

Neutral Citation Number [2022] EWHC 3426 (Fam)



**In the High Court of Justice
FD22P04563
Family Division**

Case No: DE22C104047/

sitting at the Family Court at Derby

The Senior Courts Act 1981

The Child

Troy a young person aged 15

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 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.

JUDGMENT OF HER HONOUR JUDGE WILLISCROFT sitting as a Deputy High Court Judge on 13TH December 2022

The parties and representation at this hearing

1. The applicant is the Derbyshire County Council represented by Daljit Johal, Solicitor.
2. The first respondent is the child acting by a Children's Guardian Ann-Marie Siddall, represented by Fiona Moffatt.
3. The University Hospitals of Derby and Burton NHS Foundation Trust is present and represented at this hearing by Victoria Colclough, solicitor
4. Today I approved a final care order for this child who for this judgment will be called Troy – not the child's real name. I also approved an order that Troy should be deprived of liberty by both the council and the local NHS Trust as Troy is currently "living" in a children's ward at the local hospital as there is nowhere suitable for Troy at this time.
5. In itself this is shocking. It is also shocking that this has been going on since Troy was discharged from a mental health section in early November and also that an acute children's ward was then the only place a young person then assessed to have mental health problems could be detained.
6. I will explain why I felt it was necessary to make the order that I have.
7. In October this year Troy was sectioned under the Mental Health act s2 , which was revoked on the 9th November 2022 as it was not felt necessary any longer. It was considered the distress and behaviour observed had become worse after the death of a parent.

8. In fact social services had been involved with concerns about Troy's siblings and later Troy's safety and welfare over many years from 1994 for neglect and physical and emotional abuse and in May of 2022 Troy became looked after a parent signed forms to allow this, and moved from one friend and relative to another over a period of time, including short admissions to hospital after overdose until in July Troy moved to a residential home in Cambridgeshire and then in September to a home in Derbyshire. In each place there were very worrying missing episodes where Troy was felt to be at risk of serious harm and even death by suicide and involvement with worrying people together with behaviour the staff at homes found difficult to manage, this resulting in Troy moving.
9. In November 2022 the local authority sought an order for the court to approve a number of safeguards or measures to ensure the safety of Troy and others as a result of behaviour when Troy is unable to manage emotions and behaviour.
10. My order authorised
 - a. supervision and support on a 2:1 staffing 24 hours a day; this had at one point earlier been 5:1
 - b. Troy may be kept on the ward at the hospital;
 - c. Clinical staff who are appropriately trained may physically restrain Troy if needed to ensure Troy's safety and wellbeing as a last resort;
 - d. Troy's access to a smart phone may be withheld;
 - e. Troy's access to the internet will be supervised by a professional; and
 - f. Troy's contact with others will be supervised by a professional.
11. It is self evident that for a young person of 15 years old these are significant intrusions into personal autonomy. The courts approval has to be sought since such intrusions must be justified and proportionate
12. I also authorised the Derbyshire County Council and the University Hospitals of Derby and Burton NHS Foundation Trust, as appropriate, to use the minimum degree of force or restraint required. The use of such force/restraint is lawful and in Troy's best interests provided always that the measures are:
 - a. The least restrictive of the young person's rights and freedoms;
 - b. Proportionate to the anticipated harm;
 - c. The least required to ensure the child's safety and that of others; and
 - d. Respectful of the child's dignity.
13. I gave leave for the local authority to invoke the inherent jurisdiction to enable me to have the power as a Deputy High Court Judge to make these orders, and today's hearing was the second review of that first order made in November. I did not feel able to make

final orders today given Troy's future placement remains so uncertain and where Troy is so unsuitable.

14. The orders I made were as a result of considerable risks to Troy evidenced by, for example, Troy using a phone to contact others who share photos of self-harm and encourage it which was noted to, unsurprisingly, badly affect Troy's mental health.
15. The need for restraint on occasion was to prevent Troy running away and I was told of occasions when attempts to self-harm by jumping off bridges had been prevented and on social visits access to tablets not safely managed which had been used for 3 separate occasions of overdose. Troy came into hospital after smashing a mirror and then taking a substantial overdose of paracetamol which will have been life threatening
16. Troy went to hospital when the last place Troy was living in found the behaviour of Troy too challenging to manage. In hospital there have continued to be serious issues including refusal to eat or drink and unsettled behaviour. A specialist agency had to be commissioned to supervise and restrain Troy when necessary. In hospital Troy has refused to take a mood stabiliser prescribed.
17. After Troy's previous residential home gave notice a search began for somewhere suitable. A search is on for a therapeutic single or small home suitable to meet Troy's needs. This task I am well aware is a dispiriting and often fruitless one as there are few suitable places with vacancies and on occasion young people may move very far away from relatives if somewhere is found. I am confident the local authority has done everything it can to find a place but simply lack of resources nationwide prevents this.
18. For a young person with such life threatening behaviour at times a home with specialist carers is obviously required. Medical personnel have determined that Troy would not meet the criteria to be detained for treatment in hospital, in fact obvious since no order is in place to ensure Troy takes prescribed medication at this time.
19. As a result Troy is in a room at a local children's ward, and very shockingly, I was told there were at the time of this hearing two other local children also not physically unwell but deprived of their liberty, and by this in effect, not themselves but as a result of resources, depriving the NHS of beds for children needing physical medical care.
20. As the Trust points out not only is this not a suitable setting for Troy and there are always risks of a more overriding need for the bed, but also an increased risk for anyone in hospital of acquiring an infection during a stay. This is sadly a persistent and serious problem and I note what Poole J said in *Re J (Deprivation of Liberty)* [2022] EWFC 121 in which he was considering another young person then living in a hospital ward in the absence of an alternative.
21. "This case has marked similarities to *Wigan MBC v W, N and Y* [2021] EWHC 1982 (Fam) in which MacDonald J refused to authorise the deprivation of liberty of a 12 year old who, like J, had diagnoses of ADHD and Autistic Spectrum Disorder, and who was inappropriately placed on a hospital ward when he did not meet the relevant criteria for detention under the Mental Health Act 1983; and *Nottinghamshire County Council v LH (No. 1)* [2021] EWHC 2584 (Fam) and *Nottinghamshire County Council v LH* (No.

2) [\[2021\] EWHC 2593 \(Fam\)](#). Mr Justice MacDonald set out the applicable law in *Wigan MBC* and in *Lancashire County Council v G and N* [\[2020\] EWHC 2828](#). Subsequently, the Supreme Court in *Re T* [\[2021\] UKSC 35](#) considered the exercise of the court's inherent jurisdiction to authorise the deprivation of liberty of children in unregistered placements when no secure accommodation was available. I am also assisted by a third, first instance judgment of MacDonald J, *Tameside MBC v AM and others* EWHC 2472 (Fam) and the Court of Appeal decision in *A mother v Derby City Council* [\[2021\] EWCA Civ 1867](#). I adopt the analyses in those judgments of the law applicable to the exercise of the inherent jurisdiction in a case such as the present one, including the very helpful summaries by MacDonald J at [34] of *Wigan MBC* and [61] of *Tameside MBC*." The range of cases referred to above make clear the extent of the problem. There is no dispute that the restrictions imposed on Troy deprive Troy of liberty. They amount to continual confinement, which Troy could not consent to and they are imputable to the state. As the authorities establish, the court may only authorise the deprivation of a child's liberty if it is necessary, proportionate and in the young person's best interests.

22. A hospital is not a children's home and cannot not fall within Ofsted's regulatory regime. A hospital is at least subject to regulation by the Care Quality Commission and it is not a criminal offence to place a child in a hospital, as it is to place a child in an unregistered children's home. By Section 27A of the Care Planning, Placement and Case Review (England) Regulations 2010, as amended in 2021, it is lawful for a Local Authority to place a child in a hospital. However, the court has still to be satisfied that it is necessary, proportionate and in Troy's best interests for the authorisation to be given.
23. Given there has been no alternative place for Troy to live and that restrictions amounting to the deprivation of liberty have been needed to keep Troy safe whilst living at the hospital. I must give that permission. The court is unable to find alternative placements and so, if the deprivation of a child's liberty is authorised, judges are limited to trying to ensure that the child is kept safe and is well cared for, and to hope and encourage others to act to find suitable accommodation and care arrangements.
24. I am to review the necessity of any restrictions in January of next year by which time I obviously hope more positive news of a future home will be available as Troy's carers obviously report a hospital ward is not and cannot be a home.