

WMADASS DoLS signatories newsletter December 2025

Welcome to the last newsletter of 2025. These newsletters are aimed at those who sign DoLS authorisations.

The intention of this newsletter is to keep DoLS signatories /authorisers up to date with practice changes and case law.

On 20-22nd October there was an important hearing in the Supreme Court.

Usually, we experience a case getting to the Supreme Court when it has been through the lower courts and there are people at the heart of the case. This case was different. It was a reference by the Attorney General for Northern Ireland essentially asking a policy question. Could they describe valid consent in the Code of Practice to mean consent inferred from a person's wishes and feelings, even though that person lacks capacity for care and treatment decisions. If so, this would not engage Article 5 and there would be no DoLS type process required.

As this would clearly have UK wide implications other people joined to represent Scotland, Wales and DHSC along with Mencap, Mind and the Autistic Society.

It was a long and complex discussion over three days. The charities were concerned that people may be seen to be compliant and could in fact be pressured into compliance, when that is not in line with their wishes. The judges themselves appeared to know very little about DoLS or the situation on the ground. DHSC asked the Court to re-examine Cheshire West, arguing it had been wrongly decided, but we don't yet know if that will be accepted.

The timing is key as the LPS announcement was made the weekend before this hearing. The SC are not likely to give a judgement on this for around 6 months and clearly it would affect the meaning of deprivation of liberty.

Further materials on the Supreme Court hearing

Myself and Claire Barcham from ADASS discuss the hearing and implications.

[From deprivation of liberty to liberty protection - why we need a different approach to safeguarding liberty - ADASS](#)

A huge number of blogs following the hearing can be found here.

[Commentary on the UK Supreme Court case about deprivation of liberty – Promoting Open Justice in the Court of Protection](#)

The recording of the hearing is still available here

[A Reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 - UK Supreme Court](#)

Libert Protection Safeguards announcement

<https://www.gov.uk/government/news/improved-safeguarding-and-protections-for-vulnerable-people>

A consultation on the Liberty Protection Safeguards (LPS) will be launched in the first half of next year. The consultation will be jointly run by Department of Health and Social Care and Ministry of Justice (MoJ).

DHSC say they are “launching this consultation because of the longstanding and compelling case for reform of the outdated Deprivation of Liberty Safeguards system”. LPS was introduced to statute in 2019 but was not implemented by the previous government.

As part of this consultation, the department/s will publish a revised Code of Practice incorporating changes in case law, legislation, organisational structures, terminology, and good practice since 2007, addressing critical challenges in the existing Deprivations of Liberty Safeguards framework.

The responses from the consultation will be used to inform an updated Mental Capacity Act (2005) Code of Practice and new regulations which will be laid in Parliament.

My take on this (and it is purely my reading of this statement) is that they will in essence use the previous consultation which we all responded to, to update the Codes of practice and then we will be consulted on these newer versions. I live in hope that this means some of the issues we highlighted with LPS will be ironed out in a new Code and the way forward will be smoother and simpler.

Communicating in the functional test for mental capacity *BV (Medical Treatment – Renal Cancer: Nephrectomy)* [2025] EWCOP 41 (T3)

This relatively routine case is highlighted for bringing clarity to the question of what to record in the communication part of a mental capacity assessment.

Alex Ruck Keene writes “Two points stand outthe second is the way in which Dr C approached the communication limb. So often, we see that part of the report completed as “P is able to communicate a decision,” at a point when the assessor has found that they cannot understand, retain, use or weigh relevant information. At that point, and (as discussed [here](#)) there is no ‘decision’ for the person to communicate, so saying that “P can communicate a decision” is logically meaningless. Dr C framed it correctly – this was a case where BV was able to communicate his wishes and feelings, wishes and feelings which, in turn, could be considered in the best interests decision-making process”. It is also worth clicking the link to read more in 39 Essex Chambers Guidance.

Essential reading for anyone involved in DoLS work

[Health, Welfare and Deprivation of Liberty | 39 Essex Chambers](#)

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