

Somerset Council Deprivation of Liberty Safeguards (DoLS): Key messages for providers pending full national guidance

15 June 2026

This document sets out key messages and what Providers need to know following the UK Supreme Court landmark judgment on 2 June 2026 (known as the AGNI Ruling) prior to full guidance being issued by the Department of Health and Social Care. This is followed with information of the interim response in Somerset.

Contents

Key messages p2

- What providers need to know p3
- The New DoLS Test: A simple guide for practice (DCC-i) p4

The AGNI Ruling p5

- What has changed p5
- National guidance p6
- Somerset Council DoLS Team (Supervisory Body) interim position p6/7

Additional resources p8

- Department of Health and Social Care (DHSC) interim guidance published on 15 June 2026
- [Browne Jacobson](#) summary for health and social care
- Community Care Inform's podcast with barrister Alex Ruck Keene
- Alex Ruck Keen video about the meaning of deprivation of liberty following the Supreme Court judgement

DoLS Team Contact Details p8

Key messages

We would like to draw your attention to the recent Supreme Court Judgment handed down on the 2nd June 2026 (known as the AGNI Ruling), which significantly revises the approach to deprivation of liberty within Article 5 of the European Convention on Human Rights (ECHR). The judgment is anticipated to have significant practical implications on both deprivation of liberty in the community and Deprivation of Liberty Safeguards (DoLS).

Deprivation of Liberty Safeguards system will continue to be needed but will in time focus on a smaller group of people who are likely to be unhappy with their care arrangements and are actively objecting to confinement. In addition, where the restrictions are significant and there is a need to provide the legal safeguards and the ability to challenge their detention.

In this judgment, the Supreme Court has moved away from the long-standing 'Acid Test' established in Cheshire West (2014) case which focused on whether the person was under continuous supervision and control and whether a person was free to leave. This no longer determinative. The Supreme Court emphasised that undue weight had previously been placed on the 'acid test', and that a more nuanced and context-sensitive analysis is now required. Instead, the Court has introduced a broader 'multifactorial assessment' approach to deprivation of liberty.

Supreme Court change to Cheshire West: what practitioners need to know

From the old acid test to a whole-situation approach

Old position (Cheshire West)

- ✓ Continuous supervision and control
- ✓ Not free to leave

If both applied, this usually pointed to a deprivation of liberty.

Key findings

The old acid test was too rigid.
Continuous supervision and control plus not being free to leave should not automatically decide the issue.

A person may lack capacity for some decisions but still show valid **subjective consent** to their living and care arrangements.

If valid subjective consent is present, Article 5 may not be engaged.

What the Supreme Court changed

- ▶ The acid test is *no longer the only test*
- ▶ Courts must look at the full picture
- ▶ The person's own wishes and acceptance may matter

New approach now



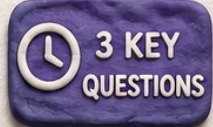
Key message: do not rely on the old acid test alone.
Consider all the circumstances.

For legal decisions, always follow current legal advice and local policy.



THE NEW DoL TEST

A simple guide for practice



1

Is the person under continuous supervision and control and not free to leave?



★ This is still important, but it is not the whole test.

You must look at the person's whole situation, including:



What restrictions are in place?



How long have they been there?



What is daily life like?



How restrictive is the placement compared to ordinary life?



What is the purpose of the arrangements?

2

Does the person understand their living situation at a basic level?



The person does not need legal mental capacity to make accommodation decisions.

Instead ask:



Do they know where they are living?



Do they understand what is happening around them?



Can they express views about their situation?

3

Are they genuinely accepting the arrangements?



If a person:



Understands their situation at a basic level



Appears settled



Expresses agreement



Does not object



then their acceptance may amount to **valid consent** for Article 5 purposes, even if they lack capacity under the Mental Capacity Act.



WHAT "CONSENT" LOOKS LIKE (EVEN WITHOUT CAPACITY)

It's about a positive attitude to the restrictions, shown consistently over time. This can be through words, behaviour, facial expression or body language.

Look for:

- Calm and relaxed demeanour
- Engaging in daily life
- No attempts to leave

- Agreeing or showing no objection when asked or when changes occur
- Consistent over time, not just once



Check over time – not just in the moment.



If they resist, object, try to leave, or show distress – this suggests **NO** consent and may be a DoL.



IMPORTANT: Where there is significant uncertainty, mixed messages, fluctuating views, or any evidence of objection – **do not assume consent.**



www.dcc-i.co.uk



crew@dcc-i.co.uk

The AGNI Ruling

The UK Supreme Court issued a landmark judgment on 2 June 2026 which overturns the established legal definition of deprivation of liberty set out in the 2014 *Cheshire West* case and restored a multifactorial approach in determining if a person is experiencing a deprivation of liberty. [A Reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998](#)

The Supreme Court considered that the ability to give subjective consent to what would otherwise be a deprivation of liberty was an ‘autonomous concept’ for the purposes of Article 5 ECHR. Meaning some people who lack legal capacity under the Mental Capacity Act 2005, may be able to give valid consent through establishing their wishes and feelings.

As a result of the judgment, fewer people are likely to meet the revised threshold for DoLS or Court of Protection authorisation. Some health or care arrangements that previously met the “Acid Test” may not meet the new “multifactorial test”.

DoLS applications continue to go through the Somerset Council DoLS Team (Supervisory Body) and authorisations continue to be processed in line with the new definition set out by the Supreme Court.

What has changed

Previous position (since 2014)

A person was considered deprived of their liberty if:

- They were under continuous supervision and control, and not free to leave (“acid test”)
- The person lacked mental capacity to consent.
- The persons care arrangements are imputable to the state.

New position following Supreme Court ruling

- The “acid test” is no longer sufficient and should not be applied in isolation.
- A multifactorial approach is required to decide whether a person is deprived of their liberty. This should consider factors such as the nature, purpose, relative normality and impact of any restrictions or confinement.
- Crucially, a person may be able to give valid consent even if they lack legal capacity within the Mental Capacity Act 2005 to make decisions regarding care and accommodation.

National Guidance

The Department of Health and Social Care (DHSC) published interim guidance on 15 June 2026: [Changes to the definition of deprivation of liberty - GOV.UK](#)

DHSC will publish additional guidance in due course to assist the sector further. They 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.

Somerset Council DoLS Team (Supervisory Body) interim position

While waiting for DHSC fully developed guidance, the Somerset Council DoLS Team will continue to triage DoLS applications against the new definition.

Assessments will take place for people identified to be actively objecting to care, support and/or accommodation arrangements, or where restrictions are significant and there is a need to provide the legal safeguards and the ability to challenge.

The Supervisory Body will continue to scrutinise completed assessments and decide whether to grant or refuse the Urgent or Standard Authorisation based on the multifactorial assessment undertaken. The decision-making processes will be undertaken by two Best Interest Leads or a Best Interest Lead and the MCA and DoLS Service Manager.

Please continue to:

- Follow the Mental Capacity Act and its core principles- The Mental Capacity Act 2005 is still law and the persons mental capacity to make decisions should be assessed in line with the Act
- Ensure any proposed care and support is necessary, proportionate, and the least restrictive option.
- Clearly record the person's wishes, feelings, and views in all decisions and care planning.
- Managing Authorities should continue in their responsibility to identify if the person is being deprived of their liberty under the AGNI definition of deprivation of liberty and apply for an authorisation via the Supervisory Body.

Additional resources

Department of Health and Social Care (DHSC) interim guidance published on 15 June 2026: [Changes to the definition of deprivation of liberty - GOV.UK](#)

[Browne Jacobson LLP](#) gives a practical summary for health and social care, including that the old acid test was said to be **too crude** and that courts must now look at the **whole situation**, including whether the person can give **valid subjective consent**:

[Cheshire West overruled: DoL reshaped for health and social care](#)

In a special, one-off edition of Community Care Inform's podcast 'Learn on the go', barrister Alex Ruck Keene discusses the so-called AGNI ruling and what it means for social workers and other professionals in the UK:

<https://omny.fm/shows/learn-on-the-go-the-community-care-podcast/alex-ruck-keene-talks-cheshire-west-the-supreme-court-ruling-and-what-it-means-for-you>

Alex Ruck-Keene has also recorded this video about the meaning of deprivation of liberty following the decision:

<https://vimeo.com/1199721103?fl=pl&fe=sh>

Contact details

Somerset Council DoLS Team (Supervisory Body)

dolsinformation@somerset.gov.uk

MCA and DoLS Service Manager: Sarah Ballantyne

sarah.ballantyne@somerset.gov.uk