This judgment was delivered in private, but is approved by the Judge for publication. However, any person who identifies QX or his family will be in contempt of court.

[2025] EWHC 745 (Fam)

Case No: FD25C40134
PR25C50035

IN THE HIGH COURT OF JUSTICE (FAMILY DIVISION)
& THE FAMILY COURT

Sessions House,
Lancaster Road,
PRESTON

Date: 31st March 2025

Before :

HIS HONOUR JUDGE BURROWS
Sitting as a High Court Judge (pursuant to s. 9(1) SCA'1981)
and as a Judge of the Family Court

- -

Between :

BLACKBURN WITH DARWEN BOROUGH COUNCIL	**Applicant**
-and-	
(1) BM	
-and-	
(2) BF	
-and-	
(3) DM	
-and-	
(4) DF	
-and-	
(5) QX (a child)	
(by his children's guardian, Jade Waters)	**Respondents**

- -

RE: QX (Parental Consent for Deprivation of liberty: Children under 16)

- -

Jonathan Buchan (instructed by **the Local Authority Solicitor**) for the **Applicant**
Richard Hunt (instructed by **Donald Race & Newton**) for **BM**
Mark Blackburn (instructed by **Cartwright King**) for **BF**
Michael Jones, K.C., & Kathryn Korol (instructed by **Farleys**) for **DM**
Bansa Singh Hayer (instructed by **Watson Ramsbottom**) for **DF**

Peter Rothery (instructed by **Roland Robinson & Fentons)** for **QX by the children's guardian.**

Hearing date: 24 March 2025

- -

APPROVED JUDGMENT

HIS HONOUR JUDGE BURROWS:

INTRODUCTION & SUMMARY

1. On 24 March 2025, I heard submissions in this case. I immediately told the parties my decision, with a few additional comments by way of explanation. This judgment, which will be handed down shortly after that hearing, focuses particularly on one issue I had to deal with which gave me greatest concern, namely parental consent for deprivation of liberty.

2. I am very grateful to leading counsel and counsel and those instructing them for the detailed skeleton arguments I received, and the succinct additional oral argument I heard. The parties were agreed as to the order I should make, and the only push back came from me. Below I will explain why.

3. The issues I had to determine in this case are almost identical to those before me in Lancashire County Council v PX [2022] EWHC 2379 (Fam) ("*PX*"). There, I had to decide whether a care order should be made where those with parental responsibility had asked the LA to accommodate and look after the child who had serious mental health conditions that made him impossible for them to care for. Furthermore, in the event that I did not make a care order, whether the child's care

plan, which inevitably resulted in his objective deprivation of liberty at the behest of the State had to be authorised by the Court?

4. I decided that a care order was not appropriate in that case. I reached the same decision in this case.

5. In PX I decided I would follow the then recent decision of the High Court in Lincolnshire County Council v TGA [2022] 3 WLR 1297 (FD)("*Lincolnshire*"), a judgment of Mrs Justice Lieven, meaning that parental consent to the child's arrangements acted to prevent the engagement of Article 5 of the European Convention of Human Rights (ECHR).

6. I reached that conclusion in *PX* because I decided that unless I was satisfied that *Lincolnshire* was wrongly decided, I ought to follow it. However, at the earlier hearing in this case, I was mindful that the tide may have turned since then and the approach taken by Lieven, J needed to be reconsidered. This was particularly so because of the recent Court of Appeal decision in which Lieven, J's judgment in Re J: Local Authority Consent to Deprivation of Liberty) [2024] EWHC 1690 (Fam) had been reversed. Unfortunately, at both hearings in this case, and at the time this judgment is written, the judgment of the Court of Appeal in *J* had not been handed down.

7. Having read and heard focused argument on this issue and having considered the relevant authorities relied upon, I have come to the same conclusion as I did in PX and I have followed Lieven, J. I do, however, have some misgivings, which were the basis of my interactions with counsel. It seems right for me to outline them here.

FACTS AND BACKGROUND

8. In order to avoid the identification of the parties involved, and the child in particular, I have anonymised all the family names and have kept my outline of the facts to the minimum necessary.

9. QX is a young man of 15. He is diagnosed as autistic with severe learning disabilities. There is no doubt that he requires continuous care and support. He is sometimes very challenging, including by way of physical assaults. There is no doubt he is not *Gillick* competent. It is inevitable this position will not change. When he is 16, QX will be the subject of proceedings in the Court of Protection. There is no doubt also that the care plan he enjoys at the present time involves continuous supervision and control, and he is not free to leave the place where he resides (without escort) and will be brought back to that place in accordance with his care plan.

10. QX's family is somewhat complicated. QX's parents are BM and BF. BM has long since recognised she is unable to look after QX. She has not seen him for over a decade.

11. For some time, until about 2016/17, BF and his then partner, DM, cared for QX together. Then, their relationship ended. About two years later BF moved out having stayed in the same house as DM for QX's benefit. That left DM as the sole carer for QX.

12. About a year later, DM began a relationship with DF, who then moved in with her and QX. From about 2020, DM and DF have cared for QX. In the Summer of 2023, DM and DF were married.

13. In December 2023, DM and DF were granted a child arrangements order (CAO) in respect of QX and with that they obtained parental responsibility (PR). Therefore, at the present time, four people, BM, BF, DM and DF have parental responsibility for QX.

14. Then, in December 2024, QX assaulted DM very seriously. This led DM and DF, with heavy hearts, to ask the local authority to accommodate and care for QX. Just before Christmas 2024, QX was introduced to his current placement. He now resides happily at that placement, with appropriate care. The circumstances at the placement involve his objective deprivation of liberty as defined in the *Cheshire West* case.

15. As far as the Children Act 1989 is concerned, the arrangement is regulated by s.20. The LA considered whether a more institutional setting was appropriate for QX, using s. 25 of the Act, namely a secure accommodation order. However, they decided that it would be counter therapeutic for QX to be detained in such a place. The placement in which he resides now is more residential in character.

16. The LA, however, were naturally uneasy about the legal basis for the continued arrangement. They applied for a care order in the Family Court, and then they applied for authorisation by the High Court of what they saw as a deprivation of QX's liberty.

17. The matter came before Ms Justice Henke on 13 February 2025, and she allocated the case to me. I was also allocated the care proceedings. At the first hearing of those proceedings, I made no interim care order, but I did authorise QX's deprivation of liberty under the inherent jurisdiction pending proper argument of both issues.

A NOTE ON PARENTAL RESPONSIBILITY

18. Just before the first hearing, in February, BM, who had previously been unsure about the LA's care plan formally agreed to it. She was the only one of the four holders of PR who had, until that point, not positively agreed with the LA's plan for QX.

19. At that point, the LA changed its position from wanting a care order and a "DoLs" order, to asking for neither.

20. PR is complicated in this case. Since there is a s.20 agreement, it is important for me to consider this issue.

21. BF and BM have parental responsibility because BM is QX's mother, and BF acquired it as his father.

22. DM and DF only acquired PR when they sought and obtained a CAO in December 2023.

23. Oddly, however, a separate order was made by the Magistrates at the same time which purports to grant PR to DM and DF as a freestanding application. Counsel before me all agreed this is wrong. DM and DF did lawfully obtain PR as part of the CAO, made at the same time. I am not sure what the parties intend to happen to the "freestanding" order, however, I consider it should be set-aside by this Court. That means, DF and DM will have PR for as long as the CAO remains in place. That order provides that QX shall live with DF and DM.

24. PR is the central feature of the s. 20 "agreement". The statutory provision states:

Provision of accommodation for children: general.

(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

(a) there being no person who has parental responsibility for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

20. In QX's case, s. 20(1)(c) is the relevant provision.

21. The three other most relevant provisions are:

(6) Before providing accommodation under this section, a local authority shall, 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.

(7) A local authority may not provide accommodation under this section for any child if any person who—

(a)has parental responsibility for him; and

(b)is willing and able to—

(i)provide accommodation for him; or

(ii)arrange for accommodation to be provided for him,

objects.

(8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.

25. So, clearly in this case it is vitally important that DM, who is the person with the longest continuous experience of caring for QX, is involved in the s. 20 process. Mr Singh Hayer, in his submissions made the important point that the whole philosophy behind s. 20 and the *Children Act* more generally is for those who exercise PR to be enabled to do so, and that means, where possible, with the support of the LA. Care proceedings are draconian, and the LA gaining PR of the child is something that should only happen where it is a necessary and proportionate interference with the Article 8 rights of the child, and his family.

26. Furthermore, if an interim or final care order were to be made in this case DM and DF's PR would be discharged by the operation of s. 91(2) CA.

27. The Court was not invited to consider whether there were other approaches that could keep PR in place with a care order. The obvious one being special guardianship, which was not asked for back in December 2023, or perhaps even the use of the inherent jurisdiction to grant PR.

CARE ORDER?

28. As I have already stated above, I have no intention of making a care order in this case. My reasoning is exactly the same as in PX. That reasoning is contained in the following paragraphs taken from that judgment.

> 25. The second point concerns a trilogy of cases concerning whether, for a care order to be made on the grounds that the child is beyond parental control there needs to be some failure on the part of the parent for the order to be made.
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> 26. As argued before me, in Re P (Permission to Withdraw Care Proceedings) [2016] WL 212893, HHJ Redgrave (sitting as a judge of the Family Court), the Court determined that for threshold to be reached there must be some failure on the part of the care giver (the parent). In Re K (Post Adoption placement breakdown) [2012] EWHC 4148 (Fam) HHJ Bellamy, sitting as a High Court Judge, and Re T (A Child)(Care Order: Beyond Parental Control: Deprivation of Liberty: Authority to Administer Medication) [2018] 1 WLUK 14, Darren Howe, Q.C. sitting as a deputy High Court Judge, it was said there need be no such failure.
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> 27. It seems to me that the starting point has to be the meaning of the plain words of the statute. The term "attributable to" "connotes a causal connection between the harm or likelihood of harm on the one hand and the care or likely care or the child's being beyond parental control on the other" (see Lancashire County Council v B [2000] 1 FLR 583, Lord Nicholls of Birkenhead). In his skeleton argument, Mr Jones points out that whereas s. 31(1)(b)(i) specifies the reasonably expected level of parenting as being relevant, s. 31(1)(b)(ii) does not. If Parliament had intended the level of parenting to be relevant to both, the same language would have been used for both.
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> 28. HHJ Bellamy put the matter this way:
>
> [75] In my judgment it is clear from [LCC v B] that even if a child is likely to suffer significant harm as a direct result of a disorder which affects that child's behaviour, if the consequent behaviour is such that a parent is unable

to control the child then the child's being beyond parental control is, at the very least, a contributory cause of the likelihood of future harm"

29. Darren Howe, Q.C. agrees and puts it this way, on the very difficult facts of his case:

. [90] In my judgment it is immaterial whether a child is beyond parental control due to illness, impairment or for any other reason. The court simply has to consider if, on the facts, the child is beyond the control of the parent or carer. If that condition is satisfied, the court then has to determine if the child is suffering or is likely to suffer significant harm as a result of being beyond the control of the parent. If the answer to that 2nd question is 'yes', then section 31(2)(b)(ii) threshold is, in my judgment satisfied.

30. These two High Court decisions bind a Family Court Judge at Circuit Level. Even a judge sitting in the High Court has to be mindful of the principle of *stare decisis*. I am extremely uneasy about morally and practically blameless parents being made the subject of care proceedings and potentially losing exclusive parental responsibility as a result. I am also far from satisfied that the parents of disabled children, should be at risk of their child being placed under care orders where there is nothing about the quality of the care they have given that can be criticised, and the only difference between them and other parents is the disability of their child.

31. All that having been said, I feel compelled to follow the clear wording of the statute and the interpretation given to it by HHJ Bellamy and Howe, Q.C.

32. However, that is not the end of the matter. I see great force in Mr Rothery's first point. Many cases of the sort considered above, and this case, involve difficulties experienced by parents struggling to manage the issues raised by their children's condition. Sometimes there is a disagreement or dispute between the parents and the authorities precipitating the involvement of the State. However, in this case, there is no dispute. The parents recognised the need for their son to be cared for by a professional team of carers in a setting dedicated to his needs. At that point they called upon the local authority to provide that care and to meet his needs. That is what has happened, and PX is now doing well.

33. In my judgment, in the circumstances of this case, where parents not only recognise that they are unable to manage their child due to his disabilities but call upon the local authority to meet his needs, it is impossible to see how the threshold is met. I am reminded of Leicester City Council v AB [2018] EWHC 1960 (Fam), where a mother developed an illness that prevented her from providing care for her child. As Keehan, J. said the threshold was not met where she had done "what any reasonable parent would do" and arranged for the local authority to care for the child. Although the factual scenario is different in this case, I cannot help but describe what these parents have done as what any reasonable parent would do.

34. Furthermore, if the relevant date for threshold is the date of issue, namely 6 July 2022, it cannot possibly be made out. PX is under the care of the local

authority. If he is at risk of suffering significant harm at the present time (and he is not), that cannot be due to him being beyond his parents' control.

35. I am further fortified in my view by the actual reason care proceedings were commenced. I am satisfied that proceedings were brought because the local authority believed it was unlawful for the child to be accommodated pursuant to s. 20 of the Act for the long term. That is not only an improper reason for bringing care proceedings, but also an inaccurate interpretation of the law. As Ms Harvey for the local authority accepted, there is no time limit for the use of s. 20, and there was no need for care proceedings to be issued in this case in any event: see Baroness Hale in Williams v Hackney LBC [2019] FLR 210.

36. If I am entirely wrong on that, and the threshold may have been met in these proceedings, I would not have made a care order in this case in any event. It seems clear to me that where a child is being accommodated under s. 20 in agreement with the parents, the parents have a child focused approach to the care plan and work well with the local authority there is no need for an order at all. It certainly is not in the child's welfare interests for there to be one.

37. For all those reasons, I indicated to the local authority that I had no intention of making a care order and I granted them permission to withdraw their application, which they did.

29. This case involves the same issues. In addition, there is the inevitable loss of PR on the part of DM and DF, which is a considerable welfare issue for QX.

30. In any event, and for all those reasons, Mr Buchan applied to withdraw the application for a care order, and I granted his application.

DEPRIVATION OF LIBERTY

31. Mr Jones, K.C., and Ms Korol took the lead here with a very helpful skeleton argument which the other parties adopted, and submissions in response to my somewhat sceptical questions.

32. What follows is my summary of his submissions.

33. The canonical instrument is Article 5 of the European Convention on Human Rights (ECHR). That provides that "Everyone has the right to liberty and security

of person" and "no one shall be deprived of his liberty" except in a number of identified "cases" and "with a procedure prescribed by law".

34. There are two "cases" to consider here. The first is, in fact, not relevant to this case, as I understand it. That is "(d) the detention of a minor by lawful order for the purpose of education supervision or his lawful detention for the purpose of bringing him before the competent legal authority".

35. The second, and relevant provision is "(e) the lawful detention of ……..persons of unsound mind". Although it is a somewhat archaic term, "unsound mind" refers to people with mental disorder. There is no doubt QX falls into this category, and it is for that reason the restrictive measures are in place for him.

36. There are three components to a deprivation of liberty: see e.g. Storck v Germany (2005) 43 EHRR 96).

37. The first is objective confinement which, following *Cheshire West* means for a person to be confined in a particular restricted place for a not negligible period of time, and being under continuous supervision and control and not free to leave that place (See [2014] UKSC 19).

38. The second component is the absence of consent to that confinement either because the person does not consent (like a prisoner) or is unable to consent (in the case of an adult who lacks capacity, or a child who is not competent to consent).

39. The third component is that the state is responsible.

40. I am not concerned with either the first or the third component in this case. In particular, no one seeks to argue that QX comes within another decision of Lieven, J., namely Peterborough City Council v a Mother and a Father [2024] EWHC 493 (Fam) ("*Peterborough*") or the more recent decision of Rochdale Borough Council v V [2025] EWHC 200 (Fam) a decision of HHJ Middleton-Roy sitting as a High Court Judge. In those cases, such was the mental and physical disability of the child,

that **it** deprived them of their liberty and not any "restrictions" that were put in place by the State or parents to keep them safe. As Lieven, J put it at [38] of the Peterborough case:

> On a conceptual level it is difficult to see how one can be deprived of something that one is incapable of doing. Equally, how can one be deprived of a right that one is incapable of exercising, not through the actions of the State or any third party, but by reason of ones own insuperable inabilities.

41. Had this case rested wholly or in part on this argument, I would have struggled to follow those authorities that appear to be plainly wrong. Wrong conceptually, because they fail to distinguish between "negative" liberty, the freedom from being prevented from doing something, and "positive liberty", the freedom to be enabled to do something. There are many people who are incapable of doing things without the help of others and are enabled to do those things by carers/family etc, often funded or provided for by the State, or following assessments under the Care Act. Where a carer for a profoundly physically, but not mentally disabled person, decides not to assist that person to move from a place where they do not want to be, no one would surely argue that the disabled person was not deprived of their liberty. Unless, it seems, they are mentally incapable, too. But in that case, the universality of human rights, for abled and disabled people alike, as in *Cheshire West* must be recognised. In which case both are deprived of their liberty.

42. Wrong also because these decisions seem to conflict with the *Cheshire West* decision as distilled through the Court of Appeal's judgment in Rochdale MBC v. KW [2015] EWCA Civ. 1054. In that case, Lord Dyson, MR rejected an earlier iteration of the *Peterborough* argument, by Mostyn, J. That argument was summarised by the Court of Appeal at [4]:

> "Mostyn J purported to apply the test required by *Cheshire West*, although it is clear from para 19 of the first judgment that he did not agree with it. He said at para 17 that it was impossible to see how the protective measures in place for KW could linguistically be characterised as a "deprivation of liberty". Quoting from JS Mill, he said that the protected person was "merely in a state to require being taken care of by others, [and] must be protected against their own actions as well as external injury". At para 25, he said that he found that KW was not "in any realistic way being constrained from exercising the freedom to leave, in the required sense, for the essential reason that she does not have the physical or mental ability to exercise that freedom".

43. The Court of Appeal overturned Mostyn, J.

44. Consequently, a person, subject to a care plan that requires them to reside in a particular place and be under constant supervision and control and are not free to leave, whether or not their physical or mental capabilities prevent them from leaving, is deprived of his/her liberty, absent their consent.

45. Mr Jones suggests that the Court needs to apply a modified comparator in this case. In other words, whether a child is subject to confinement that may amount to a deprivation of liberty, one has to ask whether those restrictions are "well in excess" of what a child of his age would have imposed upon them in "normal circumstances".

46. It is important to note that the comparator is a normal child and not one with QX's disabilities.

47. I agree with Mr Jones.

PARENTAL RESPONSIBILITY AND CONSENT

48. Can a person who holds PR for a child, give consent (sometimes called "valid" and "informed" consent) for that child to be placed in a regime that leads otherwise to his deprivation of liberty?

49. Putting matters very briefly, the answer to the question I have asked is given by Lieven, J. in the *Lincolnshire* case. In a clear and closely reasoned judgment, Her

Ladyship considers the domestic and European Court of Human Rights (ECtHR) cases, and in particular Keehan, J's judgment in Re D (Deprivation of Liberty) [2015] EWHC 922 (Fam). In brief, is a parent (or someone otherwise with PR) acting within the "zone of parental responsibility" in a case where they consent to the mentally disabled child being placed in circumstances that objectively amount to a deprivation of their liberty? Mr Justice Keehan's answer was "yes" in the case of an under 16 years of age, and "no" in the case of someone who has reached 16, but is not yet an adult. In the latter case, an application to the Court of Protection is required.

50. It is important when considering Keehan, J's judgment to be clear that he was very engaged with the individual facts of the case when he decided that the parental power to give consent to a deprivation of liberty was valid in doing so.

51. Mrs Justice Lieven in the *Lincolnshire* case reviews very extensively the case law on both "parental rights" and parental responsibility from Hewer v Bryant [1969] 3 All ER 578 up to Gillick v West Norfolk & Wisbech Area Health Authority [1986] AC 112: see [18] to [30]. In *Hewer*, the Court of Appeal referred to the parent's "personal power to control the infant until the years of discretion". The "years of discretion" is the slightly dated way of referring to increasing maturity. The point is obvious. The restrictions imposed on a 2 year old, or a 5 year old, or even a 12 year old, are likely to be greater than on a 15 year old due to maturity.

52. Her Ladyship then went on to consider and apply the domestic law on parental consent to the ECHR/ECtHR authorities. I do not need to survey Her Ladyship's comprehensive review of the authorities. All I need to record is that she reaches her conclusions in [47] to [58] of her judgment. She is clear that this is not a situation in which the person with PR exercises "substituted consent" but rather, and more simply, the right to consent to a deprivation of liberty falls within the

scope of parental responsibility following the ECtHR in Nielsen v Denmark (1988) 11 EHRR 175. In that case there was a "reasonable exercise by [the child's] mother of her custodial rights in the interest of the child". The child in *Nielsen* was 12 and therefore (as the Court put it) "still of an age at which it would be normal for a decision to be made by the parent even against the wishes of the child".

53. This approach appears to have been adopted by the ECtHR in Stanev v Bulgaria (2012) 55 EHRR 22 and Stankov v Bulgaria [2015] 42 ECtHR 276, in which a person acting within the context of protective measures may sometimes "validly replace" the wishes of that person where they have impaired mental faculties.

54. In Re D (a child) [2019] UKSC 42 the Supreme Court considered the issue of parental consent and deprivation of liberty in respect of children who have reached the age of 16. The answer is that they cannot. That is primarily because the Mental Capacity Act 2005 places people who have reached the age of 16 on a different jurisdiction footing when it comes to the issue of consent, than those under the age of 16.

55. For that reason, the tensions between the Justices of the Supreme Court in *Re D*, as to the proper application of *Cheshire West* to children under 16 result in observations that are only obiter. These are outlined and analysed by Mr Jones in his Skeleton, and I need not repeat what he says there in this judgment.

56. One issue that occurred to me that left me uncertain as to the approach of Lieven, J and Keehan, J, concerned the relevance of disability to the exercise of PR. As Keehan, J stated in Trust A v X [2015] EWHC 922 (Fam) at [54]-[57]:

> [54] I wish to pay tribute to D's parents who have throughout acted in what they considered to be in the best interests of their elder son. They have, at all times, paid the closest interest in his care at the hospital and they have worked in co-operation with the clinicians, staff and carers at the unit. They have attended, or at least one of them has attended, the periodic reviews held at the hospital.

> [55] When considering the exercise of parental responsibility in this case and whether a decision falls within the zone of parental responsibility, it is inevitable and necessary that I take into account D's autism and his other diagnosed conditions. I do so because they are important and fundamental factors to take into account when considering his maturity and his ability to make decisions about his day to day life.
>
> [56] An appropriate exercise of parental responsibility in respect of a 5 year old child will differ very considerably from what is or is not an appropriate exercise of parental responsibility in respect of a 15 year old young person.
>
> [57] The decisions which might be said to come within the zone of parental responsibility for a 15 year old who did not suffer from the conditions with which D has been diagnosed will be of a wholly different order from those decisions which have to be taken by parents whose 15 year old son suffers with D's disabilities. Thus a decision
> to keep such a 15 year old boy under constant supervision and control would undoubtedly be considered an inappropriate exercise of parental responsibility and would probably amount to ill treatment. The decision to keep an autistic 15 year old boy who has erratic, challenging and potentially harmful behaviours under constant supervision and control is a quite different matter; to do otherwise would be neglectful. In such a case I consider the decision to keep this young person under constant supervision and control is the proper exercise of parental responsibility.

57. As I suggested to Mr Jones in argument (an argument conducted exclusively with me!), although Keehan, J's reasoning is clear and very compassionate, it comes close to breaching the anti-discriminatory purpose behind the majority in *Cheshire West*. If a child of 15 with autism and severe learning disability can be deprived of his liberty on the consent of his parents, but one without autism and severe learning disability cannot, is that not discriminatory against the former child? Does it not deprive the more vulnerable from the protections of Article 5 which are designed to protect the most vulnerable?

58. However, I am persuaded that the line of authority, of which Keehan J and Lieven, J's decisions are an essential part, is clearly stated in the judgments and based upon a careful consideration of the law, both domestic and ECtHR. They clearly state

that parental responsibility can be deployed to consent to an objective deprivation of liberty. To summarise their views, provided the exercise of parental responsibility is for the interest of the child, then it is within the zone of parental responsibility; if it is not, then it is without that zone.

APPLICATION TO THIS CASE

59. It is clear to me from what I have read and heard that QX is very much at the forefront of the minds of all those with PR in this case. It is also clear that the LA, through its social workers have carefully formulated a care plan focused on QX's individual needs. All those with PR have engaged in the care planning process. DM, I think it is fair to say, has been central to that process. In addition, because of these proceedings each of them has had access to highly competent and independent legal advice and representation.

60. I am satisfied, therefore, that this is a genuine agreement made by DM and the others with PR to allow QX to be placed where he is. They understand his needs. They understand that the best way for his needs to be met is in the present circumstances. I am satisfied their agreement, their consent, has been given freely. Sometimes in cases of this sort, the threat of care proceedings hangs over parents to such an extent there may be doubt as to whether their agreement is freely given. I have no doubt in this case it is. I have no doubt in this case that until he is 16, DM and the others will ensure that what is best for QX is what is done for QX. I have no doubt that if the care falls below an acceptable level, that will be made clear to the LA.

61. For all those reasons, I have concluded that valid consent has been given to QX's deprivation of liberty and the Court has no place in further scrutiny or authorisation of the present arrangements.

62. The application for an order under the inherent jurisdiction is dismissed and the present authorisation is discharged.

CONCERNS

63. The purpose of Article 5 of the ECHR is protective. It is intended to ensure those who lose their liberty can only lawfully do so under certain specified circumstances, and when they do there is access to a Court with the power to order their release and thereafter periodic review of the legality of the person's ongoing detention.

64. By finding that parental consent can prevent Article 5 applying to a child such as QX, the Court is recognising that in some cases the parent knows best and is able freely to act in the child's best interests.

65. In this case, the Court has been provided with excellent and clear evidence that those with PR are acting freely and in QX's best interests.

66. However, as Mr Rothery for the guardian recognised during the hearing, the only reason the case came before the Court is because (a) it was thought that a care order might be needed because s. 20 was not a long term option, and (b) that a so called "DoLs" order was needed. On the basis of this judgment, neither was needed and an identical case such as this dealt with by this LA now would probably not result in Court proceedings. That would mean no legal advice or representation for those with PR. No guardian for the child. No scrutiny by the Court to ensure that this is the sort of case Lieven, J. and Keehan, J. consider should lead to the outcome here.

67. As is widely known, there has been a huge increase in the number of applications made for DoLs orders. Most of those applications concern children in care. On the basis of the recent Court of Appeal decision, albeit with no judgment as yet, they will continue to require Court involvement. However, there are many cases where children are not in care. In those cases, LA and parents/others with PR are confronted a very complex and challenging quest to find adequate placements and arrangements for vulnerable children. Those circumstances, which are very familiar to the Family Court and the Family Division of the High Court make the cool assessment by parents of the care being offered to their children extremely challenging. This places on parents an agonising decision not only whether to part with their child, but also to hand that child over into an uncertain regime of intense restrictions, often with the need to change placements on a regular basis. This makes it important for LAs to err on the side of caution if there is a prospect of parents being overwhelmed by the decision-making process or changing their minds because of harrowing reports from the placement, and a desire to please their child regardless of the circumstances, by bringing the case to court.

68. That is the judgment.