

WMADASS DoLS signatories newsletter 4 July 2026

Welcome to the latest newsletter aimed at those who sign off DoLS authorisations.

The intention of this newsletter is to keep DoLS signatories /authorisers up to date with practice changes and case law.

The outcome of the Supreme Court hearing on a reference by the Attorney General for Northern Ireland (this is now commonly referred to as AGNI)

On the 2nd of June 2026 the Supreme Court handed down their decision from a reference by the Attorney General for Northern Ireland. This will have significant implications for Councils as supervisory bodies and their DoLS Teams.

Essentially, they overturned the decision in Cheshire West (which introduced the concept of an acid test). They ruled that this was too simplistic and didn't tell the whole story. They said that a multifactorial test was needed and that this was in line with Strasbourg case law.

They noted that Article 5 is concerned with the physical liberty of the person; it is not concerned with mere restrictions on liberty of movement.

The starting point in assessing whether someone has been deprived of their liberty within the meaning of article 5 is the specific situation of the individual concerned.

That assessment is multifactorial and takes account of a range of factors including the type, duration, effects and manner of implementation of the measure in question, no single factor is determinative. This focus is on the concrete situation of the person and the realities of their situation so that means that it is relevant to have regard to the purpose of the measure, even though this is not decisive by itself.

The Court acknowledged that distinguishing between a deprivation of liberty and a mere restriction on liberty of movement is not easy and will be particularly difficult in borderline or marginal cases.

The approach should be practical and realistic. In difficult or borderline cases, the paradigm of imprisonment in a cell is a useful comparator.

The effect of restrictions on an individual, including their compliance and lack of objection is relevant in assessing the objective element of confinement.

The relative normality of a placement is also relevant in this assessment. Similarly, in situations that are far from the paradigm of confinement in a cell, the purpose for which a measure has been taken is a factor to be considered.

Ordinary expectations and the ordinary conduct of life play a significant role in the assessment of whether there is a deprivation of liberty.

The Court also determined that valid consent can be inferred from a person's wishes and feelings and this is not to be equated with the concept of legal capacity in domestic law.

A person may not have mental capacity according to domestic law to make decisions about their care and residence arrangements, but if they have a basic level of awareness and consciousness of their living arrangements that is sufficient to enable them to know and communicate whether they are happy or unhappy with them, they may be treated as able to give or withhold "valid consent" to confinement by an expression of their wishes and feelings, therefore there would be no deprivation of their liberty.

It may sometimes be difficult to ascertain the true feelings or preferences of vulnerable individuals who do not have mental capacity to decide on their living arrangements. Where there is serious doubt, no inference of valid consent should be drawn.

What does this mean for assessments and authorisations?

The acid test is no longer correct; there should be no reference to 'the acid test' in assessments although complete and continuous supervision and control and the issue of being free to leave are still important factors. Assessors should begin with a consideration of the objective element by considering the type, manner, degree and intensity of the restrictions. They should consider whether the person is constrained by their own illness or impairment or is it by the actions of others. The AGNI test looks for situations of coercive control by others. They will also look at the normality of the situation and fundamentally compare it to the paradigm of a prisoner in a cell. Then they will consider the effect of the restrictions on the person and whether they are content or objecting. As an authoriser you should begin to see requests for authorisation which feature objection, restrictions which go beyond what you would expect in the setting, people who are socially isolated, situations where sedative medication is used to control behaviour, not the many cases which were authorised using the acid test.

What kind of situations might not meet the AGNI test?

- Older person in a care home who lacks capacity for care but care is in a 'normal setting', they are not socially isolated, they take part in activities, see family/friends, the door is locked and they cannot leave alone but there are no restrictions out of the ordinary.
- A person who has a condition/disability which means they cannot leave the setting and could not even form the idea of leaving
- A person who is subject to restrictions beyond the ordinary which do amount to a deprivation of liberty but they can give valid consent

Further AGNI reading [AGNI resources – Mental Capacity Law and Policy](#)