

The Rt Hon Yvette Cooper MP
The Secretary of State for Health and Social Care
Ministerial Correspondence Unit
Department of Health and Social Care
39 Victoria Street
London
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27 July 2026

Dear Secretary of State

Re: UK Supreme Court 2026 judgment on what constitutes a deprivation of liberty and revised definition and associated processes

Communication Matters is a UK charity that supports people with little or no clear speech in using Augmentative and Alternative Communication (AAC). We believe that it is a human right to communicate, be included and be heard in an equitable society and our work is firmly grounded in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2006).

We are writing in response to the recent changes to the legal framework surrounding Deprivation of Liberty (DoL), including the move away from the Cheshire West “acid test” towards a more holistic, multifactorial assessment. Whilst we recognise the intention to better reflect individual circumstances, we are concerned about the implications of these changes for people with complex communication needs, particularly those who rely on AAC.

We recommend that any updated guidance and implementation frameworks explicitly recognise the communication rights of people who use AAC and includes clear safeguards to ensure that their wishes and feelings can be identified, expressed and appropriately weighted in decision-making processes.

Our concerns are as follows:

1. Risk of “compliance being misinterpreted as consent”

The increased emphasis on a person’s apparent agreement, wishes and feelings is welcome in principle and aligned with the Mental Capacity Act 2005 (MCA) and the Equality Act 2010, which require that individuals are supported to participate in decisions affecting them. However, for people who cannot rely on speech, there is a significant and well-documented risk that professionals may incorrectly interpret passive compliance, or a lack of objection, as consent.

Without appropriate communication support, including access to AAC and skilled communication partners, individuals may be unable to express dissent, distress, or

alternative preferences. This creates a real risk that their rights under Article 5 (liberty) and Article 8 (respect for private and family life) of the European Convention on Human Rights are not fully upheld.

2. Impact of the move to a multifactorial assessment model

The shift from the clear Cheshire West “acid test” to a more holistic assessment introduces greater subjectivity in determining whether a deprivation of liberty exists. While this approach allows for nuance, we are concerned that it may inadvertently make it easier to justify restrictions, particularly for individuals with complex needs who may not be able to articulate the impact of those restrictions. When this is combined with physical disability they may not be able to demonstrate a wish to conclude a conversation or have the opportunity to physically leave.

For AAC users, the “effects on the person” and “how restrictions are implemented” cannot be accurately assessed unless their communication needs are recognised and supported by a knowledgeable and trained communication partner who knows how they communicate. Without this, there is a heightened risk that the cumulative impact of restrictions on autonomy, wellbeing and participation is underestimated.

3. Equality Act 2010 and the duty to make reasonable adjustments

Under the Equality Act 2010, public bodies have a legal duty to make reasonable adjustments to ensure that disabled people are not placed at a substantial disadvantage. For people who use AAC, this includes providing the tools, time, and skilled support needed to enable them to communicate their views effectively. This means they must have access to their communication resources, their own trained communication partner who understands their communication methods, access to the appropriate vocabulary for the discussion, and the time and space to process new information and respond appropriately. When an AAC user has powered AAC this must be charged, ready for use and positioned correctly for access.

We are concerned that current references in guidance to what a person is “saying” or “communicating verbally” risk excluding or marginalising those who do not use speech, despite often having clear and well-developed communication skills through other means. This language should be reviewed to ensure it explicitly includes non-verbal and AAC-based communication. It is also important to note that a communication impairment does not mean a cognitive impairment, many AAC users undertake significant roles in society including paid work.

The judgement states; for there to be a deprivation of liberty, there must be an element of restriction being imposed on a person against their will. **This means that it is unlikely to be a DoL if a person’s liberty is constrained by their own illness, condition or impairment.** We are, however, concerned this statement might be misinterpreted for some AAC users, for example, if someone’s physical disabilities prevent them from leaving a particular setting because they need support to leave a bed and get into their power chair, and then they are unable to communicate any desire to

leave because they do not have access to their AAC, this will likely not be considered a deprivation of liberty.

4. Anticipated transition to Liberty Protection Safeguards (LPS)

We note that the Liberty Protection Safeguards (LPS), expected to replace DoLS, have not yet been implemented and that limited detail is currently available on how they will align with the recent legal changes. This creates uncertainty and a risk that the needs of people with communication difficulties may not be fully embedded in future frameworks.

We strongly recommend that the development and implementation of LPS includes explicit reference to AAC and communication access, to ensure consistency with the MCA principles of supporting individuals to make decisions and to express their wishes and feelings.

5. The need for explicit recognition of AAC

Across all aspects of DoL assessment and decision-making, it is essential that AAC is recognised as a core component of enabling participation. This includes:

- Ensuring access to appropriate AAC tools, resources and strategies.
- Ensuring powered AAC resources are charged and ready for use.
- Checking the AAC user has the appropriate vocabulary for the scenario to be discussed.
- Allowing the AAC user to have a familiar trained communication partner with them, for instance family member or a member of their own support team.
- Involving professionals with expertise in communication support where needed, including technical knowledge of supporting AAC users.
- Allowing sufficient time for communication, including providing an AAC user with processing, thinking and input time, which may include providing all the information needed to make a decision and then coming back at an agreed time to discuss the decision.
- Recognising non-verbal expressions of preference, dissent, or distress, including gesture, body language, facial expression and eye movement.
- Ensuring there is privacy for the AAC user to discuss their options both with family and their support teams and then with professionals. This means providing a suitable space for these discussions.

Failure to do so risks systemic inequity for people who cannot rely on speech, undermining both legal protections and ethical practice.

Further to this, we would like to see greater recognition of restriction to technology access, especially AAC and other disability aids, as a deprivation of liberty.

We hope that you will consider these concerns and recommendations to ensure that the evolving DoL framework fully upholds the rights of people with complex communication needs. We would welcome the opportunity to contribute further to the development of guidance in this area.

Yours faithfully

The Board of Trustees
Communication Matters