

Supreme Court Judgment on Deprivation of Liberty

On 2 June 2026 the UK Supreme Court handed down its judgment in *The Attorney General for Northern Ireland Reference* [2026] UKSC 16, a significant ruling concerning deprivation of liberty, consent and Article 5 of the European Convention on Human Rights.

The judgment has attracted considerable attention because the Court has departed from aspects of the approach established in the landmark *Cheshire West* decision of 2014. The Court concluded that the previous interpretation of deprivation of liberty under Article 5 had been too broad and that a more nuanced assessment is required when considering whether a person is deprived of their liberty.

For over a decade, providers and local authorities have relied upon the *Cheshire West* "acid test", namely whether a person is under continuous supervision and control and is not free to leave. The Supreme Court has now indicated that these factors alone are not necessarily determinative and that greater consideration must be given to the overall circumstances of the person's situation, including questions of consent and the nature of the restrictions in place.

At present, there are many questions about how the judgment will operate in practice across England and Wales, however it is clear that this judgement is immediately applicable.

What does this mean for now?

The DoLs team will continue to work closely with providers to ensure continuity and support around this evolving process incorporating the new guidelines as they are released.

Providers will continue to:

- Follow the Mental Capacity Act 2005 and its principles.
- Continue to identify and report potential deprivations of liberty in the usual way.
- Ensure assessments remain person-centred and that the least restrictive options are considered.
- Record clearly the person's wishes, feelings, views and responses to their care arrangements.
- Seek advice where there is uncertainty regarding the need for authorisation.

Individual applications will continue to be reviewed by Bedford Borough Council's DoLS Team. Where there is sufficient evidence that a person is providing valid consent to their care and treatment arrangements, we will confirm this to the provider.

Where there is evidence of objection, uncertainty regarding consent, or where further information is required to reach a determination, the application will continue to be progressed through the existing DoLS process, including assessment by a Best Interests Assessor (BIA) where appropriate.

This approach will ensure that the rights of individuals remain protected whilst the implications of the recent Supreme Court judgment continue to be considered.

Next Steps

We are currently reviewing the judgment and associated legal commentary. We will continue to monitor national guidance and will provide further information and advice to providers as the implications for practice become clearer.

This is potentially the most significant development in deprivation of liberty law since *Cheshire West* in 2014. Whilst the judgment may ultimately change how deprivation of liberty is identified and authorised, our shared focus remains on protecting the rights, freedoms and wellbeing of people who lack capacity to make decisions about their care and support.

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