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## **Neary case fires warning shot to local authorities**

**The case of Hillingdon Council v Neary and others will send shivers down the spines of the carers of vulnerable people in England and Wales as more is revealed about Mark Neary's 18 month struggle with Hillingdon Council on behalf of his autistic son, Steven Neary.**

The High Court has fired a shot across the bow to other local authorities by ruling that the Deprivation of Liberty safeguards were applied unlawfully by Hillingdon Council in the case of vulnerable young adult, Steven Neary. Steven was detained for nearly a year by Hillingdon Council in a “positive behaviour unit”, against the wishes of Steven’s father and carer, Mark Neary, who always argued that Steven should be returned home. The Council applied for a series of Deprivation of Liberty orders (DOL), which can be obtained to protect a vulnerable person from harm, but only if the order is in that person’s best interests, is proportionate and is sought once all the other less restriction options have been exhausted.

Mr Justice Peter Jackson found that Hillingdon had used the DOLs unlawfully and that their policy had in fact been “to keep [Mark Neary] in the dark”. He also found that Hillingdon’s DOLs were flawed because “no attempt was made at the outset to carry out a genuinely balanced best-interest assessment, nor was one attempted subsequently”.

Giving a damning assessment of Hillingdon’s behaviour, the Judge said that Hillingdon had acted as if it had the right to make decisions about Mark Neary’s son, and by a "combination of turning a deaf ear and force majeure, it tried to wear down Mr Neary's resistance". Mr Justice Peter Jackson went on “It is very troubling to reflect that this approach might actually have succeeded, with a lesser parent than Mr Neary giving up in the face of official determination."

The Judge highlighted that significant welfare decisions that cannot be resolved by discussion should be placed before the Court of Protection, who can make decisions urgently if necessary.

The Court also went on to rule that Steven's right to liberty and his right to a family life, Articles 5 and 8 of the European Convention of Human Rights, had been breached.

There is clearly a training issue here from the local authority's perspective, particularly where they are wearing the two hats of welfare support and supervisory body for DOL authorisations. The Judge highlighted the poor decision-making processes of Hillingdon in this case who on many occasions were unable to explain who was answerable for various actions - "the tail of service provision, however expert and specialised, should not wag the dog of welfare planning".

It does seem that the proper forum for resolving disputes about such welfare rests with the Court of Protection, and the local authority should be minded to seek resolution there as early as possible, rather than taking the approach adopted by Hillingdon, issuing four successive DOLs, none of which have been deemed lawful. Sadly, Mark Neary had to fight long and hard in this case to have his son returned home.

**If you would like to talk to us about the issues raised by this note, please contact:**

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