

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

Chair of the LGA Community
Wellbeing Board
Cllr Izzi Seccombe

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

24 March 2015

Dear Minister,

**Impact of Supreme Court Judgement on Deprivation of Liberty Safeguards (DoLS)
–Cheshire West**

Thank you for very much for meeting us on 25 February. We very much welcomed your recognition of the challenges facing the sector as a result of the Supreme Court judgement at the meeting.

We have not yet received a formal response from you as to the government's discussion on future funding. It would be very helpful to know whether you accept that Councils should be funded as a new burden and/or whether that you accept the need to revise the funding assumptions underpinning the government's impact assessment. We would be very grateful for a formal response from you by 31 March 2015. We then would be in a position to let our member local authorities know the outcome and to seek legal advice as to our next steps.

We believe the Cheshire West judgement creates a new burden under the Government's definition as it involves, "*authorities being asked to exercise existing powers and functions in new ways.*" Accordingly, this in-year and recurring cost pressure should be fully funded.

Government's original impact assessment outlined that; "the government will keep the matter under review in the light of future court judgements." We believe that the responsibilities now placed on local government are substantially higher than the one

envisaged in the original 2008 impact assessment in terms of definitions, scope and costs. The impact assessment stated that both numbers and levels of authorisations will decline, when the opposite has been the case.

We are aware that there is already funding available. The funding for Council's DoLs responsibilities outside hospitals is not the £35.2 million frequently quoted however. This funding consists of three separate components: £6.2 million was received this year via direct grant funding for DoLs in hospitals and £29 million is received via the general un-ringfenced funding. 60% of the general funding allocation is meant to be spent on Mental Capacity Act implementation and 40% on existing DoLS responsibilities. Therefore the total available to local authorities to carry out their DoLs responsibilities is £17.8 million this year.

However, if all this funding was used, it will still not cover the costs of the current levels of applications post the Cheshire West judgement. Based on the Department's own estimate of £1200 for the cost of a DoLs assessment, £35.2 million would fund just over 29,300 applications. The Health and Social Care Information Centre data shows that so far this year there have been 86,500 applications, with Quarter 4 still to be collected.

The LGA and ADASS estimate that the impact from the Cheshire West judgement is likely to cost, at a minimum, £96.8 million above the existing, allocated funding for 2014/15. This is not a one-off adjustment: the impact will be sustained through in-year reviews and, given changes to the demographic profile in this country, will undoubtedly increase.

Additionally, councils face an 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 the cost of Community DoLs to the sector is not as yet quantified. The impact assessment also never took into account the cost implications for reviews and renewal applications.

Under the new burdens doctrine, the Cheshire West judgement has led to, "*changes that would cause them (local authorities) to lose income*". The point also remains that the existing funding was never set up to fund the duties resulting from this Judgement.

This increase in costs also cannot be explained by any variation in understanding and application of the current responsibilities. We recognise that the levels of increase in applications will vary according to the degree to which local practice needs to change and also due to demographic differences. We are working with Councils to reduce any inconsistencies in understanding and practice. However, in every area costs are still higher than the current level of funding and is of such magnitude that it cannot be explained simply by variation in practice alone.

We remain keen to support the Law Commission's review but cannot wait for legislative change. This matter now needs immediate action, both on funding and on improving the process to ensure individual rights are upheld. Councils cannot - and should not be expected to - absorb this in-year cost pressure without avoiding an impact on other vital front line services.

Our previous correspondence to you has stressed that we welcome the Judgement as ensuring more people are protected by the Safeguards - but Councils simply do not have the resources to undertake these additional duties. As Lord Howe noted in recent House of Lords debate, there has been a ten fold increase since the Judgement and authorities are struggling to process these. Our primary concern is that people are being unlawfully deprived of their liberty as there simply are not the resources to process the number of assessments within the current statutory timelines.

A DoLS assessment also allows for care to be independently assessed to ensure it is still safe, unrestrictive and provided with dignity; people therefore are missing out on this opportunity or receiving it too late. It needs to be recognised that in not providing sufficient funding, this government is failing some of the most vulnerable members of our communities.

Yours sincerely,

David Pearson

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

A handwritten signature in black ink, appearing to read 'David Pearson', with a horizontal line underneath.

Cllr Izzi Seccombe
Chair, Community Well Being Board, Local Government Association