



**Joint Committee on Human Rights**  
Committee Office · House of Commons · London · SW1A 0AA  
Tel 020 7219 4710 Email [JCHR@parliament.uk](mailto:JCHR@parliament.uk) Website [www.parliament.uk](http://www.parliament.uk)



From Joanna Cherry KC MP, Chair

Helen Whately MP  
Minister of State for Social Care  
**Department for Health and Social Care**

26 May 2023

Dear Helen,

Many thanks for your letter of 5 April 2023 about the delay in the implementation of the Liberty Protection Safeguards (LPS). LPS are intended to replace the existing Deprivation of Liberty Safeguards (DoLS), which are safeguards used for the protection of people who are deprived of their liberty but lack the capacity to consent to their treatment and care. The LPS were originally planned to be rolled out in April 2022, but implementation has now been delayed beyond the life of this Parliament. This delay is deeply concerning, given the serious problems with the DoLS system that we reported on last year.

In 2018, our predecessor Committee highlighted that the DoLS system was “broken and, as a result, thousands of people” were being unlawfully detained.<sup>1</sup> Our inquiry into protecting human rights in care settings reported in July last year. It found that serious problems with the operation of DoLS remain. There are still significant delays in processing, a lack of access to legal aid for those who wish to challenge their deprivation of liberty, and a general poor understanding of the system by those involved in DoLS decisions.

If anything, problems with DoLS appear to be getting worse. The latest official statistics about DoLS show that the proportion of standard applications completed within the statutory timeframe of 21 days was 20% in 2021-2022, falling from 24% in the previous year. The average length of time for all completed applications was 153 days, compared to 148 days in the previous year.<sup>2</sup> This means that the vast majority of people subject to DoLS are unlawfully deprived of their liberty while their applications are being processed. As we noted in our report on protecting human rights in care settings, “[e]very person who is deprived of their liberty without the completion of an application within statutory timeframes is unlawfully deprived of their liberty. Where

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<sup>1</sup> Joint Committee on Human Rights, Seventh Report of Session 2017–19, [The Right to Freedom and Safety: Reform of the Deprivation of Liberty Safeguards](#), HC 890/HL Paper 161, para 8.

<sup>2</sup> NHS Digital, [Official Statistics: Mental Capacity Act 2005, Deprivation of Liberty Safeguards, 2021-22](#), 11 August 2022.

this happens, it is clearly unacceptable and constitutes a breach of the right to liberty and security (Article 5 ECHR)<sup>3</sup>.

Further, as we also noted in our report, it is imperative that those subject to a deprivation of liberty can challenge it: “non-means-tested legal aid must be available for all eligible persons subject to deprivation of liberty, regardless of whether an authorisation is in place”.<sup>4</sup> In cases where a DoLS authorisation is already in place, non-means-tested legal aid is available to challenge it. However, where there has been a delay in granting a DoLS authorisation, or where the route of authorisation is to the Court of Protection, the person will not have access to non-means-tested legal aid. The Mental Capacity Act 2005 Draft Code of Practice highlighted that the new LPS system would make non-means tested legal aid available before applications are finalised.<sup>5</sup> It is unclear if any expansion of non-means tested legal aid is being considered for the DoLS in the short term.

We also remain concerned that those involved in making DoLS decisions do not receive adequate human rights training, and that some providers may not have sufficient understanding of the operation of the system, a situation that may have worsened as a result of the uncertainty about the implementation of the LPS. The Care Quality Commission (CQC) has highlighted concerns about knowledge of the DoLS as providers started to switch focus to the LPS:

With providers increasingly looking towards the introduction of the Liberty Protection Safeguards (LPS), providers’ focus on DoLS has waned and training in some areas has stagnated. Poor understanding of DoLS has remained a fundamental issue.<sup>6</sup>

It is clear that the system of DoLS is in urgent need of reform. The Government itself has accepted this is the case<sup>7</sup> and yet the introduction of the LPS system has once again been delayed. I would be very grateful if you could please provide a response to the following questions by 14 June.

1. Does the Government still believe that the system of DoLS is in need of reform? If so, given the delay in the implementation of the LPS, are any reforms of the system currently planned in the interim?
2. What steps are being taken to address the delays to the processing and completion of DoLS applications, with the aim of ensuring that no one is unlawfully deprived of their liberty in a care setting?

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<sup>3</sup> Joint Committee on Human Rights, Fourth Report of Session 2022-23, [Protecting human rights in care settings](#), HC 216/HL Paper 51, para 53.

<sup>4</sup> Joint Committee on Human Rights, Fourth Report of Session 2022-23, [Protecting human rights in care settings](#), HC 216/HL Paper 51, para 55.

<sup>5</sup> The Draft Code stipulates: “when an application is made to the court in relation to the reliance of section 4B, whilst a decision about an LPS authorisation is being made, there is no means test for legal aid for the person or their Appropriate Person”. [Mental Capacity Act 2005 Draft Code of Practice. Including the Liberty Protection Safeguards](#).

<sup>6</sup> Care Quality Commission, [The impact of COVID-19 on the use of Deprivation of Liberty Safeguards](#), 12 May 2022.

<sup>7</sup> Joint Committee on Human Rights, Third Special Report of Session 2022-23, [Protecting human rights in care settings: Government Response to the Committee’s Fourth Report](#), HC 955, p 9.

3. Will the availability of non-means-tested legal aid be extended to include those who may be subject to deprivation of liberty in care settings without an authorisation in place?
4. What steps are being taken to ensure that those involved in making DoLS decisions receive adequate human rights training, and fully understand the operation of DoLS?

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanna Cherry', with a large, stylized flourish at the end.

**Joanna Cherry KC MP**

Chair of the Joint Committee on Human Rights