



We will confine our comment to Deprivation of Liberty Orders (DoLs).

1. Deprivation of Liberty outside of the statutory framework

As reported by the UN Global study on Deprivation of Liberty:

'Children deprived of liberty remain an invisible and forgotten group in society despite increasing evidence of these children being victims of further human rights violations.'

We have been monitoring DoLs with our partners in the Child Law Network and have become increasingly concerned that this statement by the UN is applicable to children in the Welsh context.¹

The Family Courts of England and Wales have inherent jurisdiction to make DoLs. When making a DoL, a judge can deprive a child of their liberty, bypassing protections contained within the statutory framework.²

2. Decrease in the size of the secure estate

The size of the secure estate in England and Wales has declined over the past two decades, in particular with the closure of 16 secure children's homes since 2002.

The limited number of secure settings in England and Wales means that children are likely to be living far away from home.³ By way of example, over 50 children, on average, have been placed in secure children's homes in Scotland by English and Welsh local authorities each year over the last five years.⁴

¹ <https://childlawnetwork.org/publications/deprivation-of-liberty-of-children-in-england-and-wales>

² Three main statutory routes – to restrict a child's liberty:

Remand or detention in youth justice system; Mental health care via Mental Health Act – in-patient setting; Secure children's home – section 119 of Social services and Well being Act 2014. Inherent jurisdiction: where children do not meet the criteria for these routes – and it is deemed to be best for child's welfare.

³ <https://www.judiciary.uk/wp-content/uploads/2023/01/DE22C00016-RE-X-Judgment-25-January-2022-Approved.pdf>

⁴ *Ibid.*

In a recent court judgment, Andrew McFarlane – President of the Family Division – reported:

‘The primary purpose of this judgment is for the court, once again, to draw public attention to the very substantial deficit that exists nationally in the provision of facilities for the secure accommodation of children. There are a number, and it is, sadly, an increasing number, of children and young people under the age of 18 years [‘a child’] whose welfare and behaviour requires that they be looked after within a secure regime which restricts their liberty. These specialist units are limited in number and, at present, the number of secure beds is far out-stripped by the number of vulnerable young people who need to be placed in them. Courts are regularly told that, on any given day, the number of those needing a secure placement exceeds the number of available places by 60 or 70.’⁵

3. Children with complex needs

There is evidence that children with particularly complex needs are deemed to ‘challenging’ to be placed in a secure children’s home. This includes children with very complex mental health needs who do not meet criteria for detention under the Mental Health Act.⁶

One judge refused to authorise the continued detention of a child in a hospital that had no mental health provision, finding that the child had been placed:

‘in full restraint with several police officers and staff. His legs were strapped together and his face covered with a guard to prevent him from spitting and biting’. The judge found that the ‘child requires urgent assessment and therapeutic treatment for acute behavioural and emotional issues arising from past abuse within a restrictive clinical environment but no such placement is available.’⁷

4. Deprivation of Liberty Order applications outnumber applications made through the statutory regime

There has been a concerning increase in the use of DoLs. Nuffield Family Justice Observatory has recorded a 462% rise in 3 years, indicating that DoLs applications now outnumber applications for secure placements made through the statutory regime.⁸ In July 2022, the President of the Family Division launched a national deprivation of liberty court.⁹ The Nuffield Family Justice Observatory have been tasked with reporting on the data collected by the court. The data shows that, in the first 4 months of the court’s

⁵ [2023] EWHC 129 (Fam) <https://www.judiciary.uk/wp-content/uploads/2023/01/DE22C00016-RE-X-Judgment-25-January-2022-Approved.pdf>

⁶ <https://www.judiciary.uk/wp-content/uploads/2023/01/DE22C00016-RE-X-Judgment-25-January-2022-Approved.pdf>

⁷ Wigan BC -v- Y (Refusal to Authorise Deprivation of Liberty) <https://www.judiciary.uk/judgments/wigan-bc-v-y-refusal-to-authorise-deprivation-of-liberty/#:~:text=Neutral%20Citation%20Number%3A%20EWHC%201982%20%28Fam%29%20Case%20No%3A,HIGH%20COURT%20OF%20JUSTICE%20FAMILY%20DIVISION%20Date%3A%2014%2F07%2F2021>

⁸ Nuffield Family Observatory <https://www.nuffieldfjo.org.uk/news/number-of-applications-to-deprive-children-of-their-liberty-in-unregulated-placements-rises-by-463-in-three-years>

⁹ Courts and Tribunals Judiciary, ‘Launch of National Deprivation of Liberty (DoLs) Court at the Royal Courts of Justice – 4 July 2022’, <https://www.judiciary.uk/launch-of-national-deprivation-of-liberty-dols-court-at-the-royal-courts-of-justice-4-july-2022/>

existence, there were over 400 DoLs applications before the Court.¹⁰ This is likely to be an underestimate of the numbers as not all of the DoLs cases go through the DoLs Court.

These children are often housed in unsuitable and unregulated placements. Nuffield reports:

‘often ending up in caravans or holiday lets without the properly regulated care they so desperately need. These are the most vulnerable children in our society, but at this point they simply disappear from view.’¹¹

5. Need to be fully aware of what is happening in relation to DOLs in Wales

In Wales, the use of DoLs has not been adequately reported. However, recently, a High Court judge, His Honour Judge Gareth Jones, went public about what he called the ‘scandal’ of children’s care placements in North Wales. In a ruling on arrangements for a 14-year-old, the judge asked for local authorities to work together and finance a residential placement for children with nowhere else to go.¹² He said such an initiative would prevent the need to place children out of the local area, the weekly costs of which ‘dwarf the expense of public education.’¹³ The court heard that the child had been placed in the south-east of England because of a lack of provision in North Wales, following an interim care order allowing for the child to be deprived of her liberty. Since the breakdown of that arrangement, the child has been placed in three different bed and breakfast accommodations and her current placement is unregistered. The judge said that the situation in Wales ‘escapes appropriate media and other scrutiny’ by politicians in the Senedd because the jurisdiction is smaller than England.¹⁴ He directed that a transcript of the judgment be made available.

The Honourable Mr Justice Francis, Family Division Liaison Judge for Wales commented recently as part of this Senedd Inquiry (February 8th)¹⁵:

‘I believe the only secure accommodation place in Wales is Hillside. Hillside is excellent; I've been to see it. I've had three Welsh cases in recent months that I've listed in open court, but obviously with a reporting restriction order in terms of identifying anybody in the case, because there is nowhere to put these children, who are at the extreme end of suffering, either at very serious risk to their own lives or possibly to the lives of others, and there hasn't been anywhere for them to go. And I had one case recently where one of the Welsh Ministers attended court and the Children's Commissioner for Wales attended court. The Welsh Minister's view, as a matter of law is absolutely right, was this was for the local authorities to resolve. The local authorities were saying, “We don't have any place to put them and we don't have the money to get the places”. And the children's commissioner says, “If you put them in unregistered places, we're going to prosecute you” and Ofsted say, 'If you put them in unregistered places, we're going to prosecute you.’”

So, I had one particular case, which is still going on now, where this very troubled young woman—I think she's just 17 now—is moved every week from one secure

¹⁰ Nuffield Family Observatory <https://www.nuffieldfjo.org.uk/news/national-deprivation-of-liberty-court-445-children-subject-to-dols-applications-in-first-four-months-of-the-national-deprivation-of-liberty-court>

¹¹ Nuffield Family Observatory <https://www.nuffieldfjo.org.uk/news/number-of-applications-to-deprive-children-of-their-liberty-in-unregulated-placements-rises-by-463-in-three-years>

¹² [2022] EWHC 3074 (Fam) <https://www.bailii.org/ew/cases/EWHC/Fam/2022/3074.html>

¹³ <https://www.lawgazette.co.uk/news/judge-pleads-for-scandal-of-childrens-care-to-be-wider-known/5114610.article>

¹⁴ *Ibid.*

¹⁵ <https://record.assembly.wales/Committee/13200>

placement to another secure placement, because there isn't anywhere that's registered to put her. And she's moved every week because if she stays in an unregistered place for more than a week, they're going to be prosecuted by either or both Ofsted and the Children's Commissioner. I identified in a recent case that I dealt with this problem, which is, as I say, in Wales, but I don't think it's actually that different from what Sir Andrew has just been talking about in England. And I think, for me, doing the job that I've been doing in Wales in recent years, this is the single biggest crisis point. It is absolutely desperate. You don't put somebody under a deprivation of liberty order unless you are absolutely at the extreme end of trouble, and I think it's a terrible problem.'

6. Due regard to the United Nations Convention on the Rights of the Child

6.1 Welsh Government

Under the Rights of Children and Young Persons (Wales) Measure 2011,¹⁶ Welsh Government Ministers must demonstrate they have exercised due regard to the United Nations Convention on the Rights of the Child in the exercise of all of their functions. Given the lack of appropriate secure accommodation in Wales for vulnerable children with complex needs, it is incumbent upon Welsh Government to demonstrate that they have given due regard to the UNCRC, when making policy and budgetary decisions regarding spending on secure accommodation (to the maximum extent of available resources, UNCRC Article 4), in guaranteeing the best interests of the children (UNCRC Article 3), the survival and development of children (UNCRC Article 6) and children's right to attain the highest attainable standard of physical and mental health (UNCRC Article 24) and to ensure that every child deprived of liberty shall be treated with humanity and respect for their inherent dignity (UNCRC Article 37.C).

Welsh Government has communicated that it is committed to ensuring looked after children with complex needs have services which ensure their needs are met as close to home as possible and in Wales wherever practicable. This is a clear priority set out in the Programme for Government.¹⁷

However, the evidence suggests children are still being failed.

We urge the Committee to request an urgent update on policy and budgetary decisions in relation to:

- Allocation of £4.8 million to all Regional Partnership Boards in Wales to develop regional residential provision to meet the needs of children and young people in their communities.
- The Small Homes Project being taken forward as a joint project between the Welsh Government and Ministry of Justice.
- Learning from other models of good practice and costs savings by bringing services into Local Authorities and not sending children to private contractors.
- The Welsh Specialist Health Services' (WHSSCs) improvement programme for the two tier 4 Child and Adolescent Mental Health Services (CAMHS) units in Wales, supported by £1.4m of additional funding.

¹⁶ Rights of Children and Young Persons (Wales) Measure 2011

<https://www.legislation.gov.uk/mwa/2011/2/contents>

¹⁷ Welsh Government Response to the Children's Commissioner for Wales 2021/2022,

<https://www.gov.wales/childrens-commissioner-wales-annual-report-2021-2022-welsh-government-response>

6.2 Local authorities

Lady Black in T(A child) [2021] UKSC 35 notes that a distinction between the English and Welsh provisions in relation to the duties of local authorities toward children is that English legislation makes no reference to the UNCRC. In contrast, section 7(2) of the Social Services and Well-being (Wales) Act 2014 provides that a person exercising functions under the Act in relation to a child “must have due regard to” the UNCRC. Additionally, local authorities in Wales are reminded, by the Code of Practice to Part 6 of the Act of the need to have regard to the Convention when exercising their functions relating to looked after and accommodated children.¹⁸

We urge the Committee to remind local authorities of the difference in legislation between Wales and other jurisdictions across the UK and their duty to have due regard to the UNCRC.

We also urge the Committee to acknowledge the need for commissioned comprehensive research on the use of DoLs in Wales and on best practice to support children with complex needs who may be subject to such orders.¹⁹

In particular we urge the Committee to recommend:

- Local authorities should be required to collate and publish data on the use of DoLs against children in Wales and where children are being placed, and the cost of the placements, including data by age, ethnicity, disability, other protected characteristics.
- The Welsh Government should commission research on the use of DoLs in Wales and into alternative appropriate placements for children with complex needs.
- Local authorities contemplating an application for a DoL carry out a Children’s Rights Impact Assessment, or other procedure, to ensure and demonstrate how they have had ‘due regard’ to the UNCRC section 7 (2) of the Social Services and Well-Being Act 2014.²⁰
- All local authorities with urgency must publish data on the number of deprivations of liberty order applications affecting Welsh children as well as making available the children’s rights impact assessment undertaken in relation to the decision making. This should be collected and collated centrally as Nuffield Family Justice Observatory are doing for the National DOLs Court.

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¹⁸ T(A child) [2021] UKSC 35 <https://www.supremecourt.uk/cases/docs/uksc-2019-0188-judgment.pdf>

¹⁹ As an example of good practice, see: [Manchester to open two homes for vulnerable children stuck in hospital | Social care | The Guardian](#)

²⁰ Social Services and Well-Being Act 2014 <https://www.legislation.gov.uk/anaw/2014/4/contents>