

RETHINKING THE RIGHT TO LIBERTY

October 2026

In June 2026, the UK Supreme Court handed down a judgment which changed how the right to liberty works in the UK, with significant implications for disabled people, their families, and public authorities across health and social care services.

Since the ruling, the British Institute of Human Rights (BIHR) has collated a series of five blogs which showcase a wide range of perspectives on this important legal change in human rights law.



What was the judgment about?

The right to liberty is protected by Article 5 of the Human Rights Act (HRA). This right protects our physical liberty, or our freedom to move around, meaning we should not be detained without a good reason.

The Deprivation of Liberty Safeguards (DoLS) scheme, set out in the Mental Capacity Act 2005, safeguards against arbitrary detention of people who lack capacity to make decisions about their accommodation and care. Before a person is deprived of their liberty in a care home or hospital, a DoLS authorisation must be granted. The DoLS scheme provides a process for the independent assessment of a person's care arrangements, access to independent advocacy, and the ability to challenge the DoLS authorisation in the Court of Protection.

In 2014, the Supreme Court established an 'acid test' to define a deprivation of liberty in a case known as Cheshire West. This said a person who lacks capacity to make decisions

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about their accommodation and care, is subject to continuous supervision and control, and is not free to leave, is deprived of their liberty requiring lawful authorisation.

Over ten years later, the Supreme Court has revisited this issue in its latest ruling, widely referred to as AGNI. The court concluded that the approach in Cheshire West was wrong and should no longer be followed.

What has changed?

The Supreme Court said the Cheshire West 'acid test' was too broad and concluded that:

- Deprivation of liberty must now be assessed by considering multiple factors, rather than a strict 'acid test'.
- This assessment must focus on the person's specific situation, considering the type, duration, effects, and manner in which restrictions are implemented.
- People who lack capacity to make decisions about their accommodation and care can still give 'valid consent' to their confinement if they are aware of their situation and can express whether they are happy or unhappy with it. If there is serious doubt about the person's views, no conclusion of valid consent can be made.
- Other factors must now be considered, including whether the person is objecting to their living arrangements, the 'relative normality' of the arrangements, and their purpose.

What are the implications of the judgment?

The Supreme Court ruling narrows the legal definition of a deprivation of liberty, meaning fewer people will be eligible for the DoLS scheme. The Supreme Court points to alternative safeguards, including the Mental Capacity Act principles, social care reviews, safeguarding duties, and welfare issues raised under Article 8 of the HRA.

Moving from a broad 'acid test' returns us to a more holistic case-by-case analysis when determining if someone is deprived of their liberty, which considers their individual circumstances and places even greater weight on their wishes and feelings.

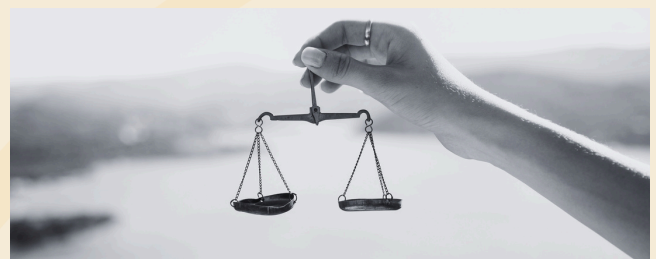
Uncertainty remains about how the judgment will work in practice, and there are concerns that people living in restrictive settings will be left in vulnerable situations without review.

What's next?

The judgment has changed the law, but this should not lead to a knee-jerk response. Crucially, the legal duty on public bodies to respect, protect, and fulfil human rights have not changed, and must continue to be met.

The UK Government's Department for Health & Social Care published guidance on 15 June about how AGNI should be interpreted in practice, announcing plans to produce further guidance with stakeholders and charities in due course.

The five blogs in this series explore what the judgment may mean in practice from different perspectives, including legal, care sector, practitioner and lived experience. They consider the questions, opportunities and challenges raised by the judgment, and what it means for people living in restrictive settings. We hope these perspectives will support reflection and discussion about how the judgment can be understood and applied in a way that continues to respect, protect and fulfil people's human rights. ||



A Practitioner's Perspective

by Annie Smith, Senior Human Rights Officer at BIHR

Before working at BIHR, Annie was an advanced social work practitioner and best interests assessor. Based in a Mental Capacity Act Team for a local authority, Annie completed Deprivation of Liberty Safeguards assessments and provided training and advice to social care staff. Annie is now BIHR's subject expert on health and care.



The Supreme Court's AGNI ruling represents a notable shift in human rights law, with implications for the health and social care sector that we will likely be trying to understand and navigate months, perhaps years to come.

I became a Best Interests Assessor (BIA) in 2018, trained to complete assessments under the Deprivation of Liberty Safeguards (DoLS) scheme. This work involved assessing people's capacity to decide where they live and the care they receive, understanding their wishes and feelings, consulting with people involved in their lives, and providing independent scrutiny to ensure care arrangements were in their best interests and with as few restrictions as possible. Where things needed to change, I could put the wheels in motion to explore ways in which the person's quality of life could be improved, ensuring independent advocacy and access to courts were made available.

The Supreme Court's 2014 Cheshire West judgment established the Acid Test for when someone is deprived of their liberty – if they are subject to continuous supervision and control, and they are not free to leave. This preceded my training so, like many BIAs, my role centred on capacity assessments and best interests decisions, with relatively little uncertainty about whether someone was being deprived of their liberty. The bar for what constituted a deprivation of liberty was low, meaning many were eligible for safeguards under Article 5 of the Human Rights Act, the right to liberty.

That changed on 2 June 2026, when the Supreme Court abolished the Acid Test, replacing it with a multi-factorial test. The bar has been raised again, with fewer people now eligible for DoLS, and BIAs will be just one of many groups of health and care professionals having to rethink their approach, after 12 years of relative clarity.

A flawed system

Clarity, however, does not mean the system was working well before. Cheshire West created significant challenges in the DoLS system. During 2024-25, only 21% of applications for DoLS were completed within statutory timeframes and almost 119,000 remained uncompleted.

To help systems to cope with their DoLS applications, ADASS developed a priority tool. We used this to try and secure a quick response where human rights safeguards were needed urgently, such as if a person was objecting to their care arrangements or they were subject to high levels of restraint. In 2019, the UK Government set out plans for a new streamlined Liberty Protection Safeguards (LPS) scheme, which has never been implemented. In 2024, with the system struggling on, underfunded and overwhelmed, the Care Quality Commission

called for urgent DoLS reform, and Age UK deemed the backlogs 'a scandal impacting some of our most vulnerable citizens'.

Casting the net of protections wide, as Cheshire West did, may in theory have seemed like the human rights solution, but in practice we have to acknowledge that it created a system that couldn't cope, with pending DoLS authorisations sometimes leading to human rights risks.

A safeguards gap

Despite the long waiting times and backlogs, however, I know that DoLS assessments have been a vital safeguard for people who may lack capacity to make decisions about their care arrangements and are restricted to varying degrees by those who support them. The DoLS process offers a fresh pair of eyes, ensures people have a say over their lives, and acts as a protective factor against institutional harm.

The Department for Health and Social Care (DHSC) has stated in its recent guidance that

the AGNI ruling is likely to 'significantly reduce the number of deprivation of liberty authorisations'. This gives me cause for concern, because although the DoLS system was flawed, it was something. What we have now is a safeguards gap which urgently needs to be filled, leaving many people with fewer formal opportunities for independent review and challenge.

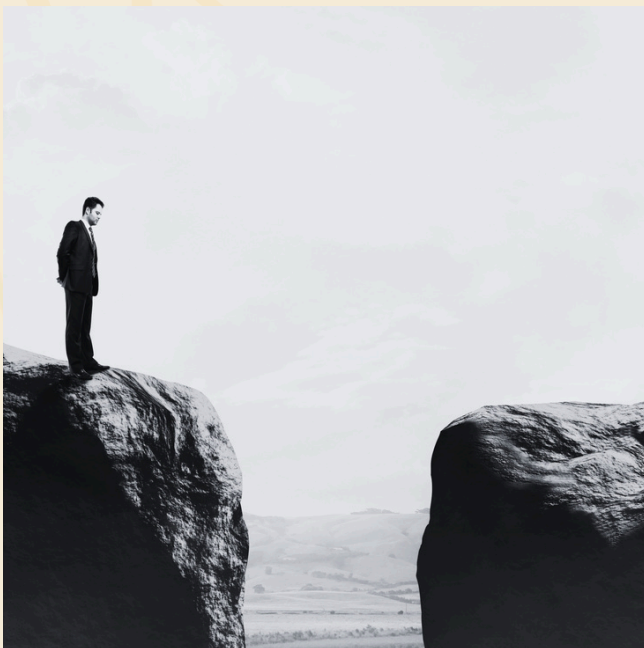
The Supreme Court suggested that people no longer eligible for DoLS will remain protected by other safeguards: the Mental Capacity Act's statutory principles, local authorities' safeguarding duties, annual care reviews, and the right to respect for private and family life (Article 8 of the Human Rights Act).

While those safeguards exist in principle, I worry about how effective they are in practice. Having delivered training on these laws for nearly eight years, I know that misunderstanding and insufficient training are widespread, holding them back from being properly implemented. On a recent BIHR programme, over a third of participants told us they had never had formal human rights training before, highlighting the gap between the law and everyday practice.

The Supreme Court has assumed that other laws will pick up the pieces, without engaging with the people who are living and breathing them. And even if this was the case, there are still many gaps and unanswered questions.

What now?

Part of me wonders if we have ended up with an over-reliance on the DoLS system to bring the human rights-based perspective, when actually almost all health and care professionals involved in a person's life have the same legal duties to respect, protect and fulfil human rights at every point in their journey to a restrictive care setting. The ambulance driver, the hospital matron, the locality social worker, the care home manager, the care inspector.



This landmark ruling could represent an opportunity to build a system in which human rights-based approaches to care become business as usual, where less restrictive options are always proactively considered, and where the person's voice is always heard. Comprehensive alternative safeguards must of course be available as a backstop where things do go wrong, but the DoLS scheme is not the only place where human rights matter.

The other part of me recognises that this will require time, investment, and in some cases, culture change. My hope is that, as policymakers and practitioners work through the consequences of this judgment, the human rights of those affected remain at the centre of every decision. If AGNI exposes gaps in our safeguards system, it must also be the catalyst for closing them. ■

A Lived Experience Perspective

by Charli Clement, Lived Experience Expert and member of BIHR's RITES Committee

Charli is an autistic and neurodivergent person who was admitted to Inpatient CAMHS (Children's Mental Health Services) aged 15. They advocate for human rights and system change in health & social care in roles across the NHS and third sector, and elsewhere, they are a writer, speaker, and trainer.

The Supreme Court ruling overturning Cheshire West is extremely concerning. Several charities have described it as the 'biggest rollback of disability rights in a generation' – from a human rights perspective, it has to be seen as problematic and dangerous to our communities. To me, it appears to severely misunderstand the realities of what changes and impacts a person's right to liberty when they are under the state.

This is now a landmark moment for disabled, neurodivergent and Mad people, and alarm has to be raised. The nature of this ruling means there is no route to appeal the decision, and there was no public debate – the Department of Health and Social Care must release interim guidance and a route to legislating.

It is hard, from a lived experience view, to not view this to an extent in a cynical nature: the pressure on the Deprivation of Liberty Safeguards system has long been overwhelming, and this will cause that to drop significantly. It is very difficult to not see this as intentional. A reduction in pressure on the system should never be the focus over people's needs and safety. The Human Rights Act is clear that staffing, resources, or money are rarely legitimate reasons to restrict a human right.



Much of the Human Rights Act hinges on decisions being within the law, with a legitimate reason, and proportionally having the least impact: a DoLS authorisation means someone's liberty does need to be restricted, but puts these safeguards scaffolds in place

to make sure this is consistently measured as their best interest, and done without abuse or neglect.

The ruling in part discusses focusing on more factors than the current 'acid test' does, which can in theory sound positive. Normally, I welcome more issues being considered when it comes to human rights needs, as so often, some issues slip through the net or are not deemed worthy. In this case, though, this is not the case. It has to be questioned as to whether liberty is something which can be debated. The Cheshire West acid test puts the need for safeguards in the minute that someone is subject to continuous supervision and control, and they are not free to leave – if this is happening but someone is okay with that, does it mean they should not be safeguarded?

This ruling says that if a person appears happy with their situation, this is not a deprivation of liberty as this gives consent. Though every disabled person is different, many can be more vulnerable to being persuaded, seeing abuse or neglect as normal, or to being institutionalised (where the practices of a facility such as psychiatric ward or care home become normalised, and where it can feel extremely difficult to leave or push back against such structures).

When institutionalised or simply under the system, it can feel extremely easy to say that you are okay with what is happening or what is being suggested; this can be because it feels safer to do so, or because you simply do not know that something different is available or that something is wrong. We are not often not taught or told about our rights in these settings, and advocacy is often lacking (whether it be due to funding, availability, or being unaware of the right to it). For me, self advocacy became a survival tactic I learnt on the spot – not something I was taught or supported with. To write into law that one can give this sort of consent simply through appearing happy or even just being passive is extremely dangerous.

In the case that someone does appear to be genuinely happy with their situation under this test, it has to be argued that this still does not pull away the need for safeguards. Abuse and neglect happens at concerning rates in health and social care settings in the UK, and learnings from cases like Winterbourne View have never truly manifested in reality. If someone is not free to leave a setting and is under continuous surveillance or lacking allowance for decision making, this puts them in an extremely vulnerable position.



I am in agreement with organisations like the National Survivor User Network who see this as symptomatic of the rights rollback that disabled people are facing across many areas at present. The fact that this was done at Supreme Court level means a complete lack of debate or scrutiny over this decision which must be seen as severely concerning. The UK Government must work with charities, organisations and individuals to consider the reality of the impact of this and put proper guidance in place prior to legislating, which must consider our rights fully.

Questions must also be raised in relation to how this decision interacts with the new Mental Health Act. Thousands of autistic people and people with a learning disability are about to not be allowed to be detained, and will, in theory, be placed into community settings. Whilst this can be seen as positive, there are fundamental issues with it surrounding where funding and placement is

actually coming from – and without the DoLS framework, it has to be wondered how many people will be supported, safeguarded and protected from abuse or neglect when they are moved.

DoLS has never been perfect. In my work, I have had my fair share of disagreement with cases in which it has felt like it is being used to the benefit of the system in place of supporting people into better environments or situations. Similarly, I have sat in many Care and Treatment Reviews where a person is stuck in a more restrictive environment due to waiting so long for DoLS due to the high demand. But, to pull away such a fundamental piece of safeguarding is to

open the door for higher levels of neglect and abuse behind closed doors, and allow for people to be kept in settings or scenarios which are unjustified or are far from in someone's best interests.

This is a huge moment for which route is taken next: a new system could embed human rights more thoroughly, consider how often we restrict people's right to liberty and consider how disabled, neurodivergent and Mad people can be genuinely supported. Currently, however, this seems unlikely – and in real time, thousands of people's safeguard has just been pulled out from under them. ■

A Care System Perspective

by **Helen Wildbore, CEO of Care Rights UK**

Care Rights UK is the charity focused on promoting the rights of older people who need care.



At Care Rights UK, we've been running the national advice line for older people needing care for over 30 years. A key theme in our advice work is people being prevented from leaving the place they receive their care, such as a care home, or having other restrictions placed on their movement. Until recently, there was a clear test for whether this interference with rights was lawful. If someone was under constant supervision and control and not free to leave their care setting, this was recognised as a restriction on their right to liberty. Safeguards would need to be applied to ensure this restriction was appropriate, known as the Deprivation of Liberty Safeguards (or DoLS). Whilst this system was far from perfect (due to delays, backlogs, and ineffective use), it was at least clear when a DoLS was needed and there was a process people could use to challenge poor practice, which had legal teeth.

That all changed in June this year. In the 'AGNI' case, the Supreme Court overruled this test, ending the clarity of knowing who should be protected by DoLS.

The court has changed the test for a deprivation of liberty and permitted care providers to infer the consent of a person to their care arrangement from their behaviour, even if they lack the 'mental capacity' to consent. In effect, the court created a new category of people who are now outside the protection of the deprivation of liberty safeguards: people who are assessed as not having the capacity to consent to their care arrangements but can be deemed to be consenting (so-called 'incapacitous consent').

The implications of this judgment are deeply concerning for the people we are supporting. The very week the Supreme Court judgment was handed down, we were supporting a family whose older relative, Valerie (name changed to protect anonymity), had been objecting to her move into a care home. Valerie moved in for respite care but then found herself being made a permanent resident. In response to Valerie objecting to being there and wanting to go home, she was placed on anti-anxiety medication that her family say left her dulled and withdrawn. Valerie stopped asking to go home and she was later assessed as not requiring a DoLS as she was taken to be consenting to being there. But the family felt that no consideration was given to the impact of the medication on her change in behaviour.

Prior to the Supreme Court decision, a DoLS authorisation would have been necessary to ensure this restriction on Valerie's right to liberty was appropriate and lawful. Now, Valerie is deemed to have consented to the arrangement and is no longer protected by DoLS. So, what does this mean in practical terms for people like Valerie?

Power imbalance

A consistent theme on our advice line is the power imbalance in care settings. People drawing on care services can feel in a vulnerable situation, unable to speak out about what they want and their choices.



The judgment has deepened this power imbalance by giving care providers the ability to choose who in their care is deemed to be consenting to their care placement through a vague set of factors. In doing so, they remove people like Valerie from the protection of DoLS, putting them in a much more vulnerable situation.

The Court decision seems to put the onus on people like Valerie to object to their care placement. But would Valerie feel able to communicate an objection to the very people providing her care? Every day we hear from people too afraid to raise their voices and speak out, for fear of their situation getting worse or of reprisals, like visiting restrictions or even eviction. It raises the wider question of how people like Valerie will be protected from sedation – even if it is a side effect of other medication. Or at the very least, how would the use of sedation in situations like Valerie's be picked up and prevent an assumption of consent?

Lack of external checks

Without the protection of DoLS, people like Valerie are much less likely to be seen by other professionals. Part of the DoLS process is an assessment by a Best Interests Assessor – someone external to the care provider to help decide what would be in the best interests of Valerie. It not only helps identify what Valerie wants but also acts as a vital system of checks and oversight on something as crucial as the right to liberty.

That extra set of eyes can be invaluable to help to identify any other care concerns or risks to other rights.

A process

Being under the protection of DoLS gives Valerie and her family a legal tool and a process to use when they need to question or challenge their care. We know from our advice work how beneficial this can be. For example, as part of the process of reviewing whether a restriction of liberty is in the best interests of Valerie, the Best Interest Assessor can impose conditions on the DoLS to ensure other rights are protected. We have seen this used to ensure people like Valerie can have access to their loved ones, overturning visiting restrictions. This process also means things should be kept under review, to determine if a deprivation of liberty is still needed or if anything has changed.

Support from trusted loved ones

As part of the DoLS process, Valerie would be able to be represented by someone who knows her, called a Relevant Person's Representative (or RPR). This ensures Valerie has a trusted relative or friend to play a formal part in the process of assessing the restriction on her liberty. This representative has a recognised role, a voice and even

access to legal aid to challenge a deprivation of liberty. Without the protection of DoLS and an RPR to represent her, Valerie's voice risks being lost.

What needs to change

The Supreme Court decision in AGNI has created a great deal of uncertainty around such a vital issue as our right to liberty. Not only because of the incredibly complicated legal reasoning which has left even the most expert commentators baffled. It has also left too much uncertainty around who will now be protected by DoLS, and a deeply concerning protection gap for people who will now be outside of these safeguards. It has taken power and voice away from the people who need them most, those in the most vulnerable of situations in our care settings. It has left older and disabled people at increased risk.

We urgently need the Government to issue guidance to ensure care and health providers, local authorities and people affected understand their rights. We are also calling for the Government to overturn the court's creation of 'incapacitous consent' to ensure that everyone has the same protection of their right to liberty. For people relying on health and care services, this right becomes more important, not less. ■



A Legal Perspective

by **Alex Ruck Keene KC (Hon)**

Alex Ruck Keene KC (Hon) is an experienced barrister, writer and educator. He is in practice at 39 Essex Chambers, specialising in the fields of mental capacity, mental health, and healthcare ethics.

The judgment of the Supreme Court in what is now universally known as AGNI is one that has provoked strong and very divided opinions. As one of those involved in the case for the Attorney General of Northern Ireland, what follows is an avowedly personal perspective. Many of those who are most concerned about the judgment and its impact have been concerned by the way in which the judgment came about, and how the Supreme Court appeared to have made policy without consultation or the involvement of those affected.

It might, however, equally be said that Lady Hale in the judgment in *Cheshire West* made policy by 'erring on the side of caution' in the delineation of the scope of deprivation of liberty – an approach that at paragraph 47 of her judgment she identified as being expressly driven by a policy concern as to the oversight of care arrangements of those with impaired decision-making capacity.

It might be thought that it is a 'bad thing' for the Supreme Court to be making health and social care policy in relation to hundreds of thousands of individuals with impairments (and, not irrelevantly, directing the allocation of millions of pounds across the United Kingdom). If it is a 'bad thing,' then, unfortunately, it is a problem that can be laid squarely at the door of the Westminster Parliament in 2007, which ducked the task of giving a statutory definition of those requiring some form of additional oversight, and, instead, left it solely to the courts to decide who needed such oversight.

If Lady Hale erred on the side of caution, the Supreme Court in AGNI erred on the side of human rights purism. Its very clear message is that deprivation of liberty is a narrow concept, representing (at root) the overbearing of someone's will by compulsion. This can be conceptualised in legal terms, and the judgment engages in close reading

of the Strasbourg case-law in ways that will keep scholars busy for years. But, perhaps significantly, AGNI also represents an approach which is much closer to what non-lawyers think deprivation of liberty means. Non-lawyers could simply be wrong, but for my part I have no very great regret that I will no longer have to inflict (visible) cognitive dissonance on non-lawyers by explaining that if a person has complex needs, it was overwhelmingly likely that they were, and would always be, identified as deprived of their liberty, which was neither 'good' nor 'bad' but just 'was.' The new approach does not automatically make deprivation of liberty 'bad,' but it undoubtedly places a much greater burden on a person seeking to justify it to explain why the situation is truly the least restrictive way of meeting the person's needs.

The idea of a broader approach to 'valid consent' – i.e. not concluding that lack of capacity means a person can have no will –



is a new one. It arguably represents a considerable move towards compliance with the Convention on the Rights of Persons with Disabilities, with its emphasis on the widest possible approach to legal capacity. And it also opens the door to a much greater emphasis on seeking to identify the wishes, feelings, beliefs and values of those with cognitive impairments.

That having been said, given the way in which the Supreme Court approached the question of deprivation of liberty, I harbour some doubts as to the extent to which 'valid consent' will be in play in many cases. The Supreme Court (rightly) identified that the European Court of Human Rights locates the person's views in both the objective and subjective elements of the test for deprivation of liberty. Applying the multi-factorial test that they identified (again rightly) to reflect the Strasbourg case-law, it will be an unusual case where a person is not actively objecting

to their situation for there to be sufficient compulsion in play to give rise to questions of whether there is consent to that compulsion.

AGNI undoubtedly represents a reset. In that reset, I would urge two things. First, I would urge people to hold the DHSC to the promise made to the Supreme Court that there were sufficient safeguards in the broader network of the law that it was not necessary to hang everything off Article 5. Second, if they are unconvinced by that promise, I would invite people to look to Jersey and the framework for oversight of 'significant restrictions on liberty' contained in the legislation there. By contrast to the position in England & Wales, it represents the decision of the democratically elected legislature on that island as to who should have the benefit of such oversight, including interferences not just with Article 5 but also the right to private and family life under Article 8 ECHR. AGNI has opened the door for such an approach here. ■

AGNI: What happens next?

by **Sanchita Hosali, CEO of BIHR**



Over the course of this series, we've heard four very different perspectives on liberty in the wake of the Supreme Court's AGNI judgment, a decision that has fundamentally reshaped the legal framework surrounding the right to liberty under Article 5 of the Human Rights Act. In broad terms, the Supreme Court concluded that the circumstances amounting to a deprivation of liberty under Article 5 should not be assessed solely by reference to the "acid test" the Court had previously established in the 2014 Cheshire West case. Rather, greater weight must be given to the person's situation as a whole, including the reasons for and context of the arrangements. Many questions remain.

Charli reminded us that discussions about liberty are never just discussions about law. They are about people's lives, relationships, choices, and what it

means to be recognised as a rights holder. Annie reflected on the realities of frontline practice and the importance of not making assumptions when supporting people to make decisions about their lives.

Helen explored the challenges facing care systems, balancing autonomy, protection, accountability and the realities of delivering support in increasingly pressured environments. And Alex examined the legal implications of the AGNI judgment itself, helping us understand what has changed, what has not, and how this fits within the wider development of the right to liberty under Article 5.

We deliberately sought out differing perspectives, knowing this series was never going to arrive at a single conclusion. Each raises different concerns and points in different directions. Yet all return to a common challenge: how do we make people's human rights real in their everyday lives? That means ensuring people are heard, balancing autonomy, protection and accountability, and keeping debates about liberty connected to the people most affected by them.

There has been considerable debate about whether the Supreme Court got the law right in AGNI. Really trying to engage with it, and the contributions from Charli, Annie, Helen and Alex, I have found myself returning to four reflections.



Why Cheshire West mattered

I was at BIHR when the Supreme Court issued the Cheshire West judgment in 2014. There was something refreshingly simple about it and how it spoke to the absolute core of human rights: universality. To paraphrase what the then President, Lady Hale, wrote in the judgment, if something would be a deprivation of liberty for me, why should it become something different simply because the person concerned is disabled?

We can debate how legal safeguards should operate and when restrictions on non-absolute rights engage human rights protections. But the starting point has to be that disabled people do not get a different version of human rights. That was the power of the "gilded cage" argument. A comfortable environment is still a restriction if the person is not free in the way the rest of us would expect to be free.

Whatever people think about the practical consequences of Cheshire West, it is important not to lose sight of what made it resonate in the first place. It challenged a long history (and indeed continuation) of treating disabled people's restrictions differently because they happened in care settings, family homes, or places regarded as benevolent.

At its heart was a simple reminder that liberty matters equally. But as Annie's and Helen's contributions remind us, a powerful principle is not the same thing as an easy system. And that brings me to my second reflection.

The principle was simple. The reality was not.

One of the reasons I have appreciated the different perspectives in this series is that they remind us what happened after Cheshire West. Translating a powerful principle into practice proved far more complicated.

Over the years, I have heard directly from

families who felt exhausted by processes they did not understand and often could not see the value of. Parents supporting adult children to live good lives found themselves repeatedly navigating assessments, reviews and bureaucracy around arrangements they experienced as loving, supportive and enabling.

I understand why that felt frustrating, and we have to take those experiences seriously. But the reason I have always found this debate difficult is because I have also heard the other stories. Stories reflected across this series: in Charlie's emphasis on being recognised as a rights holder; in Annie's reminder that asking one more question can change how we understand a person's circumstances; and in Helen's focus on accountability, scrutiny and the responsibilities that accompany decision-making power. People's lives where restrictions had become normal. Where nobody had stopped to ask whether something was really necessary. Where safeguards created opportunities for challenge that otherwise would not have existed.

These are not competing versions of reality. They are part of the same reality.

Cheshire West expressed an important human rights principle. The way that principle played out in practice was sometimes difficult. Both things can be true at once. In many ways, understanding that tension is essential to understanding how we arrived at AGNI. As Alex's contribution reminds us, it is important to step back from immediate reactions to the judgment and look at the bigger legal and constitutional picture.

AGNI: when courts revisit rights protection

The AGNI judgment has prompted strong reactions. Some commentators have welcomed it as a correction to Cheshire West. Others have raised serious concerns about what it may mean for safeguards, scrutiny



and accountability.

Reasonable people can disagree. I certainly do not think anyone should pretend this judgment is uncontroversial. But nor do I think that the fact the Supreme Court revisited Cheshire West is, in itself, a human rights problem.

Part of what made Cheshire West significant was that it developed a particularly expansive and, I would argue, positive, domestic interpretation of Article 5 that went beyond the approach taken by the European Court of Human Rights. Under the Human Rights Act, UK courts can develop domestic interpretations of Convention rights beyond the minimum standards recognised by Strasbourg.

Equally, those interpretations can later be revisited by the courts. That is part of how our legal system works. That does not mean accepting a judgment uncritically. The response to a judgment you disagree with is to challenge it through evidence, advocacy, public debate, future litigation or legislative change. But those arguments must start from an honest assessment of the legal position as it stands, not the one we might prefer.

What concerns me is when disagreement with a judgment becomes reluctance to engage with the judgment itself. The rule of law requires more of us than supporting court decisions when they produce outcomes we

welcome. If we expect judgments that strengthen rights to be respected and implemented, the same principle must apply when courts reach conclusions we would not have chosen. Otherwise, our commitment is not really to legally articulated universal rights, but to particular decisions the meet your approval.

Whatever view people take of AGNI, the judgment is now part of the legal framework governing the right to liberty; and whether it is subject to further challenge and change, the here and now matters for people whose rights may be affected. And for BIHR, that moves us beyond the courtroom to how human rights are understood and applied in everyday decision-making.

The response matters as much as the judgment: what has not changed

Public authorities remain bound by the Human Rights Act, its array of 16 rights, and the powerful practical duties to meet them. The conversation does not end with Article 5. Many of the situations discussed throughout this series also engage Article 8, the right to private and family life. Decisions about care,

support, living arrangements, relationships and participation all require consideration of dignity, autonomy, choice and inclusion.

That is why human rights protection cannot be reduced to a single legal threshold. Health and social care practitioners will still need to understand wishes and feelings, recognise objection, consider less restrictive options, involve families and assess the impact of decisions on people's rights. Where absolute rights like life or freedom from inhuman treatment are at risk, there are bright red lines, and a different decision must be taken. Where non-absolute rights like Article 8 are engaged, any restriction must be lawful, pursue a legitimate aim, and be proportionate. These questions mattered before Cheshire West. They mattered throughout the decade that followed. And they are just as important after AGNI.

Ultimately, the challenge remains the same: ensuring that human rights shape how public power is exercised in practice and how they are experienced by people. That is where rights are realised or denied, and it is where BIHR will continue to focus its efforts. ■

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