Kirklees COUNCIL

Name of Meeting: Cabinet
Dates: Tuesday 26 July 2016
Title of report: Update on the implications of the Supreme Court Ruling on Deprivation of Liberty Safeguards (DOLS)

Is it likely to result in spending or a saving of £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the Council's Forward Plan?	No
Is it eligible for "call in" by Scrutiny?	Yes
Date signed off by Director and name **Is it signed off by the Director of Resources?** **Is it signed off by the Assistant Director, Legal, Governance and Monitoring?**	Richard Parry, 5 July 2016 David Smith, 5 July 2016 Julie Muscroft , 5 July 2016
Cabinet member portfolio	Adults, Health & Activity to improve Health

Electoral wards affected: All
Ward Councillors consulted: Consultation with Ward Councillors is not applicable to this report
Public or private: Public

1. PURPOSE OF REPORT

1.1 Further to the report to Cabinet on 30 June 2015 here, this report provides an update on the impact and risks of the 2014 Supreme Court judgement on Deprivations of Liberty (DoLS). The judgement changed the legal definition of and the test for deprivation of liberty and as a result significantly increased the number of people who could be considered as being deprived of their liberty; and therefore subject to the process for authorising that deprivation of liberty.

1.2 In particular the report provides information on the impact and risks of the increasing number of people living in the community (ie outside of care homes or hospitals) who could be considered to be being deprived of their liberty and therefore subject to the process for authorising that deprivation of liberty. The process for these deprivations of liberty is by application to the Court of Protection.

2. SUMMARY

2.1 A report to Cabinet on 30 June 2015 set out the then and anticipated impact of the increasing pressures and demands on the Council arising from a Supreme Court judgement on Deprivation of Liberty Safeguards (DoLS). Since that report there has been more than double the estimated number of applications in 2015/16 (1,752 not the anticipated 800) than were expected relating to people living in care homes and hospitals. In addition there are up to 100 people with a learning disability living in the community who could be potentially being deprived of their liberty, and therefore subject to application to the Court of Protection for authorisation of a DoL. Work is taking place to identify the number of people with dementia living in the community who may require Court of Protection consideration.

2.2 This report provides an update on the impact and risks to the Council arising from the continued increase in the number of applications, together with information about the national response and local action taking place to deal with the unremitting pressures and workload on the Council. DoLS processes are complex and costly. The average cost in Kirklees of a DoL in a care home or hospital is £1,300 although a single non-complex case can incur up to £4,000 costs if it needs to be considered by the Court of Protection; a complex case will cost considerably more. It is anticipated that the cost of a DoL for a person living the community will be the same or more than the cost of a DoL in a care home or hospital.

2.3 In the past year the Safeguarding Adults Partnership Team has incurred additional expenditure in excess of its budgeted allocation for DoLs in care homes and hospitals to the tune of £98,000. During 2016/17 additional resources will be required to ensure that when DoLs in the community are identified the Court of Protection process can be utilised. It is anticipated that any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

3. INFORMATION REQUIRED TO TAKE A DECISION

Background

3.1 DoLS are part of the Mental Capacity Act 2005. They were introduced in 2009 to offer protection to anyone over the age of 18 receiving care in a registered home or hospital who lacks the mental capacity to consent to those arrangement and is therefore being deprived of their liberty. The aim of DoLS is to ensure that if a person's life is being so restricted that their liberty is taken from them there should be an independent assessment and authorisation process for the deprivation.

3.2 DoLs is a lengthy and complex process which if not followed precisely may lead to individuals being unlawfully deprived of their liberty which is a breach of article 5 of the Human Rights Act, giving the individual or their representative the right to seek damages against the supervisory authority (the Local Authority) responsible for assessment and authorisation of the deprivation.

Supreme Court Judgement

3.3 A Supreme Court judgement handed down in March 2014 (here) changed the legal definition of and the test for deprivation of liberty. There are now two key questions that need to be considered when authorising a Deprivation of Liberty (DoL) (known as the 'acid test'):

i. Is the person subject to continuous supervision and control?
ii. Is the person free to leave?

For a person to be deprived of their liberty they must be subject both to continuous supervision and control and not free to leave.

Implications

3.4 The implications of the judgement are:

a) That every person who lacks capacity to agree to being accommodated in a residential care home and /or to their care plan and is not free to leave could be considered as being deprived of their liberty; therefore the process for authorising a DoL must be followed. This has now meant the threshold for when someone is being deprived of their liberty is lower.

Potentially anyone who lacks capacity and is in a care home or hospital may meet the acid test, 24 hour care may meet the continuous supervision and control aspect, although this is for the Best Interests Assessor (BIA) to assess and determine.

(Information about the DoLS process for people living in care homes, including scenarios, is attached at Appendix 1).

b) To broaden the scope of DoLS for people living in the community (ie outside of care homes and hospitals) which now includes people living in supported living, shared lives, post 18 residential college provisions and hospices as well as in their own homes. In these settings the Local Authority is not able to authorise a deprivation, it has to be done by application to the Court of Protection. (The Court of Protection makes decisions and appoints deputies to act on behalf of people who are unable to make decisions about their personal health, finance or welfare - see here.)

   If the care the person is receiving is funded by the Local Authority then the Local Authority will be the applicant and will bear the majority of the court costs. If the person is funded by Health then Health will be the applicant but if the Local Authority has had any involvement in the person's care assessment the Local Authority is likely to be involved in the application.

   (Information about the DoLS process for people living in the community, including scenarios, is attached at Appendix 2.)

Following the Supreme Court judgement the Court of Protection launched a new streamlined procedure to assist with dealing with the increased demand for DoLS for people living in the community. This is known as the RX procedure and is supported by a new Court of Protection application form and practice direction. The responsibility remains with those who fund care in community settings (predominately Local Authorities and CCGs) to ensure they have a procedure and policy in place for these deprivations of liberty. For more complex cases the standard process for the Court of Protection remains.

3.5 **Impact of the Supreme Court judgement nationally – Local Authority DoLS applications (for all Councils who submitted data for at least 1 month over the period) for people living in care and nursing homes**

	Number of Applications	Number Granted	% Granted	Number Not Granted	% Not Granted	Number Not Signed Off or Withdrawn	% Not Signed Off or Withdrawn
2014/15							
Q1	24,000	13,400	56	3,400	14	7,200	30
Q2	33,100	13,000	39	3,600	11	16,500	50
Q3	36,300	11,600	32	3,500	10	21,200	58
Q4	38,700	11,100	29	4,300	11	23,300	60
Total	**132,100**	**49,100**	**37**	**14,800**	**11**	**68,200**	**52**
2015/16							
Q1	44,000	12,700	29	4,700	11	26,600	60
Q2	40,200	10,200	25	3,600	9	26,400	66
Total	**84,200**	**22,900**	**27**	**8,300**	**10**	**53,000**	**63**

Data source: DoLS Quarterly collection here Table 2

3.6 **Impact of the Supreme Court judgement locally – Kirklees Council DoLS applications for people living in care and nursing homes**

	Number of Applications	Number Granted	% Granted	Number Not Granted	% Not Granted	Number Not Signed Off or Withdrawn	% Not Signed Off or Withdrawn
2014/15							
Q1	77	46	59.7%	22	28.6%	9	11.7%
Q2	88	53	60.2%	19	21.6%	16	18.2%
Q3	89	56	62.9%	19	21.3%	14	15.8%
Q4	129	97	75.2%	14	10.9%	18	13.9%
Total	**383**	**252**	**66%**	**74**	**19%**	**58**	**15 %**
2015/16							
Q1	304	265	87.2%	11	3.6%	28	9.2%
Q2	415	281	67.7%	23	5.5%	111	26.8%
Q3	269	209	77.7%	12	4.5%	48	17.8%
Q4	388	217	55.9%	13	3.4%	158	40.7%
Total	**1376**	**972**	**71%**	**59**	**4%**	**345**	**25%**

NB: A further 376 cases were still in process; therefore the year-end figure is 1,752.

3.7 **Impact of the Supreme Court judgement nationally – DoLS applications to the Court of Protection for those living in community settings**

Applications increased from 109 in 2013 to 525 in 2014 and to 1,499 in 2015. A breakdown of the applications received between October and December 2015 shows that of the 489 received, 317 (65%) came from Local Authorities, 147 (30%) from solicitors and 25 (5%) came from others including CCGs.

Data source Family Court Statistics Quarterly, England and Wales, March 2016 here

3.8 **Impact of the Supreme Court Judgement locally – Kirklees Council DoLS applications to the Court of Protection for those living in community settings**

As a result of the developments of legal case practice (see 3.4b above) the scope of these DoLS is now expanding and therefore a number of additional individuals are now likely to be included within the DoLs remit. Work has commenced to identify a process for assessing and taking cases to the Court of Protection. Priority cases were identified as those in learning disabilities as a starting point. Work to date has identified up to 100 people with a learning disability living in the community and in shared lives placements. Work is currently underway to identify the number of people with dementia who may require Court of Protection consideration. Therefore during 2016/17 additional resources will be required to ensure that when identified the Court of Protection process can be utilised (as described in Appendix 2).

National Action

3.9 There have been some actions taken nationally to mitigate the effects, eg:

a) A revised set of standard forms supporting the DoLS process was implemented (reducing the total number from 32 to 13).

b) A more streamlined Court of Protection process was implemented for DoLs cases in the community (see 3.4 above).

c) New guidance from the Law Society was published to assist practitioners in understanding what may constitute a DoL here, including a quick reference guide to DoLS in the community here.

d) ADASS published guidance here for Local Authorities that included a screening tool to prioritise the allocation of requests to authorise a DoL.

e) The Law Commission were tasked to re-look at the DOLs legislation. Their consultation paper was circulated for responses by 2 November 2015. The DoH response was published on 11 December 2015. The Law Society is expected to publish its final recommendations by the end of 2016 (for further information see here). An interim statement was published in May 16 here. Local Authorities will continue to monitor closely formal arrangements that may arise.

f) In March 2015 ADASS and the LGA published a briefing here calling for the Government to fully fund the costs of the changes to DOLS. In response the Government made a one-off contribution of £25m nationally (£198,387 for Kirklees) towards the cost of DoLS (see here). Despite these actions the indications are that the number of applications is continuing to grow week by week, and will do so for the foreseeable future; see 3.5 and 3.7 above for most recent published national figures. Also, even with the new forms, the paperwork associated with DoLS is weighty and there is still a complicated administration process that underpins the system.

Local Action

3.10 Since the judgement was first handed down, work has been ongoing to deal with the increased pressures and workloads being placed on the Council. An action plan is in place which is monitored and regularly updated. Actions include:

a) The Safeguarding Adults Partnership Team has continued to review processes and have made practical adjustments to streamline them.

b) The service has increased capacity in business support for the DoLS processes based on previous projections of demand.

c) There is now a nominated DoLS Co-ordinator to manage the demand, further work is being done to widen this role to other managers to cover.

d) The number of signatories to sign off DoLS has been increased to ensure availability to deal with DoLS authorisations, training was commissioned to enable signatories in their roles.

e) Work has continued to increase the Independent BIA resource. Independent BIAs are being utilised wherever available to carry out assessments where the internal BIA resource has already been allocated.

f) In order to increase the BIA resource, internal BIAs have been offered casual contracts to work outside their contracted hours.

g) Adult Social Care has continued to work towards increasing the internal BIA by working towards training more staff.

h) Resource has been allocated to pilot and set up a small BIA team to meet some of the additional demand and improve practice.

i) Work is continuing to increase the pool of Mental Health Assessors.

j) The Contracts Team is working towards a commissioning framework for independent Doctors and BIAs.

k) Legal advice is continually sought to ensure complex cases are appropriately managed.

l) The service is continuing to look at where and how administrative support is being provided to the BIA Co-ordinator. New temporary administrative support is being recruited.

m) BIAs are participating in regional conferences which act as refresher training for them.

n) The contract for IMCs and paid RPRs (both of whom support the person being deprived of their liberty either when there is no suitable family member to support them or where support is required for the family member) is being continually reviewed to try and increase capacity. Additional funding was allocated to accommodate the increase in activity.

o) Scoping and planning on dealing with DoLS in the community is continuing.

p) Training for managing authorities, eg care homes, is being increased.

q) DoLS continues to be on the Corporate Risk Register.

r) Due to high demand DoLS applications are being screened using the ADASS priority tool mentioned in 3.9 (d) above.

s) Further work is planned to attempt to further streamline the process using systems thinking principles.

As with the national picture, despite these actions the indications are that the number of applications is continuing to grow week by week, and will do so for the foreseeable future; see 3.6 above for the number of applications received by the Council.

3.11 Since the last report demand has been more than double the estimated 800 cases that were expected (see 3.6 above). Pressure has increased so much that service now has to operate a waiting list to prioritise applications for the DoLS process for people living in care and nursing homes. The risk to the Council arising from this is described in Section 4 below.

3.12 During the forthcoming year the service will:

- Continue to apply the ADASS risk approach to the management of cases.
- Continue to explore revised approaches to systems to streamline processes and optimise the efficient use of available resources.

4. IMPLICATIONS FOR THE COUNCIL

Cost of DoLS

4.1 The costs incurred by Local Authority supervisory bodies are highly variable depending on the complexity of the application. Research published in the British Journal of Psychiatry in 2011[1] found that the average cost of a DoLS assessment was £1,277, based on 2008 figures. However, the actual cost of a DoLS application can be far in excess of this figure, depending on whether legal advice / action is required and whether the application has come from outside the Kirklees area. DoLS reviews also incur a cost to the supervisory body; again the actual amount depends on the complexity of the case.

[1] http://bjp.rcpsych.org/content/199/3/232.abstract

4.2 The average costs in Kirklees for DoLS in residential and care homes are continuing to run at £1,300 although a single non-complex case can incur up to £4,000 costs if it needs to be considered by the Court of Protection; a complex case will cost considerably more. It is anticipated that the cost of a DoL for a person living the community will be the same or more than the cost of a DoL in a care home or hospital. During 2016/17 additional resources will be required to ensure that when DoLs in the community are identified the Court of Protection process can be utilised.

4.3 During the past year the Safeguarding Adults Partnership Team has incurred additional expenditure in excess of its budgeted allocation to the tune of £98,000. Also the cost of approximately 300 Best Interest Assessments is reflected within the budgets for assessment within operational services (Social Care and Wellbeing for Adults). The real cost impact is therefore not apparent but is covered by the estimates elsewhere in this report.

4.4 The number of applications is continuing to increase rapidly. In the current year it is estimated that in excess of 2,000 referrals for consideration will be received, considerably more than the 800 previously estimated and the 1,752 requests received last year, which will place even more pressure on management and assessment resources, business support, external advocacy, Section 12 Doctors (doctors who have specific expertise in mental disorder and have additionally received training in the application of the Mental Health Act) and BIAs.

4.5 It is anticipated that any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

Risk to the Council

4.6 In line with the national picture, the number of applications being received by the Council is continuing to increase and will do so for the foreseeable future. Despite the actions listed in 3.10 above, there remains a significant risk that the Council will not have enough Mental Health Assessors, BIAs, IMCAs and RPRs to be able to comply with the DoLS process within the statutory timescales in all cases.

4.7 The unremitting pressure arising from working to meet the statutory timescales is impacting on all the staff involved, ie Business Support Officers who administer the process; the Safeguarding Operational Team; BIAs and senior managers who attend the panels. Also pressure on the whole system will mean that the ability to support other complex tasks (eg large scale safeguarding investigations, domestic homicide reviews, safeguarding adults reviews, the Safeguarding Adults Board care management functions) is compromised. Consideration of the risk to the individual is a key part of how capacity and activity is prioritised.

4.8 The inability of the Council to discharge its legal duty to comply with the DoLS process could result in a costly claim for damages and/or a loss of reputation.

5. <u>CONSULTEES AND THEIR OPINIONS</u>

No consultations were required regarding the recommendations in this report.

6. <u>NEXT STEPS</u>

The actions described in Section 3.10 and 3.12 will continue.

7. OFFICER RECOMMENDATIONS AND REASONS

7.1 That the contribution of DOLS activity to overall pressure in the system is noted.

7.2 That any overspend in this area will be drawn down from reserves as a volume pressure, consistent with the approved principle of drawing down volume pressures from reserves in other areas.

8. CABINET PORTFOLIO HOLDER RECOMMENTATION

8.1 The Portfolio Holder for Adults, Health & Activity to Improve Health:

a) supports the acknowledgement of the overall pressure created by DOLS activity;

b) supports the use of reserves to address overspends created due to volume pressures.

9. CONTACT OFFICER/ASSISTANT DIRECTOR RESPONSIBLE

Keith Smith, Assistant Director for Commissioning and Health Partnerships, 01484 221000 Email: keith.smith@kirklees.gov.uk

10. BACKGROUND PAPERS

As referenced in the report.

APPENDIX 1

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) FOR PEOPLE IN CARE AND NURSING HOMES AND HOSPITALS

Process

1. The DoLS process involves 6 separate independent professional assessments which are undertaken by a Mental Health Assessor, usually a Consultant Psychiatrist and a Best Interests Assessor (BIA) most likely to be a Social Worker or Mental Health Nurse. The DoLs process must be completed within 21 calendar days for a standard application and 7 calendar days for an urgent application.

2. The BIA's main role involves independently assessing (the Best Interests Assessment) and deciding whether a person is deprived of their liberty, and deciding whether the DoL is in their best interests, necessary to prevent harm to them, and whether it is proportionate to the likelihood of that harm occurring. The Mental Health Assessor and BIA submit their assessments together with the recommendations of the BIA to a Local Authority supervisory body who then scrutinises the assessments and authorises or declines the DoL. In this way the DoL can be made compliant with Article 5 of the Human Rights Act 1998, the Right to Liberty.

3. Local Authorities are the supervisory body in England for all DoLS whether the person is resident in a care home or a hospital and for people who are ordinary residents of that Local Authority.

4. In some cases the Local Authority may need to seek legal advice on cases and / or make application to the Court of Protection. The person, or their representative, has the right to challenge authorisations in the Court of Protection.

5 If there is no appropriate family or friend who can support the person during the assessment procedure, an Independent Mental Capacity Advocate must be appointed by the supervisory body. An IMCA is an independent person with relevant experience and training who can make submissions to the people carrying out the assessments and challenge decisions on behalf of the person they are representing.

6. If authorisation is given, someone must be appointed as the Relevant Person's Representative (RPR) but the IMCA may still have a role in supporting that person. The role of the RPR is to keep in contact with the person and to make sure that decisions are being made in their best interests. The RPR will usually be a relative or friend of the person who is being deprived of their liberty. If there is no appropriate friend or relative, it will be someone appointed by the supervisory body (possibly a paid professional) who can keep in regular contact with the person.

7. A DoLS authorisation can last for a maximum of 12 months, and should remain in force for the shortest time possible. The managing authority (the care home or hospital) and the Local Authority as supervisory body must make regular checks to see if the authorisation is still needed, remove the authorisation when no longer necessary and provide the person's representative with information about their care and treatment. The supervisory body is responsible for review of an authorisation. Review can take place at any time after the authorisation. Review can take place at any time after the authorisation and must take place if the person's circumstances change or they or their representative requests a review.

Scenarios – extracted from the Law Society publication "Identifying a deprivation of liberty: a practical guide" here.

1. Hospital Acute Ward

1.1 Mrs J is an 80 year old lady, who lives on her own in a semi-detached house. One evening her neighbours notice the smell of burning. Not finding anything in their house, they go next door. They find Mrs Jones slumped in her kitchen with the toaster on and a piece of burned charcoal in the toaster.

1.2 Mrs J is admitted to hospital with a diagnosis of severe community acquired pneumonia. She responds well to antibiotics and after a week tells the treating team that she wants to go home. She has been assessed during her admission by the physiotherapy and occupational therapy team, who feel that she has significant problems with her activities of daily living. Their professional opinion is that it would be unsafe for her to return home. The doctors treating her note that she is slightly confused, and she scores 8/10 repeatedly on a mini-mental test.

1.3 Mrs J is adamant that she will not consider anything other than returning home. Her neighbours, who have visited her daily in hospital, are very concerned about her returning home. The treating team considers that she should stay in hospital for further assessment and thereafter a suitable care home should be found for her. She will have to remain on the acute ward until then, and there is no immediate prospect of her returning home.

1.4 The key factors pointing to a deprivation of liberty are the:

- monitoring and supervision of Mrs J on the ward;
- decision of the treating team not to let her leave to return home;
- potential that she will have to remain on the ward for a significant period of time.

2. Care Home for Older Adults

2.1 P is 78. He had a stroke last year, which left him blind and with significant short-term memory impairment. He can get disorientated needs assistance with all the activities of daily living. He needs a guide when walking. He is married but his wife J has struggled to care for P and with her agreement P has been admitted into a residential care home.

2.2 P has his own room at the home. He can summon staff by bell if he needs help. He tends to prefer to spend time in his room rather than with other residents in the communal areas. He can leave his room unaccompanied at any time he wishes. Due to his visual and cognitive impairments, he does not feel safe doing this. He has access to the communal garden, the dining room, the lounge area and any other resident's room. He is able to use the telephone when he wants. It is in a communal area of the home. He is unable to remember a number and dial it himself. He rarely asks to make phone calls.

2.3 He is visited regularly by. She has asked to be allowed to stay overnight with P in his room but this request has been refused. The home has a key pad entry system, so service users would need to be able to use the key pad to open the doors to get out into the local area. P has been taken out by staff after prompting and does not ask to go out. He would not be allowed to go out unaccompanied. Most of the time P is content but on occasions he becomes distressed saying that he wishes to leave. Members of staff reassure and distract P when this happens.

2.4 The key factors pointing to a deprivation of liberty are:

- the extent to which P requires assistance with all activities of daily living and the consequent degree of supervision and control this entails;
- P is not free to leave either permanently or temporarily.

APPENDIX 2

DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) FOR PEOPLE LIVING IN THE COMMUNITY – THE STREAMLINED X PROCEDURE

Process

1. With the aim of reducing time, effort and cost, a streamlined procedure was introduced which allows for authorisation of a DoL by the Court of Protection without the need to necessarily go to court.

2. To bring proceedings an application must be submitted using a prescribed Court of Protection form here. The form, which incorporates a signed statement of truth which attests to the accuracy of the information contained in it, must include/be accompanied by a range of evidence which includes:

   - Assessment of capacity - evidence is required from a GP, psychiatrist, psychologist or other medical professional who is competent to provide such evidence, which is not more than 12 months old and should make reference to the person's eligibility to be deprived of their liberty.
   - Mental health assessment – this should normally be provided by a registered medical practitioner, psychiatrist or psychologist who has examined and assessed the person.
   - The factual circumstances and details relating to the deprivation of liberty, eg relating to:
     - ➢ Is the person free to leave, under constant supervision and control, subject to physical restraint, sedated, prevented from having contact with others?
     - ➢ What restrictions, if any, are imposed or measures used which affect the person's access to the community?
   - Statement of best interests - information about why the arrangements in the person's care plan are necessary in the best interests of the person, what harm may occur or what the risks would be if the person were not deprived of their liberty, why the deprivation of liberty is proportionate and what less restrictive options have been tried/considered. The care plan and the best interests assessment must be attached to the form.
   - Consultees – consultation should take place with:
     - ➢ Any donee of a lasting power of attorney granted for the person; any deputy appointed for the person by the court.

     And, if possible, with at least three people from the following categories:

     - ➢ Anyone named by the person to whom the application is about as someone to be consulted on the matters raised by the application; and anyone engaged in caring for the person or interested in their welfare.

     Information has to be provided about the consultees and whether they support or object to the proposed arrangements including any views expressed. Information also has to be provided about people not consulted and why they were not consulted.
   - Litigation Friend – the names of people who would be prepared to act as a Litigation Friend must be provided. If no-one is prepared to act as a Litigation Friend the court will have to consider whether, if required, the Official Solicitor is invited to act on the person's behalf.

- The draft Order that is being sought.
- Copies of any relevant Advanced Decisions, relevant Lasting Power of Attorney, Court Orders.
- Consultation with the person the application is about – the person who the application is about should always be given the opportunity to join proceedings if he or she so wishes. The person undertaking the consultation should be someone who knows the person and who is best placed to express their wishes and views. It could be a relative or close friend, or someone who the person has previously chosen to act on their behalf (eg an attorney). If no suitable person is available then an Independent Mental Capacity Advocate or another similar or independent advocate should be appointed to perform the role.

Circumstances where in which there may need to be an oral hearing in court

There are a number of triggers which indicate an oral hearing in court:

- Any contest whether by the individual subject to the deprivation or by anyone else, to any of the matters referred to in application form.
- Any failure to take steps to notify the individual subject to the deprivation of liberty or relevant people in the individual's life who should be notified of the application and to canvass their wishes, feelings and views.
- Any concerns arising out of the information concerning the individual subject to the deprivation of liberty and other relevant person's wishes, reasons of urgency, other specified factors that should be brought to the court's attention.
- Any objection by the individual subject to the deprivation of liberty.
- Any potential conflict with any relevant Advance Decision made by the individual subject to the deprivation or under a Lasting Power of Attorney or the individual's deputy; or
- If for any other reason the court thinks that an oral hearing is necessary or appropriate.

Scenarios – extracted from the Law Society publication "Identifying a deprivation of liberty: a practical guide - supported living" here.

1. Supported living

1.1 In this context supported living describes a form of domiciliary care where a local authority arranges a package of care and accommodation to be provided to a disabled, elderly or ill person. The individual lives in their own home and typically receives social care and/or support to enable them to be as independent as possible.

1.2 G is 30 years old and has autism, cerebral palsy, hearing and visual impairments and a learning disability. He resides in a one-bedroom flat with 1:1 staffing at all times. He requires a second member of staff to access the community who is available 35 hours per week. The front door is locked for his safety.

1.3 G cannot weight bear and pulls himself around inside, and requires a wheelchair outside. Due to a history of attempting to grab members of the public, a harness is used to strap his torso to the wheelchair, allowing free movement of his arms.

1.4 The key factors pointing to a deprivation of liberty are that G is under continuous supervision and control on a 1:1 basis at all times.

2. Shared Lives Placement

2.1 Shared Lives schemes differ from supported living arrangements as they involve the individual being placed in a family setting. They are likened to adult fostering arrangements and are available to those aged 16 and over. The schemes are designed for those who want to live independently but not on their own.

2.2 N is 18 years old with a moderate to severe learning disability. She lives in a stable and secure placement in which she is dependent on others as she cannot live independently,

2.3 N cannot go out on her own and has no wish to do so. She can communicate her wants and wishes in a limited manner. She lives in an ordinary domestic environment which she regards as home.

2.4 N is not restrained or locked in the house but if she tried to leave she would be prevented for her immediate safety. Continuous supervision and control is exercised over her to meet her care needs. Her limitations on movement are general dictated by her inability and lack of awareness of danger. There are no restrictions on social contacts except by court declaration. She goes to college where she is not under the control of her carer or the Local Authority.

2.5 N's mother accepts that N should remain where she is and has no objections to the care provided. Nor does she regard N as being confined or retained. N's sister also supports the placement.

2.6 The key factors pointing to a deprivation of liberty are:

- The continuous and complete nature of the control and supervision exercised over N (for beneficial reasons).
- The steps that would be taken to prevent her leaving.

3. Extra Care Housing

3.1 Extra care housing represents a hybrid between living in at home and living in 3.residential care. Usually purpose built, self-contained properties on a single site, schemes provide access to 24 hour domiciliary care and support and community resources.

3.2 C is 70 years old with Alzheimer's dementia and severe mobility difficulties. He was assessed by a social worker as lacking capacity to decide where to live in order to receive care. In consultation with C and family members, it was considered to be in his best interests to move out of his home into a housing with care setting.

3.3 C now resides in a one-bed apartment as part of a specialist dementia scheme of extra care housing which was purchased by his financial deputy. From 9 am to 8 pm he has a carer with him to assist him into and out of bed as well as attend to his everyday needs. During the night he has pressure sensors around the bed to alert staff to a fall. Occasionally he is aggressive to staff which requires them to withdraw. Staff have unrestricted access to the apartment by means of a safe key. C is able to leave the property but only with the carer.

3.4 The key factors pointing to a deprivation of liberty are:

- The extent of supervision and control exercised over C whilst he is awake and at night.
- C is not free to leave without a carer.