LEGAL MATTERS AND PLANNING AHEAD

Deprivation of liberty at home: what families should know

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IN BRIEF

If someone who lacks mental capacity is cared for at home under restrictions they do not agree to, such as locked doors, constant control or being stopped from going out, the arrangement may be a deprivation of liberty that needs authorisation from the Court of Protection. Since the Supreme Court's judgment of 2 June 2026, fewer people cared for at home are likely to be in that position: the whole situation is now weighed up, and a person who is settled and content with their care can give valid consent through their wishes and feelings. If you are in doubt, ask the council to review it.



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What deprivation of liberty means

Everyone has the right to liberty under Article 5 of the European Convention on Human Rights. The Mental Capacity Act 2005 lets carers give everyday care to someone who lacks capacity, in their best interests, without any special permission. It allows restraint only when it is needed to prevent harm and is proportionate to the risk.

A deprivation of liberty goes further: restrictions imposed on a person against their will, of a type and intensity well beyond ordinary care. When that happens, the law requires it to be authorised:

- **In care homes and hospitals:** by the council, under the Deprivation of Liberty Safeguards (DoLS).
- **In someone's own home, including with live-in care:** DoLS does not apply. Authorisation comes from the Court of Protection.

These rules apply in England and Wales; in Scotland and Northern Ireland the rules differ.

What changed on 2 June 2026

In 2014, the Supreme Court's Cheshire West judgment set an "acid test": a person who lacked capacity was deprived of liberty if they were under continuous supervision and control and not free to leave. Many people with round-the-clock care at home met that test, however content they were.

On 2 June 2026, in a reference from the Attorney General for Northern Ireland ([2026] UKSC 16), the Supreme Court unanimously overruled Cheshire West. It said:

- there is no single acid test; what matters is the person's concrete situation as a whole
- the difference between a restriction and a deprivation of liberty is one of degree or intensity
- the normality of the arrangements counts, including living in one's own home or in the community

- a person who lacks capacity in law can still give valid consent to their arrangements, through their wishes and feelings, if they have a basic awareness of whether they are happy or unhappy with them
- where there is serious doubt, consent should not be assumed

The change took effect immediately across the UK.

What the GOV.UK guidance says

The Department of Health and Social Care published guidance on GOV.UK on 15 June 2026, last updated on 22 September 2026. It lists the factors to weigh up:

- the type of restrictions, such as locked doors, physical control, supervision, sedating medication or social isolation
- how long they last, their effect on the person and how they are carried out
- whether the person objects
- how far the situation is from detention in a prison cell
- the relative normality of the arrangements, noting that greater restrictions would be needed at home for a deprivation of liberty to arise
- the purpose, for example care and protection rather than punishment or coercion

If someone's own condition is what limits them, for example a physical disability means they cannot leave and they cannot form any wish to leave, that is unlikely to be a deprivation of liberty.

The guidance expects authorisations to fall significantly in the long term, but asks for a cautious approach for now, with borderline cases referred for review. Where there is any doubt, including about consent, where restrictions are significant, or where a person moves between appearing content and appearing to object, councils, the NHS and care providers should still use the DoLS process or apply to the court. The department has said it will publish further interim guidance with practical case studies.

Signs care at home may still need authorisation



Objection points towards a deprivation of liberty. Talk to the council if the person:

- repeatedly tries to leave, or keeps asking to go “home” and is distressed when they cannot
- refuses care or physically pushes it away
- needs physical restraint, or one-to-one support to manage distress or behaviour
- is given medicine covertly when they object to it
- is given sedating medicine that affects their ability to object
- is kept from going out, or from seeing people, against their wishes

Compliance is not consent. Someone who goes along quietly may still be unhappy, frightened or not wanting to be a burden. The guidance asks assessors to consider what the person communicates in words and behaviour, their past wishes, and the views of family and carers, sometimes over several visits.

What this means for live-in care

Live-in care means someone is in the home day and night, which under the old acid test often counted as continuous supervision. Under the 2026 approach, a person living in their own home, with a carer they are settled with, who seems content with their care, is much less likely to be deprived of their liberty.

It is different when the carer has to stop the person leaving, keep doors locked that they want open, or override clear and repeated objections. Then the arrangement should be looked at properly.

Good practice for families and providers:

- record any restrictions in the care plan, with the reason and how the person responds
- choose the least restrictive option, such as a door sensor that alerts the carer rather than a locked door
- write down best interests decisions and who was consulted
- review restrictions when needs change, and reduce them where you can
- involve any attorney under a health and welfare Lasting Power of Attorney, or a court-appointed deputy

Who applies to the Court of Protection

When the council or NHS arranges or funds the care, it is responsible for considering whether authorisation is needed and for applying to the court. Straightforward cases can use a streamlined application (form COP DOL11). The court fee is £432, payable by whoever applies.

When care is arranged and paid for privately, do not assume the rules cannot apply. In Staffordshire County Council v SRK (2016), the Court of Appeal decided that a privately funded care package at home still needed authorisation because the state knew about the arrangements. If you are concerned, tell the council's adult social care team and ask for advice, and consider a solicitor who specialises in mental capacity law.

The person's views must be put before the court, and a family member or friend is often asked to act as their representative in the process. Orders are time-limited and reviewed, often once a year.

If an authorisation is already in place

The guidance expects many existing DoLS authorisations to fall outside the new definition. It says they should be reviewed as soon as practicable, that leaving one in place meanwhile does not make the care unlawful, and that restrictions can be reduced without a new authorisation when needs change. If your relative has a Court of Protection order for care at home, ask the council or NHS body that applied whether it still considers it necessary.

Questions to ask the council or care provider

- Has the person's capacity to decide about their care arrangements been assessed?
- What restrictions are in place, and why?
- How does the person respond to them, and where is that recorded?
- Has anyone considered whether this is a deprivation of liberty under the 2026 test?
- If an authorisation exists, when will it be reviewed?
- Is there a less restrictive way to keep them safe?

Words you can use

> "Following the Supreme Court judgment of June 2026, please could you review whether [name]'s care arrangements at home amount to a deprivation of liberty? [Name] lacks capacity to decide about their care and is supported by a live-in carer. [They are settled and content.] [Or: they try to leave most evenings and become distressed when the door is locked.] Please tell us who will review this and when, and how [name]'s wishes and our views will be taken into account."

What to do next

1. Write down any restrictions in place and how the person reacts to them.
2. Ask the care provider to record restrictions and best interests decisions in the care plan.
3. If the council or NHS funds the care, ask whether the arrangements have been reviewed under the 2026 test.
4. If care is private and restrictive, ask the council for advice and consider specialist legal advice.
5. Read our guide to mental capacity and best interests.

How we can help

We are a CQC-registered home care provider, rated Good, and we provide fully managed live-in care anywhere in England, from £1,550 a week, including live-in care for people living with dementia. If you are unsure how the 2026 changes affect someone's care at home, our free initial assessment is a good moment to talk it through. Call us on 01865 715780.

Common questions

Does everyone with dementia who has live-in care need Court of Protection authorisation?

No. Everyday care given in someone's best interests needs no authorisation. Since the June 2026 Supreme Court ruling, a person who lives in their own home, is settled with their carer and appears content with their care is unlikely to be deprived of their liberty. Authorisation is more likely to be needed where the person clearly and repeatedly objects, tries to leave, is restrained, or is given medicine covertly or to sedate them. If you are unsure, ask the council or the care provider to look at it.

Can a person who lacks capacity consent to their care?

Yes, for this purpose. The Supreme Court decided in June 2026 that someone who lacks capacity under the Mental Capacity Act can still give valid consent to their living and care arrangements through their wishes and feelings, if they have a basic awareness of whether they are happy or unhappy with them. Going along quietly is not the same as consenting, and where there is serious doubt about what the person wants, consent should not be assumed.

Is a locked front door a deprivation of liberty?

Not on its own. The courts now look at the whole picture: the type of restrictions, how long they last, their effect, how they are carried out, whether the person objects, the purpose and how normal the arrangements are. A locked door at night for someone who is content and settled is very different from keeping someone in who is distressed and trying to leave every day. Record why any restriction is used, and look for a less restrictive option, such as a door sensor.

What is the difference between DoLS and a Court of Protection order?

The Deprivation of Liberty Safeguards (DoLS) apply only in care homes and hospitals, for people aged 18 and over, and are authorised by the council. Anywhere else, including someone's own home and supported living, a deprivation of liberty has to be authorised by the Court of Protection instead. Both apply the same definition of deprivation of liberty, which changed with the Supreme Court judgment of 2 June 2026.

Who pays for a Court of Protection application for care at home?

Whoever applies pays the court fee, which is £432, plus their own legal costs. When the council or NHS arranges or funds the care, it is the body that should consider whether authorisation is needed and make the application. If care is private and you think an application may be needed, ask the council for advice first and take specialist legal advice about costs before applying yourself.

Sources and further information

- GOV.UK (DHSC): UK Supreme Court 2026 judgment on what constitutes a deprivation of liberty
- UK Supreme Court: press summary, Reference by the Attorney General for Northern Ireland [2026] UKSC 16
- GOV.UK: Deprivation of liberty orders (Court of Protection)
- legislation.gov.uk: Mental Capacity Act 2005

Read next

LEGAL MATTERS AND PLANNING AHEAD

Mental capacity and best interests: a guide for families

How the Mental Capacity Act 2005 works in England and Wales: the five principles, how capacity is assessed, best interests decisions, deprivation of liberty after the 2026 Supreme Court ruling, the position on LPS, and how to support someone to decide.

Read the guide →

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How to support someone with dementia at home: the stages, communication, routines, eating and drinking, sundowning and nights, wandering and safety, Lasting Power of Attorney, support for carers and how care is funded, including NHS Continuing Healthcare and council tax.

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Lasting Power of Attorney: a guide for families

How Lasting Power of Attorney works in England and Wales: the two types, why to make one early, how to make and register it online or on paper, the £92 registration fee, the certificate provider, and what happens without one (deputyship and the Court of Protection).

Read the guide →

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Talk to our care team: 01865 715780

enquiries@dayandnightcare.co.uk · Out of hours: 07775 686272

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Information, not advice: please check anything important with the organisation named.