



Cheshire West and Chester

Dear Provider Manager,

RE: Supreme Court Ruling 19th March 2014: P v Cheshire West and Chester Council and P and Q v Surrey County Council.

ADVICE TO PROVIDERS, INCLUDING ACTION TO BE TAKEN IMMEDIATELY

A. Why are we writing to you?

On the 19th March, the Supreme Court published its judgment in the case of P v Cheshire West and Chester Council and P and Q v Surrey County Council.

This judgment has clarified the test for Deprivation of Liberty for adults who lack capacity to make decisions about whether to be accommodated into the following places:

- Hospitals
- Hospices
- Residential Care Homes
- Nursing Care Homes
- Respite placements
- Some types of supported living where the care is offered 24/7 or less.
- Residential Schools for persons over 18 years

There are actions that providers need to complete as a result of this in order to comply with the new test and the requirements this places on the health & social care sector.

B. What is the new test for determining whether a person is under a deprivation of liberty?

The test to determine whether a person is under a deprivation of liberty is now:

- 1) Patient or resident lacks the capacity to consent to make a decision to be accommodated in the care settings listed above
- 2) They are not free to leave
- 3) Staff have complete and effective control over the person.*

**Complete and effective control means that P is not able to leave the place where they are now living and are supervised when out in the public square.*

This is an objective test and the above criteria are what should be applied when deciding if a person is under deprivation of liberty.

C. What if the patient or resident is compliant with care and has never asked to leave or made an attempt to leave?

These factors are no longer relevant to deprivation of liberty decisions. To clarify further, the following are **not relevant** and **have no bearing** on whether a person is under a deprivation of liberty:

- whether or not they are complying with the requirement to live in their place of care and or treatment and or support
- whether or not they are able physically and or cognitively able to undertake the actions necessary to leave their place of care and or treatment and or support
- whether or not there is consensus on the person's place of care or treatment and or support.
- whether or not they have supported access to universal services and other services such as day services
- whether or not that support, to access universal services, is required for their own safety
- whether or not they have unrestricted access to family and other significant others

D. What Does this mean for you as a provider and what actions do you need to take?

If you are a Residential Care Home, Nursing Care Home or Hospice (see Appendix 1 for Flowchart):

1. Using the new test as laid out in section B above, identify those persons in your care that are now under a deprivation of liberty. (it is anticipated that the numbers of persons that DOLS applies to will be much greater than previously)

2. If the person meets the criteria laid out in the test AND is non-compliant with placement, or there is a lack of consensus about the placement with family/carers, then complete DOLS Form 1 (Urgent Authorisation)

If they simply meet the criteria of the test and are compliant, then complete DOLS Form 4 (Standard Authorisation).

Please visit www.cheshirewestandchester.gov.uk/dols to download all forms

3. Send the Forms to the appropriate local authority for DOLS assessment.¹ If the appropriate local authority is Cheshire West & Chester, then please send the forms via email to dols@cheshirewestandchester.gov.uk

If you are a Hospital (see Appendix 2 For flowchart)

People admitted to hospital from A&E will need to be assessed by the doctor as to their likely length of stay. If the admission is likely to be for more than 3 days (72 hours), then:

1. Using the new test as laid out in section B above, identify those patients in your care that are now under a deprivation of liberty. (it is anticipated that the numbers of persons that DOLS applies to will be much greater than previously)
2. If the patient meets the criteria laid out in the test AND is non-compliant with placement, or there is a lack of consensus about the placement with family/carers, then complete DOLS Form 1 (Urgent Authorisation)

If they simply meet the criteria of the test and are compliant, then complete DOLS Form 4 (Standard Authorisation).

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3. Send the Forms to the appropriate local authority for DOLS assessment.² If the appropriate local authority is Cheshire West & Chester, then send the Forms via email to dols@cheshirewestandchester.gov.uk.

The reliance on 3 days as not constituting a deprivation of liberty is not based on law but is in recognition that to put a person through a DOLS assessment for such a short period of time is burdensome to the individual and their family and a challenge to scarce resources. However, an urgent authorisation can be applied if there is an immediate concern for the welfare of a patient.

If you are respite provider

If the person lacking in capacity is to be more than 3 days (72 hours), then follow the same steps as laid out for 'Nursing Care Homes, Residential Care Homes or Hospices' as outlined above.

¹ For Residential & Nursing Homes, Appropriate Local Authority is determined by Ordinary Residence. If ordinary residence is now known, or the service user is self funding then the appropriate local authority will be the responsibility of Cheshire West & Chester.

² For Hospitals, Appropriate Local Authority is determined by where the patient's home address is. Where a patient's address is unknown then the Appropriate Local Authority is the local authority in which the hospital is located.

E. Does this ruling and its implications meant you are breaking the law in any way?

This court ruling does not in any way suggest that providers are engaging in poor practice, or delivering care that is not in the best interests of the persons in their care. Nevertheless, providers will now be supporting people who are subject to a deprivation of liberty. The actions outlined in this letter are required to remedy this.

However, it is recognised that resources are limited and a period of identification and assessment can only take place over a period of time. But it is incumbent on you as providers to make the best effort to meet your requirements under the Mental Capacity Act.

F. Do you have to do anything different in the way you deliver care?

Other than completing the actions outlined above, no. This change will effect many hundreds of people in care across the local authority, but only in terms of their legal deprivation of liberty status. Care will continue to be delivered as normal, and best interest decisions will continue to be made for those lacking mental capacity where they are required.

These best interests decisions must be made in a timely manner and if the DOLS procedure cannot be done within the time frame expected for the efficient discharge of health and social care responsibilities, then the DOLS procedure will need to follow on as quickly as possible.

Over the next few weeks and months, more considered guidance will need to be published, at a national level as well as a local level to ensure that health and social care assessment and care management processes are as efficient and person centred as possible and effectively engage with the new test for deprivation of liberty. Further communications will follow as and when this is available.

Special note to Acute Mental Health Providers: the Supreme Court decision has also implications for the application of S131 of the Mental Health Act. S131 can now only be applied to voluntary patients i.e, patients who have the capacity to make the decision to admit themselves to hospital. Informal patients, who lack this capacity will need to be admitted either via the DoLS regime or via the Mental Health Act.

For more information in respect of this letter please contact:

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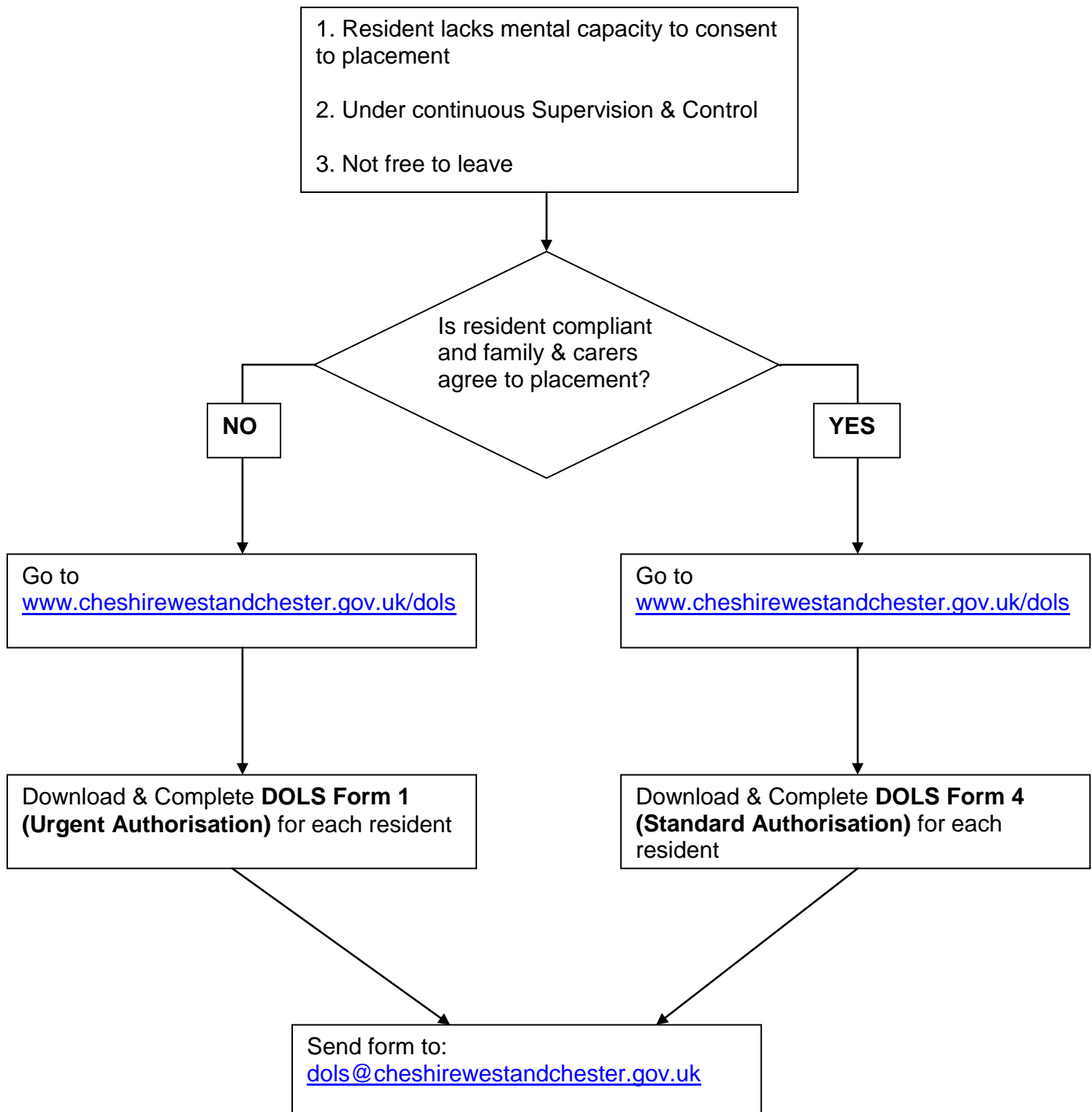
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Appendix 1 – Flowchart for Residential Care Home, Nursing Care Home or Hospice

Appendix 2 - Flowchart for Hospitals

APPENDIX 1 – DOLS Flowchart for Residential Care Home, Nursing Care Home or Hospice



APPENDIX 2 – DOLS Flowchart for Hospitals

