

Joint Committee on Human Rights

Committee Announcement

29 June 2018

For Immediate Release

The scheme safeguarding for people who lack mental capacity is 'broken', reform urgently needed says Joint Committee on Human Rights

In a report published today examining the Law Commission's proposals to reform the Deprivation of Liberty Safeguards scheme, the Joint Committee on Human Rights concludes that the current system is broken and that urgent action is needed. A copy of the report is attached to this email.

The Committee, made up of MPs and Peers and chaired by Harriet Harman MP, recommends that legislation is brought forward to implement the Law Commission's with Liberty Protection Safeguards ('LPS') which would authorise the specific arrangements that give rise to the deprivation of liberty, but in a lighter touch way than the current scheme. It supports the proposals to extend the protection into domestic settings provided that the definition of "deprivation of liberty" is established more clearly. Different laws and rights apply to people depending on whether their disorder is mental or physical. In the long term, this must also be solved.

The report emphasises the vital need to have mechanisms to ensure that arrangements made for people who lack capacity are in their best interests. It is also important that resources are, as far as possible, directed to care rather than to legal and bureaucratic processes.

The Deprivation of Liberty Safeguards (DoLS) scheme safeguards against the arbitrary deprivation of liberty of people who lack capacity to consent to their care or treatment, such as people living with dementia, people with autism and people with learning disabilities, providing legal authorisation for depriving a person of their liberty in a care home or hospital setting. However, there is widespread consensus that the scheme is broken.

70 per cent of the almost 220,000 applications for DoLS in 2016 -17 were not authorised within the required time frame. Consequently, many people are currently unlawfully deprived of their liberty, in breach of Article 5 ECHR. As many as 100,000 people are currently affected: the system is so broken those responsible for them have to consider how best to break the law.

The decision of the Supreme Court in *Cheshire West* was that the “acid test” for deprivation of liberty is whether a person is under continuous supervision and control and not free to leave regardless of whether they are content or compliant. Extending the existing scheme to all those caught by this definition could cost £2bn a year. The Committee calls for Parliament to consider the definition of deprivation of liberty in the context of mental capacity law, ensuring the safeguards of Article 5 apply to those who truly need them. Unless the fundamental issue of definition is addressed, there is a risk that the Law Commission's proposals may become as impractical as the current scheme.

Notes to Editors:

A summary of the way each scheme operates is appended to the report for reference.

FURTHER INFORMATION

More about the committee's work [here](#)

Committee Membership is as follows:

Ms Harriet Harman MP (Chair) (Labour)
Fiona Bruce MP (Conservative)
Ms Karen Buck MP (Labour)
Alex Burghart MP (Conservative)
Joanna Cherry MP (SNP)
Jeremy Lefroy MP (Conservative)

Baroness Hamwee (Liberal Democrat)
Baroness Lawrence of Clarendon (Labour)
Baroness Nicholson of Winterbourne (Conservative)
Baroness Prosser (Labour)
Lord Trimble (Conservative)
Lord Woolf (Crossbench)

Website:<http://www.parliament.uk/jchr>