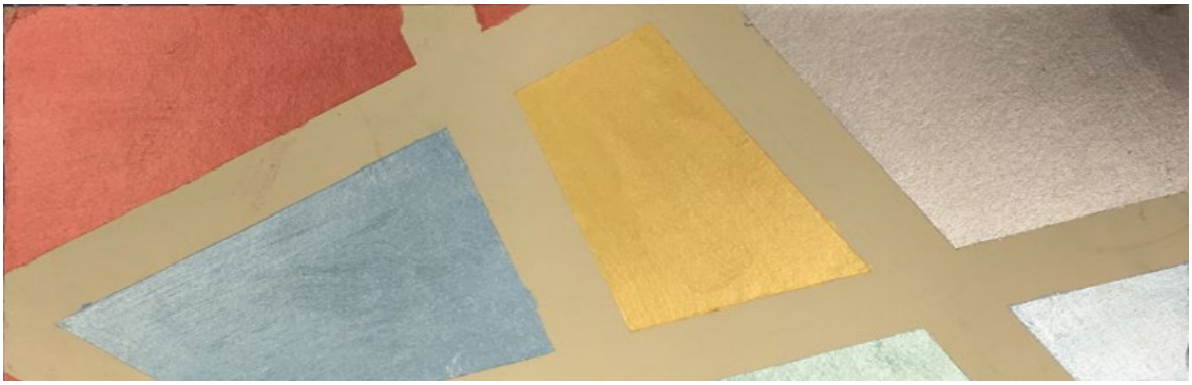

Welcome to the September 2025 Mental Capacity Report. Highlights this month include:

(1) In the Health, Welfare and Deprivation of Liberty Report: an update on *Cheshire West 2*, non-withdrawal of treatment in two very different contexts and SCIE sounds the alarm;

(2) In the Property and Affairs Report: the OPG annual report and increases to LPA fees;

(3) In the Practice and Procedure Report: the Court of Protection (Amendment) Rules 2025, a route map for anorexia cases relating to detained patients, and taking evidence from abroad;

(4) In the Mental Health Matters Report: the police, Article 2 and suicide risk, and an evaluation of the HOPE(S) programme;

(5) In the Children's Capacity Report: *Gillick* does not provide a universal test, and jurisdictional issues in the making of deprivation of liberty and wardship orders;

(6) In the Wider Context Report: anonymity, vulnerability and the open justice principle, and learning disability and social murder;

(7) In the Scotland Report: an apparently open and shut guardianship case and an update on Adults with Incapacity Act reform.

The progress of the Terminally Ill Adults (End of Life) Bill can be followed on Alex's resources page here.

You can find our past issues, our case summaries, and more on our dedicated sub-site here, where you can also sign up to the Mental Capacity Report.

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The picture at the top, "*Colourful*," is by Geoffrey Files, a young autistic man. We are very grateful to him and his family for permission to use his artwork.

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Other proceedings – Family (public law)

Summary

For years, lawyers and clinicians have thrown around the term '*Gillick* competence' as if it were a universal test to apply to analyse the decision-making abilities of children. More recently, they have largely limited themselves to throwing the term around in relation to the decision-making abilities of children under 16, looking instead (in England & Wales) to the Mental Capacity Act 2005 for those aged 16 and over.

Both of these are incorrect.

The MCA 2005 only applies to those aged 16 and over where statute provides that it does (hence why the Law Commission in its disabled children's social care consultation paper proposed expressly making it apply to decision-making by children in the context of the assessment and support planning of social care needs).

In *Re S (Wardship: Removal to Ghana)* [2025] EWCA Civ 1011, the Court of Appeal has reminded us that the *Gillick* test in fact strictly only applies to the determination of whether a child (under 16[1]) has the capacity to give or withhold valid consent to medical treatment. The case arose in another context altogether, namely whether the High Court had been wrong to refuse a wardship application – brought by the child themselves – seeking to bring about their return from Ghana. In the course of reasons for explaining why Hayden J had gone about matters in the wrong way, Sir Andrew McFarlane made some important observations about the *Gillick* test:

> *40. Although the impact of the decision in Gillick v West Norfolk and Wisbech AHA [1986] AC 115 (HL) featured prominently in the submissions of the two interveners* [The International Centre for Family Law, Policy and Practice and the Association of

[1] As Sir James Munby made clear in *NHS Trust v X (In the matter of X (A Child) (No 2))* [2021] EWHC 65 (Fam), at paragraph 77, *Gillick* competence ceases to be relevant in the context of medical treatment decisions governed by s.8 Family Law Reform Act 1969 when a child turns 16.

Lawyers for Children], *the points made there were not developed by the parties to the appeal during the oral hearing. There was, however, some discussion on the direct relevance of a child being said to be 'Gillick competent' in proceedings which do not relate to medical treatment. It may therefore be helpful to offer some short observations in that regard.*

41. In the present case, Hayden J recorded that

> *'nobody has disputed that S is a 'Gillick competent' young person and that, accordingly, resolution of his application requires his own views to be factored into a best interests decision relating to his welfare.'*

42. In their skeleton argument for S, counsel had put forward five 'key propositions', the fifth of which was:

> *'To override the wishes and feelings of a Gillick competent young person, there must be clear and compelling reasons for so doing. Parental responsibility does not trump that obligation on the Court, once the Court is seised of a welfare decision in respect of the young person.'*

43. In their skeleton argument on behalf of the father, Ms Foulkes and Ms Charlotte Baker submitted:

> *'It is wrong in law to assert that achieving Gillick-competence serves to narrow parental responsibility in relation to all and/or significant areas relating to a young person's welfare, and in addition, that there must be clear and compelling reasons to override the wishes and feelings of a Gillick-competent young person (see the "fifth proposition" in S's skeleton argument). As is explored further below, the ratio in Gillick v West Norfolk and Wisbech Area Health Authority & Anr is limited to medical treatment and, although it is often referred to in family proceedings as a shorthand to describe (a) the rationality and strength of a young person's feelings; and/or (b) their capacity to participate in litigation and competence to instruct their own solicitors, it is not of wider application as a principle of law.'*

44. In her oral submissions, Ms Fottrell asserted that Gillick was of fundamental importance in this case. She challenged Ms Foulkes' submission that it was not relevant, as CA 1989, s 1, the welfare checklist and case law were all informed by Gillick and stressed the need to give due weight to 'wishes and feelings'. Ms Foulkes maintained the position that Gillick applied directly to medical cases and that it was difficult to see how it might apply to non-medical decisions. Following further research over the short adjournment, Ms Fottrell drew attention to a Re S (Parent as Child: Adoption: Consent) [2017] EWHC 2729 (Fam), in which Cobb J (as he then was) considered the ability of a parent, who was still herself a child, to give valid consent to the adoption of her own child. Cobb J clearly considered that Gillick competence was a relevant factor in that situation, albeit that the decision in focus did not relate to medical treatment. He summarised the approach to be taken as follows:

> *'… it is agreed by all parties that in order to be satisfied that a child is able to make a Gillick-competent decision (ie has 'sufficient understanding and intelligence to enable him or her to understand fully what is proposed': see Lord Scarman in Gillick, above), the child should be of sufficient intelligence and maturity to:*
>
> *(i) Understand the nature and implications of the decision and the process of implementing that decision.*
>
> *(ii)Understand the implications of not pursuing the decision.*
>
> *(iii) Retain the information long enough for the decision making process to take place.*
>
> *(iv) Weigh up the information and arrive at a decision.*
>
> *(v) Communicate that decision.'*

45. Having considered the issue during the hearing and since, I am clear that Ms Foulkes is correct that, in terms of its legal impact, the decision in Gillick is limited to the ability of a young person to give autonomous valid consent to medical treatment. The purpose of the decision is to offer clarity for the benefit of medical practitioners who require valid consent for a proposed procedure. Lord Scarman was plain in limiting the context of the principle:

> *'I would hold that as a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed. It will be a question of fact whether a child seeking advice has sufficient understanding of what is involved to give a consent valid in law.'*

46. It is also right that, over time, the phrase 'Gillick competent' has been used more loosely to describe the age and maturity of young people who are seen as being capable of making informed decisions as to their future in a range of situations wholly unconnected with medical treatment. An example of this is the use of the phrase by Cobb J in Re S, but, it must be stressed, that Re S, whilst not concerning consent to medical treatment, was specifically focused upon the capacity of a the 'child' in that case to give valid consent to adoption. Cobb J was not referring to, or deploying, the concept of Gillick competence in the course of making a CA 1989, s 1 determination as to the child's welfare – which is the situation in the present case.

47. By the close of submissions, Ms Fottrell did not seek to go beyond the position described in the previous paragraph. In the circumstances, it is right to proceed in the present case on the basis that the characterisation of S as being Gillick competent has no direct legal impact in a case which does not concern the evaluation of his ability to give or to withhold valid consent to medical treatment. In the context of this case, 'Gillick competent' is no more, nor no less, than a convenient label to indicate that S has sufficient maturity and understanding to form his own view as to where he may live. His 'wishes and

> *feelings' are matters that the court is specifically required to take into account by CA 1989, s 1(3)(a). They are to be considered 'in the light of his age and understanding'. The fact that all parties before the judge accepted that S was Gillick competent was a factor that should have been given appropriate weight by the court in its overall welfare evaluation. The wishes and feelings of a young person who is so regarded are likely to attract more weight, and, depending on the issue in question and the circumstances of the case, in some cases significantly more weight, than that attaching to the wishes and feelings of a younger or less mature child. But, as a matter of law, it is wrong to assert, as the appellant's 'fifth proposition' asserted, that the wishes and feelings of a Gillick competent young person can only be overridden if the court finds clear and compelling reasons for doing so. As with each of the other elements in any holistic welfare balance, all will turn on the weight that is attributed to each of the relevant factors.*

Comment

Sir Andrew McFarlane is undoubtedly correct that the term '*Gillick* competence' has crept in very many places over the years. It has featured significantly in the context of the Mental Health Bill debates, for instance, with the Government resisting amendments to put the test for decision-making in relation to matters under the MHA 1983 (which extend beyond decisions about treatment to, for instance, appointment of a nominated person) on a statutory footing. The Government expressed concern that to introduce a test specifically for use in the mental health setting would create confusion and uncertainty elsewhere given the broader applicability of the *Gillick* test. Proceeding on the basis that *Gillick* does not, in fact, have 'direct legal impact' in relation to many of the decisions being taken in the mental health setting might be thought to shed rather a different light on matters.

Sir Andrew's observations about the decision in *Re S* are also interesting. It is clear that he endorsed the approach of Cobb J (as he then was), in circumstances where Cobb J reframed *Gillick* to look very much like the functional limb of the MCA 2005 test. Again in the context of the Mental Health Bill debates, there have been arguments as to whether and how *Gillick* differs from the MCA 2005. Sir Andrew, for one,[2] would appear to take the view that applying the test is applying the functional aspect of the test in the MCA 2005 (and, as in *Re S*, it does not then require any analysis of whether any inability to make the decision is down to an impairment / disturbance of the mind / brain).

More broadly, the decision is also helpful for reminding us that not only will the courts override the decision of a *Gillick* competent child in the medical treatment context where there is appropriate cause to do so, there will also be statutory contexts (most obviously under the Children Act, but also in relation to 1980 Hague Convention cases) where the child's view can never, itself, be determinative as a matter of law. That does not mean that their views should not be taken seriously, but it means that Parliament (and the courts) have determined that, as children, they are different legal creatures to adults.

Anonymisation post-*Abbasi*

In *Birmingham Women's and Children's Hospital NHS Foundation Trust v KB & Ors* [2025] EWHC 2032 (Fam), Morgan J gave detailed

[2] It is also interesting to note that the (statutory) MHA Code of Practice uses essentially the same approach as that of Cobb J to interrogate a child's ability to make relevant decisions – see paragraph 19.36.

consideration to the implications of the Supreme Court's judgment in *Abbasi*.[3] In the aftermath of a case concerning life-sustaining treatment of a child (in which, unusually, the application had been refused), questions arose as to (1) the scope of injunctive relief to prevent the naming of clinicians; and (2) the extent to which the child's parents could disclose certain types of information to relevant categories of people.

As she identified:

> 12. The differing positions as to the scope of any injunctive relief have been the main focus of the argument at this hearing. The trust invites an order which prohibits identification of those clinical staff who were witnesses directly involved in the proceedings, the second opinion doctors and (at the outset of this hearing) 'any individual – medical nursing or other healthcare professional – with responsibility for the provision of care and treatment to Fatima' . The parents acknowledged that there may be a legitimate basis for anonymising clinical staff who were directly involved in the proceedings and whose names are to be set out in Schedule 1 of the order, but argued that the justification for injunctive relief preventing the identification of any healthcare staff involved with Fatima (but not connected with the proceedings) was going too far. In particular Ms Cheetham submitted there was no evidence that there had yet been any disruption or abuse of the sort which would justify it. As the hearing developed, and secondary to that primary position, the parents submitted that if there were to be a prohibition on naming those caring for Fatima, it should be expressed as 'the individual – medical, nursing or other healthcare professionals named in schedule 1'.This, Ms Cheetham KC argued would not only provide the parents with certainty as to who they could not name, since there would be a clear list of names set out in the accompanying schedule, but also had the attraction of being consistent with the summary of conclusions at [182: (11)] of Abbasi which reads: "(11) The individuals whose identities are protected by such injunctions should be identifiab*le by reference to the court's order.".*
>
> *13. Both the Trust and the Guardian contend that it is impracticable and unrealistic to name all those looking after Fatima now and for the remainder of her stay in hospital. It would necessitate for a child of such complex needs, the naming of very large numbers of health professionals from a wide range of different teams. Added to which each time a new member of staff joined (or left) the trust's employment, whether permanently or for example as locum cover, that would require amendment. Ms Scott with whose position Mr Davey KC agreed, contended that the specificity on which the Supreme Court placed emphasis was, for good reason, expressed in terms of individuals whose identities are protected being 'identifiable by reference to the court's order' as distinct from identified by name. On that basis, the Trust modified its position such that it agreed the formulation offered by the parents subject to substitution of the word 'identified' for 'named'. Thus 'the individual – medical, nursing or other healthcare professionals identified in schedule 1' and setting out the relevant health care teams and hospital within which categories of medical nursing and healthcare professionals caring for Fatima fall. That, it is suggested, enables*

[3] Katie having been involved in the case, she has not contributed to this note.

> *anyone to identify whether a health professional caring for Fatima falls within a team, and is consistent with the requirement that those protected should be identifiable by reference to the order. In the circumstances of this case, if the injunction is to extend to those looking after Fatima, I agree with that formulation. Furthermore, it meets in my judgment the specificity needed. All cases which lead to applications of the sort brought by the Trust here are unusual, but each comes with its own fact specific circumstances. It may be that in other cases the better course to satisfying the requirement of identifiability will be by naming those caring for a child. Here I am satisfied that it is not.*

On the facts of the particular case, Morgan J further considered that it was:

> *16.* […] *necessary and proportionate to make an injunction which includes not only those involved in the earlier proceedings and the second opinion doctors but also those continuing to care for her whilst she remains in hospital. I accept and agree with the position of the Trust and the Guardian and the submissions made on their behalf. For reasons I have already considered above, those caring for Fatima should be identified by reference to particularised teams set out in schedule 1. At the outset of the hearing there had been a measure of agreement between the parties that, were I (in making any injunction in respect of treating clinicians) to adopt the formulation reflected in the version of schedule 1 attached to the draft order then circulated, that might offer clarity. That version in relation to treating clinicians set out six teams and the job titles of those falling within them, but also a named list of those caring for Fatima as at the date of the hearing. There indeed appeared at first to be some attraction to this course, as submissions developed over the course of the hearing however, I became less persuaded that it was likely to be helpful and, to the contrary, increasingly concerned that it had the potential to be unhelpful. For the following three reasons I have concluded the better course is not to include a list of names of those currently treating Fatima alongside the identification by role and team:*
>
> *i) Even as drafted at the date of the hearing, it emerged in the course of argument that the list did not meet the purpose for which it was intended – for example the Doctors named, I was told, were only those at consultant level and not their more junior colleagues.*
>
> *ii) The list did not (and could not) take account of changes of personnel coming into and out of the Trust's employment looking after Fatima. In order to provide the certainty that the list had been intended to give, there was the prospect of repeated applications for variation and the attendant cost and court time. This aspect is in reality another facet of the issues considered at [13] above arising from the Supreme Court's emphasis on the requirement of identifiability.*
>
> *iii) The purpose of the schedule is that those bound by the injunction may identify those protected. During the hearing the discussion and consideration of the utility of the inclusion of the names of those currently treating was focussed primarily on the merit from the parents' perspective that they would have a clear list of names of those who they would not be permitted to identify (during the lifetime of the order) in the course of, for example any interview they might give to the media organisations who have made contact with them. With the*

> *benefit of time for reflection that focus may have been misplaced. The parents, of all people, are well placed to know whether someone is or is not a person looking after their daughter. For others, the inclusion of the list of names risks introducing confusion and one can readily foresee a misunderstanding arising that, if a name is not on the list, an individual is not one of those protected.*

Earlier in the judgment, Morgan J had noted that

> *Fatima's parents would like to accept invitations to give interviews and to, as they put it 'tell their story'. They are anxious in so doing to know what identities or details they may give and not to find themselves inadvertently either in breach of any continued injunction or outside any restrictions of s 12 of the AJA. As to the latter point they invite either this court's interpretation/critique of the decision of the Supreme Court's judgment in Abbasi, as to which they submit para [120][4] has introduced confusion, or - should this court not be attracted to that course - as an alternative, discharge in whole or variation in part of that which would be prohibited by s12 AJA with explicit detail by way of schedule to any order of what may or may not be reported. Finally, they invite permission (insofar as it is not material falling within PD12G) to disclose some of the documents from the proceedings to certain organisations and entities and there is a difference of view between the parents and the Trust as to whether if documents are to be disclosed that should be in redacted form or otherwise.*

Morgan J took the view, however, that "the *more straightforward and appropriate course in this case is to vary section 12(1) (a) (i) of the Administration of Justice to the extent of granting permission to communicate or publish identified information* (paragraph 18). Fatima's parents:

> *21.* […] *sought permission (subject to certain conditions) to provide 'copies of any chronologies, indices, position statements, skeleton arguments and written submissions filed in proceedings' to the following:*
>
> *i) An elected representative [clarified in submissions to mean an elected Member of Parliament]*
>
> *ii) The General Medical Council;*
>
> *iii) The Parliamentary and Health Service Ombudsman;*
>
> *iv) NHS England;*
>
> *v) Legal advisors considering any ancillary claim that may be brought on behalf of Fatima or themselves, due to issues connected with the proceedings.*

[4] Which reads "[w]e *also note that section 12(1) of the Administration of Justice Act 1960 provides that the publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in certain specified circumstances, including '(a) where the proceedings – (i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors'. As Munby J said in Kelly v British Broadcasting Corpn [2001] Fam 59, 72, summarising a number of earlier authorities, 'in essence, what section 12 protects is the privacy and confidentiality: (i) of the documents on the court file and (ii) of what has gone on in front of the judge in his courtroom'. Accordingly, it covers the names of the witnesses who gave evidence or provided statements, the identities of the experts who provided reports, and the contents of their evidence, statements and reports. It follows that, by virtue of section 12, the publication of the witnesses' and experts' names, either by the media or by the parents, would have rendered them liable to proceedings for contempt of court. That reflects the common law: In re Martindale [1894] 3 Ch 193; In re De Beaujeu's Application for Writ of Attachment against Cudlipp [1949] Ch 230. For that reason also, the injunction could not be regarded as impinging upon open justice.*

vi) Accredited Reporters

As Morgan J noted:

> *22. The parents strongly contended the documents should be disclosed unredacted in the case of all those at i)-v). In respect of reporters, the point was strongly made that an accredited reporter would, but for the timing of the final hearing, have been entitled to them in that form. So far as the others are concerned in part the significance of the unredacted format submitted Ms Cheetham was that, absent the names of those concerned the documents would not make sense and in part because, to take one example, the GMC were it on receipt to set about any kind of disciplinary action would need to know who were the clinicians concerned. It would in any event, be onerous and unreasonable to expect the parents to ensure that there were appropriate redactions in place.*

However, ultimately, Morgan J concluded that the documents in categories (i) – (v) should be in a form redacted to be consistent with the injunctions she had made (paragraph 25). The position of accredited reporters was, however, different:

> *27. I take a different view in relation to those documents which may be released to accredited reporters. On this aspect in addition to submissions from Counsel for each party I had the benefit of brief observations from Mr Parke from the Press Association who was present in court. It seems to me that there is force in the submission that were the proceedings to have been heard after 1st May 2025 they would fall under the Family Transparency Provisions contained within 1.2(b) and 1.3(b)(ii) of PD12G. By para 6.2 on request a reporter would be entitled to copies (subject to receipt of a transparency order) of those documents under consideration here.*
>
> *28. Additionally, as Ms Scott submitted, amplified by Mr Parke's observations, accredited reporters are well used to receiving and handling material which is subject to reporting restrictions or injunctions as the case made be and service is accompanied by a schedule particularising in very great detail those who are protected. In my judgment so far as vi) above, Reporters, is concerned the documents disclosed should be in unredacted form.*

Short note: when to ward the older child

London Borough of X v Z & Ors [2025] EWHC 2040 (Fam) concerned 'ZE,' who was 17 years old and considered to have capacity to make the relevant decisions in this matter and to conduct proceedings. ZE had lived with his mother through most of his life, with limited contact with his father despite private law orders directing contact. The local authority had concerns of long-term and chronic neglect by his mother, including in relation to serious health issues. There were concerns about the mother's mental health, and after she was detained under the MHA, ZE was sent to live with his father.

The anonymised local authority made an application for an interim supervision order in February 2025, when ZE was 16. An interim care order was made shortly prior to his 17th birthday, and police attended to remove ZE from the family home, which his mother physically fought against. After ZE's 17th birthday, the local authority made an application to make ZE a ward of the court, and sought for ZE to live with his father and have supervised contact with his mother. This order was granted in March 2025, with a final hearing listed in July 2025.

McKendrick J noted the legal framework, and that there is no 'threshold' for wardship orders.

He considered that there were legal errors in the relevant Practice Direction (PD12D):

> *20. The text of the last sentence of paragraph 1.1 of PD12D came about following Lord Wilson's review of the earlier text of the Practice Direction, which he held had incorrectly stated that Inherent Jurisdiction proceedings should only be commenced if the issue cannot be resolved under the 1989 Act – see NY (A Child) [2019] UKSC 49 at paragraph 44. The current iteration of the Practice Direction provides, therefore, for a wider role of the Inherent Jurisdiction. The parties in these proceedings agree that the court cannot make a care order and thereby permit the applicant to exercise parental responsibility to require ZE to reside with his father. No party has submitted that I cannot determine ZE's residence under wardship because the court cannot make ZE the subject of a care order as he is seventeen. No party has sought to appeal the confirmation of ZE's wardship on the issuing of the C66 application on 17 March 2025. Therefore I shall accept the agreed position that I can make a decision in respect of ZE's residence exercising my powers in wardship. For good reasons the courts are slow to place limits on the Inherent Jurisdiction and the court's role in wardship is clear and established.*

It was agreed that the relevant test was ZE's welfare, but McKendrick J did not agree that factual findings were necessary to act in a manner contrary to ZE's and his mother's wish that he return to his mother.

> *21* […] *…Given ZE's age and his capacity, his mother's rights are limited and as such, any interference in her Article 8 right to* ***respect*** *for a family life, would need limited justification for any such interference to be lawful. I have in mind what was said by Lady Hale in Re D [2019] UKSC 49; at paragraphs 23-24 (emphasis added):*
>
> > *23. The earlier "age of discretion" cases had established the principle that children could achieve the capacity to make their own decisions before the age of majority. It was no longer, if it ever had been, correct to fix that at any particular age, rather than by reference to the capacity of the child in question: it had already been established that a child below the age of 16 could consent to sexual intercourse so that it was not rape (R v Howard [1966] 1 WLR 13) or to being taken away so that it was not kidnapping (R v D [1984] AC 778**). Parental rights and authority existed for the sake of the child, to enable the parent to discharge his responsibilities towards the child, and not for the sake of the parent. Lord Scarman put it thus (p 185):***
> >
> > > ***"The principle is that parental right or power of control of the person and property of his child exists primarily to enable the parent to discharge his duty of maintenance, protection, and education until he [the child] reaches such an age as to be able to look after himself and make his own decisions."***
> >
> > *The consequence was that (p 188):*
> >
> > *"… as a matter of law the parental right to determine whether or not their minor child below the age of 16 will have medical treatment terminates if and when the child achieves a sufficient understanding and intelligence to enable him or*

> *her to understand fully what is proposed."*
>
> *24. As Lady Black explains in paras 69 to 72 of her judgment, the Gillick case is not directly relevant to the issue before us now. It had to do with medical treatment and not with deprivation of liberty. It was concerned with whether a child might acquire the capacity, and the right, to make such decisions for herself before she reached the common law age of discretion, not with whether parental authority endured beyond that age if the child lacked the capacity to decide for herself. And as Lady Black has shown, it is, to say the least, highly arguable that such authority did not extend to depriving such a child of her liberty once she had reached the age of discretion.*
>
> *22. This point is further illustrated by the fact Article 8 does not necessarily protect the relationship between an adult child and his parent - see Kugathas v SSHD [2003] EWCA Civ 31 where Sedley LJ (with the agreement of Simon Brown and Arden LJJ (as they were)) at paragraph 14 accepts a relationship between an adult child and his parents does not necessarily acquire Article 8 ECHR protection….*

McKendrick J stated that while the parental Article 8 rights were 'in play,' the court was more concerned with ZE's rights than his mother's. He further noted that he was not being asked to make coercive orders or deprive ZE of his liberty, and ZE has not been attempted to leave his father's care. McKendrick J summarised that:

> *27. It follows from what I have said above, that I recognise my role in these proceedings is limited. To a large extent I consider I am providing guidance to ZE. The court is at the outer reaches of its powers. All parties have accepted wardship since March 2025. Certainly, there has been no appeal that the test of exceptionality as set out in PD 12D, has not been made out. I have some doubts about the exceptionality of the circumstances I am presented with, however, recognising this is not a case about deprivation of liberty and recognising the limits to the mother's rights given her capacitous son can choose where he lives, I am persuaded that ZE welcomes the decision making of this court. Furthermore, I note that the decisions made in wardship for him to live with his father and see his mother are not decisions he has sought to undermine or otherwise go against.*

After considering all evidence, it was determined that living with his father was in ZE's best interests with contact with his mother. The orders were made from July-October 2025, with McKendrick J expressing the hope that the orders would not be necessary after this time.

Compelling the capacitous child

Re G (A Child) [2025] EWHC 1974 (Fam) (Family Division (Henke J))

Article 5 – deprivation of liberty – children and young persons

Summary

Re G (A Child) [2025] EWHC 1974 (Fam) is (yet another) case in which the High Court has refused to make a deprivation of liberty order in respect of a (17 year old) child. Henke J crisply outlined the background thus:

> *3. The young person at the heart of this judgment will be referred to herein as G. He was born in March 2008. In October 2023, G expressed himself to be suicidal. He left his mother's care and went to live with his father. Whilst living with his father, G again expressed*

suicidal ideation and on occasion absconded. G has been accommodated by the local authority since 18 March 2024, shortly after his sixteenth birthday. That accommodation has been pursuant to Section 20 Children Act 1989; the local authority accepting that G has the relevant capacity to provide consent to his own accommodation by the local authority. The accommodation followed G's relationship with his father breaking down and G referring himself to social services. G is estranged from his parents and does not want them to know of the identity he now uses or where he is. They and the local authority have accepted his wishes. Consequently, they have limited knowledge of their son's current circumstances.

4. Within that context, G whilst accommodated has been provided with a number of local authority placements. These have included children's homes, supported lodgings and foster care. When he has become dissatisfied with his placement, he has absconded to random locations, attended hospital and threatened to harm himself, on occasion he has threatened to kill himself. By his actions, G has put himself at risk, including at risk of death. Whilst professionals (social care and health) consider that G makes these threats to get his own way rather than because he is truly suicidal, there is nevertheless a real risk that he will unintentionally cause himself significant harm or indeed kill himself.

5. On 7 March 2025 G presented himself to the emergency department of a hospital with his social worker. He was in distress. He was expressing suicidal ideation. He was admitted to hospital as a voluntary patient. G is considered Gillick competent. Since his admission, G has not required any medical care with the only exception being a course (ten days) of phenoxymethylpenicillin on 7 March 2025. This treatment would ordinarily be given in the community rather than in an acute hospital. G has not required or received any other medical treatment. The hospital will not detain him against his will. His mental health is vulnerable, but he is outwith the statutory scheme provided for by the Mental Health Act 1983. He is medically fit for discharge, as he has been since admission. In the normal course of events, he would receive mental health support in the community. G cannot remain on the hospital ward indefinitely given:

a. G does not have a healthcare need requiring admission to hospital;

b. Remaining in hospital is detrimental to G's health because he does not have access to community mental health services and other services ; and

c. The Trust, responsible for the hospital in question, has a duty to provide healthcare services to those in acute need of the same. The acute paediatric ward where he is currently residing is not the appropriate environment to meet his needs and his admission is preventing the provision of services to those in acute need.

6. G does not present with any substance misuse issues, or offending behaviour. He poses no risk to others. He is a bright and articulate young person who is pursuing and achieving his academic goals. He has a clear vision of what he wants for his future. It is accepted before me that he has capacity - including capacity to instruct his own solicitor - and to voluntarily admit himself as an inpatient to hospital. As already stated, in March 2024 he was considered by the local authority to have

the capacity to consent to be voluntarily accommodated under section 20 Children Act 1989.

7. G's parents have parental responsibility for him until he turns eighteen - Sections 3, 4 and 105(1) Children Act 1989. G's father does not consent to his son's accommodation by the local authority; his mother does. However, G strongly objects to either of his parents being given any pertinent information about him. He objects to them knowing the name he now uses or where he is placed. There is thus an issue about his mother's ability to give fully informed consent. The local authority cannot acquire parental responsibility for him under a care or interim care order. By reason of his age, they cannot apply for a care order, including an interim care order, in relation to him - Section 31(3) Children Act 1989 applied. They could apply for an emergency protection order but that would be for limited duration – Sections 44 and 45 Children Act 1989. Such an order would not meet the needs of this case.

8. Against that background, the local authority applied for permission to invoke the inherent jurisdiction - Section 100 Children Act 1989. If permitted, within that jurisdiction they sought an order that will deprive G of his liberty for 6 months. They sought an order which will permit them to use force to take him from the hospital ward to the placement they consider will meet his needs and to keep him there. G does not wish to go to that placement, will not go there of his own free will and is unlikely to stay there unless prevented from leaving.

9. The local authority has identified a placement designed for therapeutic help for children aged 16 upwards and for adults. The placement is registered with the CQC but not with Ofsted. Within this judgment, I refer to this placement as option 2.

Henke J refused to accede to the local authority's application.

50. It was agreed before me that that the court cannot use the inherent jurisdiction in a manner which would offend Section 100(2)(b) Children Act 1989.

51. G has been an inpatient on a hospital ward on a voluntary basis. It is agreed that nothing within Section 100 has prevented me exercising my inherent jurisdiction and restricting his liberty, as I have, by making an order depriving him of his liberty whilst he has remained on that hospital ward.

52. It is agreed before me that without valid consent to section 20 accommodation, there would be a clear violation of s.100(2)(b) 'so as to require a child to be accommodated by or on behalf of a local authority.'

53. G does not want his parents to know where he is placed or any details about him, including his current identity. G has the capacity to make that decision. His wish is being honoured by the local authority and his parents. In my judgment they cannot, absent that knowledge, make informed decisions about him. Without that knowledge they cannot exercise their parental responsibility effectively or give informed consent, even if they were minded doing so. Thus, whilst his mother has stated that she consents to G's accommodation, I do not consider in the circumstances of this case that consent can be regarded as informed or valid. Further, even if the mother's consent was valid (which it is not), G's father objects to G's accommodation. Thus, section 20 (9) and (10) Children Act 1989 apply and G cannot be

accommodated with parental consent. Even if he were accommodated on his mother's consent, G's father could remove G from accommodation without notice at any time -section 20(10) Children Act 1989 and paragraph 37 HXA (above).

54. Previously, and in my judgment correctly, the local authority has not relied upon parental consent to G's accommodation. Until he was admitted to hospital, G consented to be provided with accommodation by the local authority under Section 20 Children Act 1989. Whilst he was in hospital G did not withdraw his consent to being voluntarily accommodated by the local authority. He remained a looked after child within the meaning of Section 22 Children Act 1989.

55. G is 17 years old and has capacity. It is agreed before me that he can consent to his own accommodation by the local authority. He has done just that since March 2024. G is free to withdraw his consent at any time otherwise his accommodation cannot be said to be consensual.

56. By reason of Section 20 (6) Children Act 1989 before accommodating a child the local authority must so far as is reasonably practicable and consistent with the child's welfare –

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

57. Section 20(6) Children Act 1989 does not enable G to dictate this placement. It does, however, enable the local authority to factor into their decisions about accommodation and their placement considerations, his wishes and feelings. It also enables G to give informed consent. Knowing of the placement options available to him, he can either consent or not to his own accommodation under Section 20. Having consented to being accommodated by the local authority, he can withdraw that consent. In my judgment, it is pertinent that a local authority has no power to arrange a transfer of a voluntarily accommodated child from a residential institution to foster care without the permission of their parents - R v Tameside Metropolitan Borough Council ex parte J [2000] 1 FLR 942, QBD. Similarly, it seems to me that a local authority has no power to transfer a child consenting to his own voluntary accommodation to a placement to which he objects if he withdraws his consent to accommodation by the local authority. Consent to accommodation by a Local authority and the type of placement to be provided by the local authority are in my judgment inextricably interlinked. If G objects to the placement or type of placement proposed by the local authority, he may withdraw his consent to being accommodated. That would leave him in need of housing under the relevant housing legislation. However, that is a choice he is free to make and is one G in this case has decided to make. He is an intelligent 17-year-old with capacity who can weigh in the balance the advantages and disadvantages of the various options open to him and decide what he wants to do. He can decided to accept a service from the local authority or not. Whilst the choice G has made is not one with which the local authority agrees, it appears to me that they should respect it. By accommodating G, the local authority is providing him with service.

Accommodation is not compulsory. As Lady Hale stated ta paragraph 1 in Williams, cited with approval at paragraph 35 in HXA: "Compulsory intervention in the lives of children and their families requires the sanction of a court process. Providing them with a service does not."

As Henke J noted:

58. The reality of the Deprivation of Liberty order sought by the local authority in this case is that they wish the court to authorise taking G against his will to a placement to which he objects and to confine him there; even though if placed there they know he will not and does not consent to his accommodation within the meaning of Section 20 Children Act 1989. The primary thrust of the application is to compel his accommodation rather than to authorise the Deprivation of his Liberty whilst he is voluntarily accommodated. However, Section 20 accommodation is not intended to be used coercively. I agreed with Mr Justice Hedley that section 20 must not be used compulsively in disguise - Coventry City Council above at paragraphs 27-28. Further an application to deprive a child or young person of their liberty under the Inherent Jurisdiction should not, in my judgment, be used to compel accommodation under section 20 at a placement to which G does not consent and to which both of his parents do not consent and even if they did consent do not have the relevant information to give valid informed consent. Seeking a Deprivation of Liberty order to forcefully remove a young person from a hospital ward to a placement where he does not wish to go without the valid consent of his parents or the young person himself, is in my judgment to seek to take a young person into care when the statutory scheme does not permit them to do so. As Mrs Justice Gwynneth Knowles said in Re Q (a child: interim care order: jurisdiction) [2019] 2 FCR 268 at paragraph 23

> *'Parliament specifically chose to curtail the court's jurisdiction to make final and substantive public law orders in respect of children who had reached the age of 17'*
>
> *'Second, the Act consistently emphasises the age of 16 in recognition of a child's developing autonomy'*

59. In my judgment the primary purpose of the application before the court was to compel G to be accommodated against his will rather than to deprive him of his liberty at a placement in which he consents to be accommodated or to which both his parents validly consent to his accommodation. The application offends against the statutory scheme and section 100(2)(b) in particular. In those circumstances, the court declines to make the order sought by the local authority.

60. I am reinforced in my view that the primary purpose of the local authority's continued application for a Deprivation of Liberty order was to compel G's accommodation, by the local authority continuing to maintain their application that restrictions on his liberty were needed when the evidence from the hospital Trust supported by his Guardian was that the restrictions in place on the ward had not needed to be exercised although G knew of the application before the court. The reason why an order Depriving G of his Liberty was still sought by the Local authority was to compel him to be accommodated at a placement they considered to be in his best interests contrary to his wishes and absent his consent to be accommodated at such a placement. That in my view offends

sections 100(2)(a) and (b) Children Act 1989.

Having refused the application on jurisdictional grounds, Henke J also considered (in the alternative) that making the order sought was not in G's best interests.

62. G is 17 years old. He is intelligent. He has capacity to make his own decisions and has been doing so since March 2024 when he consented to his own accommodation by the local authority. He has recently consented to his own inpatient admission to hospital. He has made clear choices about his future education and is taking active steps to pursue that. The evidence is that he is willing to accept home treatment for his wellbeing and is now willing to engage with the local CAMHs team. He has not acted on any expressed suicidal ideation since September 2024. He does not consider the placement identified for him by the local authority, option 2, is suitable to meet his needs. The Guardian shares his views. Both G and the Guardian articulate their reasons for coming to the view they do. Neither G nor the Guardians views can be regarded as unreasonable. Both G and his Guardian express their concern that forcing G to reside in a placement which does not meet his needs, and which is contrary to his express wishes is likely to impact adversely on his wellbeing, including his mental health and is not in his best interests. Against that the local authority argue that option 2 is the most appropriate placement for G. The local authority argue that the deprivation of liberty order that they seek is necessary and proportionate to the risk that G will abscond from the placement, option 2, and put himself at risk of significant harm and possibly death. G and his Guardian argue that there is no need for a deprivation of liberty order in this case. G is willing to go without restriction to the placement I have called option 1. There he will engage with CAMHS and services intended to meet his wellbeing. In essence, the local authority counter that G is unlikely to remain safe if placed in option 1. It is they say likely that history will repeat itself. G, they argue, will become dissatisfied with his placement, abscond and the cycle of expressed demands and threats to harm and kill himself will start again.

63. In that context I remind myself that my decision to authorise the deprivation of a child's liberty does not act to authorise the placement itself. The task of the court when determining whether to exercise its inherent jurisdiction to grant a declaration authorising the deprivation of liberty is to determine (a) whether the restrictions proposed constitute a Deprivation of Liberty for the purposes of Art 5 of the ECHR and (b) if so, whether the that Deprivation of Liberty is in the child's best interests - Tameside MBC v AM & Ors (DOL Orders for Children Under 16) [2021] EWHC 2472 (Fam). In this case, it is agreed that the restrictions proposed will constitute a deprivation of G's liberty. That leaves the issue of G's best interests. I do not consider that it would be in the best interests of G to be deprived of his liberty. I agree with G's Guardian that to restrict his liberty in the manner proposed by the local authority is likely to be contrary to his welfare interests. Further I consider that the restrictions proposed are neither necessary nor proportionate to the risk of harm in this case. G has not acted on his expressed suicidal ideation since September 2024 and most recently, whilst on the hospital ward the restrictions authorised by the court have not need to be implemented to prevent him absconding even though he knew of the local authority plan for him. His objections to option 2 are reasoned and reasonable. He has made a reasoned

and reasonable decision not to go to option 2 and it is not in his best interests to compel him to go there by making orders which would restrict his liberty.

64. Very properly the local authority has confirmed that if I do not grant the deprivation of liberty order they seek, they will offer G a placement at option 1, his preferred placement. The hospital Trust will transport him there without the need for any restrictions. G has confirmed that he will accept the option 1 placement and will consent to his own accommodation by the local authority. I have made it very clear to G that given my decisions it is a matter for him which services, including accommodation he accepts from the local authority. However, I have also emphasised that if he chooses not to accept services and accommodation from the local authority, he will be a young person aged 17 or over whose housing needs will be considered in accordance with the housing legislative scheme.

Comment

What is perhaps of note about this case, over and above the careful examination of the jurisdictional issues, is Henke J's clear-eyed determination to track through the consequences of G having the relevant decision-making capacity – even if those consequences are likely to be ones of considerable concern to the local authority responsible for G.

Deprivation of liberty orders and licence conditions

In the Matter of Jake (A Child) [2025] EWHC 2230 (Fam) (Family Division (Mr Recorder Adrian Jack, sitting as a Deputy High Court Judge))

Article 5 – deprivation of liberty – children and young persons

Summary

This application for an authorisation of a child's deprivation of liberty related to 'Jake,' who was 16 years old at the time of the application. The background was set out by Mr Recorder Jack at paragraph 1 thus:

> *On 24th July 2024 he was convicted of three serious sexual offences and was subsequently sentenced to two and half years' custody. He was released on licence on 30th July 2025. He will remain on licence until 29th October 2026.*

In July 2025, the local authority applied to authorise Jake's deprivation of liberty at a placement where he has continuous 1:1 supervision, alarms on his bedroom and window restrictors.

Jake had been in the care system from a very young age, and had been the victim of sexual assault as a young child in a foster placement. Jake was placed in a residential home in July 2023, and began using drugs and alcohol. He was linked to criminal activities and placed on remand in a child detention centre even prior to the serious sexual offences committed in the summer of 2024. The judgement summarised his licence conditions:

> *8. He was released on licence on 30th July 2025 after serving half the custodial period imposed by the Crown Court (credit being given for the period from 30th April 2024, when he was on remand). The licence is granted in the name of the Secretary of State. The period of the licence runs to 29th October 2026, which is when the two and a half year sentence would expire after credit is given for the time spent on remand. He is under the supervision of [a named officer] of the Staffordshire Youth Justice Service presumably pursuant to section 38(4)(i) of the Crime and Disorder Act 1998. Although the*

Staffordshire Youth Justice Service is funded by the local authority, neither the Service nor its Youth Offender Team ("YOT") which manages Jake have taken part in this application.

9. There are thirteen conditions of the licence under which he has been released. The first nine can be summarised as these: (i) to be "of good behaviour and not behave in a way which undermines the purpose of the licence period"; (ii) not to commit any offence; (iii) to keep in touch with his supervising officer; (iv) to receive visits from his supervising officer; (v) to reside permanently at a named address in Wrexham "and obtain the prior permission of the supervising officer for any stay of one or more nights at a different address"; (vi) not to undertake work, or a particular type of work, unless it is approved by the supervising officer; (vii) not to travel outside the United Kingdom, the Channel Islands or the Isle of Man except with the prior permission of his supervising officer; (viii) to tell his supervising officer if he uses a different name to that on the licence; and (ix) to tell his supervising officer if he changes any contact details. The remaining four I should quote in full, since the impact of these is controversial:

"(x) Confine yourself to an address approved by your supervising officer between the hours of 21:00 and 07:00 daily unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a monthly basis and may be amended or removed if it is felt that the level of risk that you present has reduced appropriately;

(xi) To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your sexual offending;

(xii) To comply with any requirements specified by your supervising officer to register and engage with an education provider;

(xiii) To comply with any requirements specified by your supervising officer to register and engage with housing/your support networks."

10. Paragraph 8 of the licence warns:

> *"If you fail to comply with any requirement of your supervision… or if you otherwise pose a risk to the public, you will be liable to have this licence revoked and be recalled to custody until the date on which your licence would otherwise have ended. If you are sent back to prison and are re-released before the end of your licence, you will still be subject to licensed supervision until the end of your sentence.*

The local authority considered that Jake would need comprehensive support to both address the trauma he has experienced and his high risk of harmful behaviour, particularly if he was released without intensive support. Jake was scheduled to commence therapeutic interventions around trauma approximately two months after moving to the placement.

The application for a deprivation of liberty order was opposed by Jake's Guardian, who felt that "*that the* [Youth Offending Team] *are using the DOLs order as way to address the work needed, which is not appropriate. The Guardian feels, with respect, that there has been somewhat of a taking the eye off the ball whilst Jake was in custody. The Guardian notes from his reading that this work should have taken place whilst Jake was incarcerated and the Guardian notes that if the DOLs is enforced it will likely not help with his engagement with his licence, or his social worker. There should have been some open transparent*

conversations with Jake about the DOLs and his licence expectation, which would in essence change or reduce his offending. However, the Guardian goes back to the question as to how and why the professionals are suggesting Jake is a high-risk offender."

Mr Recorder Jack refused the application to authorise Jake's deprivation of liberty. He noted that, while the purposes of sentencing adult offenders includes the punishment of offender and reduction of crime, the purposes of criminal penalties for children is to prevent re-offending and promote the welfare of the young person, as well as to consider the risk of harm and culpability of the young person. He noted that the inherent jurisdiction had the child's welfare as its paramount consideration, and while "'t*his Court will obviously seek to reduce the risk of the child reoffending* […] *this will merely be one consideration under the paramountcy test, whereas for the Youth Offenders Team this will be a predominant factor*" (paragraph 19)

Mr Recorder Jack considered that the orders sought by the local authority would not achieve their aims.

> *23.* […] *It is true that a DOLs order is merely permissive: it allows the local authority to do something which, in the absence of the permission given by the DOLs order, they could not do. If Jake breaches the terms of the DOLs order, he is — not even theoretically — liable to contempt of court or any other Court-imposed sanction for breach of the DOLs order. The only consequence of breach is that the local authority can use limited physical force to ensure Jake's compliance. It is in order to avoid the need to use physical force to prevent absconding, that DOLs orders regularly include provisions for locking doors and affixing restrictors to windows.*

24. The absence of sanction is, however, quite different in relation to a breach of the licence conditions. If Jake fails during the day-time period to be "of good behaviour [or behaves] in a way which undermines the purpose of the licence period" then the consequences are draconian: he can be brought back to [the detention centre] and incarcerated until 29th October 2026. Likewise, if he absconds, the consequence is potentially imprisonment following the rescinding of his licence. This sanction is much more severe than putting restrictors on Jake's bedroom windows and locking his doors.

25. Further, the local authority's desire to ensure a step-down period is not at odds with what seems to be contemplated by the licence conditions. Condition (xi) provides for Jake to comply with any requirements for his addressing his sexual offending which the Youth Justice Service may impose. Conditions (xii) and (xiii) impose similar requirements in respect of education, housing and social networks.

26. No evidence has been adduced from [Jake's YOT supervisor] as to the intentions of the Staffordshire Youth Justice Service's YOT. I am therefore hampered in assessing the relative merits of the DOLs route advocated by the local authority as against what the YOT propose. The local authority has provided a well-reasoned plan for ensuring Jake's development over the next six weeks. By contrast, all I have been able to do as regards the YOT's proposals is to examine what would be permitted under the licence conditions. It need hardly be said, however, that the YOT will no doubt do what they consider is best for ensuring Jake's safety and development.

27. What is the significance of this evidential lacuna? The Court's powers to

exercise its inherent parens patriae jurisdiction are limited by section 100 of the Children Act 1989 […]

28. There is in this case no order falling under section 100(5) through which the local authority's aims can be achieved, so the condition for exercising the inherent jurisdiction in section 100(4)(a) is satisfied. However, in my judgment the local authority have failed to show reasonable cause to believe that Jake is likely to suffer significant harm in the absence of a DOLs order, so the condition in section 100(4)(b) is not satisfied. The management of Jake by the YOT is sufficient to exclude any reasonable cause for belief that Jake might suffer significant harm. The Court cannot therefore invoke the inherent jurisdiction.

29. I say this for three reasons. Firstly, the local authority are wrong in supposing that there will be no sanction if Jake absconds from his placement. On the contrary he has a very strong incentive not to, since, if he absconds, he is very likely to have his licence revoked. The same goes for the other terms of his licence. The local authority's view that there is no alternative to a DOLs order is severely undermined.

30. Secondly, the licence conditions permit the form of "step-down" which the local authority consider is desirable. There is no reason to suppose that the YOT are not cognisant Jake's needs in this regard. Even if the YOT took the view that more freedom should be given to Jake than the local authority's social workers consider desirable, there are no grounds advanced to me on which any public law attack might be made in the King's Bench Division on any decision by the YOT to that effect. There is no reason to suppose that Jake will not receive appropriate support for addressing his sexual offending.

31. Thirdly, in this case the primary organ of the state with responsibility for rehabilitating young offenders is Staffordshire Youth Justice Services and the YOT responsible for Jake. The social work team of the local authority has only a secondary responsibility for Jake's rehabilitation. It is not for the High Court sitting in its parens patriae jurisdiction to micro-manage what a body such as the YOT, which operates in a specialist area of the criminal justice system for young offenders, might consider the best course for managing a particular young offender released into the community on licence. There are no grounds for supposing that the YOT is not doing what it considers to be in Jake's best interests. Thus the absence of evidence from [the YOT supervisor] is not in my judgment fatal to Jake's and the Guardian's opposition to the local authority's application.

Comment

The observations of Mr Recorder Jack in relation to the different purposes of deprivation of liberty orders and criminal sentencing are both useful and of equal relevance to DoLS / deprivation of liberty orders made in relation to adults. Equally relevant for adults are his observations about the interaction between licence conditions and orders of the court authorising deprivation of liberty, something which often causes unnecessary confusion (an issue picked up further in the new chapter on 'When P is an offender' by Ian Brownhill in the next edition of the LAG Court of Protection Handbook, landing on bookshelves near you soon).

Life-sustaining treatment and very young children

Two cases decided over the summer, both tragic in their own way as only such cases can be, raise points of wider note.

The Trust v Z & Ors (Withdrawal of Medical Treatment) [2025] EWHC 2100 (Fam) [5] is an important reminder that a case may have to come to court because the parents and the Trust cannot reach agreement, but without both 'sides' having lost trust in each other. As Theis J noted:

> *Whilst the parents and clinical team disagree on the next steps for Z there is a strong and tangible mutual respect between the parents and the clinicians regarding their respective positions. As Dr A movingly said in evidence, they have walked this path together. The Trust in this case could not have done more for Z. They rightly sought extensive second opinions about Z's condition, prognosis and treatment prior to making any decision to issue proceedings. They have involved the parents at each stage, actively encouraging them to speak with those who attended hospital to see Z in advance of providing any second opinion. Whilst they have come to different conclusions the parents and the Trust have worked in a truly collaborative way that has benefitted Z. They both have the admiration of the court as to how they have done this in such difficult circumstances.*

In *Re J (A Child) (Withdrawal of Ventilation)* [2025] EWHC 2247 (Fam), McKendrick J noted the difficulty of applying the approach in *Aintree* of putting oneself in the shoes of the person to a baby (in that case, under a month old). As much as we are fans of the *Aintree* approach, it was decided in the context of adults, and we do have the gravest reservations about its direct applicability to very young children. Rather, we might suggest, the courts should be clear-eyed about the fact that they are considering best interests (in the common law sense) in a situation where it does not make conceptual sense to seek to take the decision that very young child would have taken.

[5] A case involving Arianna, who has therefore not contributed to this note.

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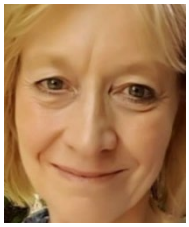

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Conferences

Members of the Court of Protection team regularly present at seminars and webinars arranged both by Chambers and by others.

Alex also does a regular series of 'shedinars,' including capacity fundamentals and 'in conversation with' those who can bring light to bear upon capacity in practice. They can be found on his website.

Advertising conferences and training events

If you would like your conference or training event to be included in this section in a subsequent issue, please contact one of the editors. Save for those conferences or training events that are run by non-profit bodies, we would invite a donation of £200 to be made to the dementia charity My Life Films in return for postings for English and Welsh events. For Scottish events, we are inviting donations to Alzheimer Scotland Action on Dementia.

Our next edition will be out in October. Please email us with any judgments or other news items which you think should be included. If you do not wish to receive this Report in the future please contact: marketing@39essex.com.

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