

Depriving children of liberty

A complex mixture of statute, common law and the inherent jurisdiction

What is a deprivation of liberty?

- **someone is under continuous supervision and control and is not permitted to leave.**
- It is defined by using the criteria set out in the case of *Storck v Germany* [43 EHRR 96](#), as confirmed in the case of *Cheshire West and Chester Council v P* [2014] UKSC 19, [2014] MHLO 16
 - Confinement in a particular restricted place for more than a short period of time
 - lack of valid consent
 - attribution of responsibility to the State.

Why would you want to deprive a child of their liberty?

- General 'zone of parental control'
- Mental health treatment
- Child lacks capacity to keep themselves safe
- Child is arrested and detained
- Child at risk of harm if runs away

Consent and parental responsibility

- The Supreme Court in *D (A Child)* [2019] UKSC 42 (26 September 2019) held that a parent could not consent to deprivation of liberty once a child was 16, even if the child lacked capacity.
- Logically this should extend to younger children and requires careful examination of what falls within the normal 'zone of parental control'.
- The key question is *Do the restrictions fall within normal parental control for a child of this age or do they not?* If they did not, Article 5 was engaged and the parent could not consent on the child's behalf.

It's not straightforward - The supreme court was split 3:2

- *Later in [Lady Hale's] judgment (para 48) she reinforces that view by equating deprivation of liberty with other "fundamental human rights" such as the right to life or freedom from torture. She argues that it would be a "startling proposition" that it lies within the scope of parental responsibility to authorise violation of such rights. I say at once, with respect, that I am not persuaded that such comparisons are fair or helpful. D's parents were not authorising the state to commit torture or anything comparable to it. They were doing what they could, and what any conscientious parent would do, to advance his best interests by authorising the treatment on which all the authorities were agreed.*

Secure accommodation – section 25 children act 1989

- the child has a history of absconding and is likely to abscond from any other description of accommodation; and
- if the child absconds they are likely to suffer significant harm; or
- if not placed in secure accommodation, the child is likely to injure themselves or another person.

What questions must the court answer before making a secure accommodation order?

- The case of [*B \(Secure Accommodation Order\)*](#) [2019] EWCA Civ 2025,

The inherent jurisdiction – supreme court judgment is coming

- In circumstances where insufficient places are available in registered secure children's homes, is the exercise of the inherent jurisdiction to authorise a child's placement in unregistered secure accommodation lawful?
- If it is, what legal test should the courts apply when determining whether to exercise the inherent jurisdiction?
- Is a child's consent to the confinement of any relevance when determining whether to exercise the inherent jurisdiction?