



Department of Health & Social Care

*From Alison McGovern MP
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Lord Alton of Liverpool
Chair, Joint Committee on Human Rights

8 September 2026

Dear Lord Alton,

Supreme Court judgment on the meaning of “deprivation of liberty”

Thank you for your letter of 8 July on the Supreme Court’s judgment and its implications for the operation of deprivation of liberty safeguards. I welcome the Committee’s interest in this important issue. I apologise for the delay in responding.

The Government recognises that the judgment has significant implications for health and social care decision-making and for individuals who may previously have been considered deprived of their liberty. Following publication of the judgment, the Department issued guidance and my officials continue to work with stakeholders across the health, social care, legal and voluntary sectors to consider the implications of the ruling.

To support consistent implementation of the judgment, we plan to publish additional guidance in the autumn to drive a consistent approach. We are working with a range of stakeholder partners and charities to develop this guidance.

Government approach and any legislative response

The Government respects the Supreme Court’s decision. The judgment provides important clarification of the factors relevant to determining whether a person is deprived of their liberty for the purposes of Article 5 of the European Convention on Human Rights. The Government’s immediate priority is to support the health and care sector to understand the judgment and apply it lawfully and consistently.

The Supreme Court has clarified the correct legal approach for determining whether a person is deprived of their liberty for the purposes of Article 5. Although some concern has been expressed about the judgment potentially removing safeguards from vulnerable people, it’s important to recognise that wider statutory protections provided through, for example, the Mental Capacity Act 2005, the Care Act 2014 and the Human Rights Act 1998, and other relevant legal frameworks, continue to apply.

Consistency and training

We recognise the importance of consistent decision-making in light of the Supreme Court’s clarification that determining deprivation of liberty requires a multifactorial assessment of the person’s circumstances and an assessment of whether valid consent has been given.

The Department's guidance published on 15 June emphasises the importance of a proportionate and considered approach. My officials are engaging with local authorities, NHS organisations, professional bodies, regulators, representative and charitable organisations to identify areas where further support may be beneficial and what form this support might take.

Any further guidance would seek to support a shared understanding of the judgment and assist decision-makers in applying it in practice. Existing statutory guidance, including guidance issued under the Care Act 2014, alongside relevant professional standards and legal duties, will continue to provide an important framework for decision-making and wider protections for individuals.

Safeguards relating to valid consent

The Government agrees that robust safeguards remain essential where decisions affect people's liberty and autonomy.

The judgment does not remove the need for careful, person-centred assessment. Decision-makers must continue to consider the individual's circumstances, wishes and feelings and act in accordance with the wider legal framework. The guidance we published on 15 June makes clear that where there is uncertainty about whether a person is deprived of their liberty, or where there is doubt about whether apparent agreement amounts to valid consent, practitioners should seek appropriate advice and consider referral to making use of existing legal processes, including an application for Deprivation of Liberty Safeguards or a referral to the Court of Protection where appropriate.

A key safeguard is that determinations should be made on the facts of the individual case. The Government does not expect superficial or rushed assessments. Local authorities, NHS bodies and providers remain responsible for ensuring that assessments are conducted appropriately and in accordance with their legal obligations.

Disability and discrimination

The Government is committed to upholding the rights of disabled people and ensuring compliance with equality and human rights legislation.

Decision-makers must continue to take account of the individual's rights, wishes, feelings and circumstances. The principles of the Mental Capacity Act 2005 remain fundamental, including the requirement to take all practicable steps to help the person make the decision for themselves before concluding that they lack capacity to make the decision in question. The Government's ongoing work with stakeholders will include consideration of how further guidance can support lawful, rights-based and non-discriminatory practice.

Implications for children

While this was not a children's law case and did not concern the deprivation of liberty of children, Article 5 applies to both adults and children. The government remains committed to protecting the rights of vulnerable children and local authorities have a duty to safeguard and promote the welfare of every looked after child. In exceptional circumstances, this might include placing restrictions on the child where this is required to keep the child safe. Those

involved in the child's care must continue to ensure the relevant court approval is obtained where restrictions amount to a deprivation of liberty.

Assurances for families

Families can be assured that the judgment does not remove the wider framework of protections that exist for people receiving health and social care support. The judgment forms the basis of avoiding unnecessary interference with private and family life, while ensuring that appropriate safeguards remain in place where a person is deprived of their liberty.

The Supreme Court's decision concerns the legal test for determining whether a person is deprived of their liberty for the purposes of Article 5. It does not alter the fundamental duties owed to individuals, for example under the Mental Capacity Act 2005, the Care Act 2014, the Human Rights Act 1998 and equality legislation.

Organisations and practitioners are expected to place individuals at the centre of decision-making, to involve families and those close to the person wherever appropriate, and to ensure that any restrictions are lawful. This requires any restrictions to be proportionate and necessary. We remain committed to supporting the implementation of the judgment in a way that protects people's rights, dignity and well-being.

Thank you again for writing. I hope this response is helpful and I would be pleased to keep the Committee informed as the Government's work in this area progresses.

Yours sincerely,



ALISON MCGOVERN

MINISTER OF STATE FOR SOCIAL CARE