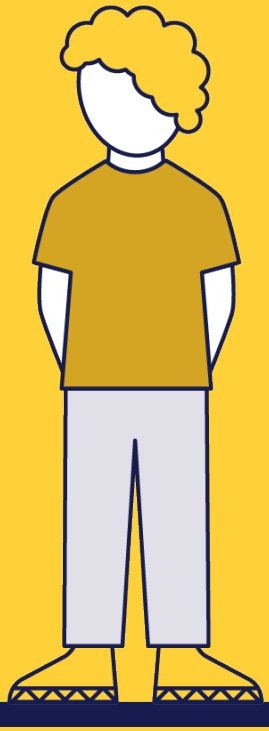
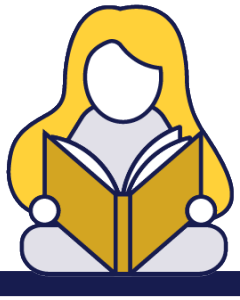
Children and young people | February 2022

# Deprivation of liberty: Legal mechanisms



Nuffield Family Justice Observatory

Briefing



# Introduction

Increasing concern has been raised about a small but highly vulnerable number of children and young people who are deprived of their liberty in various settings in England and Wales – including in secure children's homes – and the lack of information available about them.[1]

There are many circumstances where the care and support provided to a child or young person can give rise to a deprivation of liberty – such as where arrangements are put in place to protect a child or young person vulnerable to criminal or sexual exploitation, to prevent a child or young person with mental health problems from harming themselves, or to provide support to an autistic child or young person who becomes physically and verbally aggressive when distressed. Considering whether such care arrangements give rise to a deprivation of liberty is fundamental to upholding the rights of that child or young person. If they give rise to a deprivation of liberty, legal authority must be obtained.[2]

A number of legal mechanisms can be used to authorise a child or young person's deprivation of liberty depending on their age, their needs and where they will be placed. Unlike adults, there are circumstances where children and young people's parents (and others with parental responsibility) can make decisions on behalf of their child. A question for the courts has therefore been whether this parental decision-making role is relevant to determining whether a child or young person is deprived of their liberty, and if so, how.

Recent decisions have provided greater clarity on this question and the factors that give rise to children and young people's deprivation of liberty. However, as explained below, the supreme court's decision in *Re D (A Child)* [2019] UKSC 42 has created a marked difference in approach between children aged under 16, and those aged 16 and 17.

This briefing paper reflects on the circumstances giving rise to a child or young person's deprivation of liberty and summarises the legal mechanisms for authorising this.

## Definitions

This briefing uses the term 'child' or 'children' to refer to individuals aged under 16 and 'young person' or 'young people' to refer to individuals aged 16 or 17.

1 Children's Commissioner for England 2020.

2 See for example *London Borough of Lambeth v L (Unlawful Placement)* [2020] EWHC 3383 (Fam).

## What is a 'deprivation of liberty'?

The term 'deprivation of liberty' comes from Article 5 of the European Convention on Human Rights (ECHR), which provides that everyone, of whatever age, has the right to liberty. The ECHR was incorporated into national law by the Human Rights Act (HRA) 1998. Article 5 of the ECHR protects everyone's right to liberty by setting out the limited circumstances in which a deprivation of liberty is allowed, and requires strict safeguards to be in place for those who are deprived of their liberty. Such safeguards include the requirement that any deprivation of liberty must be by 'a procedure prescribed by law' and that those who are deprived of their liberty have the right to have the lawfulness of their detention reviewed by a court.

The supreme court confirmed that whatever their age, a person's care arrangements will give rise to a deprivation of liberty if the following three conditions are met:

- the objective component of confinement in a particular restricted place for a not negligible length of time
- the subjective component of lack of valid consent
- the attribution of responsibility to the state.[3]

These conditions were first set out by the European Court of Human Rights (ECtHR) in the case of *Storck v Germany* [2005] and are therefore often referred to as 'the Storck components'. These components require consideration of three distinct aspects of the person's care arrangements, which can be addressed by asking the following questions.

- Is the person confined?
- Is there any valid consent to the confinement?
- Is the state responsible for the confinement?

While the use of restraint is permitted in certain circumstances, for example, under the Children's Homes (England) Regulations 2015, such provisions do not permit a deprivation of liberty. As made clear by government guidance, restrictions 'that alone, or in combination, deprive children and young people of their liberty, without lawful authority, will breach Article 5 of the ECHR'.[4]

3 *Re D (A Child)* [2019].

4 HM Government 2019.

# How is deprivation of liberty determined?

A deprivation of liberty can arise in any setting – for example a children's home, a residential school for pupils with special educational needs, the family home or when the child or young person is being transported from one place to another. Therefore, when considering the care arrangements for children and young people, it is necessary to consider whether they give rise to a deprivation of liberty.

Like adults, children and young people will be deprived of their liberty if all three of 'the Storck components' are met (see box).

## Is the child or young person confined?

In order to answer this question, the restrictions imposed on the child or young person need to be considered, and then a decision needs to be made as to whether the first requirement for a deprivation of liberty (whether the person is confined 'in a particular restricted place for a not negligible length of time') is met. The test applied differs between young people aged 16 and 17 and children aged under 16.

### Young people aged 16 and 17

Like adults, deciding whether 16 and 17-year-olds are confined will depend on whether the test formulated by Lady Hale in P v Cheshire West and Cheshire Council: P and Q v Surrey County Council [2014] – the supreme court's key judgment on deprivation of liberty – is met. This test (known as the 'acid test') asks whether the person is 'under continuous supervision and control' and 'not free to leave'.

Although in *Re D (A Child)* (2019) Lady Hale noted that for children and young people aged under 18, the 'crux of the matter' is whether 'the restrictions fall within normal parental control for a child of this age', in practice, 16 and 17-year-olds will be confined if the acid test is met. This is because it is not part of 'normal parental control' to place 16 and 17-year-olds under continuous supervision and control, nor to prevent them from leaving the family home – once aged 16, they are free to live elsewhere.

### Children aged under 16

The focus will be on the restrictions placed on the child and whether these exceed the level of control and supervision that would normally be expected for a child of the same age (who does not have a disability). If they do, the child will be confined.

This comparator approach for under 16s recognises that as part of the proper exercise of their responsibilities, parents (and others with parental responsibility) will need to place restrictions on their child, which might amount to 'continuous supervision and control'. The second part of the acid test ('free to leave') will always be met for under 16s as they are not free to choose where they live, or who they live with.[5]

If the child or young person is confined, the next question is whether valid consent to that confinement has been given.

5 *Re A-F (Children)* [2018] EWHC at [31](i).

## Is there any valid consent to the confinement?

Like adults, children and young people can consent to their confinement if they are willing and able to do so. If they give their consent, there will be no deprivation of liberty because the second Storck component ('the lack of valid consent') is not met. To give valid consent the person must:

- have sufficient information to make the decision
- have the capacity (if aged 16 and over) or the competence (if aged under 16) to be able to make the decision
- have made the decision without any undue pressure being placed on them.

In relation to children and young people, another question is whether parents can consent to the confinement on their child's behalf. If they can, there will be no deprivation of liberty. Following the supreme court's decision in *Re D (A Child)* (2019), the answer to this question depends on the child or young person's age. The courts have also limited the decision-making powers of local authorities and parents where a care order is in place.

### Young people aged 16 and 17

Young people aged 16 and 17 can consent to their confinement if they have the capacity to do so. Under section 1 of the Mental Capacity Act 2005, individuals aged 16 and over are assumed to have capacity unless evidence shows otherwise. Their parents **cannot** consent to the confinement on their behalf. [6]

### Children aged under 16

Children aged under 16 can consent to their confinement if they are assessed as being competent to do so.[7] If they lack competence to make decisions related to their confinement it is possible for their parents (or others with parental responsibility) to consent to the confinement provided that this decision is a proper exercise of parental responsibility.

To date, the courts have given little guidance on how to decide whether consenting to a child's confinement is a proper exercise of parental responsibility and have emphasised the importance of considering the circumstances of each case.[8] A range of factors that are likely to be relevant to this question, such as whether the parents are acting in their child's best interests, the wishes of the child, and whether the child is resisting the intervention, are noted in guidance in the Mental Health Act 1983 Code of Practice (the MHA Code) concerning the 'scope of parental responsibility'. Practitioners may find it helpful to refer to this guidance when considering whether parents can consent to their child's confinement.[9]

### Children aged under 16 who are subject to a care order

Neither the parents nor the local authority responsible for the care order can consent to the confinement on the child's behalf.[10]

## Is the state responsible for the confinement?

In most cases this component is likely to be met. Even if no public body (such as a local authority or NHS trust) is directly involved in the child or young person's care, it can be met when a public body is aware (or ought to be aware) of the situation – for example a confinement arising from the care provided to a child by the parents in the family home.

6 *Re D (A Child)* [2019].

7 *Gillick v West Norfolk and Wisbech AHA* [1986] AC 112.

8 *Re D (A Child) (Deprivation of liberty: parental responsibility)* [2019] UKSC 42.

9 Department of Health 2015, paras 19.40–19.41.

10 *Re AB (a child) (deprivation of liberty: consent)* [2015] EWHC 3125 (Fam).

## Cal's story (aged 11)

Cal is 11 years old and is subject to a care order. The local authority wishes to place him in a residential unit that will accommodate Cal and one other child. The restrictions placed on Cal include staff always being aware of where Cal is and what he is doing. He is not left alone with the other child in the placement, he is always accompanied when out in the community, and staff use physical restraint to manage his behaviour.

It is agreed that these exceed the type and level of restrictions placed on a child of Cal's age as part of normal parental control. Cal is therefore deprived of his liberty. This is because all three of the Storck components are met. He is confined and there is no valid consent to the confinement (he lacks Gillick competence to give consent and because he is subject to a care order neither the local authority, nor his parents can give consent on his behalf). In addition, the state is responsible for his confinement (he is under a care order, so the local authority is responsible for his care).

## Adam's story, part 1 (aged 15)

Adam is 15 years old and has learning disabilities and autism. As part of his education, health and care plan he is placed in a residential unit by his local authority with his parents' agreement (section 20 of the Children Act 1989). Adam's care arrangements include that the external doors to the unit are locked, and if he wishes to go into the garden, he must ask for the doors to be unlocked. He is not allowed to leave the premises except for a planned activity, such as attending school (which is on the same site as the unit) and leisure activities (when he is accompanied by staff). Adam receives one-to-one support during waking hours and staff are in constant attendance overnight.

The state is clearly involved in Adam's case because his placement has been arranged by a local authority. Whether he is deprived of his liberty will therefore depend on whether Adam is confined, and if so whether there is any consent to that confinement.

In deciding whether Adam is confined, it will be necessary to consider the restrictions placed on him as part of his care arrangements and decide whether these go beyond normal parental control for a boy of his age who does not have Adam's disabilities. It does not matter that the restrictions placed on Adam are in his best interests, or that they are necessary, given his disabilities, to protect him.

As the level of restrictions goes beyond the normal parental control for a 15-year-old, it is decided that Adam is confined. The next question therefore is whether there is any consent to the confinement.

It is agreed that Adam is not able to consent to his care arrangements because he lacks Gillick competence. However, because Adam is aged under 16 and lacks competence to make such decisions, the next question is whether it is possible for his parents to give valid consent to Adam's confinement on his behalf. Here it will be necessary to consider whether this is a decision that Adam's parents can make by asking whether this decision falls within the proper exercise of their parental responsibilities. To help them decide this question, Adam's care team refer to the factors noted in the guidance on the 'scope of parental responsibility' in the MHA Code (paras. 19.40-19.41), which include ensuring Adam's parents are acting in his best interests and considering Adam's views. It is decided that the decision is one that Adam's parents can make. As they consent to Adam's confinement, the second condition for a deprivation of liberty (the lack of valid consent) is not met. Accordingly, Adam is not deprived of his liberty.

## Adam's story, part 2 (aged 16)

Adam is now 16 years old. He is in the same residential unit and his care arrangements are unchanged. Following an assessment under the Mental Capacity Act 2005, he is found to lack capacity to make decisions about his care arrangements.

As all three of the Storck components are met, Adam is deprived of his liberty. He is confined (the restrictions meet the 'acid test' because he is under constant supervision and control and is not free to leave). There is no valid consent to the confinement because Adam lacks the capacity to do so, and his parents cannot consent to his confinement because he is aged 16. As noted above, the confinement is the responsibility of the state because Adam has been placed in the residential unit by the local authority.

## Baljinder's story (aged 15)

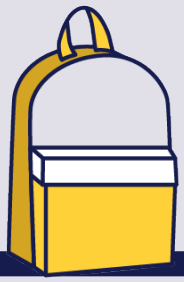
Baljinder, aged 15, has been admitted to a child and adolescent mental health services (CAMHS) unit in an independent hospital with her parents' consent. The restrictions placed on Baljinder include that the doors of the unit are locked, she is only allowed out if accompanied by a member of staff, and she is monitored by a member of staff at all times. Given that the restrictions placed on Baljinder exceed the restrictions that would fall within normal parental control for a child of her age, her care team agrees that Baljinder is confined. Accordingly, her care team considers whether there is any consent to the confinement.

If Baljinder is assessed to have the competence to make such decisions, she will not be deprived of her liberty if she consents to the restrictions that give rise to her confinement. However, if Baljinder subsequently withdraws her consent, she would then be deprived of her liberty. This is because there is no valid consent to her confinement and the state is responsible for that confinement (although it is a private hospital, Baljinder's admission and care is arranged and funded by the NHS).

If Baljinder is assessed to lack Gillick competence to make decisions about her care arrangements (and therefore the restrictions that give rise to her confinement), the care team needs to consider whether her parents can consent to the confinement on Baljinder's behalf. Baljinder will not be deprived of her liberty if her parents can consent to the confinement. As noted in Adam's story at age 15, it will be necessary for the care team to determine whether consenting to Baljinder's confinement is a decision falling within the proper exercise of her parent's parental responsibilities.

Having considered the guidance on the 'scope of parental responsibility' in the MHA Code (paras. 19.40-19.41), the care team concludes that Baljinder's parents cannot consent to the care arrangements. This is because, taking into account the level of restraint required and that Baljinder is making clear that she does not want to be in the unit (verbally and by frequently trying to leave), these arrangements are considered to exceed the type of decisions that parents can authorise.

Accordingly, Baljinder is being deprived of her liberty: she is confined, there is no valid consent to the confinement, and the state is responsible for the confinement (the NHS is responsible for arranging and funding her admission to the CAMHS unit).



# What are the legal frameworks for authorising a deprivation of liberty?

Under current law, unless the Mental Health Act 1983 applies (detention in hospital for psychiatric care), only a court can authorise the deprivation of liberty of a child or young person. However, once in force, the liberty protection safeguards scheme scheme will apply to individuals aged 16 and over who lack capacity to consent to their care arrangements.[11]

## Secure accommodation (section 25 of the Children Act 1989 and section 119 of the Social Services and Well-being (Wales) Act 2014)

These provisions are relevant when a local authority wishes to place a child or young person it is looking after in a secure children's home. They set out the circumstances in which a court can authorise child or young person's placement in 'secure accommodation'. Although this term refers to 'accommodation designed for, or having as its primary purpose, **restriction** of liberty', in practice such placements give rise to a deprivation of liberty.[12] If an order is made it will be initially for no more than three months, with subsequent renewals for up to six months while a review must be undertaken within a month of the order, and from then on every three months, to confirm that the placement continues to be necessary.[13]

## Inherent jurisdiction

The powers of the high court, under its inherent jurisdiction, will be relevant where a child or young person is deprived of their liberty and none of the statutory mechanisms for authorising a deprivation of liberty apply.

This means that applications must be made to the high court where a child under 16 is to be placed in a setting that neither falls within the Mental Health Act 1983, nor constitutes secure accommodation. Where a placement is required for a young person aged 16 or 17, an application to authorise a deprivation of liberty would need to be made to the high court in cases where a secure accommodation order cannot be sought and neither the Mental Health Act 1983 nor the Mental Capacity Act 2005, applies. (The Mental Capacity Act 2005 would be relevant in cases where a 16 or 17-year-old is assessed to lack capacity to make decisions about their care arrangements, in which case it might be possible for the deprivation of liberty to be authorised either by the court of protection, or when in force, under the liberty protection safeguards scheme). Where the high court authorises a deprivation of liberty, this will be for 12 months or less.[14]

## Mental Health Act 1983

The Mental Health Act 1983 is relevant to children and young people who require a period of inpatient psychiatric care. Under this act, three professionals determine whether the criteria for detention are met, one of whom must be an approved mental health professional (who has been approved by a local authority to work with people with a mental health condition) and two doctors (one of whom must be approved as having 'special experience in the diagnosis or treatment of mental disorder'). Individuals who are admitted for assessment of their mental health condition can be detained for up to 28 days (section 2). Those admitted for treatment of a mental health condition can be detained for up to 6 months, which can be renewed for another 6 months and thereafter every 12 months (sections 3 and 20). Those who are detained under the Mental Health Act 1983 have the right to help from an independent mental health advocate, to apply to a tribunal to be discharged from detention and to be legally represented at the tribunal. Guidance on the implementation of the Mental Health Act 1983 is provided in the MHA Code.

11 Liberty protection safeguards were due to be introduced in April 2022 but this has been delayed. At time of writing, no alternative date has been set. Liberty protection safeguards will replace the Deprivation of liberty safeguards (DoLs) but have a more extensive scope as they will apply to any setting (not just hospitals and care homes) and also apply to 16 and 17-year-olds, not just adults.

12 *Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025 at [77].

13 Children (Secure Accommodation) Regulations 1991; see also Children (Secure Accommodation) (Wales) Regulations 2015. Department for Education (2014) provides information on secure accommodation order applications (pp. 41–43). The relevant criteria for making a secure accommodation order are summarised in *Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025 at [98].

14 *Re A-F (Children)* [2018] EWHC 138.

## Mental Capacity Act 2005

The powers of the court of protection under the Mental Capacity Act 2005 to authorise a deprivation of liberty will be relevant where young people aged 16 and 17 lack the capacity to make decisions about their care arrangements.[15] The court can authorise a deprivation of liberty in any setting, so can cover young people's placements in residential schools, children's homes and hospitals as well as the care arrangements in the family home. However, the court of protection cannot authorise a young person's deprivation of liberty in hospital where the criteria for detention under sections 2 or 3 of the Mental Health Act 1983 are met and the young person objects to being cared for in hospital.[16] Where the court of protection authorises a deprivation of liberty, this will be for a period of 12 months or less.[17]

## Liberty protection safeguards

Once in force, liberty protection safeguard provisions will be relevant to young people aged 16 and 17 who lack capacity to make decisions about their care arrangements (Mental Capacity (Amendment) Act 2019). Liberty protection safeguards set out an administrative scheme for authorising the deprivation of liberty arising from the care arrangements for a person aged 16 or over who lacks capacity to consent to such arrangements.

Liberty protection safeguards will replace the deprivation of liberty safeguards (DoLs) but have a more extensive scope as they will apply to any setting (not just hospitals and care homes) and also apply to 16 and 17-year-olds, not just adults. An important limitation is that, as with the Mental Capacity Act, it will not be possible to authorise a young person's deprivation of liberty in hospital under the liberty protection safeguards where the criteria for detention under sections 2 or 3 of the Mental Health Act 1983 are met and the young person objects to being cared for in hospital.[18] Under the liberty protection safeguards, a deprivation can be authorised for an initial period of up to 12 months, which can be renewed for another 12 months and thereafter every 3 years.

The Department of Health and Social Care has issued a series of factsheets on the liberty protection safeguards, which are available from: www.gov.uk/government/publications/liberty-protection-safeguards-factsheets

## Deprivation of liberty and Article 5

Article 5(1) specifies the cases where a deprivation of liberty can be justified. The two cases that will be relevant to children and young people whose care arrangements give rise to a deprivation of liberty are Article 5(1)(d) (which permits 'the detention of a minor by lawful order for the purpose of educational supervision') and Article 5(1)(e) ('the lawful detention …of persons of unsound mind').

A child or young person's deprivation of liberty in secure accommodation or a similar alternative setting is likely to be justified under Article 5(1)(d) even though the criteria for a secure accommodation order does not specifically refer to the requirement that the placement is 'for the purpose of educational supervision'. This is because the courts have adopted a broad meaning for this phrase (considering that it covers 'the general development of the child's physical, intellectual, emotional, social and behavioural abilities'). In such cases, 'it will be necessary for the court to decide, on the evidence which will include a detailed care plan for the child, whether article 5(1)(d) is satisfied'.[19]

Article 5(1)(e) will be satisfied in cases where a child or and young person's deprivation of liberty is authorised under the Mental Health Act 1983 or (for young people aged 16 or 17) the Mental Capacity Act 2005 (the court of protection and the future liberty protection safeguards). This is because the criteria for authorising a deprivation of liberty in such cases include a requirement that the person has a 'mental disorder'.

15 Sections 4A(3) and 16(2)(a) of the Mental Capacity Act (MCA) 2005.

16 The exception to this (likely to be rare) is where a court-appointed deputy, with the authority to do so, consents to the arrangements on the young person's behalf (MCA 2005 s16A, Sch 1A).

17 *Re X and others (Deprivation of Liberty)* [2014] EWCOP 25.

18 The exception to this (likely to be rare) is where a court-appointed deputy with the authority to make this decision consents to the arrangements on the young person's behalf (Mental Capacity (Amendment) Act 2019, Sch 1, paras 45 and 51).

19 *Re T (A Child)* [2021] at [87].

# Issues arising

## There is a lack of information concerning children and young people who are deprived of their liberty

The significant gaps in the data relating to children and young people who are deprived of their liberty are highlighted by the Children's Commissioner for England report (2020), Who are they? Where are they? For example, information on the number of children and young people who are deprived of their liberty by the high court under its inherent jurisdiction, or the court of protection, is not published. As the Commissioner comments, this means that 'no one in Government knows who all these children are and where they are living' (p. 2).

## There are potential gaps in monitoring mechanisms

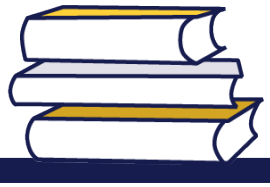
Where the inherent jurisdiction is used to authorise the deprivation of liberty of children and young people in unregistered children's homes or unregulated settings (such as rented accommodation), important safeguards will be absent. For example, as the supreme court noted in *Re T (A Child)* [2021] UKSC 35, 'the court will not be able to carry out the sort of inspections and checks that Ofsted and the Care Inspectorate Wales are obliged to carry out'.

Although regulations applying to England prohibit local authorities from placing under 16s in unregulated settings (Care Planning, Placement and Case Review (England) Regulations 2021), due to the difficulties local authorities face in finding suitable alternatives, such placements are still being made.[20] The President of the Family Division's guidance, Placements in Unregistered Children's Homes or Unregistered Care Homes in Wales aims to ensure that where placements are made in unregistered homes, those homes apply for registration so that they then fall within statutory monitoring and inspection regimes.[21] However, this does not address situations where the provider of the placement declines to seek registration.[22]

20 *Tameside MBC v AM and others* [2021] EWHC 2472 (Fam).

21 Mc Farlane 2019; 2020.

22 *Birmingham City Council v R and others* [2021] EWHC 2556 (Fam); *Derby CC v CK and Ors (Compliance with DOL Practice Guidance)* [2021].



## There is a need for greater clarity on factors relevant to determining a deprivation of liberty for children aged under 16

Under current law, children aged under 16 will not be deprived of their liberty if they are unable to consent to the restrictions that give rise to their confinement (because they lack Gillick competence), but their parents, in the proper exercise of their parental responsibilities, consent to the confinement on their child's behalf.

Given that the safeguards required under Article 5 are only engaged where a deprivation of liberty has arisen, it may be helpful for guidance to be developed to assist practitioners in determining a child's competence and whether in any given case, parents can consent to their child's confinement. A useful starting point could be the MHA Code's suggested questions to consider when assessing Gillick competence and its guidance on the 'scope of parental responsibility'.[23]

## Implementing the liberty protection safeguards

When introduced, the administrative scheme for authorising a deprivation of liberty under the liberty protection safeguards will be applied in cases where, under current law, a 16 or 17-year-old's deprivation of liberty would need to be authorised by a court or via the procedures set out under the Mental Health Act 1983. Accordingly, the government has noted that it needs to 'work with stakeholders, including children's services to ensure that safeguards are not lost through being excluded from these robust systems'.[24]

A draft code of practice providing guidance on the implementation of the liberty protection safeguards is due to be published for consultation. It will be particularly important for such guidance to explain the relationship between the liberty protection safeguards and existing mechanisms for authorising young people's deprivation of liberty (the Mental Health Act 1983, secure accommodation orders, the court of protection and the inherent jurisdiction of the high court).

## Addressing the shortage of provision for children and young people with complex needs

Recent cases concerning the deprivation of liberty of children and young people have highlighted significant concerns about the lack of appropriate placements for children and young people whose complex needs require the provision of care that deprive them of their liberty.

In *Re T (A Child)* (2021), Lady Black expressed her 'deep anxiety that the child care system should find itself struggling to provide for the needs of children without the resources that are required'. Such comments echo those of other judges who have raised concerns about the lack of appropriate placements for children and young people with complex needs.[25] Accordingly, in addition to ensuring clarity on the circumstances in which an under 18's care arrangements might give rise to a deprivation of liberty and how to authorise it, there is a need for a wider discussion on the current gaps in provision for children and young people whose complex needs require specialist input, and how they might be addressed.

23 Department of Health 2015, paras 19.34–19.37; paras 19.40–19.41.

24 Department of Health and Social Care 2018, p. 12.

25 *Tameside MBC v L* [2021] EWHC 1814 (Fam).

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*Birmingham City Council v R and others* [2021] EWHC 2556 (Fam)

*Derby CC v CK and Ors (Compliance with DOL Practice Guidance)* [2021]

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*London Borough of Lambeth v L (Unlawful Placement)* [2020] EWHC 3383 (Fam)

*P v Cheshire West and Cheshire Council: P and Q v Surrey County Council* [2014] UKSC 19

*Re AB (a child) (deprivation of liberty: consent)* [2015] EWHC 3125 (Fam)

*Re A-F (Children)* [2018] EWHC 138

*Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025

*Re D (A Child) (Deprivation of liberty: parental responsibility)* [2015] EWHC 922

*Re D (A Child)* [2019] UKSC 42

*Re T (A Child)* [2021] UKSC 35

*Re X and others (Deprivation of Liberty)* [2014] EWCOP 25

*Storck v Germany (61603/00)* [2005] 43 EHRR 6

*Tameside MBC v L* [2021] EWHC 1814 (Fam)

*Tameside MBC v AM and others* [2021] EWHC 2472 (Fam)


## Legislation


Children Act 1989

Children's Homes (England) Regulations 2015 (SI 2015 No 921)

Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021 No 161)

Children (Secure Accommodation) Regulations 1991 (SI 1991 No 1505)

Children (Secure Accommodation) (Wales) Regulations 2015 (SI 2015 No 1988 (W.298))

Human Rights Act 1998, Schedule 1

Mental Capacity Act 2005

Mental Capacity (Amendment) Act 2019

Mental Health Act 1983

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This briefing paper was written by Dr Camilla Parker, an independent legal and policy consultant, researcher and trainer specialising in the areas of mental health, capacity and consent, and human rights. Much of her work focuses on the mental health care of children and young people. She regularly provides training for practitioners working in health, mental health, social care and children's services. Camilla is a solicitor (non-practising), a member of the Law Society's Mental Health and Disability Committee, and an Honorary Senior Lecturer at the Tizard Centre, University of Kent. She is the author of *Adolescent Mental Health Care and the Law* (Legal Action Group 2020). Camilla is to be made an Honorary QC with effect from March 2022 in recognition of her contribution to the fields of mental health and mental capacity law.

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# Older children and young people

In March 2021 Nuffield Family Justice Observatory started a programme of work to shine a light on young people as they enter care or alternate systems of support through court interventions. We aim to find out more about what we do and do not know about these young people's interactions with the family justice system and the connected systems of care and youth justice.

For further information or to get involved, please get in touch:

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# Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics. Nuffield FJO funded the development of this briefing paper. Any views expressed are not necessarily those of Nuffield FJO or the Nuffield Foundation.

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