

From
The Chairman of the Association
Cllr David Sparks

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

30 July 2014

Dear Secretary of State,

RE: Impact of Supreme Court Decision re Deprivation of Liberty Safeguards

We are writing on behalf of the Local Government Association and the Association of Directors of Adult Social Services to outline the impact of the Supreme Court Judgment of the 19th March 2014 in the case of "P v Cheshire West and Chester Council and another". The Judgment is already having a significant impact on councils across the country and we would like to agree a shared response to the challenges presented by this change in the law, so that we can best protect the interests of the most vulnerable in our society.

The Judgment has led to a very significant increase in the number of people who will meet the criteria under the Deprivation of Liberty Safeguards (DoLS) and will therefore need to be assessed as part of the responsibilities of local authorities for such authorisations. In addition, many more people will be deprived of liberty outside the statutory scheme resulting in local authorities making applications to the Court of Protection.

In responding to this we want to ensure that:

- those who lack capacity, are in need of continual supervision and are not free to leave, have their best interests assessed in determining the appropriateness of any deprivation of their liberty (in line with the Supreme Court judgement and the Government's response to the report by the House of Lords Select Committee report on the Mental Capacity Act (MCA) in June 2014); and
- this process should be proportionate and avoid undue delay in ensuring that people's right to liberty is upheld and their needs and outcomes are met (for example in moving from a residential or hospital setting to a domestic setting with 24 hour support and supervision).

At the request of government, ADASS has led a multi-agency task force to establish what the impact of the Supreme Court judgement is on local authorities and to work together to identify potential solutions. This task force is considering where processes can be streamlined (within the law as it stands now) and we proposed a "fast track" process in our submission to the Court of Protection for the Hearing on 5 and 6 June 2014.

We have also advised local authorities and providers on how they can ensure their response is proportionate and lawful, and also that any care arrangements provided involve consideration of the MCA and the least restrictive alternative.

However, even if ongoing work to find cost-effective responses to the change in law is as rapid and effective as possible, there will still be very significant impacts on both Local authorities and the Court, which we must confront. Any previous diversity in understanding and application of the previous legal and statutory framework is also far outstripped by the impact of the changes to the law post the Judgement.

We cannot emphasise enough the scale of this challenge: a more than ten-fold increase in cases inevitably puts great strain on staff and on the ability to meet councils' statutory duties, as well as adding significant costs. Most importantly, it makes it harder to protect the interests of the most vulnerable people in society.

We are particularly concerned that:

- The effect of the Judgement has already gone well beyond anything assumed in the original impact statement;
- This is not a one-off adjustment: the impact will be sustained and given changes to the demographic profile in this country, will undoubtedly increase; and
- It has already created significant pressures across the health and social care system that means that vulnerable people's needs and best interests cannot be met in a timely way.

The rapid survey undertaken at the request of the Court by ADASS estimates that the assessments under the MCA Deprivation of Liberty Safeguards for individuals will increase from:

- A projected figure of 13,719 in 2013/14 to projected figures of over 138,000 in 2014/15 and nearly 176,000 in 2015/16 in hospitals & residential settings
- A projected figure of 212 to over 28,500 in 2014/15 and over 31,000 in 2015/16 in relation to DoLS requests for settings outside of hospitals & care homes, for example, supported living, shared lives, education settings.

The survey also indicated that the likely impact of the judgement due to more people needing to be considered would be, at the very minimum, £88 million above existing local authority MCA and DoLS funding of £35.2 million in 2014/15 and substantially higher than the costs outlined in the original impact assessment by government. This is highly significant and we urge an immediate response and welcome close working with the government to understand this new burden further.

We therefore formally need to request that the response to the Judgment is funded to ensure that vulnerable people are not unlawfully deprived of their liberty and that the Government meets its responsibilities to fund new burdens. We are keen to support councils in their responsibility to ensure that the appropriate staff are recruited and trained as quickly as possible so that the state moves as quickly as possible to ensure compliance with the law. But it is unreasonable to expect them to do this without additional funding.

Secondly, we believe there is an urgent need to change the law to apply the same DoLS process to settings other than hospitals and care homes (including supported living settings where the state has been involved in making those arrangements) as currently apply to residential and hospital settings. This would certainly be consistent with the need to ensure that best interests are assessed in a timely manner whilst leaving the courts to consider contentious cases. It is also consistent with wider mental health legislation and would overall be less expensive for the state.

Ultimately, our principal concern is that the rights and needs of the most vulnerable people in our society are met. We are very keen to work with government to resolve a highly unsatisfactory situation as soon as possible.

Yours sincerely,



Cllr David Sparks
Chair, Local Government Association

David Pearson

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

Cc Cllr Katie Hall, Danny Alexander MP, Chris Grayling MP, Kris Hopkins MP, Norman Lamb MP, Eric Pickles MP, Sir James Munby, Jon Rouse

