



President of the Association of Directors of
Adult Social Services
David Pearson



Chair of the LGA Community Well-being
Board
Cllr Izzi Seccombe

Norman Lamb MP
Minister of State for Care and Support
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

2 December 2014

Dear Minister,

Impact of Supreme Court Judgement on Deprivation of Liberty Safeguards

We very much appreciate the offer to meet you to discuss this urgent issue, as outlined in your letter of 2 September. Having hoped to meet you at the recent National Children's and Adult Services Conference, we now expect to see at your roundtable on 17 December – could we perhaps fit in a discussion at the end of this? We understand the pressures on your diary but there is a pressing need to ensure that some of the most vulnerable members of our community have their rights protected and we are both coming under considerable pressure to make a public statement soon.

As outlined in our previous letters to you, we are looking to Government to provide a swift solution. As highlighted throughout the recent Conference, this is one of the most significant issues facing our member authorities in adult social care.

The current grant simply does not reflect the new and expanded duties resulting from the Judgement. We are therefore seeking your agreement that additional funding must be made available on an ongoing basis as a matter of urgency to cover recurring costs.

As we also said before, as a result of insufficient levels of funding, vulnerable people are being unlawfully deprived of their liberty, are not having their best interests assured, and are being denied the opportunity to have independent scrutiny of their care arrangements that the process provides.

We are grateful to the DH for facilitating the data collection that allows fuller assessment of the scale of the impact of the Judgement for care homes and hospitals. As outlined in Appendix One, based on returns in quarter two, the projected number of applications at year end is now around 110,000. Based on this figure, the additional cost to Councils will be £96,800,000 in 2014/15. Councils are simply unable to provide this level of additional financial resource given the current pressures on budgets.

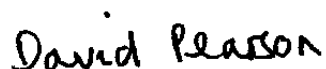
The rate of authorisations was 80% granted compared to 20% not granted, again heavily influenced by the very high number of applications which were not yet signed off or were withdrawn. Additionally councils face a huge increase in resources needed to fulfil the actions required to authorise deprivation of liberty in settings outside of hospitals and care homes (Community DoLs). This responsibility has never been funded and is in excess of anything previously estimated by ADASS/LGA. The cost of Community DoLs to the sector is not quantified as yet. We would like to work with government to collect further information to assess the cost burdens of Community DoLs, with a commitment that any financial burden be fully funded.

We wish to ensure that individuals have their needs met in a timely way via a proportionate and outcome-based process that safeguards individual rights. The lack of clarity post the Judgement is additionally placing councils at significant risk of legal challenge. We would also like a discussion with you on the specific circumstances in which the sector and government could work together on identifying a more proportionate response in advance of the Law Commission reporting in three years' time.

We welcome your recognition that the sector has done a great deal to minimise the additional burden of the judgement and also on promoting a greater understanding and more consistent application of the principles that underpin the Mental Capacity Act. However, as recent discussions on the cost implications of the Care Act highlighted, local authorities need to have confidence that they have sufficient resources to minimise the impact on other services and the wider community.

We very much hope that the meeting with you can focus on how best to find a joint resolution to these current, very pressing, issues. We look forward to a confirmed meeting date with you before Christmas as a matter of urgency.

Yours sincerely,

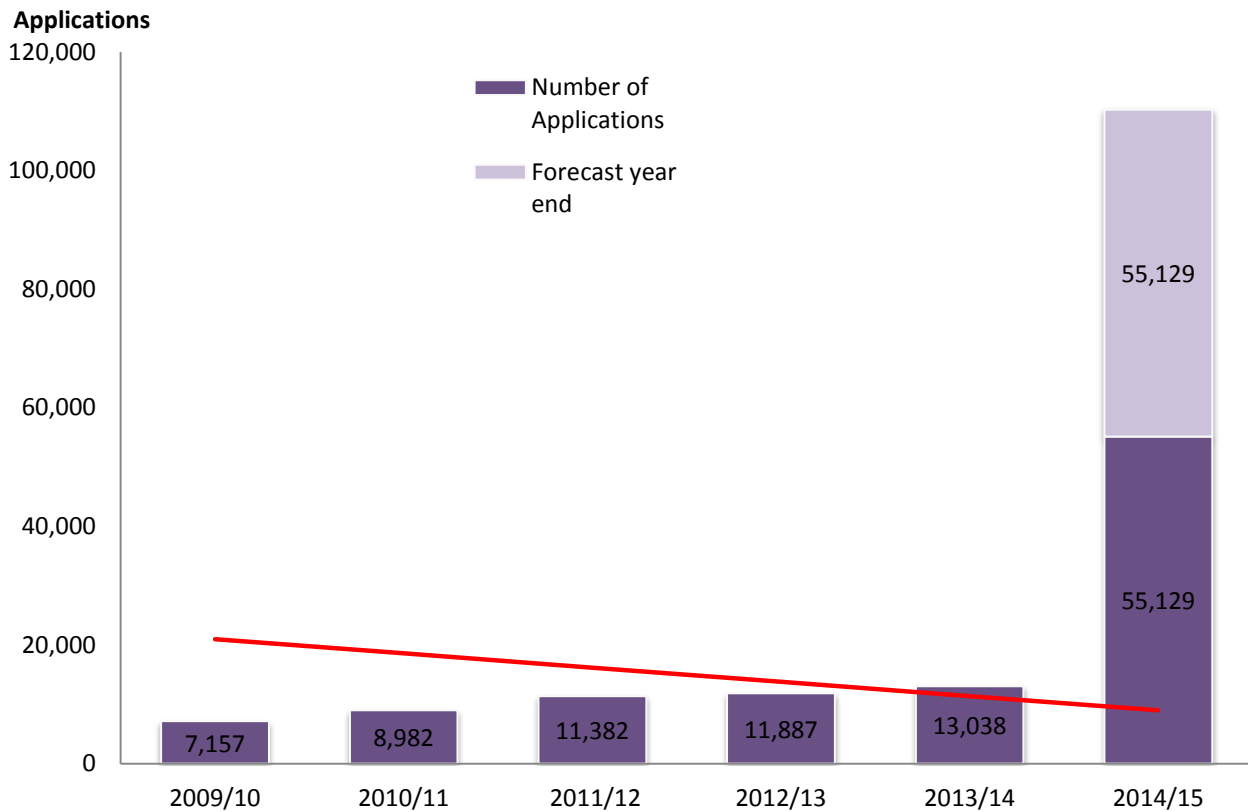


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Chair, Community Well Being Board,
Local Government Association

Number of Deprivation of Liberty Safeguards applications by year, England 2009/10 - 2014/15¹



¹ Source: 2009/10 - 2013/14 HSCIC Annual DoLS report, Quarter 2 Return, 2014-15 HSCIC DoLS report.

Forecast year end: the forecast is based on data from 141 (93% of councils) in Q1 2014/15 and 132 (87% of councils) in Q2 2014/15 on the assumption that Q1 & Q2 2014/15 data are representative of the number of applications that will be received in the remainder of 2014/15. For the purpose of this specific letter the assumption is based on reviewing the latest quarterly data published in 2010/11 which shows a uniform volume of applications across each quarter. **However, the number of applications could in practice vary by quarter, as demonstrated by the variance between Q1 and Q2 data and will need to reassessed when final outturn data is released.**