

Deprivation of Liberty Safeguards (DoLS) – Supreme Court Ruling – changes you need to be aware of – effective immediately

Briefing 1

On the 2 June 2026, the UK Supreme Court issued a landmark judgment that significantly revises the definition of deprivation of liberty (DoL).

This decision represents a fundamental shift in the legal framework that has underpinned DoLS and community DoL since 2014.

With immediate effect, the Cheshire West ‘acid test’ (lack mental capacity, subject to continuous supervision & control, not free to leave) for DoLS no longer applies in deciding whether a deprivation of liberty is present /occurring.

The Court decided that deprivation of liberty should look at the person’s overall situation in a **more detailed and individual way**.

That does not mean the Mental Capacity Act and DoLS framework have disappeared. The wider safeguards system still exists, and DoLS remains the mechanism for authorising deprivation of liberty in hospitals and care homes for adults aged 18 and over.

What has changed, is the way we decide whether a case actually reaches that threshold in the first place. In practice, this is likely to mean there will be a reduction in the number of DoL taking place.



What do you need to think about / record now ?

From the 2nd June 2026, when determining whether an individual is deprived of their liberty for the purposes of DoLS, practitioners must now take a **holistic view** of the person’s circumstances.

This includes consideration of:

- **The *nature and impact* of any restrictions**
- **The *purpose of the care* arrangements**
- **The *setting* in which care is delivered**
- **The *duration and intensity* of restrictions**

It is important to recognise that the legal test has shifted now, whilst continuing to use the current safeguards framework lawfully and **making sure that wishes, feelings, objection, distress, coercion and restrictions are clearly recorded.**

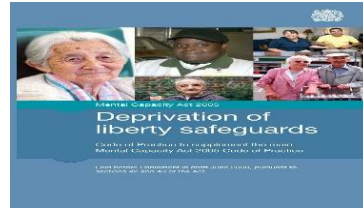
Valid consent and DoLS

The Court also introduced the **new concept of a person being able to validly consent to their care and treatment by communicating that they are happy with it, even where they lack formal mental capacity.** The idea is that those arranging / providing their care treatment will need to **actively seek and record** the person's wishes and feelings, establish how happy they are with the care arrangements, **clearly document both expressions of contentment and any objections** and ensure these are **reflected in care planning and regularly reviewed.**

The Court treated "valid consent" under Article 5 (Human Rights Act) as a separate legal idea from the usual Mental Capacity Act test for capacity. In plain English, the Court said that a person might not have capacity to make a care decision under the Mental Capacity Act, but may still be able to show enough understanding and acceptance of their situation for Article 5 purposes.

The proposed revision to the Code would guide professionals to identify that people could give *subjective consent* to confinement through words or conduct showing contentment with their care arrangements even if they lacked capacity to take decisions as to their residence and care.

They have also introduced a **concept of the normality of the setting and circumstances**, having a bearing on whether they are being deprived of their liberty.



DoLS and the Mental Capacity Act

The Mental Capacity Act remains in force, and official sources still describe DoLS as the mechanism for authorising deprivation of liberty in hospitals and care homes for adults aged 18 and over.

Processes – making DoLS applications

The guidance we have received so far from Local Authorities is to continue to make DoLS applications as you would currently. How you make a request for an Urgent and Standard Authorisation is unchanged at present.

Further guidance and revised DoLS Code of Practice is awaited.

Support from the Local Authority DoLS team

If you have cases that are urgent that you are concerned about (those where the person is unhappy with their care arrangements and are actively objecting to their placement, or where the restrictions are extreme), please contact the DoLS team on DoLS@worcestershire.gov.uk or **01905 822624** to discuss it.

Some examples of extreme restrictions:

- Use of restraint
- Use of sedation
- Use of seclusion

If in doubt..... take advice, talk to the Local Authority DoLS team.



Further briefings will be circulated as new guidance emerges and Trust Policy & Procedure and training updated to reflect the changes.