Neutral Citation No: [2026] NIFam 26	*Ref:* **HUM13179**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **10/11/2026**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

Between:

BELFAST HEALTH AND SOCIAL CARE TRUST

Plaintiff

and

HP

and

TP BY HER GUARDIAN AD LITEM THE OFFICIAL SOLICITOR TO THE COURT OF JUDICIATURE IN NORTHERN IRELAND

Defendants

[Inherent jurisdiction; placement outside the jurisdiction; deprivation of liberty]

Claire MacKenzie (instructed by the Directorate of Legal Services) for the Plaintiff
Peter McGuinness (instructed by Madden & Finucane) for the first Defendant
Suzanne Simpson KC and Gráinne Brady (instructed by Larkin & Cassidy) for the second Defendant

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HUMPHREYS J

Introduction

[1] There are three sets of proceedings before the court in respect of TP, who will shortly attain her majority.

[2] The first application, which was issued in May 2026, seeks declaratory relief from the court in respect of a proposed move from secure accommodation to a children's home.

[3] The second application is in respect of a secure accommodation order pursuant to Article 44 of the Children (Northern Ireland) Order 1995 ("the Children Order").

[4] The third application was issued on 2 November 2026 and it seeks declaratory relief in relation to a proposed move out of the jurisdiction to a secure facility for the provision of intensive psychiatric therapy in London.

[5] An order was made on 18 May 2026 in relation to the proposed move to the children's home but this was never successfully executed and, as a result of events which have occurred subsequently, secure accommodation orders have been made on 29 June, 12 August and 3 November 2026. The extant secure accommodation order will expire on TP's 18th birthday.

[6] The focus of this judgment is on the third application, the proposed move to London.

Background

[7] TP is deemed to be one of the most challenged and challenging young people in the care of the Trust. She was removed from parental care in February 2013 having experienced chronic neglect and exposure to domestic violence. She was made the subject of a full care order on 28 May 2014 and placed in long term foster care. The foster placement ultimately broke down as a result of TP's behaviour in April 2022 when she moved to the children's home.

[8] TP has a confirmed diagnosis of Autism Spectrum Disorder and developmental trauma and a working diagnosis of Emerging Emotionally Unstable Personality Disorder and Severe Borderline Personality Disorder. Final diagnosis will not be confirmed until she reaches her majority.

[9] The behaviours exhibited by TP include ligature tying, prolonged head banging, cutting, absconding, overdosing on drugs and attempting to jump off bridges. TP has spent most of the last four years between Lakewood secure unit, Woodlands Juvenile Justice Centre and Beechcroft adolescent mental health unit. She has only spent a few days of these last four years at the children's home.

[10] The assessment is that if TP were released into the community when she turns 18 she will attempt suicide or inflict significant self-harm. The evidence of the Trust sets out some of the many steps taken to identify a suitable placement for TP. More than 30 specialist providers were contacted and the unit in London has been identified as the most suitable provider. Once placed there, an assessment can be carried out to ascertain is she meets the criteria for detention under the Mental Health Act 1983 ("the 1983 Act").

[11] Even in the last few days, TP continues to present highly challenging and harmful behaviour. At the weekend she inflicted significant injury to her right arm

using a knife and razor blades. After attending hospital, she locked herself in the bathroom, ripped her T shirt and tied part of it around her neck. After discharge she absconded and took two packets of paracetamol, resulting in her return to hospital. This represents just a recent example of the risks which TP poses to herself.

The social work evidence

[12] A series of reports to the court have been prepared by Ms McKee which set out, in detail, the events which have occurred during TP's lifetime and involvement in the care system. She sets out all the various placement options which have been explored and the opinions of the professionals concerned with her care and treatment.

[13] The offer of the place in London came forward on 19 October 2026. On 23 October 2026, the Trust assessed this as meeting TP's needs in terms of safety, support and therapeutic intervention.

[14] Ms McKee has set out an options analysis which recognises the dearth of options in Northern Ireland and identifies a low to medium secure unit, outside of Northern Ireland, which treats emerging unstable personality disorder, as being the best option for TP. The placement in London fits that bill.

[15] Ms McKee has also set out the plan for contact following the move to London for TP's mother, siblings and the wider family circle.

The medical evidence

[16] Dr Anderson, consultant psychiatrist, reported on 9 October 2025 that TP had "frequent and severe episodes of emotional dysregulation and suicidal ideation" and that her episodes of emotional distress frequently culminated in self-injurious behaviours, including the use of ligatures, cutting, striking limbs against surfaces and head banging. There have been multiple episodes of aggression and assaultive behaviour towards staff, typically when staff are attempting to ensure her safety during self-harm episodes. To ensure her safety and the safety of others, she has required physical restraint and rapid tranquilisation on multiple occasions.

[17] Dr Anderson concluded that TP's presentation was not in keeping with the definition of "mental illness" under the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") as there was insufficient evidence for a diagnosis of severe depressive disorder or complex post-traumatic stress disorder. He stated:

> "I have formed the opinion that with respect to diagnosis, in addition to her ASD diagnosis, her presentation is best understood in terms of her attachment difficulties and limited adaptive strategies for managing distress. These difficulties are giving rise to emerging traits suggestive of an ICD diagnosis of personality disorder. I recognise this

> diagnosis can be viewed as problematic for under 18 within CAMHS professional groups but this is the best fit within internationally recognised categories. Furthermore, there is established evidence base for treatments such as mentalisation based therapy [MBT] and dialectical behaviour therapy [DBT]. However, with respect to the law, diagnoses of personality disorder and ASD cannot be used to detain persons for treatment in a mental health hospital in Northern Ireland."

[18] Dr Bourne, consultant child and adolescent psychiatrist has prepared two reports, dated 27 August 2026 and 18 September 2026. In his opinion, TP needs to work with professionals to address her issues, in a secure environment, for a period of 12 to 18 months after she attains her majority. Otherwise, her prognosis is very poor and there is a high likelihood of serious self-harm or death. She needs a placement which can offer her emotional and physical safety.

[19] Dr Bourne concludes that TP's case is one of the most worrying and extreme cases he has assessed.

[20] In his second report, Dr Bourne opines that TP is unable to weigh up consequences of granting or not granting restrictions on her in her decision-making process and therefore lacks the capacity to make decisions about her residence and care issues. This position is unlikely to alter in the near future. I accept that evidence. Having regard to the nature and persistence of TP's emotional instability, autistic spectrum disorder and inability to evaluate risk and consequences, I am satisfied that she presently lacks capacity to make decisions regarding her residence and care.

[21] In a recent addendum report of 13 October 2026, Dr Anderson notes that there are no facilities in Northern Ireland suitable for TP's needs. He supports a move to a specialist treatment facility in England.

The use of the inherent jurisdiction

[22] By virtue of Article 173(2) of the Children Order, the leave of the court is required to seek the exercise of the court's inherent jurisdiction with regard to children. Leave may only be granted where:

(a) the result which the authority wishes to achieve could not be achieved through the making of any order by another means; and

(b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

[23] In *Re OM* [2021] NIFam 16, McFarland J held that Article 33 of the Children Order does not provide a route for the court to approve the move of a child outside

the jurisdiction of Northern Ireland to a particular institution. This aligned with the decision of Munby J in *Re PS* [2007] EWHC 623:

> "It is in my judgment quite clear that a judge exercising the inherent jurisdiction of the court (whether the inherent jurisdiction of the court with respect to children or the inherent jurisdiction with respect to incapacitated or vulnerable adults) has power to direct that the child or adult in question shall be placed at and remain in a specified institution such as, for example, a hospital, residential unit, care home or secure unit." (para [16])

The mental health legislation

[24] Article 3(2) of the 1986 Order expressly states:

> "No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder"

[25] A patient may only be detained under the 1986 Order where she is suffering from a mental disorder which warrants detention and where to fail to detain would create a substantial likelihood of serious physical harm to himself or others.

[26] However, in England & Wales, the 1983 Act contains no such exclusion for personality disorders and provides that an application for admission for treatment of a patient may be made on the grounds that:

> "(a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
>
> …
>
> (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section; and
>
> (d) appropriate medical treatment is available for him." (section 3(2))

[27] In that statute "mental disorder" is defined as "any disorder or disability of the mind" (section 1(2)).

[28] As Dr Anderson has observed:

> "It is ethically uncomfortable that the same clinical presentation may potentially lead to differing legal outcomes depending upon jurisdiction. A young person considered non-detainable under Northern Ireland legislation may potentially become detainable under legislation operating elsewhere in the United Kingdom."

[29] The Trust shares these misgivings about the proposed approach. However, it arises because of a failure on the part of the relevant authorities to provide suitable facilities for individuals such as TP within the jurisdiction. Ultimately a court, whether exercising its powers under the Children Order or the inherent jurisdiction, will seek to act in the best interests of the child or vulnerable adult, and to avoid that individual being placed at risk of significant harm. If that course can best be achieved by a move to a suitable placement outside the jurisdiction, and to avail of different policies and practices which prevail there, then that must be an option open to the court.

The transport and placement plan

[30] The plan is that TP will travel on 16 November 2026 from Belfast to Liverpool by ferry and then by secure vehicle to London. She will be accompanied by five individuals, two nurses, two members of Lakewood staff and one member of medical staff. The journey is likely to take around 15 hours in total. There will be two cabins booked on the ferry which can be locked.

[31] It is recognised that there is a high probability of TP becoming dysregulated in the course of this move. There is significant potential for a public altercation to take place. It is proposed that the following restrictions be approved by the court:

(i) Secure transportation be used;

(ii) Close supervision shall be used during the transfer, including the use of 3:1 supervision as deemed necessary;

(iii) The use of physical restraint as a last resort;

(iv) The use of medication or sedation to manage or reduce the risk of harm to TP or others.

[32] On arrival in London, the following restrictions are proposed prior to any detention being authorised:

(i) Close supervision, up to 3:1 as necessary;

(ii) The removal of personal items when they are assessed as posing a risk of harm;

(iii) The use of physical restraint as a last resort.

The mother's position

[33] TP's mother is the first defendant to these proceedings. She herself has significant mental health issues and is accommodated in supported living. She has been involved in the discussions around TP's future and has expressed concerns around contact. At the moment this takes place on a monthly basis and the Trust's proposal is that this will continue and support will be provided, financial and otherwise, to enable the mother to travel to London. Facilities will also be arranged for weekly telephone and video calls.

[34] The mother is aware of the plan and is concerned about the use of physical restraint and medication although she recognises the importance of TP being kept safe and treatment being afforded to her. Through her legal advisors, she has expressed a neutral opinion on the Trust's application.

The report of the Official Solicitor

[35] Given her lack of capacity, the Official Solicitor was appointed to represent TP's interests in this litigation. On 6 November 2026 the Official Solicitor sought TP's views on the proposed plan. She did not wish to discuss the issue in any detail. However, she indicated that she did not agree with the proposed placement in London.

[36] The Official Solicitor has expressed her opinion that the proposed arrangements are in TP's best interests.

The impact of AGNI

[37] In *A Health and Social Care Trust v WM, KR & LR* [2026] NIFam 23, I recently considered the implications of the Supreme Court decision in *A Reference by the Attorney General for Northern Ireland* [2026] UKSC 16 ("*AGNI*").

[38] In overruling *Cheshire West*, the court held:

(i) The assessment of whether an individual has been deprived of liberty is specific to that particular case and requires a multifactorial assessment of the type, duration, manner and effect of the measure or measures in question;

(ii) The fact that an individual lacks legal capacity does not mean that they cannot validly consent to their living arrangements so as to prevent these from becoming a deprivation of liberty;

(iii) There is an overlap between the objective and subjective elements;

(iv) The effect of restrictions on the individual, including their compliance and the lack of objection if they are capable of objecting or giving tacit agreement, is relevant in assessing the objective element of confinement;

(v) There will be difficult borderline cases, particularly in the ascertainment of wishes and feelings, where the approach ought to be "practical and realistic."

[39] The important features of this case are:

(i) The nature of the placement in London. This is not akin to a residential setting. It is a low to medium secure facility for the provision of intensive psychiatric care;

(ii) It is anticipated, subject to the requisite assessment being carried out, that TP will be detained in this placement pursuant to the 1983 Act;

(iii) The transport arrangements involve the potential use of physical restraint and tranquilising or sedative medication as well as locked cabins and vehicles and close 3:1 supervision;

(iv) Prior to TP's assessment in London, close supervision, physical restraint and the removal of personal items could all be features of her stay.

[40] In light of the combined effects of these restrictions, I have concluded that they amount to a deprivation of TP's liberty, on the basis of the *AGNI* multifactorial assessment. I consider that the restrictions are analogous to those which were found to constitute a deprivation of liberty by Theis J in *Essex County Council v MH* [2026] EWHC 2328 (Fam).

[41] There is no evidence that TP consents to these restrictions so as to prevent them being a deprivation of liberty. The only evidence which exists is to the contrary effect.

The welfare test

[42] Recognising that these restrictions amount to a deprivation of liberty, the court must consider whether, nonetheless, the move to this specialist placement in England is in the best interests of TP.

[43] The court must also take into account the article 8 ECHR rights of TP to respect for privacy and family life. Any order such as that sought by the plaintiff Trust would constitute an interference with that right. Such interference must be both necessary and proportionate.

[44] Having considered all the evidence, including that from the social workers, psychiatrists and other professionals involved in TP's life, I have no hesitation in

concluding that this is manifestly in her best interests. To take any other course would clearly expose TP to a risk of significant harm.

[45] I have reached this conclusion for the following reasons:

(i) TP has been trapped in a cycle of secure accommodation, psychiatric care and juvenile justice for a period of four years;

(ii) Her presentation and behaviours have meant that no meaningful treatment plan has proven possible to implement;

(iii) The sad reality is that when she turns 18, there is no facility in Northern Ireland which could provide her with the necessary therapeutic treatment she requires;

(iv) The state of the law in Northern Ireland in relation to mental health is such that she could not be detained for treatment, unlike the prevailing position in England & Wales;

(v) If TP were simply to move into the community at age 18, she is very likely to suffer really serious harm;

(vi) The extensive efforts to locate a suitable place for TP have resulted in the London placement being identified as the best place for her to engage in the right level of treatment.

[46] I am also satisfied that the interference with TP's article 8 rights is both necessary and proportionate. It is in pursuit of a legitimate aim, namely the safety and well-being of TP, and is in accordance with law. Given the marked lack of alternatives, and the relatively short period of time prior to TP's assessment under the 1983 Act, the order represents the least intrusive measure available in pursuit of the legitimate aim.

Conclusion

[47] I am therefore satisfied on the basis of the evidence and submissions which I have heard that a declaratory order should be made authorising the placement of TP outside the jurisdiction for the provision of assessment and acute inpatient psychiatric care. This is in the best interests of TP.

[48] In doing so, the court:

(i) Orders that the plaintiff Trust have leave, pursuant to Article 173(2) of the Children Order, to invoke the inherent jurisdiction of the court on the basis that the outcome could not be achieved by any other means and TP is likely to suffer significant harm if the inherent jurisdiction is not exercised;

(ii) Declares that TP lacks capacity and is unable to weigh up the consequences of her decision making;

(iii) Declares that the plaintiff Trust may place TP in the unit in London in circumstances where she may be detained under the provisions of the Mental Health Act 1983;

(iv) Declares that the plaintiff Trust may make arrangements for the transport of TP to London as set out in the transport plan and which will entail a deprivation of TP's liberty;

(v) Declares that the plaintiff Trust may make arrangements in relation to TP's residence and care in London, both before and after her 18th birthday, such as would entail a deprivation of TP's liberty;

(vi) Declares that such arrangements in relation to transportation, residence and care amount to a necessary and proportionate interference with TP's article 8 ECHR rights.

[49] I discharge the existing declaratory order and dismiss the May 2026 application for relief. I make no further order in respect of the extant secure accommodation order which will cease to take effect on TP attaining her majority.