



Neutral Citation Number: [2026] EWCA Civ 307

Case No: CA-2026-000541

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
FAMILY DIVISION
Recorder Basu KC sitting as a Judge of the High Court
FD26C40270

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 March 2026

Before :

LORD JUSTICE NEWEY
LORD JUSTICE BAKER
and
LORD JUSTICE MILES

T (INHERENT JURISDICTION: DEPRIVATION OF LIBERTY)

Olivia Bliss and Daniel Wild (instructed by **Local Authority Solicitor**) for the **Appellant**
Tom Wilson (instructed by **TV Edwards**) for the **Third Respondent by his children’s**
guardian)

The First and Second Respondents were neither present nor represented.

Hearing date: 13 March 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE BAKER :

1. T is a deeply troubled young man aged 17 years 8 months who has been in the care of the local authority for seven years and is currently placed in a residential unit some 200 miles away from his home town. A recent deterioration in his behaviour led the local authority to apply to the Family Division of the High Court under the inherent jurisdiction for an order authorising the deprivation of his liberty. One judge duly made a very short term authorisation. But when the matter returned to court a few days later, another judge declined to extend the order. As a result, the unit where T was living indicated that they were no longer able to accommodate him. The local authority filed a notice of appeal and this Court granted permission to appeal and made an interim order authorising the deprivation of liberty pending urgent determination of the appeal.
2. At the hearing of the appeal three days later, we informed the parties that the appeal would be allowed for reasons to follow in judgments to be handed down at a later date. This judgment sets out my reasons for joining in that decision.

Background

3. T is now aged 17 years 8 months. He has diagnoses of attention deficit hyperactivity disorder and autistic spectrum disorder which impinge upon his ability to regulate his emotions and cause him to act impulsively. His parents separated when he was a young child and he has had no contact with his father for several years. The father's whereabouts are unknown and, although named as a party, he has played no part in these proceedings.
4. In 2019, when he was aged 11, T was accommodated by the local authority under section 20 of the Children Act 1989 with the consent of his mother who was having difficulty managing his behaviour. On 25 November 2019, he was made subject to a care order on the ground he was beyond parental control. He has remained in the care of the local authority ever since. An assessment carried out at the time of the care proceedings concluded:

“as a result of both his complex needs, risk to himself and others, along with insufficient protective factors, T will require a full-time therapeutic residential placement, where he will receive care from a therapeutically trained staff team, education, and specific therapeutic interventions in a holistic manner.”
5. The limited papers put before this Court do not contain details of T's life in care in the next few years. It is clear, however, that he moved between a variety of residential placements, and continued to display difficult and challenging behaviour.
6. In January 2025, T moved to semi-independent accommodation at L House, a residential unit in the North of England some 200 miles from his home town. At that date, the unit was registered with Ofsted under the Care Standards Act 2000.
7. In the course of 2025, he continued to exhibit challenging and violent behaviour. In February, he threw a kettle at a staff member. In March, he became threatening towards staff during an argument on the phone with his mother. The following day, he caused damage to his room, forcing all the spotlights out of the ceiling below. On 30 March,

he harmed himself by punching and head-butting a wall, and punching his chest, and then behaved in a threatening and aggressive manner towards staff. In April, he had an aggressive outburst at a bicycle shop. On arrival back at the unit, he was aggressive towards staff and then started punching himself on the head and hitting himself with a pool cue. On 7 May, he made threats to set fire to the home. On 16 June, he became unsettled while in the car with a member of staff driving, in the course of which he threw a bottle of water at the staff member.

8. In October 2025, it seems that the registration of L House was withdrawn after an Ofsted inspection raised concerns about staffing levels. In these proceedings, however, the local authority informed the court that the unit has now re-applied for registration, that the application is “currently at SC1 level” but “is supported for fast-track application to SC2”.
9. On 8 November 2025, T threatened a member of staff with a baseball bat. On 4 December, he became aggressive and threatening, and caused damage to the property. On 5 January 2026, he again became threatening and aggressive towards staff, and the following day he punched a hole in a television set. On 23 January, he caused damage to his bedroom furniture. Two days later, he threatened to stab the unit’s manager and caused damage to the property after a disagreement about trainers. On 2 February, he threw a plate at a wall because he was distressed about his telephone. On 16 February, he punched a mirrored wardrobe, smashing the glass and cutting his hand.
10. On 4 March 2026, he was arrested at the property following another violent incident. In the course of this incident, he made threats to burn the property and used an improvised weapon, a metal pole, to threaten the staff. He was charged with an offence of assault and released from police custody. Following this incident, however, the staff at the residential unit refused to accept him back without an increase in staffing levels. He therefore spent the night at a police unit.
11. On the following day, 5 March, the local authority applied to HHJ Reardon, sitting as a judge of the Family Division under section 9(1), for an order seeking leave to apply under the inherent jurisdiction for an order authorising the deprivation of T’s liberty. The judge made an order granting the local authority leave to apply and a declaration that it was lawful and in T’s best interests that the local authority be permitted to deprive T of his liberty at L House until 4pm on 9 March. The order further defined the measures which the local authority was permitted to take under the authorisation.
12. The matter returned to court on 9 March 2026, listed before Recorder Basu KC, sitting as a deputy High Court Judge. The local authority’s application for an extension of the deprivation of liberty order was supported by T’s mother, and by his children’s guardian.
13. After hearing submissions, the judge delivered a judgement in which he refused to grant the local authority leave to apply for an order under the inherent jurisdiction. His reasons, set out in an ex tempore judgment, are considered below. An application to the judge by the local authority for permission to appeal against his decision was refused.
14. On the evening of 9 March 2026, the local authority applied to the Court of Appeal out of hours judge for an interim order pending determination of an application for permission to appeal. An order was granted in terms broadly similar to those in the

earlier order of HHJ Reardon. On the following day, I granted permission to appeal against the judge’s order, listed the appeal for hearing on 13 March, and extended the interim order until the conclusion of the appeal.

The law

15. Article 5 of ECHR provides, so far as relevant:

“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:

...

(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;

...

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

16. The essential components of deprivation of liberty were identified by the ECtHR in *Storck v Germany* (2005) 43 EHRR 6:

(1) the objective component of confinement in a particular restricted place for a not negligible length of time;

(2) the subjective component of lack of valid consent; and,

(3) the attribution of responsibility to the State.

17. In *Cheshire West and Chester Council v P* [2014] AC 896, the Supreme Court identified the “acid test” for identifying whether a person is deprived of their liberty as whether they are (1) subject to continuous supervision and control, (2) unable to leave, and (3) unable to consent to the deprivation. It is unnecessary to consider the law in this respect in any further detail as it is not disputed that the arrangements now proposed by the local authority amount to a deprivation of liberty.

18. “Educational supervision” in Article 5(1)(d) is not confined to classroom teaching: see *Koniarska v United Kingdom* (2000) 30 EHRR CD 139, and *Re K (A Child) (Secure Accommodation Order: Right to Liberty)* [2001] Fam 377. In the latter case, Judge LJ, considering “educational supervision” under Article 5(1)(d), said (at paragraph 107):

“it involves education in the broad sense, similar, I would respectfully suggest, to the general development of the child’s physical, intellectual, emotional, social and behavioural abilities,

all of which have to be encouraged by responsible parents, as part of his upbringing and education, and for this purpose, an appropriate level of supervision of the child to enhance his development, where necessary, by restricting his liberty is permitted.”

19. The statutory scheme for secure accommodation in England is provided by section 25 of the Children Act 1989, headed “Use of Accommodation for Restricting Liberty”. Wales now has a separate regime for secure accommodation under s.119 of the Social Services and Wellbeing (Wales) Act 2014, although the provisions are substantially the same as under section 25.

20. Section 25(1) provides:

“Subject to the following provisions of this section, a child who is being looked after by a local authority in England or Wales may not be placed, and, if placed, may not be kept, in accommodation in England or Scotland provided for the purpose of restricting liberty (‘secure accommodation’) unless it appears

(a) that –

(i) he has a history of absconding and is likely to abscond from any other description of accommodation, and

(ii) if he absconds, he is likely to suffer significant harm; or

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.”

A “looked after” child is defined as a child who is either in the care of the local authority under an order made under Part IV of the Act or provided with accommodation by the authority in the exercise of certain statutory functions, in particular under Part III: sections 22(1) and 105(4).

21. Section 25(2)(a) provides that the Secretary of State may by regulations specify a maximum period beyond which a child may not be kept in secure accommodation without the authority of the court and for which the court may authorise a child to be kept in secure accommodation. Subsection (3) provides that “it shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case”. Subsection (4) provides that “if a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specify the maximum period for which he may be so kept”. Subsection (5) empowers the court to make an interim order permitting the child to be kept in secure accommodation during the period of any adjournment of the hearing.

22. Regulations made under section 25 – the Children (Secure Accommodation) Regulations 1991 – make provision for the maximum periods beyond which a child to whom section 25 of the Act applies may not be kept in secure accommodation, depending on whether it is with or without the authorisation of the court.
23. Over the last ten years, however, the need for secure places has outstripped the number of secure placements available under the regulations. For that reason, local authorities have resorted to applying under the inherent jurisdiction to obtain an order authorising a deprivation of liberty, a course endorsed by the Supreme Court in *Re T (A Child)* [2021] UKSC 35. As repeatedly observed in cases during that period, the provision of secure accommodation units in England and Wales is wholly inadequate to cope with the numbers of children who require it. Accordingly, as Lady Black observed in *Re T* at paragraph 141:

“it is unthinkable that the High Court, with its long-established role in protecting children, should have no means to keep these unfortunate children (and others who may be at risk from them) safe from extreme harm, in some cases death. If the local authority cannot apply for an order under section 25 because there is no section 25 compliant secure accommodation available, I would accept that the inherent jurisdiction can, and will have to be, used to fill that gap, without clashing impermissibly with the statutory scheme.”

24. In order to use the inherent jurisdiction, however, a local authority must satisfy the provisions of section 100 of the Children Act 1989, which provides:

“100. Restrictions on use of wardship jurisdiction

(1) Section 7 of the Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.

(2) No court shall exercise the High Court’s inherent jurisdiction with respect to children –

- (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
- (b) so as to require a child to be accommodated by or on behalf of a local authority;
- (c) so as to make a child who is the subject of a care order a ward of court; or
- (d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

- (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.
- (5) This subsection applies to any order –
 - (a) made otherwise than in the exercise of the court’s inherent jurisdiction; and
 - (b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).”

25. The scheme underpinning the Children Act 1989 was to provide a single route into local authority care. As I explained in *Re E (S.27 Direction)* [2025] EWCA Civ 470 (at paragraph 72):

“Prior to the 1989 Act, children could be placed in the care of a local authority via a number of routes. There were “more than twenty separate provisions leading to care under a court order with several different sets of criteria for the court to apply” (Review of Child Care Law, paragraph 2.4). The effect of the Act was to replace these provisions with a single route – the application by the local authority for a care or supervision order under section 31(1) – and a single set of threshold criteria under section 31(2).”

One of the routes by which children could be placed in care under the old law was wardship under the Family Law Reform Act 1969. This was expressly abolished by section 100(1). Section 100(2) added that the inherent jurisdiction cannot be used to require a local authority to receive a child into care (subsection (a)) or to accommodate a child (subsection (b)) or to confer on a local authority any power to determine the exercise of parental responsibility for a child (subsection (d)).

26. This does not mean, however, that a local authority cannot resort to the inherent jurisdiction. As Lady Black explained in *Re T* (at paragraph 119):

“It must also be borne in mind that Parliament made it very clear that it was not intended that the inherent jurisdiction should be entirely unavailable to local authorities, and that it appreciated that there could be cases in which it would be necessary to have

recourse to it because there was reason to believe that the child would otherwise be likely to suffer significant harm. This is evident from sections 100(3) to (5). Like the express prohibitions in sections 100(1) and (2), the more general conditions imposed by subsections (3) to (5) are shaped to confine the local authority to orders otherwise available to them, but building in a safety net where those other orders would not achieve the required result in a risky situation.”

27. If a secure accommodation placement is available, the local authority will be able to achieve the result it seeks by applying for a secure accommodation order under section 25. In those circumstances, it would be unable to meet the criteria for being granted leave to apply under the inherent jurisdiction under section 100(4) and (5). Where, however, the court is satisfied that there is no secure accommodation placement available, the result which the authority wishes to achieve cannot be achieved through the making of an order under section 25. In those circumstances, the court may grant the authority leave to apply under section 100(3), provided it is also satisfied, under section 100(4)(b), that there is reasonable cause to believe that, if the court’s inherent jurisdiction is not exercised, the child is likely to suffer significant harm.
28. Where a local authority has been granted leave to apply under the inherent jurisdiction, the court may grant an order under its inherent jurisdiction authorising the deprivation of a child's liberty if it is satisfied that the circumstances of the placement constitute a deprivation of liberty for the purposes of Art 5 of the ECHR and it considers such an order to be in the child's best interests: *Tameside Metropolitan Borough Council v C & Ors* [2021] EWHC 1814 (Fam) per MacDonald J at paragraph 49. The evaluation by the court of the child’s best interests “encompasses a holistic welfare appraisal in the widest sense that will range over every matter that conduces to the child's wellbeing, health and safety” (ibid, paragraph 70).
29. Frequently in these cases, however, the court is faced with the problem that the placement is not capable of meeting all of the assessed welfare needs of the child but, by reason of a lack of appropriate resources, is the *only* placement available. In those circumstances:

“The child's welfare needs must be considered both holistically and realistically, which approach demands that the court consider the likely consequences of any order it does or does not make. Within that context, to leave out of the best interests equation the lack of availability of an alternative course of action with respect to L's welfare would be to artificially constrain the court from evaluating fully the extent to which it is in L's best interests for the court to authorise the current restrictions that constitute a deprivation of his liberty” (ibid, paragraph 74).
30. The number of children under deprivation of liberty orders granted under the inherent jurisdiction continues to rise. According to figures collated by the Nuffield Family Law Observatory, in the three months from April to June 2025, 357 children were subject to applications for DoL orders, a 20% increase on the equivalent period in 2024. During the same period, 71 applications were made for orders under section 25.

31. The high number of applications to the High Court has given rise to logistical difficulties. Under the arrangements in place prior to October 2023, all applications for orders relating to the deprivation of a child’s liberty under the inherent jurisdiction were issued and retained in the Family Division in the Royal Courts of Justice (“RCJ”) in London. In October 2023, the President of the Family Division (“PFD”) issued a Revised National Listing Protocol which established a National DoL List (“NDL”), replacing the previous National DoL Court. Paragraph 1 provided that all applications seeking orders to deprive any child of their liberty (‘DoL orders’) should continue to be issued centrally in the Royal Courts of Justice. Paragraph 5 provides that all first applications would be listed in the RCJ in the NDL before a NDL judge, who is either a Judge of the Family Division or “a s.9 Deputy Judge of the High Court”. (It seems that both deputy High Court Judges appointed under section 9(4) of the Senior Courts Act 2001 and judges are authorised to sit in the High Court under section 9(1) as NDL judges.)
32. Under paragraph 6, headed “Case management”, the Protocol describes the “Role of the s.9 NDL judge at the first hearing in the RCJ”:

“6.1 The judge must

(a) consider whether the order sought amounts to a deprivation of liberty within the meaning of Article 5 ECHR;

(b) consider the extent to which the restrictions sought are necessary and proportionate in relation to the perceived risks to the child or others; and

(c) consider the nature of the placement and its suitability to meet the needs of the child concerned

6.2 Where the application is being made on an urgent basis on short notice in circumstances where the local authority has not yet identified a suitable longer term placement for the child, the judge must give careful consideration to the conditions under which the child’s liberty will be restricted in the short term pending an urgent review hearing.

6.3 If the short-term placement is unregulated, the revised guidance issued by the PFD in September 2023 must be followed.

6.4 Any initial directions given at the first hearing in the RCJ may include

(i) directions for the listing of any urgent hearing on transfer back to the local court including the provision of notice to other persons or parties to ongoing care proceedings;

(ii) the filing of further evidence;

(iii) joinder of the child as a party to the proceedings allocated to a children’s guardian in the local area where the child lives;

(iv) whether there are any particular reasons why the proceedings should remain in the RCJ for the next review hearing (for example the unavailability of a s.9 judge in the local court if the next review is urgent).”

33. The reference to “unregulated” placements in paragraph 6.3 of the Protocol refers to placements falling within the definition of a children’s home in England under the Care Standards Act 2000 (or the Regulation and Inspection of Social Care (Wales) Act 2016) which must be registered with Ofsted (or the Care Inspectorate Wales). In *Re T*, the Supreme Court held that it was only open to the High Court to authorise a deprivation of liberty in an unregistered placement where there are “imperative considerations of necessity” and strict compliance with guidance issued by the PFD: per Lady Black at paragraph 145 and Lord Stephens at paragraph 170. The guidance for unregistered placements issued by the PFD in September 2023, replacing earlier guidance issued in November 2019, provides:

“8. The Courts when considering a DoL application should enquire into whether the proposed placement is registered or unregistered. If it is unregistered it should enquire as to why the local authority considers an unregistered placement is in the best interests of the child.

9. The Court may order the local authority to inform Ofsted/CIW within 7 days if it is placing a child in an unregistered placement.”

The judgment under appeal

34. In his judgment, when summarising the incident which precipitated the application, the judge said: (at paragraph 4):

“T attempted to throw a punch but there was a physical intervention which sounds like to me like a lawful exercise of the power that any citizen has to protect themselves from anyone causing serious harm, under s.3, Criminal Law Act 1967. This replaces the common law rule on the use of force. It seems to me repelling an attack where such force is used is lawful without a deprivation of liberty authorisation in place.”

35. The reasons given by the judge for refusing to extend the order were as follows:

“9. When someone poses a risk to others and very little risk to himself, I cannot speculate that this risk would cause harm to him or that he is at risk of suffering emotional harm. That would be pure speculation. I would need evidence from an appropriately qualified expert, which I do not have. I cannot see that it is in T’s best interests to authorise a deprivation of liberty.

10. I then look at s.100(3) of the Children Act 1989. I may only grant leave to the local authority to make an application for the invocation of the inherent jurisdiction of the High Court if I am

satisfied that the result which the authority wishes to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies. But it could be achieved through the making of a secure accommodation order pursuant to s.25 of the Children Act 1989. Furthermore, I may only grant leave if I am satisfied that there is reasonable cause to believe that if the Court's inherent jurisdiction is not exercised with respect to T, he is likely to suffer significant harm.

11. I have no evidence that T would suffer significant harm if the order were not made. There is but one piece of evidence that he cut his hand: this was a one-off incident and is not indicative of T being likely to suffer significant harm. T does, however, pose a risk of significant harm to other people. In contrast, s.25(1)(b) provides for the availability of a secure accommodation order where, if T were kept in any other description of accommodation, other than secure accommodation, it is likely that he would injure himself or other persons. T is a risk to placement staff in particular, rather than others, but that may reflect that he is not out in the community.

12. Moreover, even if I were able to make a Deprivation of Liberty Authorisation Order in these circumstances, which I do not consider that I can, I would need to be satisfied that the placement is suitable. Given the concerns expressed by the Police, I am not so satisfied.

13. I refuse leave to the local authority to apply for the exercise the inherent jurisdiction. Even if I had been able to grant leave, I would have rejected the application, as I do not consider authorising the deprivation of T's liberty is justified. I am very concerned that what I am asked to do is authorise the deprivation of liberty of a child who is said to be committing criminal acts against others, which is not covered by a process governed by statute, but which is, rather, within the inherent jurisdiction of the High Court, T is not present at the hearing and so cannot speak himself in his own defence, and that there are no charges that have been admitted by him, or proven against him beyond reasonable doubt.

14. I will explain further that, if there is a need for this judgment to be examined by another Court, it is regrettable that this case was at the end of the list, put in mid-morning. I received a helpful position statement from the Local Authority, but no position statement from the Guardian (who had little notice of the hearing also). I have therefore not had chance to give as a fluent judgment as I would have wished. My own other professional commitments mean that I could not provide a reserved judgment in writing, and so it is necessary for me to give an *ex tempore* judgment this evening." (original emphasis)

36. In the order made at the conclusion of the hearing, the judge recorded his conclusion that the restrictions proposed by the local authority “would clearly amount to a deprivation of T’s liberty within the meaning of Article 5”. The order further recorded that:

“(iii) there was insufficient evidence before the Court to enable it to be satisfied that there was reasonable cause to believe that if the Court’s inherent jurisdiction was not exercised with respect to T he was likely to suffer significant harm, as required by s.100(3) read with s.100(4)(b) of the Children Act 1989 – noting that the only evidence before the Court in relation to this question appeared to be that he had cut his hand by punching and breaking a mirror on a cupboard on 15 February 2026 but that there was no indication that he had required any hospital or medical treatment therefor. There were “no visible injuries to T” in the 4 March 2026 incident;

(iv) there was insufficient evidence before the Court to enable it to be satisfied that the result that the local authority wished to achieve could not be achieved through the making of a secure accommodation order, pursuant to s.25 of the Children Act 1989;

(v) an order pursuant to the inherent jurisdiction of the High Court authorising the deprivation of T’s liberty in these circumstances, in which the risk in question is the risk posed to other people (including carers) and to property (at the placement) as a result of the actions on T’s part, would be wrong in principle as not being shown to be in his best interests, having regard to his welfare as the Court’s paramount consideration, and:-

- (a) amounting to deprivation of liberty without (1) his having been heard by the Court and (2) any accusation against T of what amounts to criminal conduct having been admitted by him or proven beyond reasonable doubt in a public hearing
- (b) compelling him to remain at a placement about which (and about the manager of which) the police who had dealt with T on 4th March 2026 had reported “significant concerns”.

The appeal

37. The following grounds of appeal were put forward:

- (1) The judge erred in law by refusing the local authority leave to invoke the inherent jurisdiction of the High Court by relying on the use of s.25, Children Act 1989 as a statutory alternative to invoking the inherent jurisdiction thus preventing the Court granting leave to invoke the inherent jurisdiction pursuant to s.100(3), Children Act 1989. The judge failed to consider that at the time of the order being sought there was no available secure placement.

- (2) The judge erred in applying the facts by concluding that T had not suffered harm or was at risk of suffering harm as a result of his behaviours against others. Having wrongly found this fact, he misapplied it as a barrier to the court making an order pursuant to the inherent jurisdiction in T's best interests.
 - (3) The judge erred in facts by concluding that T was not at risk of suffering significant emotional harm due to placement instability that may arise from T's dysregulating behaviours and the judge was wrong to conclude that there was not sufficient evidence before the court to reach that conclusion.
 - (4) The judge was wrong to conclude that the placement staff had a statutory defence of self-defence by virtue of s.3 Criminal Law Act 1967.
 - (5) The judge was wrong to find that the deprivation of liberty order sought was to be used as a mechanism to punish T's alleged criminal offending and subsequently concluding that as T was not present and there were no findings made to the criminal standard of proof, that this prevented the court from authorising T's restrictions at his placement.
 - (6) The judge failed to undertake an appropriate welfare analysis as required by section 1 of the Children Act 1989 including the impact to T if he was to move placement from a placement where T wishes to remain.
38. The local authority's appeal is not opposed by T's mother, who was informed of the proceedings and the appeal but did not attend the hearing before the judge or this Court. The appeal is supported by T's children's guardian for whom Mr Tom Wilson was instructed for the purposes of this appeal. In a detailed and helpful skeleton argument, Mr Wilson indicated that the guardian supported the appeal on all grounds, but submitted that the judge's principal errors were concerned with his analysis of s.100(4), namely
- (1) his erroneous decision that he was precluded from granting permission to the local authority to invoke the inherent jurisdiction on the basis that an alternative order was available under section 25, and
 - (2) his erroneous analysis of whether there was reasonable cause to believe that T was likely to suffer significant harm if an order was not granted.
39. Mr Wilson informed us that, in a brief conversation with the guardian and his solicitor, T has been assessed as competent to give instructions directly. He has discussed each of the measures sought by the local authority with his guardian in the course of which he indicated that he does not oppose them, a position he has confirmed via a text message. He told the guardian that he had returned to the placement where he feels happy and settled. It is the longest placement T has had since being accommodated eight years ago. He was familiar with the proposed restrictions and was "used to this" and "don't mind it". The guardian does not consider that the restricted circumstances of the conversation enable him to advise the court that T is consenting to the order. He is, however, satisfied that T is aware of, and content with, the measures proposed.

Discussion and conclusion

40. I have considerable sympathy for the judge who was required to make a quick decision in difficult circumstances. I am clear, however, that his decision cannot stand. Although there is force in all of the local authority's grounds of appeal, the principal errors made by the judge were as summarised by Mr Wilson:
- (1) He wrongly decided that he was precluded from granting permission to the local authority to invoke the inherent jurisdiction on the basis that an alternative order was available under s.25 CA 1989.
 - (2) His analysis of whether there was reasonable cause to believe that T was likely to suffer significant harm if an order was not granted was flawed.
41. Although there is a statutory regime under section 25 for a local authority to seek a court's authorisation to keep a child in secure accommodation, it was not available in this case. The seemingly chronic shortage of secure accommodation places meant that the result which the local authority wished to achieve – the power to impose restrictions on T's liberty to protect him from significant harm – could not be achieved through the making of an order under section 25. In addition, T wishes to stay at L House where he has been living for over a year. It would be plainly contrary to his welfare to move him immediately to another placement. The judge's interpretation of section 100(4)(a) was therefore manifestly too narrow.
42. In addition, the judge's conclusion that the condition in section 100(4)(b) was not satisfied was wrong. It seems that T did not suffer any physical harm during the incident on 4 March which precipitated this application. But "harm" is not restricted to physical harm. Section 105(1) provides that the word "harm" in the Act "has the same meaning as in section 31(9)". Under that subsection, "harm" means "ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another". It therefore includes emotional and psychological harm. If one considers the evidence about the incident on 4 March in the context of T's background of dysfunctional behaviour over several years, there is plainly reasonable cause to believe that T is likely to suffer significant harm if the court's inherent jurisdiction is not exercised. Looking at the totality of the evidence in the social worker's statement, the requirements of section 100(4)(b) are clearly met.
43. In those circumstances, this was a case where the local authority was able to demonstrate that the conditions for granting leave under section 100(4) were satisfied and the judge's conclusion to the contrary was wrong.
44. I turn next to the two questions to be addressed when deciding whether to grant the declaration sought by the local authority. The restrictions sought were:
- (1) There are a maximum of three members of staff on a 3:1 ratio at times when T is dysregulated both inside and outside the home;
 - (2) At times when T becomes dysregulated in his behaviour, T may be subject to physical restraint, which shall only be used by appropriately trained staff, who are trained in the use of physical restraint and as an act of last resort after all other de-escalation tactics have been deployed.
 - (3) When travelling by car T is supervised by a maximum of 3:1 staff members.

It is not disputed by the parties – and was accepted by the judge – that these restrictions amount to a deprivation of liberty under *Storck v Germany* and the “acid test” in *Cheshire West*.

45. As to the second question, I agree with the local authority and the guardian that a declaration authorising a deprivation of liberty in those terms is in T’s best interests for the following reasons.
- (1) The history of T’s residence at L House shows ongoing and escalating risks to himself and others and significant dysfunctional behaviour including threats, assaults on staff, and damage to property.
 - (2) The application was precipitated by a serious incident which led to his arrest.
 - (3) Although T was not physically injured during that incident, it is likely that he sustained emotional and psychological harm. Furthermore, there have been earlier incidents in which he did sustain physical harm, and the escalating nature of his behaviour gives rise to a likelihood that he will sustain significant harm, including physical harm, in future unless staff are able to restrain him when necessary.
 - (4) The staff and management at L House have indicated that they are unwilling to keep T unless authorised to use restraint if required.
 - (5) Despite the incidents described above, T has made progress at L House and wishes to stay there. It is plainly in his best interests to remain in a placement where he wishes to stay, in particular during the crucial period leading to his eighteenth birthday in July, which is only four months away.
 - (6) Although L House is unregistered, it is in the process of seeking registration from Ofsted.
 - (7) There is no alternative placement available. If T is required to leave L House, he will be homeless.
46. I agree with Mr Wilson’s submission that the judge’s analysis failed to grapple with the actual consequences for T if an order was not made authorising measures which would enable him, in the short-term at least, to remain in his current placement. The “imperative considerations of necessity” required the court to authorise the deprivation of T’s liberty at L House notwithstanding that it is currently unregistered, provided there is compliance with the PFD’s Guidance.
47. I therefore concluded that the appeal should be allowed on grounds 1, 2, 3 and 6 and that leave be granted to the local authority to invoke the inherent jurisdiction, pursuant to section 100 of the Children Act 1989. In the circumstances, it is unnecessary to consider in detail the points raised by the local authority, and supported by the guardian, under grounds 4 and 5. I only add that I agree with Mr Wilson’s observation that the judge’s apparent focus on the potential criminal nature of T’s actions led him into error.
48. For the reasons set out above, I also concluded that this Court should declare that
- (1) it is lawful and in the best interests of T that the local authority be permitted to deprive T of his liberty by placing him at L House pursuant to Article 5 ECHR and

accordingly such deprivation of liberty be authorised until 4:00pm on 17 April 2026;

- (2) the deprivation of liberty sought by the local authority and permitted by the court may include the measures set out in paragraph 44 above;
- (3) the provisions in place for T are necessary, the least restrictive and a proportionate response to the risk of harm which arise;
- (4) in depriving T of his liberty, the local authority be directed to use the minimum degree of force or restraint required and only in circumstances that these are necessary, and
- (5) the use of such force or restraint is lawful and in his best interests provided always that the measures are (a) the least restrictive of T's rights and freedoms; (b) proportionate to the anticipated harm; (c) the least required to ensure T's safety and that of others; and (d) respectful of T's dignity.

I also agreed that this Court should order that the matter be listed before a full-time judge of the Family Division in the week of 13 April 2026 and endorsed certain case management decisions agreed by counsel in preparation for the hearing.

LORD JUSTICE MILES

49. I agree.

LORD JUSTICE NEWBY

50. I also agree.