



Department  
of Health

*From Jackie Doyle Price MP  
Parliamentary Under Secretary of State for Care and Mental Health*

*Richmond House  
79 Whitehall  
London  
SW1A 2NS*

*020 7210 4850*

Nicholas Paines QC, Law Commissioner  
Law Commissioner  
1st Floor, Tower,  
52 Queen Anne's Gate,  
London  
SW1H 9AG

*Dear Nicholas*

## **GOVERNMENT INTERIM RESPONSE TO THE LAW COMMISSION REPORT ON MENTAL CAPACITY AND DEPRIVATION OF LIBERTY**

I would first like to formally thank you and your team for your comprehensive and thorough review, published on 13 March, on this important and complex issue. I am also grateful to the many people, local authorities, NHS organisations, legal and academic experts who contributed their views and experiences. In accordance with the Protocol between the Lord Chancellor and the Law Commission, I am writing to provide you with an interim response.

### **Mental capacity and deprivation of liberty**

This Government is committed to take action to reform mental health and transforming care for people with conditions such as dementia, learning difficulties and / or autism. Taking action to reform the current Deprivation of Liberty Safeguards regime is an important contribution towards achieving these aims and providing greater protection for some of the most vulnerable people in our society.

The current Deprivation of Liberty system has been described as overly complex, with the result that it is unnecessarily cumbersome to ensure that thousands of vulnerable people are afforded the rights and protections to which they are entitled. In line with your first recommendation on the need to replace the current system, the Government recognises that it is increasingly unsustainable and may divert resources from frontline care at a time when the system is coming under pressure.

## **Liberty Protection Safeguards**

We welcome the Law Commission report and the detailed recommendations to establish a new system of Liberty Protection Safeguards. We want in place a regime that will protect peoples' liberty and serve three purposes: to improve the quality of care, to ensure access to safeguards is improved and to deliver value for money. This will mean that the right people get the right safeguards at the right time through a streamlined process, which goes hand in hand with the person-centred care approach as enshrined by the Care Act.

We are carefully considering your report and plan to engage with stakeholders to understand in greater detail how these changes can be implemented. We will also consider what enabling actions need to be taken to support the Mental Capacity Act ethos of greater empowerment and care centred around people, their wishes and aspirations. We particularly want to hear from people, carers and families of those who have been deprived of their liberty and have first-hand experience of how the current system works for them.

As you are aware, the government has committed to reform of mental health legislation and ensuring that parity of esteem is at the heart of treatment. We will ensure that our work on deprivation of liberty for the purpose of care and treatment is undertaken in consideration of our work reforming mental health.

## **Wider recommendations**

We note the recommendations on mental capacity law relating to all children, changes to the best interests test; advocacy provision and the judicial body for determining challenges to authorisations of deprivation of liberty. My officials are working closely with those in the Ministry of Justice and the Department of Education to consider how best to take forward these recommendations. The Government will make a final response on the report in the spring and we will respond to the report's specific recommendations in more detail at that time.

May I express again how grateful I am for the Law Commission's thoughtful and exacting review in this area, and I look forward to meeting you in October.

I will be making a written Ministerial statement on this matter and will attach a copy of this letter to that statement.



**JACKIE DOYLE PRICE**