications.

Perhaps the most pressing changes which need to be made involve the simplification and streamlining of procedure. In practical terms this may mean fewer professionals being involved and greater clarification of the processes.

Concern was frequently raised about the limited applicability of DOLS and the need for it to cover vulnerable people in the wider community. Even within hospitals and residential care homes, special attention is needed to ensure that 'friendless patients' do not miss out in the process. The extent of this need and how it could be covered by DOLS are areas where further consideration is required.

If cognisance and appreciation of DOLS developed, then it would be used more frequently and applied more effectively. In many senses, DOLS offers positive protection for patients and staff, but the full impact of this will only occur when team members have greater familiarity and grasp of the knowledge base fostering better understanding of this important piece of legislation. Consideration of the implications of the use of DOLS, on a day-to-day level, relating to all those involved in the multidisciplinary process, whether it be patient, family member, consultant or social worker, is important.

Overall this study demonstrates that DOLS has been a welcome amendment to the Mental Capacity Act (2005) and had positive implications on clinical practice in Mid Glamorgan. It has become an integral part of the way that vulnerable people are protected and this is recognised by the whole spectrum of those involved with DOLS's implementation. Nevertheless, there is undoubtedly room for improvement and now that many of the teething problems have been eradicated and practitioners and policy-makers have allowed the dust to settle, it is perhaps time for a major assessment of DOLS's effectiveness, with the view to making the necessary and needed improvements, some of which have been highlighted by those involved in this particular study.

Recommendations: The findings from this small-scale, qualitative study highlight insightful trends in perceptions and experiences although there are probable limitations on the generalisability of these results nationally. There is a need for further research in this area including national qualitative evaluation studies of both the perceptions and operational effectiveness of DOLS taking place in the near future.

FIGURE 1: Main Research Questions

1. What DOLS training have you had? What was involved? What was your view of the DOLS training?
2. What is your understanding of the rationale for and operation of DOLS?
3. How do your team colleagues understand the rationale and operation of DOLS?
4. How user friendly are DOLS for you in your professional capacity?
5. Is there any scope for personal interpretation in DOLS?
6. What is the interface between DOLS and the 2005 Mental Capacity Act?
7. What do you think of the procedure and degree of involvement of DOLS assessment?
8. Are vulnerable people excluded from the protection of DOLS in your view?
9. What is your overall assessment of the effectiveness of DOLS?
10. What changes would you institute to DOLS if you were able to?

References:

1. Brindle, N. & Branton, T. (2010) Interface between the Mental Health Act and Mental Capacity Act: deprivation of liberty safeguards. Advances in psychiatric treatment, 16, 430-7.

2. Cairns, R. et.al (2011) Judgements about deprivation of liberty made by various professionals: comparison study. The sychiatrist, 35, 344-9.

3. Cairns, R., Richardson, G. & Hotopf, M. (2010) Deprivation of Liberty: Mental Capacity Act safeguards versus the Mental Health Act. The Psychiatrist, 34, 246-7.

4. Council of Europe. (2003) European Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe.

5. Dolan, B. (2011) How effectively are the safeguards offered by the MCA and DoLS delivering protection to those the legislation is aimed at? Unpublished lecture. Mental Capacity Act and Deprivation of Liberty Safeguards: A national conference exploring developments in practice, case law and inspection. 7th October 2011. The Royal College of Psychiatrists.

6. Dwyer, S. (2010) Deprivation of Liberty Safeguards and People with Dementia. British Journal of Social Work. 40. 1503-16. Eldergill, A. (2011) How far has the Court of Protection helped to define the appropriate use of DoLS and when to use the Mental Health Act 1983 rather than the MCA or DoLS? Unpublished lecture. Mental Capacity Act and Deprivation of Liberty Safeguards: A national conference exploring developments in practice, case law and inspection. 7th October 2011.

7. The Royal College of Psychiatrists.

8. Department for Constitutional Affairs (2007) Mental Capacity Act Code of Practice, London, The Stationary Office.

9. Department for Health (1959) Mental Health Act, TSO (The Stationary Office)

10. Department for Health (1983) Mental Health Act, TSO (The Stationary Office)

11. Department of Health (2005) The Mental Capacity Act. TSO (The Stationary Office)

12. Department of Health. (2007) Mental Health Act. TSO (The Stationary Office)

13. Department of Health (www.dh.gov.uk)(2011)

14. Department of Health (2008) Deprivation of Liberty Safeguards: Code of Practice to Supplement the Main Mental Capacity Act 2005 Code of Practice. TSO (The Stationary Office)

15. Halliday , S. (2009) Advance decisions and the Mental Capacity Act. British Journal of Nursing, Vol 18 11, 697-9.

16. Healthcare Inspectorate Wales (2011) DoLS in Wales. Information Brief April 2009-31st March 2010. 15th March 2011.

17. HL v UK (2005) 40 EHRR 437
JE and DE v Surrey County Council (2006) EWHC 3459 (Fam)
Knapp, M. et.al (2007) Dementia UK: The Full Report, London, Kings College London / Alzheimer's Society.

18. Law Commission (1995) Report on Mental Incapacity. (Law Commission Consultation Paper no 231) TSO (The Stationary Office)

19. Mental Health Alliance (2011) Report on Deprivation of Liberty Safeguards. Pre publication www.mentalhealthalliance.org.uk accessed December 2011.

20. Ministry of Justice (2008) Deprivation of Liberty Safeguards: Code of Practice to Supplement the Main Mental Capacity Act 2005 Code of Practice, London, The Stationary Office.

21. NHS Information Centre (2010) Community and Mental Health. Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) – First Report on Annual Data, 2009/10. Health and Social Care Information Centre.

22. NHS Information Centre (201) Community and Mental Health. Mental Capacity Act 2005, Deprivation of Liberty Safeguards Assessments (England) – Second Report on Annual Data, 2010/11. Health and Social Care Information Centre.

23. Royal College of Psychiatrists (2011) Report of the National Audit on Dementia Care in General Hospitals 2011. London: Royal College of Psychiatrists.

24. Shah, A. & Heginbotham, C. (2010) Newly introduced deprivation of liberty safeguards : anomalies and concerns. The Psychiatrist. 34. 243-5.

25. Shah, A., Heginbotham, C. & Kinton, M. (2009) Deprivation of Liberty Safeguards in England and Wales, Geriatric Medicine, 39, 216-18.

26. Social Care Institute for Excellence (2010) Mental Capacity Act 2005. At a glance 05 (June)

27. Social Care Institute for Excellence (2011) The Deprivation of Liberty Safeguards. At a glance 43 (July)

28. Stewart, R. (2006) Letter. British Medical Journal, 332, 118-9.

POSTER REFERENCES

1.Brindle, N, & Branton, T. Interface between the Mental Health Act and Mental Capacity Act: deprivation of liberty safeguards. *Advances in Psychiatric Treatment* 2010; **16**: 430-7**.**

2. Shah, A. & Heginbotham, C. Newly introduced deprivation of liberty safeguard: anomalies and concerns. *The Psychiatrist* 2010; **34**: 243-5.

3. Mental Health Alliance Report, Deprivation of Liberty safeguards Pre-Publication report, December 2011.

The World Journal of Medical Education & Research (WJMER) is the online publication of the Doctors Academy Group of Educational Establishments. It aims to promote academia and research amongst all members of the multi-disciplinary healthcare team including doctors, dentists, scientists, and students of these specialties from all parts of the world. The journal intends to encourage the healthy transfer of knowledge, opinions and expertise between those who have the benefit of cutting-edge technology and those who need to innovate within their resource constraints. It is our hope that this interaction will help develop medical knowledge & enhance the possibility of providing optimal clinical care in different settings all over the world.

DOCTORS ACADEMY
Disseminating Medical Knowledge and Skills Globally

ISSN 2052-1715

WJMER

World Journal of Medical Education and Research

An Official Publication of the Education and Research Division of Doctors Academy