WMADASS DoLS signatories newsletter 16th September 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.

Post AGNI world

Authorisers, BIAs and DoLS Leads are all working hard to come to terms with the impact of AGNI. DHSC produced their initial guidance on the 15th June Changes to the definition of deprivation of liberty - GOV.UK and are, at the time of writing, working on subsequent guidance.

Across the region we are seeing variability in the impact of AGNI on numbers of people who are now considered to be deprived of liberty. We hope to do an informal data collection at the end of September to provide some kind of baseline figures. We hope to avoid huge variations across the region and to aim for a consistent and coherent application of the AGNI ruling and application of this in practice.

For interest, figures have been made available by Northern Ireland

To add some context, there is a DoLS regime in NI operated by the combined health and social care trusts, which extends into people's own homes and applies 16+ (so it is broader than DoLS here).

Regionally, the number of live DoLS in NI has reduced from 3,264 to 2,274 at 31st August 2026, a variance of 990 (30%); the Trusts have been reviewing 'legacy' cases and, of 1,094 cases reviewed (with 1,831 still to be reviewed), 836 (76%) are considered no longer to require deprivation of liberty authorisation on the basis that post-AGNI the person no longer is to be considered to be deprived of their liberty.

Types of queries from DoLS practitioners

By far the most frequent questions being asked regionally are about the amount of consultation required when it appears that a person is not deprived of liberty. Although Councils may have different methods all will be carrying out prioritisation. The ADASS priority tool was amended to support this ADASS Deprivation of Liberty Safeguards (DoLs) priority tool - ADASS

Cases will now generally fall into two camps; those which appear to still meet the test as explained in AGNI and those which don't. Some of these will be new referrals and some will be renewals or backlog cases. Those which are likely to still be a dol will follow the usual route with a Form 3 and 4 and 5 being completed. Those which don't will require just a Form 3A and a 6, more detail below.

Form 3A, consultation and other assessments

The first job of a BIA is to determine whether the person is a 'detained resident' in other words is a deprivation of liberty occurring. If it is not, then the person does not fall within Article 5 and no further DoLS assessments are required, or in fact possible. This assessment is completed with a Form 3A where the concrete situation of the person and their response to it, is examined by the BIA. If it is clear from meeting with/speaking to the person that they are not deprived of liberty, then no wider consultation and no other assessments are required. So, there is no need to complete a capacity assessment and no need to instruct a mental health assessor. Face to face assessments are generally required in these cases where it is a new referral although there may be exceptions to this.

If the person is already known to the BIA and they are confident that the situation has not changed and their previous findings give clear evidence that it is no longer a deprivation of liberty, then a desk top exercise may suffice.

In all these cases where family may not have been consulted it is good practice to include an explanation about the AGNI changes and the impact on current assessments. The WMADASS website has two versions of an easy read information sheet.

HHJ Burrows has handed down the most comprehensive first instance 'run' at *AGNI* to date, *AR (Whether restrictions amount to a deprivation of liberty)* [2026] EWCOP 45 (T2), concerning *a* young man the judge called AR. He is diagnosed as suffering from moderate to severe learning disability and autistic spectrum disorder. He is a man of 25 years who lived for most of his life with his parents. However, since May 2025, AR has lived in a placement, initially by way of respite care, but now on a more permanent footing. Although there has been disagreement between the LA and AR's parents in this case, it seems agreed that where he presently lives meets his needs, and the judge was not asked to order his return home.

This case gives us an example of AGNI being applied in supported living and is the first judicial interpretation of the test. It was persuasive value rather than setting a precedent.

AR had 24-hour one-to-one supervision, 2:1 support in the community, locked doors and gates, CCTV in communal areas and occasional physical redirection. The court concluded that the intensity did not amount to confinement.

The judge discussed protective purpose, relative normality, community participation and the absence of custodial characteristics.

Further AGNI reading AGNI resources – Mental Capacity Law and Policy