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Are you ready to respond? Law Commission proposals for those deprived of their liberty

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This week, the Law Commission published its proposals for replacement legislation to safeguard people deprived of their liberty if they lack the mental capacity to consent. Following the Supreme Court Judgement (Cheshire West) in March 2014, this has applied to many more people and the existing mechanisms – Deprivation of Liberty Safeguards via the local authority for people in hospitals and care homes and via the Court of Protection in housing settings – are clunky and buckling under the strain. A knock-on consequence seems to be that in some cases, individuals' best interests take second place to avoiding court applications.

I don't yet know what the Law Commission is proposing but I don't envy them their job. To come up with something which upholds human rights and is workable, proportionate and affordable is quite a challenge. I know that they have gone out of their way to understand the different settings that the new proposals need to cover, including housing with care.

I've been thinking about what I'll be considering when looking at their proposals.

1. Are the recommended arrangements sufficiently independent of those making the care and living arrangements?
2. Do they get away from the "cliff-hanger" effect, enabling proportionate monitoring/scrutiny of arrangements for anyone lacking capacity to agree to the restrictions they are under? (It may be unrealistic to hope for this)
3. Are they likely to facilitate or impede a person's best interests in practice – do they minimise the risk of perverse incentives?
4. Are they clear, e.g. who does what in which settings?
5. If a single mechanism is proposed across all settings, is it congruent with housing models or does it cut across or undermine them?
6. Are they practical, streamlined and affordable to all concerned?
7. What is the impact on housing providers likely to be in terms of management, operations and finances?

Once I've seen the proposals these criteria are likely to change and develop: one or two may fall away while others are extended or new ones are added.

There will be a four-month consultation period and housing providers would be advised to consider the implications for their organisations and feed back their thoughts and concerns to the Law Commission. The Housing LIN, Sitra, the National Housing Federation and Arco have arranged two events, one in London on the 21st September

and the other in Manchester on the 22nd, giving housing providers the opportunity to hear what the Law Commission is proposing and to respond. For more information about these events and deprivation of liberty in housing settings generally, go to the Housing LIN's Deprivation of Liberty web-page at:

www.housinglin.org.uk/Topics/browse/HousingandDementia/Legislation/DoL

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