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Case No: FD26C40826

IN THE HIGH COURT OF JUSTICE,
FAMILY DIVISION,
NATIONAL DEPRIVATION OF LIBERTY LIST.

Royal Courts of Justice
Strand, London, WC2A 2LL
20/07/2026

IN THE MATTER OF THE SENIOR COURTS ACT 1981
IN THE MATTER OF THE INHERENT JURISDICTION OF THE HIGH COURT

IN RE (D) (A CHILD WITH COMPLEX NEEDS: DEPRIVATION OF LIBERTY)

B E T W E E N: -

LONDON BOROUGH OF ENFIELD

Applicant

-V-
THE MOTHER

First Respondent

- V-

THE FATHER

Second Respondent

-V-

D (A CHILD ACTING BY HIS GUARDIAN)

Third Respondent

IN RE (D) (A CHILD WITH COMPLEX NEEDS: DEPRIVATION OF LIBERTY)

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

(Nerys Wyn Rees, counsel, Deka Chambers, instructed by London Borough of Enfield, solicitors for the Applicant)

(The First Respondent mother did not attend the hearing)

(The Second Respondent did not attend the hearing)

(Zahra Manji, Miles and Partners LLP, solicitor for the third Respondent child (through his Children's Guardian, Katrina Bernard)

Hearing date: 20 July 2026

JUDGMENT

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This judgment was handed down remotely at 10 am on 4 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MS JUSTICE HENKE

Henke J:

Introduction

1. I heard this matter in the Deprivation of Liberty List on 20 July 2026.

Relevant Background

2. The child at the heart of the application is D. D is 12½ years old. He is in the care of the local authority, a final care order having been granted when he was just 5 months old. D is placed in foster care with his sister E. He has had the same foster carer since his removal from parental care shortly after his birth. D spends one weekend a month at his respite placement. D has regular supervised contact with his mother and siblings. D's father plays no part in D's life.

3. D has diagnoses of ASD, foetal alcohol syndrome with frontal lobe impairment, mild cerebellar dysplasia and global developmental delay, and he is undergoing assessment for ADHD. D has very limited verbal communication. His means of communication, and the assistance he requires, are described below. He is doubly incontinent and requires full support across all areas of his day-to-day living.

4. D attends a specialist school which provides education in a structured, supervised setting. He has an EHCP identifying significant ongoing needs requiring a high level of adult support. D is making progress in his communication with the assistance of

SALT. The evidence describes his use of initial sounds, single words, picture boards and simple signs. He requires those caring for him to interpret his communication and support his emotional regulation. There is involvement from CAMHS to monitor his mental wellbeing. There are no presenting concerns about his physical health.

5. By reason of his diagnosis, D is restricted within his home and within his respite placement. He requires constant supervision within the home and the community. D will attempt to leave his home if doors and windows are not kept locked. He is unable to care for himself physically and requires adult support to manage all aspects of his day-to-day life.

6. The restrictive measures and supervision arrangements described in the evidence are as follows:
   (i) 1:1 supervision for D at all times when he is in the community.
   (ii) 1:1 supervision at all times within the home.
   (iii) 1:1 supervision at all times within the respite placement which D attends for one weekend a month.
   (iv) Doors and windows in the home and the respite placement to be locked.
   (v) D is taken to school and returned home each day by school transport, accompanied by an escort.
   (vi) 1:1 supervision at all times while D is at school.

7. D is not currently subject to an order authorising the deprivation of his liberty.

Procedural History

8. By application issued on 30 June 2026, the local authority sought the court's permission under section 100 of the Children Act 1989 to invoke the inherent jurisdiction and, if permission were granted, sought an order of this court authorising D's deprivation of liberty for a period of 12 months.

9. On 8 July 2026, the application came before Recorder Rhys Taylor sitting as a Deputy High Court Judge in the Deprivation of Liberty List. Given the recent judgment of the Supreme Court in *A Reference by the Attorney General for Northern Ireland of a devolution issue under paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 [2026] UKSC 16 [AGNI]*, Recorder Taylor listed the application before me and directed full skeleton arguments.

The Hearing Before Me

10. At the hearing before me, the local authority was represented by Nerys Wyn Rees. D, through his Guardian, was represented by Zahra Manji.

11. Although its application sought authorisation of a deprivation of liberty, the local authority's position at the hearing before me was that neither the objective nor the

subjective element of Storck (Storck (a) and (b)) was met. On behalf of D, it was argued that under the pre-*AGNI* case law, D's situation would amount to a confinement. Further, it was submitted that D cannot consent to that confinement.

12. In order to determine the application before me, I have read the bundle which comprises 96 pages, together with the case summary of the local authority, the Guardian's Position Statement and the skeleton arguments of both the local authority and D, through his Guardian. In addition, I heard brief oral submissions.

The Relevant Law

13. I have recently reviewed the relevant law in *Re B (A Child: Complex Needs: Deprivation of Liberty) [2026] EWHC 2789 (Fam).*

My Decision with My Reasons

14. D is the subject of a final care order, and any confinement will be imputable to the State — Storck (c). The issues in this case revolve around Storck (a) and (b).

15. I begin by considering the specific situation of D himself. My analysis must be multi-factorial and include consideration of D's lived experience.

16. D's age is set out in paragraph 2 above. D has diagnoses of ASD, foetal alcohol syndrome with frontal lobe impairment, mild cerebellar dysplasia and global developmental delay, and he is undergoing assessment for ADHD. D has very limited verbal communication, as described in paragraphs 4 and 18. He is doubly incontinent and requires full support across all areas of his day-to-day living.

17. The restrictive measures in place for D are set out in paragraph 6 above. They go beyond the everyday restrictions applicable to a 12 ½-year-old.

18. D has a *warm loving relationship* with his foster carer (quote from F4 of the bundle), with whom he has been placed since shortly after birth. D's IRO has observed D to be happy *and comfortable in his home* (quote from F17). In December 2025, D was described by his foster carer as being mostly in his own world. According to her, D likes routine. He experiences sensory overload in busy places and that can lead to dysregulated behaviours. D enjoys cuddles and, at home, can be calm and comfortable. The December 2025 health assessment recorded that D could communicate with single words and would use picture boards and simple signs to aid communication. However, D needs help to interpret what he is saying. D's foster carer is best placed to do that. D is described in the papers before me as able to understand and follow direction. D has a good bedtime routine; he finds it difficult to settle to sleep and has melatonin prescribed to aid his sleep, not as a chemical restraint. D generally goes to bed at 9-

9:30pm and wakes every 3-4 hours. He is supervised throughout the night; his room has an extra bed where either the foster carer or her partner sleeps. D wakes early and stays in his room, playing until it is time to get up. D is unable to maintain his own safety and is always supervised 1:1 at home, at his respite placement and in school. The purpose of the supervision is to ensure all his needs are met and that D, who has no sense of danger, is kept safe.

19. D does not have legal capacity, nor is he Gillick competent. However, I remind myself that consent for the purposes of Article 5 is distinct from legal capacity and the concept of Gillick competence. A child who does not have legal capacity may nevertheless understand their living arrangements and may be able to express a meaningful view about them. D's social worker considers that D has some awareness of his situation. D's Guardian tells me that it is difficult to identify whether D is happy with his placement or the restrictions due to D's profound needs. However, she tells me that she has observed D to be close to his carers and content in their care. D's social worker, who, by reason of her role, has met D on more occasions than the Guardian, considers that D is happy and content with his circumstances. That view is consistent with that expressed by his IRO and by his foster carer, who probably knows him best. Accordingly, I accept the evidence of the social worker, the IRO and D's foster carer. I distinguish the evidence that D is happy and settled in his carers' company from the separate question of his response to the arrangements, including the restrictions. His contentment is relevant evidence, but the conclusion requires consideration of his understanding and behaviour, including his attempts to leave.

20. D is described by his social worker as an "escapee". If doors and windows are unlocked, he will try to get out. He has no appreciation of danger. His motivation cannot be established with certainty. I have therefore considered whether those attempts are an expression of a wish to leave his foster home or respite placement, rather than simply exploratory behaviour. Having considered the evidence as a whole, I find the latter explanation more probable: his attempts are more likely to reflect curiosity and a lack of inhibition. That finding does not remove the need to consider the actual effect of the measures which prevent him leaving unaccompanied.

21. There are locks and bolts on the external doors to D's foster home. His bedroom window is locked, and shutters prevent him leaving through it. Those measures prevent D from leaving unaccompanied. Their purpose is to protect him from dangers which he cannot recognise, while enabling him to go out with supervision. I distinguish that protective purpose from their practical effect: they nevertheless restrict his ability to leave without an adult.

22. I stand back and consider D's concrete situation and the nature, cumulative effect and purpose of the restrictive measures to which he is subject. In my judgment, D's lived experience is far removed from the paradigm deprivation of liberty, namely detention.

The reality of D's life is that his liberty is restricted by his autism and his learning disability. The purpose of the restrictive measures is to enable D and protect him. D does not see danger and thus needs to be kept safe. He needs constant supervision, but that supervision is there to protect him and ensure his daily needs are met. With supervision, D can access the community safely; without it, he would be extremely vulnerable and at risk of harm. The locks on the doors and windows prevent D from leaving unaccompanied; with supervision, he can go out safely. Whilst I have set out that the Guardian tells me it is difficult to know whether D is happy with his restrictions because of his autism and profound needs, her evidence is not the only evidence I have about D's happiness and contentment with his circumstances and the restrictions. I also have the evidence of the social worker and the views of the IRO and D's foster carer. Looking at that wider canvas, I find, on the balance of probabilities, that D is content with his circumstances and the restrictive measures in place. I have considered his attempts to leave when doors or windows are unlocked as well as the absence of a verbal objection. For the reasons given in paragraph 20, I do not interpret the attempts to leave as an expression of opposition to his living arrangements.

23. In this case the objective and subjective elements of *Storck* overlap. On the facts before me, for the reasons given, I have decided that D is not being deprived of his liberty. Accordingly, the application is dismissed.