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CASE ANALYSIS:

MANCHESTER CITY COUNCIL V P (REFUSAL OF RESTRICTIONS ON
MOBILE PHONE) (REV1) [2023] EWHC 133 (FAM)

NAVPREETH GIHAIR

BARRISTER

ST JOHN'S BUILDINGS

In a judgment handed down in January 2023, Mr Justice MacDonald dealt with the question of whether depriving a person of the use of their mobile phone and/or social media equates to depriving them of their liberty.

The question for the High Court was – do restrictions imposed by a local authority on P’s access to her mobile phone fall within the category of a deprivation of liberty or the proper exercise of parental responsibility under Section 33 of the Children Act 1989?

BACKGROUND

P is a 16-year-old girl who was made subject of a full care order on 16th January 2023. She has ADHD and functions at the age of a 7-year-old.

P had many periods of going missing and during these periods had threatened to harm her mother and brother with a knife, engaged in acts of self-harm, including attempts to take her own life. She was also at risk of child sexual exploitation and involvement in organised criminal gangs.

The Court made an interim care order on 24th June 2022 in respect of P. On the same date an order was made authorising restrictions that amounted to a deprivation of P’s liberty for the purposes of Article 5(1) of the European Convention of Human Rights (“ECHR”).

The Local Authority made an application to limit P’s access to her phone and social media as there were concerns that she was engaging with peers who may encourage her to act out in unsafe behaviours, self-harm, or expose her to a further risk of child sexual exploitation.

SUBMISSIONS

The Local Authority and Guardian in this matter submitted to the Court that depriving P of her mobile phone and other electronic devices, to which she did not consent, was a deprivation of her liberty. Therefore, the High Court was being invited to authorise the deprivation of her liberty by exercise of its inherent jurisdiction.

On behalf of P, it was submitted that her use of a mobile phone is an integral element of the deprivation of her liberty. Her phone, for her, is a connection to the outside world, and therefore, the restrictions on the use of P’s phone, it was said, fit within Lord Kerr’s formulation of the meaning of ‘liberty’ in **Cheshire West and Chester v P [2014] AC 896** at paragraph 896.

JUDGMENT

MacDonald J recognised that:

45. [...] for P, in common with many other young people of her age, her mobile phone and other devices constitute a powerful analogue for freedom, particularly in circumstances where she is at present confined physically to her placement. Within this context, I accept that the possession and use of her mobile phone, tablet and laptop, and her concomitant access to social media, is likely to equate in P’s mind to “liberty” broadly defined as the state or condition of being free.

However, he noted:

However, this court is concerned with the meaning of liberty under Art 5(1) of the ECHR. Whilst I recognise that the Convention is a living instrument, which must be interpreted in the light of present-day conditions (see Tyrer v United Kingdom (1978) 2 EHRR 1 at [31]), over an extended period of time the Commission and the ECtHR have repeatedly made clear that Art 5(1) is concerned with individual liberty in its classic sense of the physical liberty of the person, with its aim being to ensure that no one is dispossessed of their physical liberty in an arbitrary fashion. The Supreme Court proceeded on that formulation of the proper scope of Art 5(1) in Cheshire West.

He concluded:

46. [...] in my judgment the removal of, or the placing of restrictions on the use of, P's mobile phone, tablet and laptop and her use of social media do not by themselves amount to a restriction of her liberty for the purposes of Art 5(1). On the evidence currently before the court those restrictions do not act to deprive P of her physical liberty, but rather act to restrict her communication, so as to ensure her physical and emotional safety. The evidence set out earlier in this judgment demonstrates that the effect of those restrictions is to limit P's communications with peers who might encourage her to engage in bad behaviour, with strangers who may present a risk to her and with family and friends when she is in a heightened emotional state. Within this context, the restrictions on the use of P's devices for which the local authority seek authorisation do not, in my judgment, by themselves constitute an objective component of confinement of P in a particular restricted place for a not negligible length of time. In the circumstances, whilst they are steps at times taken without P's consent and are imputable to the State, those restrictions do not, by themselves, meet the first Storck criterion [i.e. that P is subject to continuous supervision and control and prevented from leaving a restricted place for a non-negligible period of time].

MacDonald J accepted that, at times, these restrictions may form part of a regime of continuous supervision and control, but indicated that they did not act as a *physical* restriction of P's liberty. Further the proposed restrictions were more of an interference with P's Article 8 right to respect for private and family life than a deprivation of liberty for the purposes of Article 5(1).

MacDonald J concluded that the Local Authority was able to manage P's access to devices under s.33(3)(b) of the Children Act 1989. As the Local Authority have a care order in respect of P, the control, regulation and supervision of the use by a child or young person of their mobile phone will constitute an exercise of parental responsibility.

At paragraph 55, MacDonald J indicated:

"it would not be unreasonable for a parent who has become aware that the use by their 16-year-old child of his or her mobile phone is placing them at risk of significant harm, for example through child sexual exploitation (because it is apparent that they are being groomed online), or through self harm (because it is apparent that they are watching self harm content on social media), or through criminal prosecution for selling drugs (because it is apparent they are in contact with an OCG), to seek to address that situation by removing or restricting the use of their teenager's mobile phone and other devices in the exercise of their parental responsibility."

However, MacDonald J did accept that whilst not present in this case, the use of physical restraint or other force to remove a mobile phone or other device from a 16-year-old adolescent, even in order to prevent significant harm, would require sanction by the Court, and would not fall under a local authority's power under S.33(3)(b) Children Act 1989.

DISCUSSION

So where are we three months on?

Recently I have acted on behalf of numerous local authorities in the National DoLs Court where this issue has been the subject of extensive debate. The clarity produced by this judgment is welcome: any limit to the use of electronic devices or access to the internet with respect to children is to be managed under the local authority's parental responsibility. Local authorities are being encouraged to produce working agreements with children and young people which outline a plan for the child or young person to have freer access to electronic devices. This includes the use of applications to monitor the child's phone use; limiting data or credit on a mobile phone; turning off the internet and removing electronic devices at night.

Whilst limiting the use of electronic devices is no longer considered a deprivation of liberty in the meaning of Article 5, Judges will invite the Local Authority to evidence that it has properly and fully explored options under its corporate parenting powers to manage a child's use of electronic devices. Only once all options have been explored and if there is a demonstrable risk of significant harm to the child, for instance involvement in terrorist activity or a high risk of child sexual exploitation, will the Court consider permitting the use of force to remove devices from a child. Even then, the bar is high, and there must be clear, cogent and recent evidence of significant harm to a child to justify an application to the Court to remove devices from a child by force. It is very clear, that whilst young people may feel deprived of their liberty without a phone, laptop or unfettered access to the internet, the Court, whilst sympathetic, will no longer spend disproportionate time managing issues which fall under the scope of the Local Authority's powers under s.33(3)(b) Children Act 1989.

By Navpreeth Gihair, barrister at St John's Buildings

Contact: Clerk@stjohnsbldings.co.uk