

Interim Briefing for Managing Authorities (Hospitals)

Supreme Court Judgment on Deprivation of Liberty – 2 June 2026

Introduction

On 2 June 2026, the UK Supreme Court handed down a landmark judgment which significantly changes how deprivation of liberty is understood and assessed within adult social care and healthcare settings. This judgment fundamentally alters the legal framework that has underpinned Deprivation of Liberty Safeguards (DoLS) practice since 2014 and is expected to have important implications for hospitals as managing authorities.

Summary of the judgment

The Supreme Court has overturned the previous legal test established in *Cheshire West* (2014), which determined that a person was deprived of their liberty if they were subject to continuous supervision and control and not free to leave, regardless of whether they were content or not objecting. In place of this acid test, the Court has introduced a more comprehensive and context-based approach. Practitioners must now assess whether a person is deprived of their liberty by considering their individual circumstances in the round, including the nature, type and duration of the restrictions in place, the effect of those restrictions, the context and setting, the purpose of the arrangements, and the individual's wishes and feelings. The Court also clarified that a person may express valid consent through their wishes and feelings even if they lack formal capacity.

What this means for hospitals

This judgment introduces a period of legal and operational uncertainty, and national guidance is expected to follow. However, several immediate implications for hospital practice can be identified.

Shift away from the Acid Test

Hospitals should not rely solely on the previous acid test. A more holistic and personalized assessment is now required.

Wishes and feelings

Greater emphasis must be placed on the patient's wishes and feelings. Hospitals should actively seek, record, and consider any indications of agreement, compliance, or objection.

Context of hospital setting

The type of setting and context of care remains relevant. Hospitals should consider the purpose of admission, the duration of restrictions, and whether restrictions are proportionate to clinical need.

Safeguarding and Human Rights

Article 5 rights remain engaged. Hospitals must continue to ensure restrictions are necessary, proportionate, and lawfully authorised while working within the Mental Capacity Act framework.

Interim expectations

Hospitals should continue to refer potential deprivation of liberty cases where there is uncertainty, ensure clear recording of decision-making and rationale, maintain least restrictive practice, and seek advice from local authority DoLS teams.

3 June 2026

Next steps

Warwickshire County Council is reviewing the implications and will provide further guidance in due course, however, it is important that hospital trusts also seek guidance and support from relevant national NHS bodies.

Conclusion

This judgment represents a significant shift in the legal landscape, requiring a more individualized and context-sensitive approach. Hospitals will need to apply professional judgment carefully, ensure clear documentation, and maintain a strong focus on patient rights and safeguards.