

## **Advice from the Department of Health – re - Cheshire West Ruling: what to do next**

### *Relevant staff should*

- Familiarise themselves with the provisions of the Mental Capacity Act, in particular the five principles and specifically the “least restrictive” principle.
- When designing and implementing new care and treatment plans for individuals lacking capacity, be alert to any restrictions and restraint which may be of a degree or intensity that mean an individual is being, or is likely to be, deprived of their liberty (following the revised test supplied by the Supreme Court)
- Take steps to review existing care and treatment plans for individuals lacking capacity to determine if there is a deprivation of liberty (following the revised test supplied by the Supreme Court).
- Where a potential deprivation of liberty is identified, a full exploration of the alternative ways of providing the care and/ or treatment should be undertaken, in order to identify any less restrictive ways of providing that care which will avoid a deprivation of liberty
- Where the care/ treatment plan for an individual lacking capacity will unavoidably result in a deprivation of liberty judged to be in that person’s best interests, this **MUST** be authorised.

### *Local authorities should in addition*

- Review their allocation of resources in light of the revised test given by the Supreme Court to ensure they meet their legal responsibilities.

Although local authorities are the supervisory body for DoLS for both care home and hospital settings, the NHS (commissioners and providers) have a vital role to play in correctly implementing DoLS (and the wider MCA). We expect that the NHS and local authorities will continue to work closely together on this.

### *Further steps that Local Authorities could consider taking are:*

- Ensuring awareness of the Supreme Court judgment among care providers
- Ensuring awareness of the need to reduce restraint and restrictions and promote liberty in care plans.
- Mapping any additional requirements for Best Interest Assessors (BIAs) and working collaboratively with other Local Authorities to reduce training costs.
- Reviewing information on the number of individuals in supported living arrangements to identify those individuals whose arrangements should be reviewed.