



CAPACITY, CONSENT, LIBERTY & ADVOCACY

Deprivation of Liberty & DoLS

Understanding restrictions, safeguards, rights
and the current 2026 legal position.

The key idea

Deprivation of liberty is a human-rights issue, not simply a care-planning label. Where arrangements amount to a deprivation of liberty, there must be a lawful route for authorisation, safeguards, representation, review and challenge.

What is a deprivation of liberty?

Article 5 of the European Convention on Human Rights protects the right to liberty and security. A person can sometimes lawfully be deprived of liberty for care or treatment, but only through an appropriate legal process with safeguards.

A major legal change in 2026

On **2 June 2026**, the UK Supreme Court changed the legal approach to deciding whether care arrangements amount to a deprivation of liberty. The previous Cheshire West “**acid test**” is **no longer the current test for the objective element**.

What replaced the old acid test?

Current government guidance says the starting point is now a **multifactorial assessment** of the actual arrangements. Relevant factors include the type, duration, effects and manner of restrictions; whether the person objects; how far the situation resembles detention; and the relative normality of the arrangements in their setting.

Old information may now be out of date

Resources that say deprivation of liberty is determined simply by being under **continuous supervision and control and not free to leave** reflect the previous Cheshire West approach. Those factors can still be relevant, but they are no longer a stand-alone acid test.

Wishes and feelings now require careful attention

The 2026 guidance also emphasises the person's current and previously expressed wishes and feelings, including what they communicate through words, actions and behaviour. People should receive the support they need to communicate those views.

When there is doubt

Current government guidance advises continued use of DoLS or court processes where there is genuine doubt about whether arrangements amount to a deprivation of liberty, particularly where restrictions are significant, consent is uncertain or Article 5 may be engaged.

Restrictions are not automatically a deprivation of liberty

Care and treatment often involve some restrictions. The legal question is whether the arrangements, considered as a whole and in their context, cross the line into a deprivation of liberty.

Examples of potentially relevant restrictions

Locked doors; physical control; very close supervision; sedating medication; restrictions on movement or contact; social isolation; preventing a person from leaving; or other arrangements that substantially constrain ordinary freedom.

Context matters

The same restriction may carry different legal weight depending on its duration, intensity, effect, implementation and setting. Government guidance following the 2026 judgment specifically identifies the **relative normality** of arrangements as one factor in the assessment.

Home is not automatically unrestricted

Care taking place in somebody's own home can still engage Article 5, although the context of a domestic setting is relevant when deciding whether the overall arrangements amount to deprivation of liberty.

Capacity and consent

The Mental Capacity Act remains central. The person's capacity to consent to the relevant care and residence arrangements must be considered properly, and their wishes and feelings must not be ignored simply because they have cognitive, communication or support needs.

Support communication first

Consider speech, writing, signs, behaviour, communication aids, processing time, sensory needs and trusted support. Apparent compliance should not automatically be treated as meaningful agreement.

What if the person objects?

Objection is now one of the factors in the multifactorial assessment and should be explored carefully. Government guidance says practitioners should consider verbal communication, behaviour, attempts to leave, distress and previously expressed wishes.

What are the Deprivation of Liberty Safeguards?

Deprivation of Liberty Safeguards (DoLS) form part of the Mental Capacity Act 2005 framework. In England and Wales, they provide a legal process for authorising deprivation of liberty for certain adults who lack capacity to consent to their care arrangements.

Where DoLS applies

DoLS applies to people aged **18 and over** who are deprived of liberty in a **hospital or registered care home** and meet the relevant legal requirements.

Who starts the process?

The hospital or care home is the **managing authority**. Where it believes a person's arrangements amount to deprivation of liberty, it requests authorisation from the **supervisory body** — generally the relevant local authority.

DoLS is a safeguard, not permission to ignore rights

The purpose is to ensure restrictive arrangements receive formal scrutiny. An authorisation does not mean every restriction is automatically justified or that the person's wishes stop mattering.

Urgent and standard authorisations

Where a deprivation of liberty needs to begin before the standard assessment process is completed, the managing authority can use an urgent authorisation where the statutory conditions are met while requesting a standard authorisation.

What if the person is elsewhere?

DoLS does not provide the authorisation route for deprivation of liberty in settings such as a person's own home or supported living. For adults in those settings, authorisation may need to be sought from the **Court of Protection**.

Children and young people

DoLS itself is an adult scheme for people aged 18 and over. Different legal routes apply to children and 16- or 17-year-olds where care arrangements may amount to deprivation of liberty.

What happens during a DoLS assessment?

A standard DoLS authorisation requires a set of statutory assessments. These examine whether the legal requirements for authorisation are met and whether the arrangements are justified.

Age assessment	Confirms that the person is aged 18 or over.
Mental health assessment	Considers whether the person has a mental disorder within the relevant legal definition.
Mental capacity assessment	Considers whether the person lacks capacity to decide whether to be accommodated in the hospital or care home for the purpose of the relevant care or treatment.
Best interests assessment	Considers the arrangements, deprivation of liberty, necessity, proportionality and the person's circumstances and wishes within the current legal framework.
Eligibility assessment	Considers whether the person is eligible for DoLS, including relevant interaction with the Mental Health Act.
No refusals assessment	Checks for conflicts with certain valid decisions or authority, such as relevant advance decisions, attorneys or deputies.

Conditions can be attached

A standard authorisation may include conditions intended to reduce restrictions, address concerns or support the person's wellbeing. The arrangements should continue to be reviewed rather than treated as fixed simply because authorisation has been granted.

Representation, review and challenge

A person subject to a DoLS authorisation has important safeguards. These are part of what makes a deprivation of liberty legally reviewable rather than simply an informal restriction imposed through care arrangements.

Relevant Person's Representative (RPR)

A representative is appointed to maintain contact with the person, support them in matters relating to the authorisation and help them exercise rights, including the right to challenge.

Independent Mental Capacity Advocate

An **IMCA** may have a role within DoLS, including in circumstances where additional independent support is needed. The next PDF in this collection will explain the IMCA role in detail.

Right to challenge

The person or their representative can apply to the **Court of Protection** to challenge a standard or urgent DoLS authorisation. The court can consider issues including whether the authorisation is valid, whether the person has capacity and whether the arrangements are in their best interests.

Reviews

A DoLS authorisation can be reviewed where circumstances change or where relevant qualifying requirements may no longer be met. The person and representative should not have to wait passively until an authorisation expires if the situation has materially changed.

Objection should be taken seriously

A person repeatedly saying or showing that they want to leave, return home or reject the arrangements is important. Current 2026 guidance specifically emphasises careful assessment of wishes, feelings and behaviour.

Legal representation

Challenges to deprivation of liberty can involve legal aid and specialist representation. Where somebody wants to challenge an authorisation, an advocate, representative or specialist legal adviser can help them understand the appropriate route.

The 2026 Supreme Court change

This is an especially important update because many existing leaflets, websites and training materials still describe the legal position using the old Cheshire West acid test.

Before June 2026

Cheshire West was commonly summarised as asking whether the person was under **continuous supervision and control** and **not free to leave**. If both applied, the objective element of deprivation of liberty was generally treated as satisfied.

From June 2026

The Supreme Court rejected that stand-alone acid test for the objective element. Current DHSC guidance instead requires a **multifactorial assessment** of the arrangements and their context.

Factors identified in current guidance

- The type of restrictions being used.
- How long the restrictions last.
- Their effects on the person.
- The manner in which they are implemented.
- Whether the person objects.
- How far the situation is removed from detention in a prison cell.
- The relative normality of the arrangements in the particular setting.

This does not abolish DoLS

The June 2026 judgment changed the definition and assessment of deprivation of liberty; it did **not** abolish the DoLS system. Where there is reason to believe Article 5 is engaged, DoLS remains the current authorisation process in hospitals and care homes.

DoLS and Liberty Protection Safeguards (LPS)

The **Mental Capacity (Amendment) Act 2019** created the Liberty Protection Safeguards as a planned replacement for DoLS. LPS was designed to cover a wider range of settings and people aged 16 and over.

LPS is not currently in force

As at **September 2026**, Liberty Protection Safeguards have **not replaced DoLS**. Implementation was postponed and no new commencement date has been announced in the current government material reviewed for this resource.

What LPS was designed to change

The legislation and published implementation material envisaged a system applying from age 16 and across settings including hospitals, care homes, supported living and people's own homes, with different Responsible Bodies and a new pre-authorisation review structure.

Do not use future LPS procedures as current law

Older or forward-looking guidance may describe Responsible Bodies, Approved Mental Capacity Professionals, Appropriate Persons and LPS authorisations. Those materials explain the intended LPS scheme, but they should not be mistaken for the **currently operational DoLS process**.

What should services use now?

Current 2026 government guidance says the **DoLS process still applies in hospitals and care homes** where there is reason to believe an adult is deprived of liberty. Court authorisation remains relevant in other settings.

Why this section may need updating

LPS remains on the statute book as a planned replacement framework, so future government decisions could change this position. Check current GOV.UK guidance before relying on this resource for operational practice.

Practical reminders

- Deprivation of liberty is a human-rights question requiring lawful safeguards.
- The old Cheshire West acid test is no longer the current stand-alone test following the June 2026 Supreme Court judgment.
- Current assessment is multifactorial and includes the nature, duration, effect and context of restrictions and whether the person objects.
- Wishes and feelings should be actively explored and communication supported.
- DoLS currently remains in use for adults aged 18+ in hospitals and registered care homes in England and Wales.
- Deprivation of liberty in other adult settings may require Court of Protection authorisation.
- A DoLS authorisation brings rights to representation, review and challenge.
- LPS has been legislated for but has not replaced DoLS as at September 2026.

A useful starting question

Rather than asking only “**Is the door locked?**”, consider the whole arrangement: **What restrictions exist, how long do they last, how do they affect this person, what are they communicating, and what lawful safeguards are required?**

About this resource

This PDF provides general educational information about deprivation of liberty and DoLS in England and Wales. The law changed significantly in June 2026 and further government guidance may follow. Complex or disputed situations may require specialist legal advice.

Information reviewed: September 2026

References & further information

Department of Health and Social Care. *UK Supreme Court 2026 judgment on what constitutes a deprivation of liberty.* Updated 22 September 2026. Current government summary of the new multifactorial approach and immediate implications.

Office of the Public Guardian. *Deprivation of Liberty Code of Practice.* Published 2 June 2026. Guidance on the DoLS legal framework, authorisation, representation, review and challenge.

HM Courts & Tribunals Service. *Deprivation of Liberty orders.* Updated July 2026. Guidance on challenging DoLS authorisations and seeking court authorisation outside hospitals and care homes.

Department of Health and Social Care. *Mental Capacity (Amendment) Act 2019: Liberty Protection Safeguards collection.* Government material on the planned LPS framework and delayed implementation.

Next in this collection

The next resource will focus on **Independent Mental Capacity Advocates (IMCA)**: when an IMCA must or may be instructed, what their role is, and how independent advocacy supports a person's participation and rights.