

This judgment was delivered in private. The Judge has given leave for this judgment to be published. The anonymity of the child and members of their family 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.



**IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION**

Royal Courts of Justice
Strand, London WC2A 2LL

Case Number: FD25C40045

Re V (Profound Disabilities)

Neutral Citation Number: [2025] EWHC 200 (Fam)

31 January 2025

Before His Honour Judge Middleton-Roy acting as a Judge of the High Court

Between:

Rochdale Borough Council

Applicant

- and -

The Mother

1st Respondent

The Father

2nd Respondent

**The Child 'V'
through his Children's Guardian**

3rd Respondent

Misha Ryan, Counsel, instructed by Rochdale City Council
The First Respondent was not in attendance nor legally represented
The Second Respondent was not in attendance nor legally represented
Jessica Horsman, Solicitor for the Third Respondent

Hearing date: 31 January 2025

Approved Judgment

This judgment was handed down at 11.30am on 31 January 2025.

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His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the child and the adult parties in this judgment have been anonymised, having regard to the implications for the child of placing personal details and information in the public domain. The anonymity of the child and members of their family 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 and may result in a sentence of imprisonment.
2. The Court is concerned with a young person who will be referred to in this judgment as ‘V’. He is a 15-year-old boy with profound enduring disabilities. He is a looked after child who is the subject of a Care Order.
3. This short judgment is delivered orally on an extempore basis at the conclusion of a hearing in a busy National Deprivation of Liberty List in the Royal Courts of Justice. It is published as the request of the Local Authority.
4. The Local Authority, Rochdale City Council, applies pursuant to s.100 of the Children Act 1989 for leave to invoke the inherent jurisdiction of the High Court and for a Deprivation of Liberty Order. The Local Authority seeks a declaration from the Court that it is lawful and the best interests of ‘V’ for the Local Authority to be permitted to deprive him of his liberty pursuant to Article 5 of the European Convention on Human Rights (“ECHR”) and to avoiding breaching ‘V’s Article 2 ECHR right to life and his Article 3 ECHR rights prohibiting torture, inhuman or degrading treatment.
5. ‘V’s mother was not in attendance nor legally represented at this hearing. She was served with notice of the hearing. It is understood she supports the Local Authority’s application.
6. ‘V’s father was not in attendance nor legally represented. His views on the Local Authority’s application are not known.
7. The Guardian sought a short adjournment of the application to allow her to meet with ‘V’.
8. Having expressed at the outset of the hearing the Court’s preliminary observation that the application did not on its facts meet the test for the High Court to invoke its inherent jurisdiction, Counsel for the Local Authority and the Solicitor for the Guardian helpfully confirmed that they were in a position to make submissions and for the Court to determine the preliminary legal issue having regard to the familiar legal authorities.
9. There is a considerable background of concern in respect of ‘V’. He is a highly vulnerable young person with complex medical needs. He was diagnosed with microcephaly shortly after birth. He is described as having severe quadriplegic cerebral palsy, epilepsy and profound learning disabilities. He is registered blind. He is doubly incontinent. He had a tracheostomy and receives oxygen through a tube inserted into his trachea. He requires regular nebulisers and physiotherapy to support his chest management and secretion levels. Moreover, he has bi-lateral dislocated hips. He has no independent functional movement and requires hoisting equipment for all transfers.

He is not able to mobilise and uses a wheelchair. Further, he requires support with position changes as part of his chest management.

10. The Local Authority applies to this Court for authority to impose restrictions including two-to-one or one-to-one supervision at all times, including when 'V' is transported by vehicle and when he is in the community, to be supported with his personal care including intimate care and to be monitored in his room by voice monitor and physical checks. Further, the Local Authority sought authorisation from the Court to supervise the use of 'V's mobile phone. The Local Authority accepted in submissions that no deprivation authorisation from the Court was necessary in respect of the proposed restrictions on 'V's mobile phone use, this being an appropriate exercise of the Local Authority's Parental Responsibility for 'V' under the existing Care Order.
11. A previous Deprivation of Liberty Order was made in the local Family Court by a section 9 Judge in November 2023. In that Order, the Court granted permission to the Local Authority to invoke the inherent jurisdiction. The Court then proceeded to make declarations that it was lawful for the Local Authority to deprive 'V' of his liberty, in the same terms as the Local Authority now seeks before this Court. That Order was made prior to the decision of Mrs Justice Lieven in the case of *Peterborough City Council v SM [2024] EWHC 493 (Fam)*
12. The Local Authority submits that 'V's case is distinguishable from the case of *SM*, primarily as in that case, the subject child could not communicate in any form and did not understand language. The Local Authority submits that 'V' has limited communication and understanding but can express happiness, sadness and pain.
13. People with disabilities have the same human rights as those without disabilities. 'V's profound disabilities place a duty on the State to make reasonable accommodation and cater for his particular needs. The measures put in place by the Local Authority to support 'V', on a proper fact-specific analysis, form part of 'V's care provision. 'V' is undoubtedly under close and constant supervision. However, in this Court's judgement, the measures implemented by the Local Authority are not actions of the State which deprive 'V' of his liberty. They are designed to meet his care needs. There are many aspects of 'V's care which may intrude on his privacy, with specific justification, but they are not, in this Court's judgement, interferences with his important right to liberty and security of person under Article 5 of the European Convention on Human Rights.
14. Respectfully, this Court disagrees with the submission that there is any material distinction of the principle in *SM* this current case. The young person, 'V' who is at the centre of this case, requires support because of his profound disabilities. In practical terms, 'V' cannot leave his care placement of his own volition, due to his enduring disabilities. For 'V', the reason he can't leave his care placement and requires intimate support is because of those disabilities, not by reason of any action of the State. For the same reasons articulated by Lieven J in *SM*, the facts of this case show that the State is not depriving 'V' of his right to liberty and security of person within the meaning of Article 5 ECHR. 'V's Article 2, 3 and 5 rights are not infringed by the restrictions necessarily implemented by the Local Authority to supervise him, monitor him and provide for his personal care.
15. Nothing in this decision is intended to take away from the fact that this Local Authority is providing suitable care for 'V' and is responding appropriately to his complex needs. This is not, however, a case where the Local Authority requires a permissive Order from

the Court. This is not a case where it is necessary for the High Court to grant leave to exercise its inherent jurisdiction. In this Court's judgement, a Deprivation of Liberty Order is not necessary.

16. For these reasons, the Local Authority's application for permission under s100 Children Act 1989 is refused.

HHJ Middleton-Roy
31 January 2025