

# Deprivation of liberty – onwards and ? upwards

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[www.mclap.org.uk](http://www.mclap.org.uk)

# *Cheshire West*: what did the Supreme Court actually want?

## *“Policy*

[... Those in the position of P, MIG and MEG] *need a **periodic independent check on whether the arrangements made for them are in their best interests**. Such checks need not be as elaborate as those currently provided for in the Court of Protection or in the Deprivation of Liberty safeguards (which could in due course be simplified and extended to placements outside hospitals and care homes). Nor should we regard the need for such checks as in any way stigmatising of them or of their carers. Rather, they are a recognition of their equal dignity and status as human beings like the rest of us.”*

Paragraph 57, per Lady Hale

# Law Commission Mental Capacity and Deprivation of Liberty project

- Consultation closed 2 November 2015
- Draft legislation and report by end of 2016
- ‘Protective care’ consisting of ‘supportive care’ and ‘restrictive care’ arrangements
- Separate regime for hospitals/palliative care settings
- The end of Schedule A1
- Strengthening the MCA principles

# Challenges

- Principle – what do we actually want?
- Practice – how do we actually achieve it in a world with no money
- Article 5 ECHR and the CRPD:

*31. Throughout all the reviews of State party reports, the Committee has established that it is contrary to article 14 to allow for the detention of persons with disabilities based on the perceived danger of persons to themselves or to others. The involuntary detention of persons with disabilities based on risk or dangerousness, **alleged need of care or treatment** or other reasons tied to impairment or health diagnosis is contrary to the right to liberty, and amounts to arbitrary deprivation of liberty.*

Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities (September 2015)

## Keeping yourself current in the meantime

- Law Society Guidance: [www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/](http://www.lawsociety.org.uk/support-services/advice/articles/deprivation-of-liberty/) (Now available updated in hard copy)
- [www.mentalcapacitylawandpolicy.org.uk/resources-2/cheshire-west-resources/](http://www.mentalcapacitylawandpolicy.org.uk/resources-2/cheshire-west-resources/)