Department of Health & Social Care

From Alison McGovern MP
Minister of State for Social Care and Mental Health

39 Victoria Street
London
SW1H 0EU

Alex Sobel MP
Chair, Joint Committee on Human Rights
House of Commons
Westminster
SW1A 0AA

13 November 2026

Dear Alex,

Supreme Court judgment on the meaning of "deprivation of liberty"

Thank you for your letter of 15 October about the Supreme Court's judgment and its implications for the operation of the safeguards for those deprived of their liberty. I congratulate you on your election as Chair of the Joint Committee on Human Rights and welcome the Committee's continued interest in this important issue.

I recognise that the Committee remains concerned about how the judgment will operate in practice, particularly for people who may no longer be considered deprived of their liberty for the purposes of Article 5 of the ECHR. I apologise for the delay in responding.

Stakeholder engagement

The Department is working with health and social care stakeholders to understand both the immediate and longer-term implications of the judgment. This includes engagement with local authorities, Deprivation of Liberty Safeguards leads, NHS organisations, care providers, professional bodies, regulators, representative organisations, and charities, including those that support carers and service users.

This engagement has included meetings, discussions with expert groups, focus groups to explore issues relating to the assessment of both the objective and subjective elements of deprivation of liberty, and feedback from those responsible for applying the judgment in practice. This engagement is informing the development of further interim guidance.

The possible wider implications of the judgment will also be considered alongside the Government's response to the Casey Commission, including work to review statutory safeguarding duties.

Additional interim guidance

Additional interim guidance is currently in development. The guidance cannot determine an outcome for every set of circumstances, because each assessment is specific to the person and the facts of their situation.

We anticipate it will support a shared understanding of the judgment and assist decision makers applying it in practice by:

- Providing a structured explanation of the multifactorial assessment, including the relevance of the factors identified by the Supreme Court;
- Being clear about when valid consent should be considered as part of an assessment of deprivation of liberty;
- Providing tailored advice for best interest assessors, managing authorities, supervisory bodies, advocates, families and carers;
- Providing case studies with learning from each;
- Providing more detailed guidance around safeguards for those no longer subject to a DoLS authorisation;
- Advising decision-makers to take a cautious approach where evidence is incomplete or conflicting.

Monitoring the impact of the judgment

The Department recognises the importance of understanding the consequences of the judgment and its impact on practice.

Conversations with a several local authorities have led us to conclude that the existing annual data collection remains adequate to monitor the impact of the Supreme Court judgment. We are exploring adding an additional voluntary question to the 2026/27 data collection that asks whether the Supreme Court judgment affected the outcome of an application. We do not currently propose more substantive or mandatory changes to the data collection, in keeping with the New Burdens Doctrine which aims to keep data collection burdens on local authorities proportionate and justifiable.

As set out in my previous letter, the Department maintains the view that the judgment does not remove the wider protections available to people with care and support needs. For example, the Mental Capacity Act 2005, the Care Act 2014, the Human Rights Act 1998 and equalities legislation continue to apply, alongside regulatory oversight, professional responsibilities and other relevant legal duties.

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

Yours sincerely,



ALISON MCGOVERN

MINISTER OF STATE FOR SOCIAL CARE AND MENTAL HEALTH