GOV•UK

Department of Health & Social Care

Guidance

UK Supreme Court 2026 judgment on what constitutes a deprivation of liberty

Published 15 June 2026

Contents

Background

The 2026 judgment

Who this applies to

Assessing deprivation of liberty

Existing DoLS authorisations

Next steps

© Crown copyright 2026

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-

licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at https://www.gov.uk/government/publications/changes-to-the-definition-of-deprivation-of-liberty/uk-supreme-court-2026-judgment-on-what-constitutes-a-deprivation-of-liberty

On 2 June 2026, the Supreme Court published a judgment changing the definition of deprivation of liberty.

These changes apply with immediate effect and extend across the UK.

This update sets out the summary points from the judgment and the main implications for:

- health and social care staff
- anyone who cares for an individual who lacks capacity to consent to their care and residence where there is or may be a deprivation of liberty
- staff with responsibility for organisational policies, procedures and internal or external facing documents relating to deprivation of liberty safeguards

Background

The Mental Capacity Act 2005 (https://www.legislation.gov.uk/ukpga/2005/9/contents) (MCA 2005), which applies in England and Wales, defines deprivation of liberty by reference to its meaning in article 5(1) of the European Convention on Human Rights (ECHR). This means that to determine if someone is deprived of their liberty, close consideration must be given to both domestic law and the case law of the European Court of Human Rights.

The Supreme Court, in P v Cheshire West and Chester Council [2014] UKSC 19, known as Cheshire West 2014, set out an ‘acid test’ to determine if someone is confined and therefore deprived of their liberty. The Cheshire West 2014 judgment concluded that someone is confined if they are under continuous supervision and control and are not free to leave. It proceeded on the basis that, if someone lacks mental capacity to consent to their care and living arrangements under MCA 2005, they cannot give valid consent to their confinement.

The 2026 judgment

Read the judgment and the summary judgment (https://www.supremecourt.uk/cases/uksc-2025-0042)

Between 20 and 22 October 2025, the UK Supreme Court heard a case brought by the Attorney General for Northern Ireland concerning the definition of a deprivation of liberty.

The Supreme Court handed down its judgment on 2 June 2026 and concluded that:

- the Cheshire West 2014 judgment was incorrect
- instead of relying on the single ‘acid test’, an assessment of whether someone is deprived of their liberty must now consider multiple factors - that is, it is multifactorial
- the starting point in assessing whether someone is deprived of liberty is to look at the specific situation of the individual and take into account the type, duration, effects and manner of implementation of restrictions on the person - crucially, no single factor is determinative
- the Cheshire West 2014 judgment wrongly assumed that if someone lacks legal capacity under the MCA 2005, they cannot give valid consent to the arrangements. The 2026 judgment clarifies that a person’s expression of their wishes and feelings carries significant weight. A person can give valid consent if they are conscious of their environment, have a basic level of understanding and are capable of expressing a view that they accept and/or are happy with the situation. However, if there is serious doubt, no conclusion of valid consent can be drawn
- the effect of the restrictions on the person may differ based on whether or not the person is content with their arrangements - Cheshire West 2014 was wrong to conclude that a person’s lack of objection is never legally relevant to the question of objective confinement

These changes to the definition of a deprivation of liberty apply with immediate effect and extend across the UK.

Who this applies to

The new definition applies to:

- deprivation of liberty in hospitals and care homes for people aged 18 and over where the Deprivation of Liberty Safeguards (DoLS) process applies (see the DoLS code of practice (https://www.gov.uk/government/publications/deprivation-of-liberty-code-of-practice))
- deprivation of liberty in the community for people aged 18 and over, and for children where it is authorised through the Court of Protection or the High Court's inherent jurisdiction

Organisations should begin aligning their practice with this new legal position. We recognise that there are wide-ranging implications of the judgment. Providers and local authorities should use their professional experience and take a proportionate and considered approach in how they respond to the Supreme Court judgment, before further government guidance is published.

In the long term, these changes are likely to reduce significantly the number of deprivation of liberty authorisations. In the short term, we recognise that a more cautious approach will be needed, with borderline cases referred for review.

Registered care home providers or managers and supervisory bodies (the supervisory body is the local authority and is referred to as such in this update) should expedite plans to:

- share the ruling (or an accurate summary of the ruling) throughout their organisations
- upskill their workforce on the definition of deprivation of liberty in line with this change in the law

This should include an initial review of, and update to, individual organisation-specific operational products to ensure they reflect the new legal framework for identifying deprivation of liberty. For example, this could include but not be limited to policies, protocols, websites and public-facing leaflets.

NHS England will be publishing an updated DoLS e-learning module by 30 July 2026.

We recognise that there will be a period of adjustment before we get to a new steady state. To help manage this, local authorities should make plans for how they will prioritise reviews, assessments of cases coming to the end of their authorisation and new referrals.

Local authorities should also ensure that essential safeguards such as independent advocacy and access to an appointed relevant person's representative (RPR) continue where applicable.

This ruling will not remove the need to comply with ECHR article 5 where it is engaged. Where there is reason to believe that a person is deprived of their liberty, the DoLS process still applies in hospitals and care homes, and the court process still applies in other settings.

In addition, organisations should continue to ensure they meet their duties and deliver safeguards under:

- the MCA 2005
- the Care Act 2014
- continuing healthcare
- common law duties of care

The Care Act 2014 (https://www.legislation.gov.uk/ukpga/2014/23/contents) provides explicit safeguards for adults with care and support needs. Section 5 of the Care Act 2014 states that local authorities must ensure that the services they commission are safe, effective and of high quality.

Assessing deprivation of liberty

The judgment is clear that the starting point is a multifactorial assessment of the proposed arrangements before considering whether a person could be said to validly consent, through an expression of their wishes and feelings, to those arrangements.

For the avoidance of doubt, there is no longer an acid test when it comes to assessing the objective element of deprivation of liberty, although these factors remain relevant as part of the multifactorial assessment.

The multifactorial assessment considers:

- the type of restrictions (for example, locked doors, physical control, supervision, sedating medication social isolation and so on)
- the duration of those restrictions
- the effects of the restrictions on the person
- the manner of implementation of the restrictions
- whether the person objects
- how far removed the case is from the situation of detention in a prison cell
- the relative normality of the arrangements (for example, greater restrictions would be required at home in order for deprivation of liberty to arise)

- the purpose of the arrangement, for example whether the arrangements are for care and protection, rather than punishment or coercion

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 deprivation of liberty if a person's liberty is constrained by their own illness, condition or impairment. For example, if someone's physical disabilities prevent them from leaving a particular setting and they are unable to form any desire to leave, this will likely not be considered a deprivation of liberty.

Determining objection

It should be noted that the issue of whether a person is objecting to the confinement is relevant to the question of objective deprivation of liberty. Where a person is objecting, then it follows that valid consent is unlikely to be present. If there is an absence of objection when the person is capable of objecting, then it is more likely that the person is not being confined.

Any objection would point towards a deprivation of liberty. Objection could take a number of forms and could include:

- attempts to leave the setting where the arrangements take place, such as a care home, hospital or supported living
- refusing care or treatment and/or physical rejection of care (for example, pushing staff away when care is being provided)
- physical restraint or one-to-one care to manage behaviour
- covert medication if objecting to medication
- sedating medication to manage behaviour if it impacts on an individual's ability to object

Determining someone's wishes and feelings

A person may be able to give valid consent in relation to a deprivation of liberty even if they lack legal capacity to consent to their care and residence under the MCA 2005.

Compliance does not automatically mean someone is consenting. A critical question to consider could be 'how do we know what this individual actually understands and wants?' rather than 'are they compliant?'.

When assessing wishes and feelings, consideration should be given to what the person is communicating both verbally (if they are able) and through their actions and behaviour. For example:

- do they appear happy or unhappy?
- are they trying to leave or are they distressed in any way?
- are they able to express a view?

Consideration should also be given to the individual's previously expressed wishes and feelings or previously observed behaviour that could indicate an objection to the current arrangements.

People should be given all support necessary to enable communication of their wishes and feelings. Assessment should also require a thorough review of care and/or medical notes and speaking to family and staff. It may require multiple visits.

All practitioners assessing wishes and feelings should be alert to circumstances that may impact someone's ability to express their wishes and feelings, for example:

- sedating medication
- fear of consequences
- perceived pressure
- feeling that they do not want to be a burden

Seeking further advice

Where practitioners from care providers or hospital trusts are in doubt about whether someone is objecting to their confinement or, in instances where people fluctuate between appearing content and appearing to object to their confinement, a referral should be made to the local authority for consideration of a DoLS authorisation, or the Court of Protection.

Practitioners from care providers, hospital trusts and the local authority should continue to use DoLS processes and court applications where there is any doubt as to whether arrangements constitute a deprivation of liberty. This includes where there are any doubts about valid consent, where restrictions are significant or where it appears ECHR article 5 may be engaged. Hospital trusts and local authorities may want to contact their own legal teams for advice where necessary.

Existing DoLS authorisations

Following the judgment, it is likely that there will be many people currently subject to DoLS authorisations who no longer fall in scope of DoLS. This could be because the restrictions are no longer seen to amount to a deprivation of liberty following a multifactorial assessment and/or because the person is able to give valid consent to them.

Where the person is no longer deprived of their liberty but has a DoLS authorisation in place, their cases should be reviewed as soon as is practicable. However, leaving the authorisation in place in the meantime does not mean the person is being unlawfully deprived of their liberty.

Local authorities should document their approach for responding to the change in definition in terms of their caseloads, referrals and current authorisations, and clear decision making should be recorded, particularly where authorisations are left to lapse if they no longer fall in scope of DoLS.

It is worth noting that within existing DoLS authorisations, if someone's circumstances change and they no longer require the level of restrictions imposed on them, restrictions can be reduced without the need for a review or a new authorisation.

The Department of Health and Social Care (DHSC) continues to stress the importance of an MCA 2005-centred approach following this judgment. Plans for responding to the judgment should reflect the paramount importance of the wellbeing of people who have health and care needs.

The DoLS code of practice (https://www.gov.uk/government/publications/deprivation-of-liberty-code-of-practice) was originally published in 2008 before the judgment in Cheshire West 2014. The 2008 code of practice was republished on 2 June 2026. Chapter 2 may remain a helpful starting point in relation to the objective element of deprivation of liberty (while also noting that it does not reflect fully the Supreme Court's 2026 decision).

Next steps

DHSC will publish additional interim guidance to assist with the implications of this ruling. We are working with a range of stakeholder partners and charities to develop this guidance. It will include practical case studies to help people understand how they should apply the judgment to their work.

OGL

All content is available under the Open Government Licence v3.0, except where otherwise stated

© Crown copyright