

This judgment was delivered in private. The Judge has given leave for this judgment to be published. The anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.



**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

Neutral Citation Number: [2024] EWHC 228 (Fam)

Case Number: 1675848284632795

Date: 2 February 2024

**Before
His Honour Judge Middleton-Roy
Acting as a Judge of the High Court**

Re 'U' (A Child: Deprivation of Liberty)

Miss Kakonge, Counsel, instructed by the Local Authority

Mr Turner, Counsel for the First Respondent, instructed by Bastian Lloyd Morris LLP

Miss Redford, Counsel for the Second Respondent, instructed by Crane and Staples Solicitors

Mr Neaves, Counsel for the Third, Fourth, Fifth and Sixth Respondents, instructed by Reeds Solicitors

Hearing date: 2 February 2024

APPROVED JUDGMENT

Crown Copyright ©

His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the child and the adult parties in this judgment have been anonymised, having regard to the implications for the child of placing personal details and information in the public domain. The anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

The Application and Background

2. This Court remains concerned with a child referred to in this judgment as ‘U’. He is the subject of an Interim Care Order made in ongoing proceedings in the Family Court. Those proceedings involve ‘U’ and his three siblings. The detail and background circumstances of the children are set out fully in the Court’s judgment of 31 January 2024: ‘UDTQ’ (No Adequate Care Planning) [2024] EWFC (B). That judgment provides essential background information relevant to this current application.
3. On 24 January 2024, the Local Authority made an application to the High Court through the Deprivation of Liberty Unit for a Deprivation of Liberty Order, a permissive Order, under the inherent jurisdiction of the High Court. The application falls to be determined by me exercising a s9(1) jurisdiction.
4. The child is a party to this application through his Children's Guardian, who is the same Guardian in the substantive Care Order proceedings. The Guardian supports the Local Authority’s application for a Deprivation of Liberty Order, albeit reluctantly. The child’s parents, each of whom has parental responsibility for the child, are also Respondents to this application. All parties are represented in this application by the same, experienced, specialist Counsel who represent the parties in the substantive Family Court proceedings. The Court is immensely grateful to all counsel for their considerable assistance and focussed submissions.
5. ‘U’ is placed presently in a Children’s Home, funded by the Local Authority, under an Interim Care Order. The home is a registered placement, that is, it is an establishment that is a Children’s Home for the purposes of s.1(2) of the Care Standards Act 2000 which has been registered in accordance with the requirements of the 2000 Act. It operates as a private children’s home for 7- to-18-year-olds, registered with Ofsted. The current Ofsted Rating from December 2022 is ‘Good’.
6. ‘U’ is seven years old, an extraordinarily young age for a child subject to an application of this nature. He has diagnoses of autism and attention deficit hyperactivity disorder (ADHD). He is the youngest child in placement.
7. Naturally, both his mother and father are deeply concerned about his situation.
8. The Court has before it a statement of evidence from the Local Authority dated 22 January 2024, setting out the features of the regime in the Children’s Home, including the arrangements that are proposed and said to amount to a deprivation of the child’s liberty, the circumstances said to comprise a situation of imperative necessity and the reasons it is contended that the declaration authorising the deprivation of the child’s liberty is in the child’s best interests. In addition, the Court has before it a series of incident reports from ‘U’s Children’s Home, a risk assessment, behaviour management plan, Ofsted report, the parties’ position statements and an extensive bundle of documents filed in the substantive Care Order proceedings.

9. The Children's Guardian has also provided information about the child's circumstances in placement, the Guardian, having visited 'U' in that placement very recently. The Guardian informed the Court that 'U' has required 2:1 adult supervision by staff members when present with 'U' in the community, so as to manage his behaviour and 1:1 supervision during the day and night at all other times in placement. There is little in the way of clear information about the education 'U' is receiving whilst placed in the Children's Home. There also remains some conflicting information regarding the level of supervision 'U' is receiving. The Guardian, the parents and this Court are all concerned about the conflicting information being provided to the Local Authority and the Guardian by the Children's home.
10. Moreover, 'U' has been subject of physical restraint by members of staff on at least six occasions since November 2023. Written reports of physical intervention record the following incidents:
- (a) 6 November 2023 at 15:20: *'U' was watching TV in the lounge and asked staff if he could go out for an activity. Staff explain that this is not possible...['U'] cries and says he wants to go out...[he] throws the...TV remote and it smashes against the wall...[he] jumps up and throws a DVD. This hits staff...in the face. ['U'] says he is going to smash the TV and shouts at staff to f**k off...['U'] kicks staff in the face. ['U'] is held on the sofa in a seating position in a straight arm immobilisation...[two staff members] hold his legs down to prevent him from being able to kick. ['U'] screams that he is going to smash the TV and kill everybody...[he] is held for approximately five minutes before he calms and the hold is released. [He] shouts f**k off and runs...to his bedroom...where he proceeds to kick the walls on the landing...['U'] states that he hates everybody. [He] runs down the stairs and kicks the office door. Staff stand in front of the door to prevent him from leaving...";*
 - (b) 13 November 2023 at 17:30: *'U' "picked up a bottle of water from by the sofa and threw this at the TV causing the TV to break. [He] then started throwing objects in the lounge at staff...he started to kick staff, swearing at them and saying he was going to kill them...he continued punching and kicking staff...[Two staff members] held him in a straight arm immobiliser. [He] continued to back kick and kick at staff...[His legs were restrained]...[He] went to his bedroom. [He] kicked his door numerous times. Staff opened the door and [he] threw objects and DVD's out of his bedroom at staff...[He] came out of his bedroom attempting to kick staff;"*
 - (c) 18 November 2023 at 14:00: *'U' "ran upstairs continuing to shout and swear at adults. [He] has a small metal object in his hand and was scraping it up and down the wall in an aggressive manner...[He] swore whilst attempting to hit and kick adults...adults removed the object from [his] hand to prevent possible injuries to himself and adults and further damage to property...[He] started hitting, punching and kicking [staff]...[He] continued to hit and kick adults. [Two staff] held ['U'] in physical restraint in straight arm immobilisation] for 1 minute;"*
 - (d) 20 November 2023 at 07:15: *'U' was eating breakfast and threw a plate and hairbrush. He "ran across the sofas hitting and kicking out at adults, swearing calling them f**king c*nts. [He] said he was going to kill housemate and tried to push past adult to get to her. [He] kicked adult in the face and broke her glasses and hit and punched [second adult] and kicked her head and both...arm twice...[staff] took hold of ['U's] arms in straight arm immobilisation. [He] was still kicking adults and [two] adults placed their legs across [his]...[U'] again became angry and started to hit and kick out at staff and running over the sofas saying he was going to kill everyone and where is a knife. He ran to go out of lounge...he returned sofas and started jumping and running over them shouting and swearing. [He] tried to hit and kick staff and punched them to the face and he was placed in hold for approx. 3 minutes...in straight arm immobilisations, he kicked out at adults kicking [one adult] in the head. Again, adults placed their legs across [his];"*
 - (e) 2 December 2023 at 16:45: *'U' picked up objects and started to throw these at adults...[he] continued to throw objects and threw a show that hit adult...in the face...[he] went into the*

kitchen and through the utility room shouting he was going to find something to hurt adults with...[he] then picked up objects from the utility room and run towards [staff] and hit her...[he] started to kick adults...throughout swore at adults. [He] grabbed the cables from the TV...shouting he was going to pull the TV off the wall and break it...[he] began to kick and hit adults...[two adults] intervened...in a straight arm immobiliser [and]...placing [legs across his]...he continued using abusive language and trying to bite both adults throughout. [He] then proceeded to head butt the wall with the back of his head...[he] proceeded to scream and dig his nails into [adult's] arms.”

11. The length of each act of restraint has varied from one to five minutes each, with two members of staff involved at any given time.
12. Given ‘U’s diagnoses of ADHD and autism and the lack of any information presently from any psychologist as to the short-, medium- and long-term effects on ‘U’, the Children’s Guardian expressed concern about the harm these acts of restraint may have on ‘U’. The Guardian is also concerned regarding a lack of information about what other more effective methods of behaviour management should be used and whether this placement is right for ‘U’. This Court shares those concerns. Those significant concerns led the Guardian to make an application under Part 25 Family Procedure Rules for permission to obtain expert assessment from an independent Psychologist, necessary to assist the Court to resolve these proceedings justly. This Court agrees that such evidence is necessary. Separate directions have been made by the Court permitting the instruction of such expert.

Determination

13. In circumstances where there is no approved secure accommodation available, the High Court may use its inherent jurisdiction to authorise the deprivation of a looked after child’s liberty in a registered children’s home which has not been approved as secure accommodation by the Secretary of State (and hence its use as such was prohibited by r.3(1) of The Children (Secure Accommodation) Regulations 1991 (*Re T (A child) [2021] UKSC 35*) The use of the jurisdiction is limited to cases where there are imperative conditions of necessity.
14. Central to the conclusion of the Court is the effect of a declaration authorising the deprivation of liberty. A declaration under the inherent jurisdiction does not itself deprive a young person of their liberty. It authorises the Local Authority or those acting on its behalf to do so. In making a declaration authorising the deprivation of a child’s liberty, the Court is not authorising the placement itself.
15. It is a fundamental principle of a democratic society that the State must adhere to the rule of law when interfering with a person’s right to liberty and security of person.
16. Article 5(1) of the European Convention on Human Rights stipulates that everyone has the right to liberty and security of person and that no one shall be deprived of his liberty save in the circumstances described by Article 5 and in accordance with a procedure prescribed by law.
17. The purpose of Article 5 is to ensure that people are not deprived of their liberty without the safeguards that secure that the legal justifications for the constraints which they are under are made out.
18. In considering any application for deprivation of liberty of a looked after child, the Court must ask itself two key questions:
 - (a) Do the arrangements proposed for the child, ‘U’, amount to a deprivation of liberty for the purposes of Art 5 of the ECHR?
 - (b) If so, is the deprivation of liberty in the child’s best interests?
18. In *Cheshire West and Chester Council v P [2014] UKSC 19* the Supreme Court articulated an ‘acid test’ of whether a person is deprived of their liberty, namely:
 - (a) The person is unable to consent to the deprivation of their liberty;

- (b) The person is subject to continuous supervision and control; and
 - (c) The person is not free to leave.
19. The question of whether a child is restricted is a matter of fact is to be determined by comparing the extent of the child's actual freedom with the notional circumstances of a typical child of the same age, station, familial background and relative maturity, whose freedom is not limited. The comparison to be drawn is that between the situation of the child with the ordinary lives which young people of their ages have living at home with their families.
 20. A deprivation of liberty for the purposes of Article 5 will only be lawful if the Court is satisfied that it is in the child's best interests, having regard to the child's welfare as the Court's paramount consideration. That evaluation requires the Court to survey and take into account a wide range of matters. The child's welfare needs must be considered both holistically and realistically, which approach demands that the Court considers the likely consequences of any Order it does or does not make. The 'conditions of imperative necessity' contended for by the Local Authority as justifying the authorisation of the deprivation of the liberty of a child will be a factor to be taken in the best interests analysis the Court is required to undertake.
 21. The child has a right to respect for their psychological integrity and mental health as an aspect of their right to respect for private and family life under Article 8 ECHR. This carries with it a positive duty on the State with respect to measures designed to secure respect for the child's psychological integrity.
 22. The Court has regard also to the three-part test in *Storck v Germany* [2005] 43 EHRR 6, adopted by the Supreme Court in *Cheshire West* namely, (a) the objective component of confinement in a particular restricted place for a not negligible length of time; (b) the subjective component of lack of valid consent; and (c) the attribution of responsibility to the State.
 23. On all the evidence, the circumstances of the particular case, where 'U' is being restrained to prevent harming himself, with the components of constant supervision and control at all times in the community, and inside the Children's Home, the Local Authority being directly responsible having identified and funded the Children's Home and approved the package of interim care provided, the actual circumstances of the child lead the Court to conclude that the three-part test in *Storck* is met plainly, constituting a deprivation of his liberty.
 24. It appears to this Court that the living and care arrangements of the child amount to a deprivation of his liberty. Further, on the evidence currently available, the conditions of imperative necessity contended for by the Local Authority as justifying the deprivation of 'U's liberty are met. There are limited realistic options at this stage for 'U' to prevent risk of harm to himself and others. Looking at all the circumstances of the case, on the evidence currently available, it is in 'U's best interests to make an Order depriving him of his liberty. The Court is satisfied that the restrictions set out in this Order as the least restrictive options for 'U'.
 25. Leave is granted to the Local Authority to invoke the inherent jurisdiction of the High Court.
 26. The Court declares that it is lawful and in the best interest of 'U' that the Local Authority is permitted to deprive 'U' of his liberty by continuing to place him in his current Children's home, as a stop-gap placement, pursuant to Article 5 EHCR. Such deprivation of liberty is permitted until 14 March 2024 when the matter will be the subject of further review by this Court.
 27. The deprivation of liberty sought by the Local Authority and permitted by the Court is necessary to avoid breaching 'U's Article 3 rights, and is the least restrictive and most proportionate response to the risk of harm which arises, and may include:
 - (i) 'U' having 2:1 supervision in the community;
 - (ii) 'U' 1:1 supervision in the Children's Home; and
 - (iii) The use of physical restraint necessary to safeguard 'U's welfare and to prevent him from causing a serious risk to himself or others.

28. In depriving 'U' of his liberty, the Local Authority is directed to use the minimum degree of force or restraint required. The Court declares that the use of such force/restraint is lawful and in 'U's best interests, provided always that the measures are used as a last resort and provided always the measures are:
- (i) the least restrictive 'U's rights and freedoms;
 - (ii) proportionate to the anticipated harm;
 - (iii) the least required to ensure U's safety and that of others; and
 - (iv) respectful of 'U's dignity.

Conclusion

29. The Court grants the Local Authority's application and makes the declarations and Orders sought. The matter is listed before me on 14 March 2024 when, consequent upon the directions set out in the Order following this judgment, including the provision of independent expert evidence, and in the expectation that those Orders are complied with, the Court will fully review the child's circumstances and consider what further Orders are in his best interests.
30. If a change or changes of the Care Plan render it more restrictive than proposed but are not required as a matter of imperative necessity, the Local Authority must apply to the Court for urgent review of this Order before any changes are made.

HHJ Middleton-Roy
2 February 2024