Deprivations of liberty safeguards: Not fit for purpose

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Dear Editor,

The attention paid by the ICS and FICM to recent changes to the legal framework governing deprivations of liberty is very welcome. The clarity provided by the 'acid test' of *Cheshire West*¹ in relation to the living arrangements of mentally incapacitated persons suggests that deprivations of liberty are more common in hospital practice, and particularly in critical care, than previously thought.² We would like to draw attention to practical consequences emerging from the avalanche of DOLS applications that will ensue.

Firstly, Sir James Munby, the President of the Family Division of the High Court, has made it plain that if all relevant patients have an application, the court service (HMCTS) will be utterly unable to deal with the volume of work that will ensue.³ Our own local authority is now reportedly taking 12–20 weeks to complete authorisations, so a patient's therapeutic journey is likely to be over long before a decision is made regarding its admissibility. 'After the fact' authorisation in this way does little to either support physicians or safeguard patients.

Secondly, the high frequency of deprivation of liberty in the 'usual' practice of critical care will necessitate DOLS applications in many cases where there is negligible moral risk of compromising a patient's rights and wishes. Healthcare professionals may become desensitised and disillusioned by a complex and bureaucratic process that they see (largely correctly) as irrelevant and non-contributory to many of their patients.

Current arrangements are not fit for purpose and there is a genuine risk that the plight of vulnerable patients will become lost in the ensuing chaos, disadvantaging the very persons that the *Cheshire West* aimed to protect. Recognising this, a planned review of the Mental Capacity Act 2005 by the Law Commission has had its terms of reference broadened to include an appraisal of DOLS arrangements; but this is not due to be translated into new law until 2017 when the architecture of the law will undoubtedly be radically changed.

In the interim, it is imperative that this practical challenge is appropriately addressed in order to ensure that the rights of vulnerable critically ill patients continue to receive optimal protection. The 'acid test' is already being tested in the lower courts. Given the importance of these issues for critical care, we suggest that it is important for the profession to make its voice heard as legal policy is redrafted.

References

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3. 'Immense burden' warning over care. Press Association, 8 May 2014, www.yorkpress.co.uk/news/national/news/11200965_Immense_burden_warning_over_care/ (accessed 6 December 2014).

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