Families and DoLS - questions following the AGNI ruling

The council has told us that my relative's DoLS authorisation has ended due to a change in law. I am worried that without the DoLS, they will they let my relative leave the care home.

The law changed due to a significant Supreme Court case* (often referred to as *AGNI)* in June 2026. Your relative will not be allowed to leave because of this change in law. In fact, their care arrangements won't be changed *due* to this court case, either. What will change, is the part of the Mental Capacity Act 2005 that was *authorising* their stay in the care home. Prior to this court case, the relevant *authorising* law was DoLS. After this court case, your relative will now be kept in the care home under the 'authority' of restraint (Sections 5 and 6 Mental Capacity Act 2005). The impact of the court case is that the Mental Capacity Act restraint provision is more extensive now and can be used to keep people in care homes, without the need for a DoLS authorisation.

The care home told me the DoLS was necessary because of the bed rails/cot sides (or other restriction). Now that the council has cancelled the DoLS authorisation, will the care home have to remove these?

No, the DoLS was given to authorise the accommodation in order to keep the person *in* the care home (which will now be covered by Sections 5-6 Mental Capacity Act 2005). It did not authorise the specific acts of care and treatment (even though these were analysed as part of the DoLS assessments). The bed rails/cot sides and other acts of care and treatment can continue with the person's consent or if they lack mental capacity, in their best interests under the Mental Capacity Act 2005.

I was my relative's representative and now I have been told the DoLS authorisation has been terminated, am I still their representative?

No. Your appointment as representative was attached to the existence of a standard DoLS authorisation. As the authorisation has been terminated, your role and rights as a representative have come to an end.

I was a Representative and had a 39D IMCA supporting me. Will they still support me?

The 39D IMCA is only available to those under DoLS. However, there may be other advocacy services in the local area that your relative is eligible for. More information is available here or speak to your former advocacy provider.

I disagreed with the council about the restrictions my relative was subject to and as their Representative, appealed using Section 21A. This resulted in the restrictions being reduced, after a judge looked at their care in the Court of Protection. How will I appeal in future?

If your relative is not under the Deprivation of Liberty Safeguards, they will no longer have the right to a Representative, the Section 21A appeal route or automatic legal aid.

However, you can apply to the Court of Protection via a different route (personal welfare application). This route does not include automatic legal aid but if you have limited savings, assets and disposable income, you may be eligible for means tested legal aid.

More information about this is available here. If you are not eligible for legal aid, whilst it is not possible to give approximate figures, the legal costs are likely to be in the thousands. It is also possible to represent yourself.

© 2026 Edge Training & Consultancy Ltd admin@edgetraining.org.uk www.edgetraining.org.uk
Edge T&C accepts no responsibility for relying on the contents of this table; nothing in it is intended to be or should be relied upon as legal advice.

I was not consulted as part of the review of my relative's DoLS authorisation and was only informed that it had ended. How can they assess without speaking to me?

The Supreme Court said that to identify whether someone is deprived of their liberty or not, there should be a multi factorial assessment. Part of this assessment, requires the Best Interests Assessor (BIA) to consider any objections by the person and their ability to maintain social contacts. Some people may not object currently, but their previous objections may be relevant ie before they were given a new medication that is so powerful that it now prevents their attempts to leave. The assessors are independent and will not have been observing the person over a period of time. Accordingly, they will need to learn more about the person's wishes and how they have been supported to maintain contacts with family/friends. if they only ask the care home about these, that will give them a one dimensional view, especially if there is a high turnover of staff or poor records kept on the issue of the person's objections or protests. In some cases, there may be some bias. In our view, the Best Interests Assessor (BIA) will need to consult with those closest to the person such as family, friends and/or any independent advocate working with them. Otherwise, they may not get the full picture on the person's wishes, feelings, statements and a proper understanding of the person's objections or objections by family/friends. Please write to the council DoLS team and ask them to consider another assessment because you would like to add your input so all the information relevant to the Supreme Court *AGNI* case can be documented and taken into account.

My relative's DoLS was cancelled 6 months ago and I was told this was because they were not objecting to living in the care home. However, recently, due to a few changes in their care plan and staffing levels in the care home, they have starting pushing care staff away, becoming tearful and asking to go home repeatedly. The care home has told me they already had a DoLS assessment and so will not be putting in another request. What can I do?

You can write to the local authority DoLS team and explain your concerns that there may be an unlawful deprivation of liberty and ask that your relative is reassessed. You can read more about this in Chapter 9 of the DoLS Code of Practice

Notes:

* A Reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998

Please note: this factsheet focusses on the DoLS and not deprivation of liberty in the community which is authorised by a judge in the Court of Protection and doesn't have the same safeguards or procedure.

© 2026 Edge Training & Consultancy Ltd admin@edgetraining.org.uk www.edgetraining.org.uk
Edge T&C accepts no responsibility for relying on the contents of this table; nothing in it is intended to be or should be relied upon as legal advice.