## 7 MINUTE BRIEFING

## **Deprivation of Liberty**

Similarly a 15 year old with significant cognitive difficulties may be deprived of their liberty when a 15 year old without impairment may not

Once a child is sixteen their deprivations of liberty must be authorised if they are accommodated by the state. Applications should be made to the Court.

This learning was identified from a recent serious case review, regarding Child Q and Child S

A lack of capacity or competence will be relevant but not a requirement for the court to authorise a deprivation of liberty.

Young children are frequently deprived of their liberty. An appropriate exercise of parental responsibility in respect of a 5 year old child will differ very considerably from what is or is not an appropriate exercise of parental responsibility in respect of a 15 year old young person.

A deprivation of liberty safeguard process is in place for people over 17 living in specified accommodation. In the alternative court orders are required. For a person to have their deprivation of liberty authorised by the Mental Capacity Act they must lack capacity.

The High Court will make the order if it is in the welfare interests of the child (and occasionally adults) and no other lawful authority can be used.

What is a Deprivation of Liberty? Is the person i) under continuous supervision and control or ii) not free to leave, and iii) their care arrangements are the responsibility of the state.

Deprivations of liberty are commonly authorised by the criminal law, the Mental Capacity Act, the Mental Health Act and the High Court through its inherent jurisdiction.

Examples of restrictive care practices:
Using locks or key pads which stop a
person going out or into different areas
of a building. The use of some
medication, for example, to calm a
person. Requiring a person to be
supervised outside. Physically
preventing a person from doing
something which could cause them
harm. Holding a person so that they can
be given care, support or treatment,
Bedrails or wheelchair straps, restraints
in a vehicle, and splints

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Some adults and children consent to control and supervision for their welfare. If a person consents the authorisation of the deprivation is not necessary.

Some people lack the competence or capacity and can's consent to their deprivation of liberty.

In order to make a decision, a person must be able to generally understand what the decision is and why it needs to be made, remember the information long enough to make the decision, be able to consider the pros and cons of the decision and then communicate their wishes.

The Mental Capacity Act enables the authorisation of deprivations of liberty at moments of necessity under section 5.