IN THE FAMILY COURT
(Sitting at East London) No. ZE20C00168

East London Family Court
6th and 7th Floor
Westferry Circus
London E14 4HD

Thursday, 1 April 2021

Before:

MR DEXTER DIAS QC
Sitting as a Judge of the High Court

(In Private)

B E T W E E N :

LONDON BOROUGH OF BARKING & DAGENHAM
Applicant

- and -

(1) A PATERNAL GRANDMOTHER
(2) A PATERNAL GRANDFATHER
(3) A MOTHER
(4) A FATHER
(5) A PATERNAL AUNT
(6) AB, A CHILD
(by his Children's Guardian, Julie Slaughter)
Respondents

- and -

HORIZON CARE AND EDUCATION GROUP LIMITED
Intervener

MR D. LONGE (instructed by Barking & Dagenham Legal Services) appeared on behalf of the Applicant.

MR T. PARKER (instructed by T V Edwards) appeared on behalf of the First Respondent.

THE SECOND RESPONDENT did not appear and was not represented.

MR C. STEVENSON (instructed by Ewings & Co.) appeared on behalf of the Third Respondent.

MS R. WILSON (instructed by Sternberg Reed) appeared on behalf of the Fourth Respondent.

THE PATERNAL AUNT, the Fifth Respondent, appeared in person.

MS D. JACOBS (of Gary Jacobs & Co.) appeared on behalf of the Sixth Respondent.

MR L. SAMUELS QC and MR S. SPENCER (instructed by DWF Law) appeared on behalf of the intervener.

J U D G M E N T

MR DEXTER DIAS QC:

1. This case concerns the human rights of a child.

2. It is also about judicial control of the State's interference with those rights, and especially a child's right to liberty.

3. AB is 13 years old. For many months, he has been deprived of his liberty. For several of those months he has had his liberty restricted in a 'residential unit', a privately run care home. When the local authority that placed AB there was specifically pressed by this court, it conceded that between November 2020 and March 2021, AB was confined in the residential unit without lawful authority. The deprivation this child's liberty was unlawful. That is the crux of the problem in this case. Regrettably, it is not the only one. Yet today the local authority applies to further deprive AB of his liberty.

4. I have emphasised in proceedings that this historic illegality is a matter of the gravest concern to the court. This court exercises its inherent jurisdiction not as a mere technicality, but as a constituent part of the rule of law. To have a person confined without lawful authority, and particularly a child, and particularly an exceedingly vulnerable child, is a matter of the utmost seriousness. It is a fundamental interference with the child's rights under the European Convention on Human Rights and the UN Convention on the Rights of the Child.

5. So what is the child in question like? A couple of years ago at a meeting of professionals, AB was described as 'very bright, he loves reading, he is good at PE and is very polite.' The Children's Guardian describes him as having a disarming smile and he likes to make you laugh. At his PEP (Personal Education Plan) meeting on 29 January this year, he was described as bright and on track to get good GCSE grades in English and Maths. Yet just over two weeks earlier, on 10 January, AB was involved in incident in the care home which resulted in him complaining that a member of staff tripped him up unnecessarily. If true, that would be

impermissible as a form of control. The staff member said he lost his balance due to an ear infection. He has been suspended and not permitted to return to the home. A disciplinary panel considered AB's allegation and imposed a disciplinary sanction on the staff member. However, senior managers are now reopening this investigation and the matter remains undetermined.

6. What has happened since that day in January is also of profound concern to this court. There was a hearing before this court at which the final hearing of this case had to be adjourned. During the hearing, the court expressed its concerns about AB. Following the hearing, the child's allocated social worker contacted the relevant statutory inspectorate, here Ofsted. With commendable promptness, Ofsted deputed two inspectors to visit the site. They call it a monitoring inspection.

7. Their report is scathing. No milder word will do. The inspectors made numerous serious criticisms that touched upon almost all aspects of the care provided to the resident children. Consequently, the registration of the residential unit was suspended immediately. The children were moved out. AB was one of them.

8. Ofsted, as is their legal duty, provided a detailed list of statutory requirements for necessary remedial work prior to any reopening. The conditions that AB and the other children were living in shocked even senior managers of the company that operates the home when they visited during the Ofsted inspection. AB was living in a neglected, chaotic and unsafe environment.

9. This flurry of dramatic events happened in the few weeks following the abortive final hearing of this case before me. The manager of the residential unit who briefly addressed the court at that early hearing has now also been suspended for professional misconduct.

10. How could it come about that a child could be detained without lawful authority for months and no one did anything about it? Should the court authorise the further deprivation of AB's liberty today? These are among the urgent issues for this court to determine. Therefore, the court rules today upon a second application by the applicant local authority to deprive AB of his liberty by invoking the inherent jurisdiction of the High Court.

11. I remind myself, as the governing Practice Direction makes plain:

> "It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of." (Practice Direction 12D – Inherent Jurisdiction (Including Wardship) Proceedings, at [1.1])

12. At all points, I have had at the forefront of my thoughts the salutary words of Hayden J in *London Borough of Barking and Dagenham v SS* [2014] EWHC 4436 (Fam) at [15]:

> "It scarcely needs to be said that restricting the liberty of a child is an extremely serious step, especially where the child has not committed any criminal offence, nor is alleged to have committed any criminal

offence. It is for this reason that the process is tightly regulated."

13. That tight regulation has fallen apart in AB's case. AB has fallen through its cracks.

14. I have been invited by several of the parties to publish my judgment and send it to the Children's Commissioner for England. As to the first request, I have carefully considered the Practice Guidance issued in 2014 by the President of the Family Division on Transparency in the Family Courts and the Publication of Judgments. There is a wider public interest in publishing this judgment about the unlawful treatment of a 12 year-old child (as he then was) by a public authority and the inadequate safeguarding he experienced in placement. There is no compelling reason not to publish.

15. As to the Children's Commissioner, her public function, unmistakably established by statute, is to be the 'eyes and ears' of children in what she calls 'the system'. I have no hesitation in sending her my judgment. She needs to see and hear what has been happening to AB. That is not only because of what AB has experienced, but also for fear that other children are or have been experiencing the same: confinement and deprivation of liberty without lawful authority. If so, there needs to be urgent collective and institutional action to stop it.

16. There is much to go through. To assist parties to follow the judgment, I subdivide it into the following six sections:

§I. INTRODUCTION

(a) Anonymisation

17. This judgment necessarily contains a significant amount of anonymisation - of individuals, of institutions. The overriding concern has been to keep AB safe and to ensure that the privacy of his family is respected. Art. 8 privacy considerations also apply to certain professionals who should not be wrongly connected to the criticisms that follow. Further, for any individual for whom allegations of misconduct remain undetermined, fair trial considerations obviously remain. The court settled the scheme of anonymisation after receiving detailed submissions from parties. I have determined the following precautions to be necessary to safeguard the Convention rights and broader welfare interests of affected individuals while vindicating the public's right to know. As ever, a balance had to be struck.

18. In respect of AB, all parties are satisfied that the anonymisation below is more than sufficient to prevent any 'jigsaw' identification of the child. This has required a lot of thought and I am grateful for the input of all parties.

(b) Parties

19. The applicant local authority is Barking and Dagenham Council. It is represented by Mr Longe. The allocated social worker is Ms W. The first respondent is the paternal grandmother. In the past she had a special guardianship order granted in her favour. She is represented today by Mr Parker of counsel and previously by Ms MacLachlan of counsel. AB's paternal grandfather did not appear and is not represented. AB's mother is represented by Mr Stevenson of counsel. AB's father is represented by Ms Wilson of counsel. His paternal aunt appears in person, and has been granted permission to challenge a negative assessment of her in respect of the care proceedings. AB is represented through his children's guardian Ms Julie Slaughter. The solicitor for the child is Ms Jacobs.

20. Following a C2 application dated 31 March 2021, I granted permission for Horizon Care and Education Group Limited (Horizon) to intervene. Horizon runs the residential units AB has been placed in most recently. Horizon is represented by Mr Samuels QC who leads Mr Spencer of counsel. I am grateful to them both for having absorbed the mass of detail encircling this case with such rapidity.

21. Indeed, the court has been immeasurably assisted by the focussed and effective submissions of all advocates. It pays tribute to them all.

(c) The application

22. At the outset of proceedings – the relevant date is 20 March 2020 - the local authority sought a full care order. Almost a year later, on 1 March 2021, the Final Hearing was listed before me. For reasons that will become apparent, it had to be adjourned. All parties agreed. The local authority indicated its intention to seek the necessary statutory leave to invoke the inherent jurisdiction of the court for a Deprivation of Liberty (DoL) order. That was granted. At that point the detailed background of what was happening in the residential unit was not known, but the court was concerned about AB and sought more information urgently. Today the local authority seeks a second DoL order. Much more is known. It is this new intelligence that has troubled parties, and indeed the court, greatly.

§II. BACKGROUND & PROCEDURAL HISTORY

23. AB was born on [XXXX].

24. Around the time of his birth, AB's parents had a number of far-reaching personal and other problems. They are not relevant to this application and do not help me determine it. As a result, however, AB's parents were unable to care for him. On 18 February 2009, so even before his first birthday, a Special Guardianship Order was granted in favour of AB's paternal grandmother following care proceedings under Part IV of the Children Act 1989.

25. Unfortunately, problems developed there also. Children's Services tried to support the paternal grandmother's parenting of AB over a significant period. There were several police callouts. On 12 February 2020 she took AB to a police station stating that she could no longer cope with his behaviour. On the other hand, there are also a series of allegations against this grandmother concerning her treatment of AB that ultimately it may be the duty of the court to resolve. There is a detailed threshold document that is not yet fully agreed.

26. In any event, the result was that on 20 March 2020 the local authority issued protective proceedings. An interim care order was granted by this court on 25 March 2020. It remains in force until the conclusion of proceedings or further order. Thus, the local authority shares parental responsibility for AB. He was placed in foster care, being removed from his grandmother's home, the only home he had ever really known.

27. Once more, things did not go as hoped. The foster carers were unable to care for him due to his complex needs and emotional dysregulation. They notified the local authority that they could not care for AB beyond 31 July 2020.

28. On 3 August AB was placed at Mill Cottage. This residential unit is operated by Horizon. On the same day, the local authority instructed Dr Christine Tizzard, a child psychologist, to undertake a psychological assessment of AB.

29. About a month later, on 8 September, there was the first physical restraint of AB at Mill Cottage.

30. Towards the end of the same month, on 24 September, Dr Tizzard filed her report. Her assessment confirmed a clinical diagnosis of Autism Spectrum Disorder (ASD), severity level 1 without intellectual impairment. She made a concomitant diagnosis of Oppositional Defiant Disorder as well as attachment issues. The result in terms of AB's functioning is the exhibiting of extremely chaotic, dysfunctional and worrying behaviours.

31. Dr Tizzard advised that for his prognosis to improve he required continuing placement in a small residential unit. She found that his needs were 'very considerable' and it was 'crucial' for the local authority to provide additional funding for one-to-one support. He also required anger management support supervised by a child psychologist. He also has a gaming addiction that requires significant therapy.

32. On 21 October Dr Tizzard provided a second report in response to further questions asked by parties. She stated that AB would need to stay in a small unit with simultaneous therapy for 9-12 months.

33. On 10 January 2021 there was another incident at Mill Cottage. AB was physically restrained. It was during this incident that AB claims he was tripped by a member of staff. That person was subsequently suspended and not permitted to return to the residential unit.

34. On 28 January the social worker informed the Children's Guardian of the 10 January incident with AB. The Guardian told the social worker that the local authority should consider applying for a DoL order. This was the right thing to do, and the Guardian's judgement unquestionably correct. Unfortunately, it was not followed through with adequately.

35. On 5 February there was a LAC (Looked-After Child) Review, which the Children's Guardian attended. It was brought to the meeting's attention that AB had been restrained twice since the previous review and a staff member from the latest restraint had been suspended. The recommendation of the meeting was that the placement (Mill Cottage) continue and the social worker take advice about a DoL application.

36. On 8 February the Children's Solicitor, on behalf of the Guardian, emailed the local authority requesting them to reconsider applying for a DoL order. Again, this was the right thing to do. The local authority replied that there would be a meeting on 18 February to consider the DoL situation and any possible application. After that the trail goes cold.

37. Subsequent to that point, the local authority did not revert to the Children's Solicitor or indeed the Guardian. Ms Jacobs who represents the Guardian accepts that she should have referred this unexplained failure to respond to the court. She regrets that she did not. Once more, here was a professional, Ms Jacobs, whose professional judgement was correct. Once more the matter was not followed through with as it should have been.

38. The local authority's overarching application for a care order was set down for Final Hearing between 1 and 5 March. However, on the first day, Monday 1 March, all parties agreed that the hearing could not proceed. The problem was not an evidential one. It concerned AB's placement at the residential unit. Serious issues flowing from worrying events at the unit had come to the attention of the local authority over the immediately preceding weekend. These concerns included:

    a. AB fighting with other young people in his placement;
    b. AB engaging in challenging behaviour towards other young people in the placement such as punching the nose of youngest child;
    c. Allegations AB made that he was being bullied;
    d. Concern that AB was accessing adult images on the internet.

39. The local authority concluded that Mill Cottage was not appropriately safeguarding AB. The court sought more detailed information about these troubling reports.

40. On 3 March 2021 the local authority filed its first DoL application with the court. It sought a declaration in respect of the residential unit authorising:

    Limb 1: restrictions on AB's freedom entailed by precautionary and safeguarding steps taken at the unit to protect him. These curtailed the child's movements, access to harmful material, and specified an intense level of staff supervision;

Limb 2: authorisation of physical restraint as a last resort.

41. On 4 March the High Court processed the application.

42. On 5 March the DoL application was heard by this court. At this point, there were few details and no investigation by Ofsted or anyone else. Ms X, Registered Manager of Mill Cottage, attended the hearing remotely and briefly addressed the court. The declaration sought by the local authority was granted, invoking the court's inherent jurisdiction. At the same time the court was concerned about AB. It made various case management directions, including a direction requiring information about AB's residence at Mill Cottage be provided to the court, given the concerns ventilated by the local authority.

43. In the background to all this court-based activity, on 1 March the allocated social worker had contacted Ofsted and the LADO, the Local Authority Designated Officer, a dedicated safeguarding role within Children's Services.

44. Things now moved swiftly. On 8 March there was an Ofsted inspection of Mill Cottage by two social care inspectors under the Care Standards Act 2000 (CSA).

45. On 10 March following the Ofsted monitoring visit, the registration of Mill Cottage was suspended. Ofsted specified 11 statutory requirements, actions that must be taken to meet the safety standards under the CSA, the Children's Homes (England) Regulations 2015 and the Guide to the children's homes regulations including quality standards. Ofsted also made an additional recommendation (a suggestion not a statutory requirement).

46. AB was moved to Ford Cottage (Ford), another residential unit operated by Horizon. The other young people resident at Mill Cottage were also rehoused. The local authority placed AB at Ford as an emergency placement pending the identification of a suitable long-term placement.

47. On 19 March Ms Z the Residential Operations Director of Horizon wrote a letter to the court. In it, Horizon stated that it was unaware that Ms X had attended the court hearing of the first DoL application on their behalf. Ms X had not informed Horizon of the court's direction of 5 March to provide information and she had made no attempt to prepare a response herself. Further:

> "Ms X has been suspended from her duties, pending investigation of a number of serious concerns that have come to light and also following a decision by Ofsted to suspend Mill Cottage's registration."

48. On 23 March AB was restrained on five separate occasions in a single day at the school he attended, a school also operated by Horizon (the School).

49. On 24 March the local authority filed a second DoL application. Now declarations were sought in respect of both Ford Cottage and the School. On that same day, 24 March, AB served a one-day exclusion from the School. I pause to record that the local authority no longer seeks a declaration in respect of the School. The

appropriateness or otherwise of these school restraint incidents is not a matter for this judgment.

50. On Friday 26 March the second DoL application was heard by the court. It went part-heard to Thursday 1 April.

51. Between these two hearings, on 30 March Horizon provided a statement to this effect:

> "The manager was suspended following the Ofsted visit and concerns raised regarding their response to safeguarding concerns and leadership and management of the home. Ofsted found serious safeguarding concerns and suspended the registration of the home."

52. On 1 April there was the resumption of the second DoL application, the product of which is this judgment.

53. On 7 April Ofsted published its monitoring report of Mill Cottage, which thus became a matter of public record.

54. In its position statement dated 16 April, Horizon confirms that it does not dispute the contents of the Ofsted report. Horizon's CEO Paul Callander states in his filed evidence:

> "In AB's case… our support at Mill Cottage fell well short of the standard of care we are committed to providing and I apologise sincerely and unreservedly to AB and his family for this situation. I accept there were failings in his care, procedural failings and failings of leadership which led to this situation, and we are committed to addressing these comprehensively to ensure that such shortcomings never happen again."

55. These are the relevant background facts. I turn now to the governing legal principles that structure and inform how the court's inherent jurisdiction is exercisable.

§III. LAW

56. Depriving a child of his or her liberty is an exceptional step for a court to take.

57. To do so, particularly when that child has not been charged or convicted of any criminal offence, is one of the most serious interferences with the life and liberty of the individual a state can make. Unsurprisingly, given these high stakes, a burgeoning jurisprudence continues to grow around this sensitive issue.

58. I propose to subdivide the complex legal framework into three distinct stages:

- **First**, identifying the vital rights engaged under international conventions (plural) to which the United Kingdom is a contracting party.

- **Second**, surveying the possible pathways to authorisation.
- **Third**, stipulating the necessary conditions to authorise the path chosen here by the local authority: the inherent jurisdiction of the High Court.

Stage 1: Convention rights

59. The starting-point must be an unequivocal recognition that in a society that holds itself out as democratic, the State and its agents must observe the rule of law when interfering with an individual's freedom and personal security. This fundamental principle was emphasised in *Brogan & Ors. v The United Kingdom* (1988) 11 EHRR 117 at [58]:

> "The Court has regard to the importance of this Article (Art. 5) in the Convention system: it enshrines a fundamental human right, namely the protection of the individual against arbitrary interferences by the State with his right to liberty (see the Bozano judgment of 18 December 1986, Series A no. 111, p. 23, para. 54). ***Judicial control of interferences by the executive with the individual's right to liberty is an essential feature of the guarantee embodied in Article 5 para. 3 (Art. 5-3), which is intended to minimise the risk of arbitrariness. Judicial control is implied by the rule of law, "one of the fundamental principles of a democratic society*** ..., which is expressly referred to in the Preamble to the Convention" … from which the whole Convention draws its inspiration" ..." (emphasis provided)

60. Therefore, depriving a child of liberty engages Art. 5 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). Insofar as it is material, Art. 5 provides:

> **"Article 5 - Right to liberty and security.**
>
> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases ***and in accordance with a procedure prescribed by law*** (emphasis provided):

Then pertinently to this case:

> "d. The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority."

61. It has been held that although specific reference is made to educational supervision, there may be other legitimate reasons for a child's detention (*Mubilanzila Mayeka and Kanika Mitunga v Belgium* (2008) 46 EHRR 44).

62. The significance of this Art. 5 right for a child in the care of a local authority was explained by Baroness Hale in *Re D (A Child)* [2019] 1 WLR 5403 at [31]:

"Prima facie, therefore, article 5 protects children who lack the capacity to make decisions for themselves from being arbitrarily deprived of their liberty. All parties to this case agree that this means that *a local authority which has parental responsibility for a child cannot deprive the child of his liberty without the authority of a court*." (emphasis provided)

63. I should add that protecting children from emotional and physical harm engages Art. 3 ECHR. Art. 3 provides:

"**Article 3:**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

64. The European Court of Human Rights (ECtHR) considered this question in *Z & Ors. v UK* application no. 29392/95 (2001). It found that where children were subjected to or at significant risk of emotional abuse and neglect, Art. 3 was engaged. In that case, Art. 3 was violated by insufficient state action to protect the subject children from neglect and abuse from their parents.

65. The State's positive duty to protect children in care institutions for which it is responsible and/or funds was considered in *Nencheva & Ors. v Bulgaria* application no. 48609/06 (2013). Here the outcomes were fatal: 15 vulnerable children died through neglect during the winter in a state-funded care home. The children's Convention rights were engaged. In that case the violation was Art. 2; the Art. 3 claim was time-barred or undoubtedly this provision would have been engaged.

66. The House of Lords emphasised in *Re E (A Child)(A)(Northern Ireland)* [2008] 3WLR 1208 how the high vulnerability of children carried with it a concomitant positive obligation on the State to take steps to protect them from inhuman or degrading treatment for Art. 3 purposes. Baroness Hale stated at [8]:

"The special vulnerability of children is also relevant to the scope of the obligations of the state to protect them from such treatment. Again, in *Mayeka v Belgium*, at para 53, the court reiterated, citing *Z, A and Osman*, that:

> 'the obligation on high contracting parties under article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with article 3, requires states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals. Steps should be taken to enable effective protection to be provided, *particularly to children and other vulnerable members of society*, and should include reasonable measures to prevent ill-treatment of which the authorities have or ought to have knowledge.' (Emphasis supplied)

Despite the fact that the state had detained the little girl, the court treated the case, not as a breach of its negative obligation, but as a breach of its positive obligation to look after her properly. She:

> 'indisputably came within the class of highly vulnerable members of society to whom the Belgian State owed a duty to take adequate measures to provide care and protection as part of its positive obligations under article 3 of the Convention': para 55."

67. Rights protected by the European Convention do not exist in a vacuum. In *Al-Adsani v The United Kingdom* [2001] BHRC 88 at [103] it was held that the ECHR must be read and given effect to in domestic law in light of the United Nations Convention on the Rights of the Child (UNCRC). Art. 37 of the UNCRC provides:

> **"Article 37:**
>
> "...Parties shall ensure that...
>
> …..
>
> (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
>
> (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of a person of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."

68. In the United Kingdom, in appropriate circumstances, deprivation of liberty to promote or safeguard the welfare of a child can be permitted. In this the UK has been subjected to international rebuke from organisations concerned with the rights of children and the Committee on the Rights of the Child of the United Nations itself.

69. I observe that this international and civil society disquiet highlights how inescapably sensitive a topic this is. It reinforces how meticulously the designated procedures that embody the legal safeguards against oppressive or improper detention must be followed – and how seriously material deviations from them must be viewed.

Stage 2: Pathways to authorisation

70. I mention and then swiftly move on from various routes for depriving children of their liberty that are not relevant here. These include criminal proceedings, the Mental Capacity Act 2005 (for children over 16), and the Mental Health Act 1983.

71. Simplifying greatly: two further routes exist for authorising a child's confinement and deprivation of liberty. There is a statutory pathway and the inherent jurisdiction of the court.

(a) Statutory scheme: secure accommodation order

72. I can deal with the statutory pathway shortly. Section 25 of the Children Act 1989 provides a basis for a child to have his or her liberty restricted in secure accommodation. There are three gateway criteria and then a two-limbed test. No application under s.25 is made in this case by the local authority and rightly so: key qualifying criteria would not be met. I thus move on to the heart of the matter.

(b) Inherent jurisdiction

73. When the statutory gateway criteria are not met, there may nevertheless be the need to protect a child by restriction of his or her liberty. The Court of Appeal has made clear in *Re B (Secure Accommodation)* [2019] EWCA Civ 2025 that where a secure accommodation order application is not open to the local authority under s.25 of the Children Act 1989, it may be able to apply under the inherent jurisdiction of the court, subject to the restrictions imposed by s.100(4) of the same Act. Any such application must be stringently scrutinised. The use of this power was considered by Sir James Munby in *Re PS (Incapacitated or Vulnerable Adult)* [2007] EWHC 623 (Fam), [2007] 2 FLR 1083 at [16]:

> "It is in my judgment quite clear that a judge exercising the inherent jurisdiction of the court (whether the inherent jurisdiction of the court with respect to children or the inherent jurisdiction with respect to incapacitated or vulnerable adults) has power to direct that the child or adult in question shall be placed at and remain in a specified institution such as, for example, a hospital, residential unit, care home or secure unit. It is equally clear that the court's powers extend to authorising that person's detention in such a place and the use of reasonable force (if necessary) to detain him and ensure that he remains there: see *Norfolk and Norwich Healthcare (NHS) Trust v W* [1996] 2 FLR 613 (adult), *A Metropolitan Borough Council v DB* [1997] 1 FLR 767 (child), *Re MB (Medical Treatment)* [1997] 2 FLR 426 at page 439 (adult) and *Re C (Detention: Medical Treatment)* [1997] 2 FLR 180 (child)."

Stage 3: Inherent jurisdiction

74. The inherent jurisdiction arises from the Crown's innate power - and corresponding responsibility - to protect its subjects. It is both coercive and protective in nature. This power is exercisable, but not exclusively, by the court. It is wielded on behalf of the sovereign. The precise origins of the jurisdiction will perhaps be forever lost in the historical mists, but Blackstone found that aspects of the wider inherent jurisdiction were 'exercised as early as the annals of our law extend' (see per Sir Wm. Blackstone, 4 Bl.Com. 286).

75. This is no place for an exposition of the history of the inherent jurisdiction, let alone a comprehensive one. But the concept's genesis informs its application in this case. That is because beside the power to control and protect the court's own process, the jurisdiction reflects the Crown's obligation qua *parens patriae* to protect those who cannot protect themselves.

76. Since at least the reign of Charles II, the jurisdiction to protect the interests of children was part of the practice of the Court of Chancery, then its successor the Chancery Division of the High Court, before being transferred to the Family Division in 1971 (see Sir James Munby, extra-judicially, "Whither the Inherent Jurisdiction?", CPBA lecture, 10 December 2020). Part of that jurisdiction in respect of children is wardship. In *Re E (SA) (A Minor) (Wardship: Court's Duty)* [1984] WLR 156, Lord Scarman explained the court's inherent duty in respect of children as follows:

> "… its duty is to act in the way best suited in its judgment to serve the true interest and welfare of the ward. In exercising wardship jurisdiction, the court is a true family court. Its paramount concern is the welfare of its ward. It will, therefore, sometimes be the duty of the court to look beyond the submissions of the parties in its endeavour to do what it judges to be necessary." [pp.158-59]

77. In respect of children, the jurisdiction is exercisable as a matter of mathematics: because majority has not been reached. As Sir James Munby pithily put it: 'what founds the jurisdiction is simply the fact that the child is a child': op. cit., p.3. This protective power is consonant with the State's obligation deriving from Art. 3 of the UNCRC. This provides:

> **"Article 3**
>
> 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

78. The scope of the inherent jurisdiction can be curtailed by statute. The Children Act 1989 sought to do precisely that. Applications to exercise the court's inherent jurisdiction require leave. Section 100(4) insofar as it is material provides:

> **"100 Restrictions on use of wardship jurisdiction.**
> …
> (3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.
>
> (4) The court may only grant leave if it is satisfied that—

(a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm."

79. Thus, leave can only be granted if the result the authority wishes to achieve (1) cannot be accomplished through any other order, and (2) if the jurisdiction were not exercised there is reasonable cause to believe the child is likely to suffer significant harm.

80. The court may grant an order under its inherent jurisdiction authorising the deprivation of a child's liberty if two conditions are satisfied (1) that the circumstances of the placement constitute a deprivation of liberty for the purposes of Art. 5 of the ECHR; and (2) such an order is in the child's best interests (see *Salford CC v M (Deprivation of Liberty in Scotland)* [2019] EWHC 1510 (Fam) at [35] to [41], per MacDonald J).

81. I turn to consider the two conditions in turn: what is meant by a deprivation of liberty, before moving on to best interests.

Condition 1: deprivation of liberty

82. In *Storck v Germany* (2006) 43 EHRR 6 the ECtHR identified three necessary components of a deprivation of liberty for Art. 5 purposes:

(a) Objective component: confinement to a certain limited place for a not negligible period of time;
(b) Subjective component: absence of consent to that confinement; and
(c) What I shall call the 'attribution component': the attribution of responsibility to the State; whether the confinement is imputable to the State.

83. Building upon the *Storck* analysis, in *Cheshire West and Chester v P* [2014] AC 896 the Supreme Court articulated an 'acid test' of whether a person who lacks capacity 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.

Acid test (a): Consent

84. The Supreme Court in *Re D (A Child)* [2019] UKSC 42 decided that for the purposes of Art. 5 ECHR parents could not consent to the deprivations of liberty of children who were 16 or 17. While the issue did not arise in *Re D*, Baroness Hale thought the same considerations must apply to children under 16. However, it

should be noted that in *Birmingham City Council v D (by his litigation friend, the Official Solicitor)*, [2016] EWCOP 8, Keehan J found that in respect of confinement in a hospital, parents who had a close and caring relationship with a child aged under 16 could consent to hospital confinement.

Acid test (b) and (c)

85. In *RD (Deprivation or Restriction of Liberty)* [2018] EWFC 47 Cobb J, helpfully condensed the law into eleven propositions:

i) 'Free to leave' does not mean leaving for the purpose of some trip or outing approved by those managing the institution; it means leaving in the sense of removing herself permanently in order to live where and with whom she chooses (*Re A-F* [2018] EWHC 138 (Fam) at [14], repeating comments made in *JE v DE* [2006] EWHC 3459 (Fam) at [115], which had been cited with approval in *Re D (A Child)* [2017] EWCA Civ 1695, [22]);

ii) It is accepted wisdom that a typical fourteen or fifteen-year old is not free to leave her home (*Re A-F* at [31](i));

iii) The terms 'complete' or 'constant' define 'supervision' and 'control' as indicating something like 'total', 'unremitting', 'thorough', and/or 'unqualified' (*Re RD (Deprivation or Restriction of Liberty)* at [31]);

iv) It does not matter whether the object is to protect, treat or care in some way for the person taken into confinement (*Cheshire West and Chester v P* at [28]);

v) The comparative benevolence of living arrangements should not blind the court to their essential character if indeed those arrangements constitute a deprivation of liberty (*Cheshire West and Chester v P* at [35]);

vi) What it means to be deprived of liberty must be the same for everyone, whether or not they have physical or mental disabilities (*Cheshire West and Chester v P* at [46]);

vii) The person's compliance or lack of objection, the relative normality of the placement (whatever the comparison made) and the reason or purpose behind a particular placement are not relevant factors (*Cheshire West and Chester v P* at [50]);

viii) The distinction between deprivation and restriction is a matter of "degree or intensity" and “in the end, it is the constraints that matter” (*Cheshire West and Chester v P* at [56]);

ix) The question whether a child is restricted as a matter of fact is to be determined by comparing the extent of the child’s actual freedom with someone of the child’s age and station whose freedom is not limited (*Cheshire West and Chester v P* at [77]);

x) The sensible and humane comparison to be drawn is that between the situation of the child with the ordinary lives which young people of their ages might live at home with their families (*Cheshire West and Chester v P* at [47]);

xi) The 'acid test' has to be directly applied on each case to the circumstances of the individual under review. Where that individual is a child or young person, particular considerations apply (*Re A-F* at [30]).

86. In *Guzzardi v Italy* (1980) 3 EHRR 333 the ECtHR observed that to determine whether someone has been 'deprived of liberty' within the meaning of Art. 5, the starting point must be his or her concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question.

87. In *Salford County Council v M (Deprivation of liberty in Scotland*) [2019] EWHC 1510 (Fam) MacDonald J set out a list of relevant factors:

a. The extent to which the child is actively prevented from leaving the placement and the extent to which efforts are made to return the child if they leave;

b. The extent to which forms of restraint are utilised in respect of the child within the placement and their nature, intensity, frequency and duration;

c. The nature and level of monitoring that is in place in respect of the child within the placement;

d. The extent to which rules and sanctions within the placement differ from other age-appropriate settings for the child;

e. The extent to which the child's access to mobile telephones and the Internet is restricted or otherwise controlled;

f. The degree of access to the local community and neighbourhood surrounding the placement and the extent to which such access is supervised;

g. The extent to which other periods outside the placement are regulated, for example transport to and from school.

88. Cobb J explained in *Re RD (Deprivation or Restriction of Liberty)* how the courts use comparators to evaluate the constituent parts of the *Storck* test in respect of the subject child. On such relevant comparators, in *Re A-F* at [33] Sir James Munby P stated:

> "...whether a state of affairs which satisfies the "acid test" amounts to a "confinement" for the *Storck* component (a) has to be determined by comparing the restrictions to which the child in question is subject with the restrictions that would apply to a child

> of the same "age", "station", "familial background" and "relative maturity" who is "free from disability".

89. Within this context, in *Cheshire West and Chester v P* Lord Kerr observed that "All children are (or should be) subject to some level of restraint. This adjusts with their maturation and change in circumstances".

90. Thus, childhood is not a single, fixed and universal experience between birth and majority but rather one in which, at different stages, in their lives, children require differing degrees of protection, provision, prevention and participation. Seen in this context, each case must be judged on its own facts.

Condition 2: best interests

91. If the court is satisfied that there has been a deprivation of liberty for the purposes of Condition 1, it must consider whether that deprivation is in the best interests of the child. It is apparent from even the brief survey of decided cases that the best interests of the child will be fundamental to the court's decision.

92. The determination of those best interests requires the court to undertake a broad, searching, meticulously holistic consideration of the welfare interests of the child. The fact that the application is an interim one does not, in my judgement, relieve the court of the duty to do all it can to determine the child's best interests with accuracy and sensitivity.

93. Moreover, as with state intervention in care and other public law family proceedings where Convention rights are imperilled, it is essential to consider necessity and proportionality and identify with clarity what is the legitimate aim pursued.

Proportionality

94. In *W (A Child) (Secure Accommodation Order)* [2016] EWCA (Civ) 804, the Court of Appeal made it very clear that any interference must be necessary and proportionate and the court should, therefore, only authorise the minimum interference for the minimum time to meet the demands of the situation and its attendant risks.

95. I respectfully borrow the structured approach to proportionality articulated by Lord Reed in *Bank Mellat v Her Majesty's Treasury (No.2)* [2013] UKSC 39:

> "71. An assessment of proportionality inevitably involves a value judgment at the stage at which a balance has to be struck between the importance of the objective pursued and the value of the right intruded upon.
>
> …
>
> 74. It is necessary to determine

(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right,

(2) whether the measure is rationally connected to the objective,

(3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and

(4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter … *In essence, the question at step four is whether the impact of the rights infringement is disproportionate to the likely benefit of the impugned measure*." [emphasis provided]

96. I would only add that Lord Reed, relying on Canadian authority, points out that rational connection requires no more than that the legitimate aim is logically 'furthered' by the rights intrusions: see His Lordship at [92].
97. That concludes my statement of the law in respect of deprivation of liberty. I turn lastly to the question of the approach to the rights of parties or individuals subject to criticism in a judgment.

Criticism and procedural rights

98. In *In re W (A Child) (Care Proceedings: Non Party Appeal)* [2016] EWCA Civ 110, MacFarlane LJ (as he then was) gave guidance about the proper approach when the court formed the view that significant adverse findings may be made against a particular party. It was essential that Art. 6 and Art. 8 rights were respected and given effect to. I cite the relevant part of the judgment in greater than usual detail because this was a matter of particular sensitivity in this case and the court's invaluable guidance was carefully followed. His Lordship stated:

"94. … out of respect for the thoughtful and more widely based submissions that have been made, and because the ramifications of this decision may need to be considered in other cases, I would offer the following short observations on other aspects of procedural fairness in the context of Art 8 in answer to the rhetorical question: 'what should the judge have done?'.

95. Where, during the course of a hearing, it becomes clear to the parties and/or the judge that adverse findings of significance outside the known parameters of the case may be made against a party or a witness consideration should be given to the following:

a) Ensuring that the case in support of such adverse findings is adequately 'put' to the relevant witness(es), if necessary by recalling them to give further evidence;

b) Prior to the case being put in cross examination, providing

disclosure of relevant court documents or other material to the witness and allowing sufficient time for the witness to reflect on the material;

c) Investigating the need for, and if there is a need the provision of, adequate legal advice, support in court and/or representation for the witness.

96. In the present case, once the judge came to form the view that significant adverse findings may well be made and that these were outside the case as it had been put to the witnesses, he should have alerted the parties to the situation and canvassed submissions on the appropriate way to proceed. One option at that stage, of course, is for the judge to draw back from making the extraneous findings. But if, after due consideration, it remains a real possibility that adverse findings may be made, then the judge should have established a process that met the requirements listed in paragraph 95 above.

…

98. … This judgment should be seen by the profession and the family judiciary to be a particular, bespoke, response to a highly unusual combination of the following factors:

a) a judge considering himself or herself to be driven to make highly critical findings against professional witnesses, where

b) such findings have played no part in the case presented by any party during the proceedings, and where

c) the judge has chosen not to raise the matters of criticism him/herself at any stage prior to judgment.

99. The fact that, so far as can be identified, this is the first occasion that such circumstances have been brought on appeal may indicate that the situation that developed in the present case may be a vanishingly rare one. For my part, as the reader of very many judgments from family judges during the course of the past five years, I can detect no need whatsoever for there to be a change in the overall approach that is taken by judges.

100. The present case is, unfortunately, to be regarded as extreme in two different respects: firstly the degree by which the process adopted fell below the basic requirements of fairness and, secondly, the scale of the adverse findings that were made. This judgment is, therefore, certainly not a call for the development of 'defensive judging'; on the contrary judges should remain not only free to, but also under a duty to, make such findings as may be justified by the evidence on the issues that are raised in each case before them.

…

108. Looking at this issue in general terms, it must, in some cases, be possible, where a court is contemplating making findings which may have arisen

> outside the original focus of the case, for the court to embark on a process which allows for those affected to make submissions and/or submit evidence in relation to those matters before final judgment is given. I have already described some of the basic elements in such a process at paragraph 95. For those additional steps to be an effective counter-balance to a process which might otherwise be seen as a whole to be unfair, they need, in my view, to be undertaken before the judge has reached a concluded decision on the controversial points. Whilst not impossible, it is difficult to conceive of circumstances where the overall fairness of the hearing could be rescued by any form of process after the judge has reached and announced his concluded decision. Where a court is considering making findings that have not, thus far, been foreshadowed in the proceedings I would suggest that, at the very least, the judge should alert the parties and, if necessary any affected witness, to the potential for such an outcome so that the steps in paragraph 95, and any other relevant additional matters, can be openly canvassed during the hearing and before any judgment is given."

99. That concludes my survey of the law. I turn to the evidence.

§IV. EVIDENCE

100. No live evidence was called.

101. Parties were content that matters were dealt with on the papers. Of particular relevance are the statements of (a) Ms W, the allocated social worker; (b) Ms X the former manager of the residential unit; (c) the Ofsted conclusions; and, for the purposes of responding to the Ofsted findings, (d) Paul Callander, Chief Executive of Horizon.

(a) Ms W, allocated social worker

102. Ms W is employed by the applicant local authority as a social worker within the specialist intervention service. She has over eight years' experience of working with children and their families and became the allocated social worker for AB on 17 January 2020. The local authority is seeking a DoL order, she says, to safeguard AB.

103. AB was placed at Mill Cottage after he had not managed well in a foster care placement. The placement broke down quickly due to his challenging behaviour.

104. Subsequently, Mill Cottage informed the local authority that AB had been restrained on several occasions, in accordance with s.20 of the Children's Homes (England) Regulations 2015. Those regulations provide that members of staff may use reasonable force in order to prevent: (a) injury to any person, including the child; (b) serious damage to the property of any person, including the child. The local authority has been concerned about a restraint that took place on 10 January of this year. AB made a complaint about it. Ms W's information was that a member of staff had tripped him up in order to stop him and then restrained him during an

incident in which AB was verbally and physically aggressive and throwing items at his peers.

105. The situation was taken very seriously by Horizon, Ms W writes. An investigation was carried out and the member of staff will not be returning to work at Mill Cottage. Furthermore, in line with the recommendations of Dr Tizzard, the local authority had been providing additional funding to Horizon to enable Mill Cottage to put in place a one-to-one staffing support regime for AB whereby he is supervised for eight hours a day. Ms W has recently been informed that supervision is only in communal areas. Mill Cottage also restricts AB's device access and internet use is restricted to one hour daily to support his recovery from gaming addiction. There are other safeguards in place within the home.

106. Ms W writes that AB would not meet the criteria for s.25 of the Children Act 1989. He is looked after by the local authority and the service has been provided not solely for the purpose of restricting his liberty but to ensure that he is safe. Certain necessary conditions for a s.25 application are not made out. He has not made attempts to abscond from his current unit. Much of the time his behaviour has been managed.

107. However, at other times, staff at Mill Cottage have felt it necessary to use restraint to prevent him either hurting himself or others. Ms W says that due to his family history and complex needs, he struggles with rules and boundaries in placements and has a confused understanding of healthy and positive relationships. This can lead to his emotions becoming heightened, particularly within his peer relationships and due to his gaming addiction. At times he cannot be calmed down and will become verbally abusive and physically aggressive and confrontational. If he is not helped to control his actions, he will be at risk of repeated placement breakdowns.

108. In light of the Ofsted report, the local authority sought alternative placement for AB. Eventually, after exploring other options, they identified the most appropriate placement as being Ford Cottage. It is another residential unit operated by Horizon. However, its Ofsted history, while not without blemish, is significantly better than Mill Cottage. The local authority was satisfied that Ford would be able to support and protect AB.

109. The local authority thus applied to the court for the following restrictions to be authorised:

1. Inability to have access to gaming technology except for devices and games that are agreed by staff, and except during times agreed by the staff for AB to engage in gaming.
2. Not being allowed in a peer's room without being supervised for the safety of both AB and his peers.
3. Inability to leave the placement on his own due to his age and his limited understanding of safety and his local area.
4. AB to receive 1:1 support where he is supervised by a member of staff for 8 hours a day.

(b) Ms X, residential unit manager

110. Ms X filed a statement dated 2 March 2021. She was the registered manager at Mill Cottage. She says that Mill Cottage is a privately owned children's home and one of a range of residential educational services provided by Horizon. This home is registered for young people with emotional and behavioural difficulties (EBD).

111. There have been 17 restraint incidents since AB was placed at Mill Cottage. Last year: one in August, six in September, three in October and one in December. In 2021: one in January and four in February. Whenever physical intervention is used, an incident report and a record of physical intervention is required to be completed and placed the file. Physical intervention should only be used exceptionally and consistent with guidelines provided by the Department of Health in the document *Permissible Forms of Control in Children's Homes*.

112. In terms of the restrictions, she writes that AB is supervised in communal areas of the home for a minimum of 8 hours per day. However, staff are available within the home to support him for 15 hours per day. There are door alarms on his bedroom door that chime throughout the day if he goes in and out of his bedroom, which is displayed on a control panel in the office and where staff sleep. This is standard practice for a children's residential setting. There are louder door alarms on the three external doors: the front door, the patio door and the back door. At nighttime, the door alarms are set on all the young persons' bedroom doors and external doors in order to keep them safe from harm or allegation. Once again, that is standard practice within a children's residential setting.

113. AB is free to leave the home and staff would not physically intervene. However, as per his 'missing from care' protocol, staff would follow him on foot or in the home car to ensure his risk assessment is being adhered to, which is standard practice, again, for a children's residential setting. The external doors are locked and secured at nighttime for health and safety reasons. However, they can be unlocked from the internal side should he choose to exit, which again is standard. They have window restrictors on all the windows on the first floor, including AB's bedroom for health and safety purposes. A risk assessment is in place for the use of these. They currently have a Koala safety internet system in place. However, this is not currently operational and there is no internet access available to the young people in the home. They are waiting for a new system called iKids to be installed.

114. AB, she says, has 'consented' to the above and not complained about any of the safety measures in place. She writes that the restriction will need to be in place for as long as AB is placed at the home, either to ensure his safety or that of other young people in the placement.

(c) Ofsted conclusions

(i) Significance for judgment

115. Mill Cottage was inspected by Ofsted during a monitoring visit on 8 March 2021. Ofsted inspection reports, once filed, are matters of public record. They are also matters of public concern. It is submitted on behalf of Horizon that the Ofsted

conclusions are 'wholly ancillary' to the decision of the court. I cannot accept that submission.

116. This court has been careful to consider Horizon's Art. 6 rights as a legal entity, and indeed the Art. 8 rights of individuals to the extent they have become relevant in considering the anonymisation of this judgment. These are vital matters not to be minimised. When it became clear that the court may have to consider the situation at Mill Cottage and later Ford Cottage, the court immediately brought this to the attention of parties. Horizon applied for intervener status. The court granted it. The purpose of that court order was to afford Horizon every opportunity (1) to challenge any matter that would form part of the judgment; and (2) to make submissions about whether this judgment of these private proceedings should be published and thus, with appropriate anonymisation, made public.

117. In approaching these important questions, I have carefully considered the principles in *In re W*. I have ensured that Horizon has had every opportunity to contribute to the issues indicated above. Through counsel, Horizon has made lengthy and detailed submissions. I have considered them as thoroughly as the submissions of all other parties.

118. The resultant position is that this court has not had to make fresh findings against Horizon. As part of its evaluation of the best interests and welfare of the child concerned, it has had to consider the prevailing environments in these two residential units to understand what has actually been happening to AB and where he would be best placed, should the court authorise his future confinement. The court has had to reflect on why the listed final hearing could not go ahead; whether there was any independent support for the concerns that the local authority had about AB's placement at Mill Cottage; what were the deficits in care, if any, at Mill Cottage; and given any such failures, whether it would be safe for AB to be placed at another residential unit run by the same company. This last consideration is crucial.

119. The State has a positive duty to ensure that children in state care, whether directly or in institutions to which the State has delegated care, have their Art. 3 ECHR rights protected. They must not be exposed to emotional harm or neglect or the risk of it. Equally, the court is duty-bound to consider carefully the nature of the proposed placement venue. This duty is only heightened when the court is being asked to authorise such a placement under its inherent jurisdiction, which has at its root the historic protective duty of the court for the vulnerable.

120. The Ofsted investigation report about Mill Cottage is in many key respects deeply condemnatory. There is no other way to view it. Horizon has accepted the findings. It has not sought to contest or challenge any single one of them. The Ofsted report is a public document. It is hard to conceive on what basis, other than relevance, a judge - whether sitting as a judge of the High Court or otherwise - could or should be prevented from incorporating extracts of a public document published by an independent statutory monitoring body into its judgment, especially where the welfare of children is at stake.

121. I remind myself what MacFarlane LJ (as he then was) said in *In re W*. The judgment in that case should not be construed by later courts as an encouragement to defensive judging. The duty of the court is and remains to make findings grounded in the evidence on the issues raised in the case before it. The court in this case finds itself in a hybrid situation. The court is not itself making 'findings' against Horizon. Critical factual conclusions have been made by a duly-appointed statutory investigative body about serious deficits in care of the young people in a children's home run by Horizon. However, the fact that the court itself has not made the findings in my view in no respect reduces the procedural safeguards that Horizon is entitled to enjoy. It must have the right to challenge the criticisms. It has not. It accepts them. Horizon must have the right to make submissions about what should be included in the judgment. It has been afforded that opportunity. In those circumstances, I am quite satisfied that the Horizon's procedural rights have been respected and given full effect.

122. Further, Horizon's argument that the Ofsted report is 'wholly ancillary' is misconceived. The Ofsted inspections are critical to an understanding of whether AB's placement was suitable, and if it was not, why not. Lessons may be learned about where next to place AB and what support he will need. The Ofsted report casts light on the living reality of the environment in which AB found himself. The conditions of a child's life may obviously affect his or her behaviour, state of mind, emotional regulation and a host of other matters that may be relevant to the court in assessing the welfare of the child and where is best, most appropriate and safest to accommodate him and what restrictions to liberty may be needed. These are all obvious 'best interests' factors.

123. I take a step back and reflect on what has happened. Due to deep concerns that came to the attention of the social work team as a result of AB's case, and echoed by the court, very responsibly and shortly after the first hearing before me, they made a referral to Ofsted. What is Ofsted?

124. Its full title is the Office for Standards in Education, Children's Services and Skills. The remit of Ofsted is clear. It is stated on the splash page of its governmental website:

> "Ofsted's role is to make sure that organisations providing education, training and care services in England do so to a high standard for children and students." (www.gov.uk.government/organisations/ofsted: accessed 28 March 2021)

125. Further, as explained in its monitoring report of Mill Cottage, Ofsted

> "regulates and inspects childcare and children's social care and … assesses council children's services, and inspects services for children looked after, safeguarding and child protection." (p.11)

126. As such, Ofsted is part of the UK National Preventative Mechanism (NPM). This is a group of 21 organisations, including many statutory inspectorate bodies. The NPM was set up in 2009 to 'strengthen the protection of people in detention

through independent monitoring'. Ofsted, as it makes clear, reports directly to Parliament. It is independent. It is impartial.

127. Turning back to AB, it is plain from my exposition of the law that the inherent jurisdiction can only be invoked to deprive a child like AB of his liberty if it is in his best interests. Courts are, of course, well acquainted with assessment of a child's best interests. It requires a broad, holistic assessment. For the purposes of AB's position, it must inevitably anxiously review what has been happening to this child during his detention and why. Thus it is essential for the court to gain an accurate and nuanced understanding of AB's experience at Mill Cottage. He lived there for several months. The court needs to consider and evaluate the suitability of its successor, Ford Cottage. The court must assess whether placement of AB at Ford Cottage is safe, appropriate and in AB's best interests.

128. The Ofsted conclusions therefore have relevance for whether and in what way the court should exercise its inherent jurisdiction to authorise any further deprivation of AB's liberty and in what kind of institution. The Ofsted report is critical to an understanding of why AB had to move. In my judgement, it is far from ancillary.

129. The added significance of the report for the purposes of this judgment is that here is the marrying up of (a) the statutory inspectorate body's conclusions about an institution that had to be shut because it was failing to properly safeguard children, was compromising their safety and placing them at risk of serious harm and sexual exploitation with (b) the living experience of a single vulnerable child within it.

(ii) Mill Cottage

130. Ofsted's conclusions about Mill Cottage include:

(a) Staff do not take full account of children's vulnerabilities, resulting in incidents being able to escalate and children being placed at risk of harm. The registered manager [Ms X] and staff do not have the skills to manage children's presenting needs safely and effectively. There have been a number of recurring incidents when children have assaulted other children and staff. Partner agencies shared with inspectors their significant concerns about the escalation of incidents and how staff manage children's behaviour. Failure to recognise and respond effectively to such incidents has placed children at risk of harm;

(b) Children are frequently restrained as a way of managing their behaviours. During one incident, a child was restrained six times. The registered manager's review and oversight of physical interventions is poor and does not include sufficiently robust scrutiny to ensure that the use of restraint is necessary and proportionate. Furthermore, the manager is unable to identify and address shortfalls in staff practice, resulting in staff continuing to use physical intervention as a way of dealing with children's behaviours. This compromises the safety and wellbeing of children;

(c) The registered manager has failed to ensure that when children make allegations against members of staff these are promptly referred to the local authority designated officer. Inspectors raised this concern with

senior leaders, who then discovered a further four incidents that they had not been aware of. In these cases children have made allegations that have not been appropriately dealt with by following agreed safeguarding procedures. Further to this, there is not a clear system of keeping records in relation to allegations. This failure to follow basic safeguarding procedures leaves children and staff vulnerable;

(d) Staff do not adequately monitor children's use of the internet or their personal electronic devices. Managers have not ensured that risk assessments contain all relevant information. Staff do not follow the limited strategies identified in risk assessments and this has led to two children accessing inappropriate sexual content online. This means that children have been placed at risk of harm and are potentially vulnerable to exploitation;

(e) Children have made a number of complaints about how they feel about the home environment and the other children. The registered manager failed to act on these concerns. This has left children feeling that they are not valued or listened to;

(f) Staff do not address bullying effectively or support children well to manage their relationships. Children have told the independent visitor they are being bullied and made formal complaints about this. After much delay, there has been some work done with children about bullying, but this has not led to things changing for the better in the home. Staff have also failed to de-escalate conflict between children, which has led on at least seven occasions in recent months to children being punched or headbutted in the face;

(g) Staff and the registered manager do not have the experience and skills to manage children's behaviours safely and effectively. For example, incidents relating to a child's harmful sexual behaviours are not understood and only reactive control measures are put in place to try and minimise further incidents;

(h) The compatibility of children with the other children and staff in the home is not considered on an ongoing basis. When children do not get on, staff cannot manage their behaviour or when there is insufficient staffing for the home this is not reviewed and acted on. This has led to incidents when children and staff have been hurt that may have been avoided;

(i) Training is not provided to staff in key areas relating to children. This includes working with and understanding acquired brain injury, working with sexually harmful behaviour and working with autism spectrum disorder. This leaves staff without up-to-date knowledge in key areas relevant to the children. This means that children are not supported by staff with the required skills and knowledge;

(j) Staff and managers have not ensured that the home environment is clean, homely and tidy. Senior leaders visited the home during the inspection and were shocked to see the neglected and unwelcoming state of the home. The lack of action by staff and managers to address this over several months has meant that children have been living in a chaotic and neglected environment;

(k) Staff do not always receive regular supervision; this includes new members of staff who are still in their probation period. The records of

supervision are not reflective and do not show that staff are receiving practice-related supervision;

(l) Leaders and managers have failed to ensure that the home has a sufficient number of skilled and experienced staff to provide care for each child. This has meant that sometimes there are insufficient numbers of staff on duty to safely meet the needs of children in the home. This has contributed to a large number of incidents and children being unsafe in the home; and

(m) The registered manager and leaders in the organisation have inadequate oversight of the home. Monitoring and review systems area ineffective and have not promoted improvements to the quality of care children receive. Leaders and managers have also been unaware and have not formally noted when children are unsafe and as a result appropriate and timely action has not been taken. Consequently, children have been left at risk of harm and staff left unsupported in their efforts to safely and effectively manage children.

131. Senior leaders of Horizon accepted the findings of the Ofsted monitoring visit, and committed to addressing the shortfalls identified.

132. As a result of the inspection, Ofsted suspended Mill Cottage's registration on 10 March 2021. All resident children were moved immediately to alternative placements.

133. Ms X, then registered manager, was suspended from her duties, pending investigation of a number of the concerns that came to light and also following Ofsted's decision to suspend Mill Cottage's registration.

(iii) Ford Cottage

134. AB has been resident at Ford Cottage from 10 March 2021 to date.

135. Following a full inspection on 19 and 20 February 2020, Ofsted found that the effectiveness of leaders and managers "require[d] improvement to be good".

136. There has been no registered manager permanently appointed since November 2019 and the arrangements to cover that vacant position were found to be insufficient and so an interim manager was appointed. Ofsted found that, without a manager, the leadership and management of the home had suffered. Ofsted found that the recording of information in the register of all children and young people who had lived there (past and present) lacked important information, giving an incomplete picture should that information be required in the future. Additionally, Ofsted found that Ford's most recent statement of purpose gave an inaccurate account of the services the home provides, which could be misleading for families or local authorities looking for a suitable placement for a young person.

137. Ofsted completed a monitoring visit on 14 January 2021, following concerns raised from recent safeguarding incidents. The findings included:

(a) The matching of the new young people is weak. Managers do not fully consider the needs of the new young people against the needs of young people already living in the home. Subsequently, following an increase in

incidents of challenging behaviour between young people, managers have made the decision to end the placement of one of the young people. This is not a positive outcome for the young person and, consequently, young people's care is compromised;

(b) Staff receive regular supervision. However, staff say that they do not feel supported and morale is low. Not all staff receive annual appraisals or mandatory training when required. Not all staff are debriefed following incidents. This means that staff do not always receive the support and guidance required to support them in their role;

(c) Following incidents of restraint, young people are not always given the opportunity to express their feelings about their experience of the restraint and why the measure was deemed appropriate to use. This creates a missed opportunity to use feedback and assessment to improve practice;

(d) Recording of incidents of challenging behaviour is detailed, however managers have not ensured that all records in the home are completed when required. Risk assessments do not include all relevant information. These omissions mean that staff do not have access to up-to-date information to help them to keep young people safe;

(e) The environment is not homely and there are places that require repairs. For example, there is damage to walls in several rooms and the walls are bare. Some rooms are dirty. One young person's bedroom windows were all boarded up due to another young person repeatedly breaking the windows. The bathroom is dirty, with damage to the bath. Managers have an improvement plan for the home, however, at the current time, young people area not provided with a home with a nurturing environment.

138. Managers accepted the findings of this monitoring visit and started to address the shortcomings.

(c) Paul Callander, Horizon

139. Paul Callander is Chief Executive of Horizon Care and Education Group Limited. He provided the court with a statement dated 16 April 2021. In it he responds to the various Ofsted criticisms of the two establishments run by Horizon that had been inspected.

(i) Mill Cottage

140. Horizon is keen to point out that the last full inspection of Mill Cottage was in August 2018 and the rating of the residential unit was good. Indeed, in the assurance visit on 7 and 8 October 2020 no widespread concerns were identified.

141. Mr Callander states that following the Ofsted monitoring visit of 8 March 2021 at Mill Cottage, a comprehensive operational plan has been put in place to address the concerns identified by Ofsted and address the remedial actions necessitated by the statutory requirements. Staff recruitment is underway with a view to the residential unit reopening in due course. A full Root Cause Analysis has been commissioned by an independent external organisation in a bid to learn from the failings documented by Ofsted. A refurbishment of the home is being undertaken. Indeed a program called 'Operation Spring Clean' has been launched across the

whole residential division to ensure all Horizon's children's homes are clean and tidy.

142. The Residential Manager of Mill Cottage and the Responsible Individual remain suspended pending disciplinary action.

143. Mr Callander states that each time AB was restrained at Mill Cottage approved techniques were used. I emphasise that whether this is correct or not is not for this court to determine here. It is inappropriate to prejudge the various incidents and complaints. As indicated, the alleged tripping incident is being reinvestigated.

144. In respect of the concerns about bullying, a bullying risk assessment was initiated on 7 January 2021. On 4 February a psychologist and assistant psychologist who both are employed internally by Horizon worked with staff with a view to introducing LEGO therapy, directed at developing social and communication skills. A bullying reduction plan was devised on 1 March 2021, the first day listed for the original final hearing. It was written by Ms X.

145. An action plan to address the failings identified by Ofsted has been formulated by Horizon with a delivery manager tasked to deliver the necessary improvements. Ofsted set a deadline for the remedial action of 1 June 2021. The external investigation will determine whether further failings exist elsewhere within Horizon.

(ii) Ford Cottage

146. While Ofsted noted that the management at Ford required improvement to be good, Ofsted also noted that this deficit had not been to the detriment of the children. The overall rating of Ford was good. That rating remains in place. Mr Callander states that the team at Ford took the Ofsted suggestions 'very seriously'. The home regularly updates the statement of purpose that Ofsted found to be misleading to ensure its accuracy.

147. The Ofsted monitoring visit of 14 January 2021 raised a number of concerns. The interim manager Mr Y has sought to improve the matching of young people living together that Ofsted had found to be 'weak'. This has led to a decrease in incidents and no physical interventions at Ford in the previous three months. The previously low staff morale has improved, Mr Callander states, with the new management.

148. Ofsted found that restraint was rarely used and when used appropriate. However, young people were not always given the opportunity to express how they felt after restraint. Since the Ofsted finding that the recording of incidents was not timely or complete, Mr Callander states that the incident documentation is reviewed by the manager.

149. The residential unit has been 'refreshed and furnished' following Ofsted's finding that it did not provide a homely environment for the young people.

150. There have been no incidents of restraint following the monitoring visit in January 2021.

§V. DISCUSSION

151. AB's liberty has been significantly restricted. When a child's liberty is curtailed in the way that both Ms X and Ms W identify, unquestionably his rights under Art. 5 and Art. 8 ECHR and Art. 3 and Art. 37 UNCRC are engaged.

152. There is no application under s.25 Children Act 1989, nor would one succeed. Therefore, the local authority is correct in seeking the inherent jurisdiction pathway to authorisation.

153. There are two prime conditions for exercising the inherent jurisdiction in respect of the confinement of children. As to Condition 1, I consider whether the arrangements proposed amount to a deprivation of liberty by examining the *Storck* criteria, considering each of the components in turn.

Inherent Jurisdiction Condition 1:
Deprivation of liberty

(a) Objective component: confinement in a particular restricted place for a not negligible length of time.

154. The court must consider the case of *Re A-F (Children)* [2018] EWHC 138 (Fam) where Sir James Munby stated that the question of whether a child has been deprived of his or her liberty must be viewed in the context of his or her age and compared to other children of the same circumstances. The restrictions sought by the local authority far exceed what would be imposed on a 13 year-old boy (as AB now is). Having considered all those principles, my clear conclusion is that the restrictions the local authority seeks do amount to restrictions of AB's Art. 5 rights.

155. The proposal in the local authority application is for the order to be valid until the conclusion of the Final Hearing, listed to start on 26 July 2021, four months from this date. Therefore, the restrictions sought are for a length of time that is not negligible. The objective component is satisfied.

(b) Subjective component: lack of valid consent

156. Despite what it is reported that AB says about his confinement, I am not satisfied that he has validly consented to his confinement. He is only just 13 and has a number of complex needs and vulnerabilities. Thus, there justifiable concerns about his level of maturity and understanding. I have serious concerns whether he is *Gillick* competent to a meaningful level.

157. I am bound to say that AB's case is distinguishable from *Birmingham City Council v D*. Historically, the relationship between AB and his parents has not been close. He has had little contact, although more recently there has been some visitation, but it is still very limited. His mother and father have played little part in his life and barely exercised parental responsibility. Sadly, his relationship with his paternal grandmother has broken down. Thus no one who has parental

responsibility for AB has a sufficiently close relationship with him presently to satisfy the court they can validly consent to AB's confinement. I emphasise that none of this prejudges the outcomes and placements in the wider public law proceedings before the court. The subjective component is satisfied.

(c) Attribution component: state responsibility

158. Sir James Munby has previously said that a child being placed in accommodation by a local authority where he or she is deprived of liberty is so evidently attributable to state responsibility that it needs no authority to establish the principle. There is no doubt that AB's confinement is imputable to state responsibility. It is hard to conceive to what else his confinement could be attributable to. The third *Storck* component is satisfied.

Acid test cross-check

159. I cross-check my analysis by considering the acid test articulated by the Supreme Court in *Cheshire West*. AB is not able to consent validly. He is subject to continuous supervision and control. He is not free to leave in the sense that should be leave, he will be followed by staff on foot and/or car and the 'missing from care' protocol initiated. As such, AB is subject to a deprivation of liberty for the purposes of Art. 5 ECHR. I turn to Condition 2.

Inherent Jurisdiction Condition 2:
Best interests

160. I remind myself that AB's Art. 3 ECHR rights are unquestionably engaged. He has the right to expect the State to protect him from treatment that is inhuman and degrading, or which places him at risk of emotional harm or neglect. Institutions run by or funded by the State for the placement of children, and particularly vulnerable children, must be run in a way that protects them from violations of their Art. 3 ECHR rights. This is a high duty on the State and indeed the court in ensuring those rights are protected.

161. Consequently, I must satisfy myself that the placement is one in which AB will be safe. The children's guardian has provided evidence that in her judgement the continuing placement at Ford Cottage is in AB's best interests. That is because after the turmoil of Mill Cottage, AB is settled at Ford and has a routine. He wishes to remain there. While that is not determinative, it is a factor I weigh in the balance in terms of his psychological and emotional well-being and I distinguish these wishes and feelings from consent. I am satisfied that despite the various matters highlighted in the Ofsted reports, AB's welfare needs can be met at Ford. Horizon has stated its commitment to implementing the Ofsted recommendations fully. There have been no incidents requiring physical restraint at Ford since the Ofsted monitoring visit in January 2021. The Ofsted rating of Ford remains good. The residential unit can provide AB with security and the high child-staff ratio and the supervisory regime proposed will help keep him safe. There has been a substantial redecoration and refurbishment of the premises to create a more homely environment.

162. AB is a child who has suffered exceptionally difficult life experiences. He is diagnosed with Autistic Spectrum Disorder, Oppositional Defiance Disorder and

concomitant attachment difficulties. These features of his functioning result in extremely chaotic, dysfunctional and worrying behaviours and his struggling with rules and boundaries. As a result of his complex presenting difficulties, I am quite satisfied that should AB's liberty not be restricted, he would be at risk of significant harm. There is a need to protect him. He cannot be managed in a family setting. Dr Tizzard specifically advised that his cumulative needs are too great to be managed in a foster care placement. Regrettably, there has been a breakdown in the placement with his paternal grandmother. The restrictions in the residential unit provide the tailored protection and support his complex needs manifestly require.

Section 100, Children Act 1989

163. The court may only grant leave if it is satisfied that the result which the authority wishes to achieve could not be achieved through making any other order not requiring the court to exercise its inherent jurisdiction. As I have indicated, it is not possible in this case for the court to make an order under s.25. Further, I cannot see how any other order or combination of orders would properly safeguard AB.

164. I am also quite satisfied that is there is reasonable cause to believe that, if the inherent jurisdiction is not exercised, AB is likely to suffer significant harm. Consequently, the conditions for the granting of leave are met. The court grants leave subject to the necessary proportionality analysis.

Proportionality

165. Overall, I have no hesitation concluding that protecting AB from significant harm is an objective that is sufficiently important to justify restricting his liberty. The measures proposed are rationally connected to that legitimate objective in that they further it. Given AB's complex needs, there are not less intrusive measures that could be taken without compromising AB's safety. It should be noted that in contrast to their original application on 3 March in respect of Mill Cottage, the local authority does not seek authorisation of restraint. That evinces a measured and reflective approach: there have not been incidents at Ford necessitating AB's restraint. It would have been disproportionate to seek such authorisation. The local authority does not.

166. Thus, the balance between AB's Art. 5 ECHR rights and his welfare has been correctly struck. I am also mindful that the authorisation is not open-ended, but strictly time-limited. It must be reviewed regularly by the local authority. It will also be reviewed in the interim as appropriate by the court in the exercise of its supervisory duty, then fundamentally at the conclusion of the final hearing.

167. The measures taken as a whole are, I am satisfied, demonstrably necessary and plainly proportionate.

§VI. CONCLUSION

168. The conclusions of the court, reflective of the above analysis, are set out in one place in an appendix to this judgment for ease of reference. This in turn should be appended to the case management order for the DoL application hearing.

169. Before ending, I must address five further matters: (a) the terms of the declaration made; (b) the previous deprivation; (c) the role of the children's guardian; (d) the intentions of Horizon; (e) the child at the centre of all this, AB himself.

(a) Terms of declaration

170. In light of the preceding analysis, the court makes a declaration in the following terms:

1. It is lawful and in the best interests of AB (DOB: XX.XX.XXXX) to be deprived of his liberty by the London Borough of Barking & Dagenham at Ford Cottage Residential Home and accordingly such deprivation of liberty is authorised.

2. The following arrangements put in place by Local Authority, through Ford Cottage Residential Home, in respect of AB constitute a necessary and proportionate deprivation of his liberty and are the least restrictive intervention to meet the risk of harm that arises.

The Restrictions:

a. Inability to have access to gaming technology except for devices and games that are agreed by staff, and except during times agreed by the staff for AB to engage in gaming.
b. Not being allowed in a peer's room without being supervised for the safety of both AB and his peers.
c. Inability to leave the placement on his own due to his age and his limited understanding of safety and his local area.
d. AB to receive 1:1 support where he is supervised by a member of staff for 8 hours a day.

Paragraphs 2(a) to 2(d) shall be valid until 11.59pm on 30 July 2021 before which this order shall be reviewed to examine its continuing suitability (30 July being the last day of the scheduled Final Hearing).

171. However, I will list the matter on 8 April 2021 for further directions. At that point the court will review any updates about the circumstances of AB's confinement and deprivation of liberty (on reviews, see *Re A-F (Children)* [2018] EWHC 138 (Fam) at [55], per Sir James Munby).

172. I emphasise that any material developments must be brought to my attention immediately.

(b) Previous deprivation

173. In *LB Lambeth v L (Unlawful Placement)* [2020] EWHC 3383 (Fam) MacDonald J stated:

"it is vital that all local authorities adhere strictly to the proper legal

procedures where a child is to be deprived of his or her liberty in a placement. Those proper procedures are summarised comprehensively in the foregoing paragraphs taken from *Re A-F (Children)* [2018] EWHC 138 (Fam) and must be followed by local authorities assiduously."

174. Here when specifically asked by the court, the applicant local authority accepted that it had failed to ensure that the proper procedures were followed at all, let alone assiduously. No application was made to invoke the inherent jurisdiction until the case came before me in the first week of March 2021.

175. No legitimate or plausible reason has been given for the local authority's failure to seek the court's authorisation. These, I reiterate, are not technicalities. They are requirements of the rule of law. Either a deprivation of liberty is lawful or it is not. Between November 2020 and early March 2021, it was not.

176. My task today is not to consider damages under the Human Rights Act 1998. However, MacDonald J sounded an appropriately cautionary note in *Lambeth v L* (above):

> "Local authorities are under a duty to consider whether children who are looked after are subject to restrictions amounting to a deprivation of liberty. A local authority will plainly leave itself open to liability in damages, in some cases considerable damages, under the Human Rights Act 1998 if it unlawfully deprives a child of his or her liberty by placing a child in a placement without, where necessary, first applying for an order authorising the deprivation of the child's liberty."

(c) Role of children's guardian

177. The children's solicitor has accepted that there was a failure to restore the matter to court when it was evident that the local authority was not taking the procedural steps it should have taken to ensure AB's deprivation of liberty was lawful. That concession is responsible and entirely what I would expect of Ms Jacobs. However, this failure highlights the critical and central function of a children's guardian. The statutory basis of the role is clear.

178. Section 41(2)(b) of the Children Act 1989 emphasises that the duties of the guardian include an obligation 'to safeguard the interests of the child'. It is quite plain, as observed by Theis J in *LR v Local Authority & Ors* [2019] EWFC 49, that Practice Direction 16A Part 3 imposes upon a guardian a duty to take proactive steps as part of the core safeguarding function. Her Ladyship made plain at [38] that:

> "***The child is a party to the proceedings for a reason***; so, their position can be properly protected and, in appropriate circumstances, seek directions from the court and make applications, for example, an application for an expert under Part 25 FPR 2010. It is not a passive role, just receiving requests or directions from others. The need for the guardian to undertake a proactive role in appropriate cases is wholly in

accordance with the rules and their obligation to 'safeguard the interest of the child'." (emphasis provided)

179. That did not happen. A vital opportunity to safeguard AB was missed. In future everything should be done to prevent this kind of avoidable lapse.

(d) Horizon

180. Horizon has filed evidence stating that it is intent on remedying the failures identified by Ofsted. This court has no evidence to doubt the sincerity of that ambition. However, it remains to be seen how successfully Horizon can remedy the wide-ranging and serious defects identified by Ofsted and by these proceedings. Horizon must comprehensively understand the mechanism that produced the parlous state of affairs that reigned at Mill Cottage – and as importantly, why it was not flagged up as unacceptable and unsafe in an establishment for vulnerable children that Horizon had responsibility for operating. Its senior management correctly characterised the environment and regime these children lived under as shocking. It must never happen again.

(e) To AB

181. The very last thing I wish to say is to AB. If one day he reads this judgment, he may well ask with some justice why it took so long for so many professionals charged with safeguarding his best interests to make sure he was being treated lawfully.

182. The only answer this court can give is this: that inexcusable failure to vigilantly scrutinise and safeguard the freedom and personal security of this highly vulnerable child ends here. His necessary deprivation of liberty has been put on a lawful footing. Too late, I acknowledge. But at last.

183. The precise origins of the court's inherent jurisdiction may now be unascertainable, but centuries after its inception an extremely vulnerable child stands in need of its protective powers. This court will continue to exercise its inherent jurisdiction to ensure AB is 'protected and properly taken care of' as Practice Direction 12D demands.

184. As indicated, I direct that a copy of this judgment be provided to the Children's Commissioner for England, and I have obtained the approval of the Family Division Liaison Judge to the same effect. The judgment should also be sent to Ofsted.

185. That is my judgment.

APPENDIX

The conclusions of the court are as follows:

Stage 1. AB's Art. 5, Art. 8 and Art. 3 ECHR rights and Art. 3 and 37 UNCRC rights are engaged.

Stage 2. The necessary conditions for a s.25 Children Act 1989 order are not satisfied, therefore the appropriate legal pathway to seek authorisation of the deprivation of AB's liberty is the inherent jurisdiction of the court.

Stage 3. The two conditions for invoking the inherent jurisdiction are satisfied:

Condition 1: the circumstances of AB's placement at Ford Cottage constitute a deprivation of liberty: he is unable to consent to his confinement; he is subject to continuous supervision and control; he is not free to leave. Further, the circumstances meet the *Storck* test:

(a) The confinement is for a not negligible period of time;
(b) AB cannot and does not validly consent to the confinement, nor is there anyone who shares parental responsibility for him who can;
(c) The confinement is attributable to the responsibility of the State.

Condition 2: the deprivation is in AB's best interests considering his welfare holistically, in light of his complex presenting needs and how the arrangements can support and promote his welfare and development.

Leave: The statutory leave conditions under s.100(4) Children Act 1989 are satisfied and the court grants the local authority leave because:

(a) No other order would succeed in keeping AB safe;
(b) There is reasonable cause to believe that without exercising the court's inherent jurisdiction, AB is likely to suffer significant harm.

Proportionality: The deprivation sought is necessary and proportionate:

(a) Protecting AB from significant harm is a sufficiently important and legitimate aim to justify significant curtailment of his Art. 5 ECHR rights;
(b) The measures sought by the local authority are rationally connected to and further the protection of his safety and promotion of his welfare;
(c) Less intrusive measures would unacceptably compromise his personal security and welfare, rendering the measures necessary;
(d) The balance between liberty and welfare has been struck in a proportionate way: the benefit of safeguarding AB's welfare outweighs the intrusion into his protected rights.