

Re QX (Parental Consent for Deprivation of liberty) [2025] EWHC 745 (Fam)

Navigating the complexities of deprivation of liberty for children under 16

11 April 2025  Katie Viggers

The recent judgment in *Re QX (Parental Consent for Deprivation of Liberty: Children under 16) [2025] EWHC 745 (Fam)* has brought to light the complex and often perplexing legal landscape surrounding deprivation of liberty (DoL) for children under the age of 16.

The case confirms that individuals with parental responsibility can consent to the DoL of a child under 16 who lacks Gillick competence. However, it also highlights the challenges faced by practitioners, particularly social workers, as they work to ensure the welfare and rights of the children involved.

Background of the case

The case of *Re QX* involves a 15-year-old boy with autism and severe learning disabilities. He requires continuous care and support and is not Gillick competent. His care plan involves continuous supervision and control, and he is not free to leave the place where he resides without escort.

There are four people who have parental responsibility for QX, including his biological parents. However, in December 2024, the local authority was asked to accommodate and care for QX and he was moved to his current placement. His care arrangements amount to a DoL.

The local authority applied for a care order (although they subsequently applied to withdraw this application, which the Judge consented to) and a DoL order.

Key decisions and implications

The main focus of the judgment relates to DoL of children. In delivering his findings, Judge Burrows highlighted several critical points:

1. Those with parental responsibility can consent to a DoL

The Judge affirmed that individuals with parental responsibility can consent to the DoL of a child under 16 who is lacking Gillick competence, *“provided the exercise of parental control is for the interest of the child”*, i.e. provided parental responsibility is being exercised appropriately. A court authorisation is not required in these circumstances. Judge Burrows confirmed that he was following the cases of *Lincolnshire County Council v TGA [2022] 3 WLR 1297 (FD)* and *Re D (Deprivation of Liberty) [2015] EWHC 922 (Fam)* in this regard.

Judge Burrows was satisfied that all four people with parental responsibility for QX understood his care needs and had freely agreed to him being cared for in his current accommodation. Valid consent had therefore been given to QX's DoL and no court authorisation was required.

2. Concerns over lack of court scrutiny

Although it was agreed that individuals with parental responsibility could consent to the DoL of a child, Judge Burrows appeared to express concerns about this approach. While court proceedings were deemed unnecessary in this case – as those with parental responsibility could and had consented to the DoL – the proceedings nonetheless provided clear evidence and assurance that those with parental responsibility were acting voluntarily and in QX’s best interests.

Judge Burrows noted that a similar case might not lead to court proceedings now. In turn, this means there would be no legal advice or representation for those with parental responsibility, no guardian appointed for the child and no judicial scrutiny to ensure that parental responsibility was being exercised appropriately and that valid, free consent to the DoL was given. He considered this problematic due to the complexities and challenges associated with finding suitable arrangements and placements for vulnerable children.

He therefore urged local authorities to “*err on the side of caution*” and bring a case to court, particularly if there is a possibility that parents may be overwhelmed by the decision-making process or may change their minds because of distressing reports from a placement.

3. Criticisms of other recent DoL cases

Judge Burrows expressed his view that the recently decided cases of Rochdale BC v A Mother, A Father and V [2025] EWHC 200 (Fam) and Peterborough City Council v SM [2024] EWHC 493 (Fam) are “*plainly wrong*”. In these cases, children with profound and enduring disabilities were found not to have been deprived of their liberty, despite having highly restrictive care plans in place, because their disabilities rendered them physically incapable of exercising their right to liberty and mentally incapable of asserting it. Therefore, it was concluded that the mental and physical disabilities of the children deprived them of their liberty, rather than any state or parental restrictions put in place for their safety.

However, in Judge Burrows’ view, a person subject to a care plan that requires them to reside in a particular place and be under constant supervision and control and not free to leave – regardless of their physical or mental capabilities – is considered deprived of their liberty if they have not consented.

It should be noted that Judge Burrows’ remarks on these cases are not binding or authoritative. Nonetheless, other legal commentators have also raised concerns regarding these two cases, and an appeal to a higher court to resolve this issue would be beneficial.

Challenges for local authorities

This judgment serves as a critical reminder of the complexities inherent in the law regarding DoL for children under 16.

While the decision provides some clarity, the comments and concerns expressed by the Judge may well lead to uncertainty and inconsistency in practice, further complicating the responsibilities of social workers and other practitioners.

In light of the judgment, practitioners are advised to:

1. Seek legal guidance

Given the potential for confusion, it is crucial for practitioners to seek legal advice when faced with difficult decisions regarding deprivation of liberty. This is to ensure all actions are in compliance with the law and serve the best interests of the child. Browne Jacobson has a team of lawyers who specialise in deprivation of liberty and can provide detailed guidance or a 'sense check' in any case.

2. Document decisions thoroughly

Maintaining detailed records of decisions and the rationale behind them can provide clarity and protection for practitioners should their decisions later be questioned.

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