



Neutral Citation Number: [2021] EWHC 1814 (Fam)

Case No: MA20P00300

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 05/07/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

Tameside Metropolitan Borough Council

Applicant

- and -

C

First

-and-

Respondent

D

Second

-and-

Respondent

L

Third

(A Child acting by his Children's Guardian)

Respondent

Mr Matthew Carey (instructed by the Borough Solicitor) for the Applicant

The First and Second Respondents appeared in person

Ms Eleanor Keehan (instructed by AFG Law) for the Third Respondent

Hearing dates: 21 June 2021

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 5 July 2021.

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Mr Justice MacDonald:

INTRODUCTION

1. In this matter, I am concerned with the welfare of L, who is now 17 years old. The application to further extend an order authorising the deprivation of L's liberty pursuant to the inherent jurisdiction of the court is made by Tameside Metropolitan Borough Council, represented by Mr Matthew Carey of counsel. The application was issued on 4 February 2020. L's mother, C, appears in person, as does L's father, D. L is represented through his Children's Guardian, Emma Gauden, by Ms Eleanor Keehan of counsel.
2. Certain of the issues raised in this case are currently the subject of consideration by the Supreme Court, from which court judgment is awaited in the appeal from the decision of the Court of Appeal in *Re T (A Child)* [2018] EWCA Civ 2136. Whilst, ordinarily, this court would defer its decision pending receipt of definitive authority on the issues before it, the current situation for L does not allow for that. In the circumstances, I proceed to decide this matter on the law as it currently stands albeit, as will become apparent, there remain very significant challenges in seeking to do so.
3. In this case the local authority seeks an extension to the order authorising the deprivation of L's liberty at his current placement. That extension is opposed by L's parents, who seek the implementation of a staged plan that will result in L returning to their full time care. The Children's Guardian is unable to support the extension of the order authorising the deprivation of L's liberty as being in his best interests. This matter was reallocated to me on 28 May 2021 by HHJ Singleton QC and comes before me for a contested hearing.
4. In determining the application before me I have had the benefit of reading the core bundle, which bundle includes the report of the Children's Guardian, the written submissions of counsel and have had the benefit of hearing oral submissions from Mr Carey, each of the parents and Ms Keehan on behalf of L. Given the issues involved, I reserved judgment for a short period and now set out my decision and the reasons for it.

BACKGROUND

5. L is the adopted child of the respondent parents. L was removed from his birth mother's care following a history of maternal alcohol abuse, neglect, inconsistent parenting and concerns around sexual abuse. The papers record that, prior to his removal, L was noted to have multiple fingerprint bruising on his body.
6. L was adopted by the parents with a sibling when he was 4 years old. The report of the Children's Guardian asserts that the matters summarised in the foregoing paragraph were either not shared fully with the parents by, or were minimised by, the placing local authority and that this, combined with limited preparation of the parents with respect to, and their limited experience and understanding of, attachment meant the parents struggled to meet L's needs. During the course of the hearing, the father intimated that the parents will shortly be commencing civil proceedings against the local authority in respect of its alleged failures in this case.

7. L was referred to Educational Psychology in April 2012 because of concerns about social communication difficulties, emotional vulnerability and his rate of educational progress. In December 2012, L's full scale IQ was assessed to lie on the 5th centile, with a full scale IQ of 75. On 11 February 2015 the parents attended a post-adoption surgery run by the local authority and reported that L was demonstrating increasingly difficult behaviours, including making threats with a knife, smearing faeces, food hoarding, arson, aggression towards the family pet, sexualised behaviour and sexually harmful behaviours towards fellow pupils and teachers. As time moved on L was also noted to make threats to kill himself and others. L appears increasingly to have had a pre-occupation with violence. The adoption support assessment that took place in February 2015 recommended a full psychological assessment of L and parenting programmes for the parents.
8. On 4 August 2015 a report from Dr E, Consultant Child and Adolescent Psychiatrist, recommended referral to the FACTS team. On 5 October 2015, Mr F, Consultant Child and Adolescent Psychotherapist, recommended a package of support to include individual work with L and his sibling, therapeutic parenting support for the parents, further assessment of L and a Reducing Anxiety Management Programme (RAMP) for both children. Whilst a number of agencies intervened with respect to L's behaviour, including FCAMHS and FACTS, and a number of assessments were undertaken, it is very difficult to identify what was *done* at this time to assist L and the family with his escalating behavioural issues, albeit it there is a suggestion that therapy was offered to L but that he declined to engage. A Forensic CAMHS assessment on 28 October 2015 resulted in a recommendation that there be no further involvement from FCAMHS.
9. In February 2016 L assaulted his parents and in April that year L caused damage to the family home. The parents were noted to be willing, but unable, to provide the advanced and intensive therapeutic parenting required by L. On 14 July 2016 a report from a paediatric nurse specialist recommended a multi-agency approach to address L's difficulties. On 5 December 2016, a report by Mr G identified that L will needed an extensive therapeutic package of support from a placement to address his harmful sexualised behaviour. Mr G made clear that short-term measures should be avoided as long term stability was key to making progress with L's emotional health needs. Again, it is difficult to see what was actually *done* for L in response to these clear recommendations.
10. On 18 December 2016 L was provided with accommodation pursuant to s.20 of the Children Act 1989 with his parents' agreement. On 25 January 2017 GMAP (an independent specialist service for children displaying problematic or harmful sexual behaviour) produced an initial assessment report that recommended a therapeutic programme and reiterated that:

“[11.3] In order to receive the therapeutic programme that is likely to yield the quickest and best outcomes for L, he needs to reside in a specialist rehabilitation unit for young people who have attachment problems / disorders and who can manage client group who have a range of his risk behaviours including sexual harm of others. Ideally the placement would be within commuting distance of his parents' home address and would also provide education. Contact between L and his parents and sibling should remain under the direction and assessment of the local authority.

[11.4] The placement should be staffed, or be willing to train staff, in attachment informed care, trauma, parenting with PACE or any other recognised and evidence based therapeutic parenting techniques. It should have low occupancy and high staff ratios. Bedroom door monitoring would also be important.”

GMAP further recommended that multi-agency case planning forums should review the case and the case should be referred to CAMHS for assessment and ongoing oversight. L returned to the care of the parents on 26 January 2017. Subsequently, L did engage in some GMAP therapeutic sessions. L was assessed as being amongst the most concerning young people assessed to date with the AIM2 tool, a tool used to assess the level of risk of sexual harm that may be posed by a young person.

11. On 7 March 2017 L took an overdose and was assessed at being of significant risk of further overdoses. He also exhibited self-harming behaviours. Care proceedings under Part IV of the Children Act 1989 were issued with respect to L and his sibling and interim care orders were made on 10 March 2017. L was placed in a residential placement. Within those proceedings, Dr A, Chartered and Registered Psychologist, observed as follows (in a passage later cited by Dr Ross) with respect to L’s presentation in a report dated 3 July 2017:

“Behaviourally, socially, psychosexually, and emotionally, L presents as having significant difficulties. He can be controlling, challenging, provocative, sexually inappropriate, non-complaint, and oppositional, defiant, and verbally intimidating, as well as physically aggressive. Particularly, in the past L’s challenging behaviour has placed both him and others at risks of harm. He has significant difficulties in terms of his emotional regulation and will become aggressive when frustrated, but he has also learned to use negative and intimidating behaviour as a way to try and exert control over other people and his environment...L’s interpersonal functioning is highly compromised. L presents as emotionally and interpersonally unstable and has a highly segmented, fragmented, and uncertain sense of self as well as experiencing a wavering sense of identity. As well as lacking skills and resources to regulate himself, L struggles to maintain a cohesive and integrated sense of his identity and his very sense of being is very fragile...L’s presentation is indicative of significant levels of disturbance in multiple domains of his functioning. I am extremely concerned about his long term adjustment and development.”

12. The care proceedings concluded in 2017 with care final orders being made in respect of both L and his sibling. Since that date, L has had *thirteen* placement moves and *seven* separate substantive residential placements in the course of less than five years. There remains no placement identified that can meet his assessed needs, even as he is now unable to remain at his latest temporary placement. Each placement has broken down consequent upon the behaviour exhibited by L, which has continued to include being violent and threatening harm and sexual assault towards others, sexually inappropriate behaviour, being racially abusive towards others, weaponising items for use against himself by way of self-harm, causing criminal damage and absconding. Within this context, it is starkly arresting to note the observation of Dr A in her report of 3 July 2017 as to the consequence for L of any disruption to his placement:

“I would not recommend that L’s placement is changed since this would destabilise him enormously and there is no guarantee that he would settle anywhere else. Such a move would also mean that his therapeutic intervention would have to be put on hold and therefore any move would delay and hamper his access to therapeutic intervention... The primary intervention for both boys is to be settled and stable in a care environment that provides emotionally attuned, reparative care and which can support all aspects of their development... Once a “secure base” and an appropriate care environment are established, a number of interventions may be possible. In this context I am clear to distinguish between interventions and therapy. L in particular clearly presents with a range of symptoms and difficulties that may be amenable to therapeutic techniques and interventions in the foreseeable future. However, he will only be able to engage in this therapy if he feels safe enough to allow himself to feel vulnerable and/or to signal his vulnerability to others and allow them to help him.”

And the observation of GMAP in their report dated 30 October 2017 regarding the need for stability and consistency of placement:

“It is important that L resides in an environment where he receives clear consistent boundaries. It would be most beneficial if he could reside in a specialist home for young people with harmful sexual behaviours due to the complexity of his needs. L has said he is unhappy in his current placement and would like to return to his adoptive parents’ home, however this type of response for a looked after child is very understandable. L will need support and nurture to feel cared for and settled in residential care.”

13. Any summary of the incidents that have occurred since the end of 2017 leading to the serial disruption of L’s residential placements, in order to ensure that the size of this judgment remains within reasonable bounds, runs the risk of seriously underrepresenting the demands required of those providing care for L, such as been the seriousness, persistence and regularity of such incidents. However, by way of example, the chronology contained in the statement of the Team Manager dated 6 February 2020 contains the following entry for 28 June 2018:

“L is constantly talking to himself by asking himself questions and then answering in the third person, sometimes using accents or strange noises. He has been saying he hears voices and that he wants to kill himself or someone else. He says he sees shadows moving and objects moving. L seen by staff talking to a kettle and he said it nodded back to him with the answer. L has also been using pen and paper to draw sharp objects and people being stabbed in the neck. Staff report says these are graphic and focused on the stabbing in the neck. Staff stated that L picked up a piece of slate in the back garden and said he was going to stab a female member of staff in the neck from behind. L also broke a glass and used a shard to try and attack a male member of staff in the neck. Restraint required to prevent harm,”

And on 24 September 2018:

“L assaults a female member of residential staff, head-butted and also with a fire extinguisher and causes damage at placement. Following this incident L

made repeated verbal threats to ‘rape’ this staff member. It was noted that L had an erection during the attack on the female staff member.”

14. On 20 April 2018 a report from a ‘Healthy Young Minds’ specialist registrar again recommended that L would benefit from a suitable therapeutic placement with adequate supervision. On the same day L was moved to a temporary bridging placement and an ensuing nationwide search for a suitable placement met with no success. On 21 June 2018 L was moved to a placement that was able to offer therapy addressing sexualised behaviour, although it remains unclear the precise extent to which L was able to benefit from this as that placement was not able to work with children who demonstrated both sexualised behaviour and mental health difficulties. L did engage with therapy but that engagement declined over time.

15. During the course of 2019 L’s behaviour continued to present difficulties. In addition to property damage and incidents of self-harm and threatened suicide, L continued to display violence and sexually inappropriate behaviour and was also noted to have an interest in violent pornography. Concern was expressed regarding the link between his anger and violence and sexualised arousal. By way of example, the chronology in the statement of the Team Manager dated 6 February 2020 contains the following entry for 9 July 2019:

“L absconds from activity with staff, missing overnight for 2 nights before returning to parents address and refusing to return. L said he had slept in a park, that he and his [his sibling] had been ‘looking for someone to rape’ in a park and that they were throwing stones at members of the public.”

And the entry for 14 November 2019 (after L had been assessed by CAMHS in September 2019 as “non-urgent”):

“L destroys bedroom, damage to walls and electrical equipment. L writes his thoughts on the walls which include sexualised thoughts of rape and violent sexual acts including:

- Kill everyone
- Don’t piss me off I’ll kill you and rape your kids and other people
- I think about killing people for the fun of it
- One day I will run away and break into a family house and kill their kids and the mum and dad I will rape them, kill them and burn them
- There are some people I would love to hurt them, if they are not dead in three years I will kill them my fucking self.”

16. In December 2019 L’s presentation deteriorated significantly and on 8 December 2019 his parents removed him from the placement he was then in after seeing the level of destruction in his room and that L was unwashed, dirty and with cuts on his body. The police intervened to return L to the placement. On 14 December 2019 L wrote thoughts about “killing a child” on the walls of his room and then removed all of the plaster by repeatedly punching the walls. On 18 December 2019 CAMHS assessed L (who

refused to engage with the assessment) as not being psychotic but exhibiting trauma based symptoms that did not meet the criteria for detention under the mental health legislation. CAMHS considered that L's then placement was not meeting *any* of his needs.

17. As I have noted, the local authority made an application for permission to invoke the inherent jurisdiction and for an order authorising the deprivation of L's liberty on 6 February 2020 following his move to a further, unregistered placement on 4 February 2020. The initial hearing took place on 18 February 2020 before HHJ Allweis. An order authorising the deprivation of L of was made with directions given with respect to the issue registration in accordance with the President's Guidance entitled '*Placements in unregistered children's homes in England or unregistered care home services in Wales*' issued by the President on 12 November 2019. At that hearing, the court observed that in the event a secure unit bed became available for L, the local authority should lodge its application immediately and the court would accommodate that application on an urgent basis. Despite ongoing searches since February 2020, L has not been accepted for a secure bed. The interim order made by HHJ Allweis on 6 February has been subsequently extended on *eleven* occasions between 6 February 2020 and 6 January 2021 in circumstances where L's placement remained unregistered despite the efforts of the local authority to move the registration process forward.
18. L's challenging behaviour continued following the authorisation of the deprivation of his liberty. On 16 February 2020 L locked a female member of staff in his bedroom with him and attempted to punch her. Within the context of persistent behavioural issues, L continued to express thoughts about raping and killing people. On 14 March 2020 L presented as manic and talked continually about strangling, stabbing and killing people. On 9 May 2020 L spoke about wanting to murder people and cook their bodies. In June 2020, L placed a member of staff in a choke hold and was arrested and made the subject of a 12 month referral order with the youth offending team until December 2021.
19. On 6 December, Dr H a psychologist at a provider of therapeutic intervention commissioned by the local authority to support a proposed bespoke placement for L identified by the local authority, wrote to the local authority in the following terms:

"I consider it essential that, as a basic foundation, any putative carers of L must have a strong training and experience in working with young people with developmental trauma who present with very risk behaviour. He requires considerably in excess of 'good enough' care due to his history and complex clinical presentation. If the staff team are unprepared for his level of need, as I adjudge likely to be the case based on my correspondence with [the placement], then there is a risk of a) causing him further harm, and b) failing to provide the foundations necessary for therapeutic growth. Moreover, on the basis of the information available to me at this time, I consider L presents with a high number of risk factors for causing harm to himself, and perpetrating threatening and violent (Borum, Bartel & Forth, 2005), and sexually harmful behaviours (Leonard & Hacket, 2019). Without expertise in managing such issues, I consider that staff will likely struggle to manage his risks, increasing the likelihood of him causing staff serious physical and psychological harm, and contributing towards staff burnout."

20. L moved to the bespoke placement with respect to which the comments of Dr H related in January 2021 but, regrettably, that placement quickly broke down on 21 February 2021. Following the incident that caused the breakdown of the placement, L was arrested for criminal damage and sexual assault (following him kicking a member of staff to the groin) and later charged with sexual assault on a male, assault by beating and criminal damage.
21. At the present time, L is in a further temporary placement, the order authorising the deprivation of L's liberty having been amended by consent on 26 February 2021. OFSTED has refused to register L's current temporary placement, due to concerns regarding home conditions (which have now been improved) and poor compliance with policy and regulation. The placement therefore remains unregistered and is without any specialism in attachment difficulties, trauma or problematic sexualised behaviour, without specialised staff and with no therapeutic milieu. The restrictive regime that L is subject to at his current placement is as follows:
- i) L has a staffing ratio of 3:1 at all times at the placement. The additional staff member is required to be present if L's behaviours became challenging and significant where he cannot be managed on a 2:1 staffing level.
 - ii) L is subject to 30-minute welfare checks undertaken when not in communal areas.
 - iii) L is not permitted to lock his bedroom / bathroom door but the door can be closed, subject to regular checks.
 - iv) L is not free to leave the placement unless supervised by a minimum of two staff members.
 - v) L is subject to restraint as a result of challenging and aggressive behaviours.
 - vi) L's bedroom is 'scaled back' to include minimal furniture comprising a bed, mattress, bedding and wardrobe.
 - vii) L has no access to a personal mobile phone.
 - viii) L does not have access to the internet.
 - ix) L has no independent access to finances.
 - x) L is not permitted unsupervised access to the kitchen and all sharp objects from the bathroom are removed. L is only permitted to use plastic crockery and cutlery.
22. L has taken to sleeping on the bathroom floor at the placement. L is also not accessing education. L's contact with his parents is supervised with three staff members attending. On 9 March 2021 the local authority concluded a parenting assessment with respect to the parents. That assessment concluded that it would not be safe for L to return home having regard to the nature and extent of L's dangerous behaviour, the difficulty with providing 24 hour supervision in the home environment and the need for a therapeutic parenting approach to be taken with L. An addendum parenting assessment dated 21 April 2021 endorsed this conclusion, further noting that the parents

lacked insight into the risks posed by L to their safety. The social worker was at pains to make clear that the negative outcome of these assessments was not a reflection on the parents, but rather of the challenge of caring for L.

23. On 5 April 2021 Dr Kenny Ross, Child and Adolescent Psychiatrist, completed a psychiatric assessment of L confirming that, as at the time of the report, L did not meet the criteria for admission into a medium secure adolescent mental health in-patient unit. Within the context of his assessment of L's vulnerabilities as being multifactorial in origin, Dr Ross opined that L requires to be placed in a stable, registered, long-term placement that can both meet his needs and manage his risks. He considered that the placement should be therapeutic in terms of having a "therapeutic milieu" and being staffed by skilled and experience professionals trained in trauma-informed care and attachment theory. Within this context, Dr Ross emphasised the importance of consistency. Dr Ross recognised that it may be difficult for professionals and carers to engage with L. On 5 May 2021 an FCAMHS consultation took place. The outcome of that consultation is awaited and is anticipated at the end of June 2021. In this context, I note the following observation of Dr Ross:

"[11.45] It seems unlikely that L will have completed the required therapeutic input before he turns 18. The engagement process itself is likely to take significant time (months probably) and he will need to be in a supportive therapeutic placement to underpin this work. It is of course impossible to predict how long therapeutic input will be required but it is difficult to foresee this lasting less than 18 months to two years."

24. The most recent incident reports paint a concerning picture regarding L's recent behaviour in placement. In particular, the incident reports relate the following:
- i) On 1 March 2021, L was heard shouting in his room and stating that he was going to kill his mother and father and would telephone someone to stab the neighbour and her child.
 - ii) On 29 March 2021, L reported that he dreams of killing people, namely his mother, his father and police officers and wished a day could be set aside where such crimes could be committed without him getting into trouble.
 - iii) On 8 April 2021, following an incident in which L damaged property, he stated that he did not like women working at the placement because if he sees a women he is attracted to he will rape her and that all women are scared of him.
 - iv) On 17 April 2021, L stated he believed that a female member of staff had been talking about him and stated that he would get her back for this by locking her in the bathroom and raping her, claiming that he had almost done so before.
 - v) On 18 April 2021, L stated that he "fancies" a female member of staff, was frustrated that he could not act on this and had thoughts and visions of raping and kidnapping women.
 - vi) On 7 May 2021, the police were called after L broke furniture and assaulted staff.

- vii) On 28 May 2021, L believed that everyone was talking about him and, having managed to secure a screwdriver, stabbed the walls of his bedroom and bathroom with it, kicked the bathroom door off its hinges and threatened to stab the young person occupying the next door area.
 - viii) On 31 May 2021, after becoming upset with respect to the female young person in the next area, L threatened to smash the window, punched a wall, referred to the young person as an “ugly fat bitch” who he wished would drop dead and sought to climb the fence separating the two areas, resulting in the application of a two armed restraint. During the restraint L spat at and headbutted staff, tried to grab their genitalia and used offensive and racist language towards them.
 - ix) On 7 June 2021, after becoming upset regarding the female young person in the next room, L stated that he would “strangle the fuck out of her”.
 - x) On 10 June 2021, whilst out in the community with staff, continued to state that he wished to kill, harm, kidnap and rape others.
 - xi) On 13 June 2021, L broke a piece of wood over his head when he became heightened emotionally.
 - xii) On 15 June 2021, L held a female member of staff by both arms and attempted to drag her into his bedroom. The police were called but not required to enter the property as L had by then calmed down.
 - xiii) On 16 June 2021, L punched a wall, threatened to smash his television and became angry with respect to the female young person in the next door room.
25. In their submissions to the court, the parents sought to add context to the incidents set out above. In particular, the mother stated that L had, since he was a child, told lies and made statements of intent that he did not mean. The father stated that much of the behaviour exhibited by L as set out above was in consequence of his ongoing dispute with the young person next door and because social worker’s failed to act on what they knew about L, for example that he did not like it when he thought people were discussing him.
26. Mr Carey informs the court that there remains senior management oversight of this case with Director of Children’s services and other senior managers meeting regularly to identify any possible placement options for L. As at the date of this hearing there is no indication that a suitable placement of the type repeatedly recommended by specialists and professionals since 2016 is available to take L.
27. The report of the Children’s Guardian is dated 15 May 2021. The Children’s Guardian makes clear that L has declined to speak to her. She is not able to support the return of L to the care of the parents given the complexity of his care needs. Within this context, the Guardian succinctly sums up L’s current position:

“The Local Authority continue to search for a therapeutic placement for L however he has sadly become one of a large number of young people seeking such a placement in a situation where demand is greater than supply. As a result L’s therapeutic needs continue to be unmet as they have in all truth for

the majority of his life, despite the best attempts by his parents and professionals.”

28. In this context the reality of L’s current situation, in a temporary, unregulated placement that is not capable of fully meeting his needs, is succinctly and eloquently summed up by the Children’s Guardian as follows:

“L has been isolated from his family and community for several years and is no longer playing an active role in life as we know it. He does not appear to be washing, is wearing unclean clothing and eating a poor diet. He experiences minimal stimulation and sleeps for long periods on a bathroom floor despite being provided a comfortable bed. There is minimal comfort and joy in L’s life and I can only begin to imagine that he must feel without hope. We don’t know what L wants for his future and his goals to be the individual who is the largest, most intimidating are very frightening to consider as it suggests he remains focused on power and control. Whilst the risks must not be lost sight of it is essential we look at why L would suggest these goals and what care he needs to guide him to improved self-esteem that is not reliant on control. L is a very vulnerable young man, always has been and I see nothing has changed - so if I suggest that from the outside L must very much feel that having lived experiences that are fraught with emotional instability. L’s parents described how he was excluded by class in his primary years and forced to sit at the back of the classroom facing the wall with no engagement with others in the room. It struck me that this isolation hasn’t really changed for L and without the care he is so desperately lacking there can be no optimism of change any time soon.”

29. Whilst, in the foregoing circumstances, unable to support the renewal of the deprivation of liberty order as being in L’s best interests where his complex needs are only being met at the very basic level of keeping him physically safe, the Children’s Guardian nonetheless recognises, and in doing so encapsulates the central difficulty in this case as in so many others, that:

“L has the right to his freedom, to sustaining relationships that are important to him and developing new ones, to be stimulated and to play an active role in society - these rights should only be limited or removed if the safety of him or others requires so. It has been the view of professionals that L has remained at high risk throughout these proceedings albeit Dr Ross reports the risk to be reduced. However I note the risks are based on the environmental situation and not improved psychological stability of L, therefore it would be naïve to conclude that L no longer requires deprivation of his liberty as were this removed without evidence of internal progress it is highly likely the risk would immediately increase.”

30. Finally, in a statement dated 17 June 2021, the social worker confirms that a CQC registered provider has identified a staff team and is working to identify a suitable appropriate accommodation for L that is a solo, regulated placement with therapeutic support with an experienced team to support L’s complex needs and that the local authority continues to carry out searches to contract lists, with targeted referrals where providers who may be able to meet L’s needs are identified through other channels. In addition, the social worker makes clear that pending the identification of a permanent

placement, the local authority are taking the following steps with respect to L's current, temporary placement:

- i) The local authority has arranged for trained residential staff to visit the provision on weekends to support and advise staff within the provision.
- ii) A request has been made to the Head of Service for access to specialist training around attachment, trauma, inappropriate sexualised behaviours, adolescent training and risk based training to further staffs understanding and approach to support L's complex individual needs.
- iii) The local authority will make a referral to Adolescent at Risk Forensic Service at Maudsley Hospital and The Child Psychology Service to offer assistance to current and prospective placements to support, educate and assist with meeting L's presenting needs.
- iv) A team of three social workers will visit L on a weekly rota. L has engaged with all three social workers in some capacity.
- v) Social workers will continue to seek L's wishes and feelings and encourage L to engage in small goal setting activities to encourage him to partake in the community with support from staff members.

SUBMISSIONS

The Local Authority

31. On behalf of the local authority, Mr Carey concedes that the current placement is not fully meeting L's needs, that the placement remains unregulated and that there is a lack of a therapeutic input as recommended by Dr Ross. However, Mr Carey submits that, absent any other option being available, it remains in L's best interests for the court to authorise the continuing deprivation of L's liberty in his current placement as the only means of keeping him safe in circumstances where, if L is not deprived of his liberty in an unregulated placement, there is an unacceptable risk that L will harm himself or others.
32. The local authority submits that the evidence before the court demonstrates that L is a risk to himself and others if the authorisation for the deprivation of liberty sought is not granted, in circumstances where L's recent behaviour suggests he will do harm to himself and poses a grave risk of harm to others by way of serious criminality, including murder, rape and kidnap. On behalf of the local authority Mr Carey submits that, in addition to the danger presented to the public, the latter conduct would be detrimental to L's welfare as it would expose him to the risk of arrest, prosecution and imprisonment. Mr Carey further prays in aid that there has, in L's current placement, been a reduced need to use force and restraint, that L has developed some positive relationships with staff.
33. With respect to the application of the best interests principle in circumstances where the local authority is unable to locate a placement that is capable of meeting the needs of a child such as L, Mr Carey realistically concedes that such a situation is one in which it is obvious that the cardinal principles underpinning the best interests principles are at

risk of being undermined in the way this court identified in *Lancashire County Council v G (No. 1)* [2020] EWHC 2828 (Fam) and subsequent decisions in those still ongoing proceedings.

34. Within this context, Mr Carey however, submits that the analysis of the court must be realistic and not idealistic, and must take into account the reality of the situation regarding the availability of placements when considering what is in L's *overall* best interests. Mr Carey submits that it would be artificial not to take into account the availability and type of resources that are or are not available when evaluating best interests, particularly in circumstances where no placement is likely ever to be ideal in the sense of meeting completely the needs of a given child, all best interests decisions representing, to a degree, a compromise. In the circumstances, Mr Carey submits that the court is not precluded from having regard to the fact of the unavailability of other placements nor from concluding that, in such circumstances, the principle consideration has to be the safety of L and that, to ensure the safety of L and protection of risks of harm to himself and others, it is necessary for the ongoing deprivation of liberty to be authorised for that limited purpose.
35. Finally, Mr Carey rejects the submission of the Children's Guardian that a refusal by the court to authorise the deprivation of L's liberty at his current placement would not necessarily result in that placement coming to an end, pointing out that this outcome would require either the removal of restrictions that at present prevent L absconding, leading to the likely end of the placement in circumstances where L wishes to return to the care of his parents, or the maintenance of unauthorised, and hence unlawful, restrictions which would expose the local authority to civil liability for breach of Art 5.

The Parents

36. The parents seek the staged return of L to their care. In their statement they movingly describe their perception of L's current situation as follows:

“[We] have been heartbroken at the very obvious decline in L not just in his behaviour towards others and especially in himself. He has no routine, his personal hygiene is non-existent and his self-confidence is at rock bottom. His anxiety is really bad alongside his paranoia. L needs goals, a light at the end of the tunnel and he believes he has nothing, and no hope of ever getting out of this situation.”

37. The parents however submit that pending this course of action, it remains in L's best interests for the deprivation of his liberty to be authorised by the court. During the course of his submissions to this court, the father made clear that the parents support certain elements of the order depriving L of his liberty in circumstances where he at times requires restraint to prevent him harming others. The parents however, contend that other elements of the current order authorising the deprivation of L's liberty should be dispensed with, including the prohibition on L having a mobile phone.

The Child

38. In her comprehensive and closely argued Skeleton Argument, Ms Keehan makes the following cogent submissions on behalf of L with respect to the manner in which the best interests principle should be applied:

- i) The requirement to hold the child's welfare as the court's paramount consideration when exercising the jurisdiction to authorise a deprivation of liberty is a vital safeguard for children and young persons.
 - ii) The court must apply fully the best interests principle. The court must have the child's welfare, in the broadest sense, as the paramount consideration and must undertake a rigorous analysis as to whether the arrangements are necessary, proportionate and, crucially, in the child's best interests. The function of the court cannot be reduced to an administrative, transactional one in which the court acts as a rubber stamp to a *fait accompli*.
 - iii) Within this context, the court should not continue to authorise a deprivation of liberty when, on a holistic analysis, the balance falls against the restrictive arrangements contended for being in the child's best interests. To give effect to the principle of the paramountcy of the child's welfare the decision as to whether a deprivation of liberty is authorised cannot be based on safety or containment alone. A child's safety is only one facet of best interests; it cannot and ought not be permitted to be determinative of their wider welfare.
 - iv) In fulfilling its function the court is deciding not whether the child should live in a given placement, which is a matter for the local authority alone where a care order is in force, but rather whether or not to authorise as lawful restrictive arrangements in the placement constituting a deprivation of liberty that would, absent an authorisation, amount to a breach of Art 5.
39. Ms Keehan accepts that a given course of action in respect of welfare that is not ideal may nonetheless be capable of being considered to be in the child's best interests, but contends that there is a difference between a course of action that is sub-optimal in terms of welfare and one that actively works to the detriment of a child. Within this context, Ms Keehan submits that when a holistic view is taken, it is plain that the current arrangements for L that constitute a deprivation of his liberty do not safeguard and promote L's welfare and, thus, such arrangements cannot be said to be in best interests. In particular, Ms Keehan relies on the following matters to support her submission:
- i) The placement is unregistered. Further, registration has been sought but refused by Ofsted by reason of the home conditions and the placement's poor compliance with policy and regulation.
 - ii) L has not been provided with, and therefore is not accessing, the therapeutic input he requires.
 - iii) The current placement does not have a therapeutic milieu and is not staffed by a skilled and experienced group of professionals who have been trained in trauma-informed care as recommended by Dr Ross.
 - iv) There are issues with respect to the staff's understanding of L generally and his needs, which impacts on the management of L's behaviours and the ability to meet his complex emotional and psychological needs. The input from staff is not informed by attachment theory, as well as being trauma informed, as recommended by Dr Ross.

- v) Within this context, L's emotional or psychological needs are not being met in any form at the placement.
 - vi) L has been restrained by staff and the police have been called to the property. There has been an occasion where L was restrained and the police called to an incident but the staff at the placement did not alert the local authority. Most recently the police were called to an incident at the placement on 15 June 2021.
 - vii) There is a duty for the local authority to provide L with education until he reaches adulthood and as a looked after child, if he so elects beyond his majority. However, in breach of that duty, L is not accessing and has not been provided with any education, apprenticeships, traineeships or employment (paid or voluntary). L has not had access to education or training since July 2018.
 - viii) L has a fundamental lack of stimulation and routine and does not access regular meaningful daytime activity. L has no freedoms and exercises no autonomy.
 - ix) L has been isolated from his family and community for several years and is no longer playing an active role in life as we know it. He does not appear to be washing, is wearing unclean clothing and eating a poor diet. He experiences minimal stimulation and sleeps for long periods on the bathroom floor despite being provided a comfortable bed. There is minimal comfort and joy in L's life.
40. Ms Keehan further submits that, in the context of (a) the protection afforded by Art 8 of the ECHR, including the notion of personal autonomy, physical and mental integrity and extending to those features that are integral to a person's identity or ability to function socially as a person, and (b) where preservation of mental stability is, in that context, an indispensable precondition to the effective enjoyment of the right to respect for private life, L's Art 8 rights are the subject of unnecessary and disproportionate interference by the State in circumstances where L does not have access to the therapeutic input he requires, his psychological and emotional needs are not being met and his care is not provided by appropriately trained staff.
41. Within the foregoing context, and having regard to the distinction that must be drawn between responsibility for placing the child (which lies with the local authority under the care order) and responsibility for authorising the deprivation of liberty (which lies with the court), Ms Keehan submits that the fact that there is no alternative placement currently available for L is simply irrelevant, the question before the court being whether the *current* arrangements in the placement that amount to a deprivation of liberty are in L's best interests, and hence lawful. In this respect, Ms Keehan submits that the court is not faced with a binary choice between (a) L remaining at a placement in which the risk to his safety may be mitigated but the arrangements are otherwise detrimental to his welfare and (b) no placement with the consequence that the risk to his safety remains unmitigated.
42. Rather, and within the context of the court having no power to require the child to be placed in a particular placement once responsibility has been handed to the local authority under a final care order, Ms Keehan submits that the court is instead confined to considering the singular question whether the *current* arrangements operating in respect of L are necessary, proportionate and in his best interests. If they are not, then Ms Keehan submits that the absence of suitable alternative arrangements can make no

difference to the conclusion that must necessarily follow that assessment, namely the refusal to authorise such arrangements as lawful.

43. As I have noted, in the foregoing context, Ms Keehan submits that, to give effect to the principle of the paramountcy of the child's welfare, the decision as to whether a deprivation of liberty is authorised cannot be based on safety or containment alone, the child's safety being only one facet of best interests which ought not be permitted to be determinative of the child's wider welfare. Were necessity in respect of safety to be determinative in the absence of an alternative, Ms Keehan asserts that such an approach would permit as lawful the deprivation of a child's liberty in a secluded room, with continuous observation by care staff without access to education, minimal stimulation and no therapeutic services provided the child is kept, in the narrow sense, 'safe' but which would plainly be unconscionable.
44. In this respect, Ms Keehan further reminds the court that it is required to act in the best interests of the child and is forbidden by s. 6 of the Human Rights Act 1998 from endorsing a plan which involves a breach of Art 8 of the ECHR. Ms Keehan also reminds the court that the court's function in authorising a deprivation of liberty is to confirm that the circumstances of the deprivation are such that they can be declared as lawful. Accordingly, and in addition, Ms Keehan argues that if the Court's purpose is limited to considering only the narrowest facet of the child's welfare by reference only to containment providing for the child's safety in the absence of alternative options, the protection afforded by Art 5 is fatally undermined.
45. Finally, Ms Keehan asserts that a refusal by the court to authorise arrangements that constitute a deprivation of liberty also will not automatically result in the termination of the placement. In this regard, Ms Keehan highlights the ability of the court to invite a local authority to reconsider its plan and to make changes to that plan with a view to furthering the child's best interests.

THE LAW

46. As I have observed in previous cases, it is a fundamental principle of a democratic society that the State must adhere to the rule of law when interfering with a person's right to liberty and security of person (see *Brogan v United Kingdom* (1988) 11 EHRR 117 at [58]). Within that context, Art 5(1) of the ECHR provides as follows in respect of a person's right to liberty and security of person:

“ARTICLE 5

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

47. As made clear in *P (acting by his Litigation Friend the Official Solicitor) v Cheshire West and Chester Council* [2014] A.C. 896, the purpose of Art 5 is to ensure that people are not deprived of their liberty without the safeguards, that secure that the legal justifications for the constraints which they are under are made out. Whilst Art 5(1)(d) of the ECHR provides a specific example of the detention of children, namely for the purposes of educational supervision, that example is not meant to denote that educational supervision is the only purpose for which a child may be detained (see *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* (2008) 46 EHRR 449).
48. It is well established that the rights enshrined in the ECHR are to be read and given effect in domestic law having regard to the provisions of the UN Convention on the Rights of the Child (see *Al Adsani v United Kingdom* (2001) 12 BHRC 88 at 103, *Dyer (Procurator Fiscal, Linlithgow) v Watson*; *JK v HM Advocate* [2004] 1 AC 379 and *Smith v Secretary of State for Work and Pensions* [2006] 1 WLR 2024 at [78]). Art 37 of the UN Convention on the Rights of the Child provides as follows with respect to the right to liberty:

“Article 37

States Parties shall ensure that:

(a) .../

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain

contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

49. The court may grant an order under its inherent jurisdiction authorising the deprivation of a child’s liberty if it is satisfied that the circumstances of the placement constitute a deprivation of liberty for the purposes of Art 5 of the ECHR *and* it considers such an order to be in the child’s best interests.
50. With respect to the first question of whether the arrangements in the placement amount to a deprivation of liberty for the purposes of Art 5, *Storck v Germany* (2006) 43 EHRR 6 the European Court of Human Rights established three broad elements comprising a deprivation of liberty for the purposes of Art 5(1) of the ECHR, namely (a) an objective element of confinement to a certain limited place for a not negligible period of time, (b) a subjective element of absence of consent to that confinement and (c) the confinement imputable to the State. Only where all three components are present is there a deprivation of liberty which engages Art 5 of the ECHR. Within this context, in *Cheshire West and Chester v P* [2014] AC 896 the Supreme Court articulated an ‘acid test’ of whether a person who lacks capacity is deprived of their liberty, namely (a) the person is unable to consent to the deprivation of their liberty, (b) the person is subject to continuous supervision and control and (c) the person is not free to leave.
51. It is accepted in this case that L is unable to consent to the deprivation of his liberty. With respect to the application of the second and third limbs of the test, in *Re RD (Deprivation or Restriction of Liberty)* [2018] EWFC 47 Cobb J, having undertaken a comprehensive and meticulous review of the extensive case law, summarised the position as follows:
 - i) 'Free to leave' does not mean leaving for the purpose of some trip or outing approved by those managing the institution; it means leaving in the sense of removing herself permanently in order to live where and with whom she chooses (*Re A-F* [2018] EWHC 138 (Fam) at [14], repeating comments made in *JE v DE* [2006] EWHC 3459 (Fam) at [115], which had been cited with approval in *Re D (A Child)* [2017] EWCA Civ 1695, [22]);
 - ii) It is accepted wisdom that a typical fourteen or fifteen-year old is not free to leave her home (*Re A-F* at [31](i));
 - iii) The terms 'complete' or 'constant' define 'supervision' and 'control' as indicating something like 'total', 'unremitting', 'thorough', and/or 'unqualified' (*Re RD (Deprivation or Restriction of Liberty)* at [31]);
 - iv) It does not matter whether the object is to protect, treat or care in some way for the person taken into confinement (*Cheshire West and Chester v P* at [28]);

- v) The comparative benevolence of living arrangements should not blind the court to their essential character if indeed those arrangements constitute a deprivation of liberty (*Cheshire West and Chester v P* at [35]);
 - vi) What it means to be deprived of liberty must be the same for everyone, whether or not they have physical or mental disabilities (*Cheshire West and Chester v P* at [46]);
 - vii) The person's compliance or lack of objection, the relative normality of the placement (whatever the comparison made) and the reason or purpose behind a particular placement are not relevant factors (*Cheshire West and Chester v P* at [50]);
 - viii) The distinction between deprivation and restriction is a matter of "degree or intensity" and "in the end, it is the constraints that matter" (*Cheshire West and Chester v P* at [56]);
 - ix) The question whether a child is restricted as a matter of fact is to be determined by comparing the extent of the child's actual freedom with someone of the child's age and station whose freedom is not limited (*Cheshire West and Chester v P* at [77]);
 - x) The sensible and humane comparison to be drawn is that between the situation of the child with the ordinary lives which young people of their ages might live at home with their families (*Cheshire West and Chester v P* at [47]);
 - xi) The 'acid test' has to be directly applied on each case to the circumstances of the individual under review. Where that individual is a child or young person, particular considerations apply (*Re A-F* at [30]).
52. In *Guzzardi v Italy* [1980] 3 EHRR 333 the ECtHR observed that to determine whether someone has been "deprived of his liberty" within the meaning of Art 5, the starting point must be his or her concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. Within this context I repeat the following, non-exhaustive, list of relevant factors that I set out in *Salford CC v M (Deprivation of Liberty in Scotland)* [2019] EWHC 1510 (Fam):
- i) The extent to which the child is actively prevented from leaving the placement and the extent to which efforts are made to return the child if they leave;
 - ii) The extent to which forms of restraint are utilised in respect of the child within the placement and their nature, intensity, frequency and duration;
 - iii) The nature and level of supervision that is in place in respect of the child within the placement;
 - iv) The nature and level of monitoring that is in place in respect of the child within the placement;
 - v) The extent to which rules and sanctions within the placement differ from other age appropriate settings for the child;

- vi) The extent to which the child’s access to mobile telephones and the Internet is restricted or otherwise controlled;
 - vii) The degree of access to the local community and neighbourhood surrounding the placement and the extent to which such access is supervised;
 - viii) The extent to which other periods outside the placement are regulated, for example transport to and from school.
53. With respect to the application of the ‘acid test’ to children and young people it will be seen that, as Cobb J made clear in *Re RD (Deprivation or Restriction of Liberty)*, the courts have utilised comparators against which to measure the elements of that test in respect of the subject child. In *Re A-F* at [33] Sir James Munby stated that:
- “...whether a state of affairs which satisfies the “acid test” amounts to a “confinement” for the *Storck* component (a) has to be determined by comparing the restrictions to which the child in question is subject with the restrictions that would apply to a child of the same “age”, “station”, “familial background” and “relative maturity” who is “free from disability”.
54. Within this context, in *Cheshire West and Chester v P* Lord Kerr observed that “All children are (or should be) subject to some level of restraint. This adjusts with their maturation and change in circumstances”. As I have observed in a number of other cases, it is important in this context to recognise that childhood is not a single, fixed and universal experience between birth and the age of majority, but rather one in which, at different stages, in their lives, children require differing degrees of protection, provision, prevention and participation. With respect to the subject child, each case must be decided on its own facts.
55. However, with respect to the question of a comparator, in *Re A-F* Sir James Munby sought to lay down a “rule of thumb” whereby, having observed that a child under the age of 15 years old is not ‘free to leave’ in the context used in *Cheshire West and Chester v P*, he noted that a child aged ten, even if under pretty constant supervision, is unlikely to be “confined”, a child aged 11, if under constant supervision, may, in contrast, be so “confined, though the court should be astute to avoid coming too readily to such a conclusion and once a child who is under constant supervision has reached the age of 12, the court will more readily come to such a conclusion.
56. With respect to the second question of best interests, where the court has assessed the situation of the child to amount to a deprivation of liberty for the purposes of Art 5 following the application of the principles that I have summarised above, that deprivation will only be lawful if the court is satisfied that it is in the child’s best interests.
57. It is well recognised that, when the court is considering the best interests of the child as its paramount consideration in the evaluative exercise with respect to welfare required on an application made pursuant to the inherent jurisdiction of the High Court, the court surveys and takes into account a wide range of matters. To take but one example in the decision of the Court of Appeal in *Re G(Children)(Same Sex Partner)* [2006] 2 FLR 614:

“Evaluating a child’s best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child’s welfare and happiness or relates to the child’s development and present and future life as a human being, including the child’s familial, educational and social environment, and the child’s social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach...”

58. This court examined in *Lancashire County Council v G (No. 1)* [2020] EWHC 2828 (Fam) and subsequent cases the problem of determining best interests where the survey of the wide range of factors the court must consider returns the result that the placement is not capable of meeting all of the assessed welfare needs of the child but, by reason of a lack of appropriate resources, is the *only* placement available for that child, without which the placement child will be at risk of serious or fatal harm. In *Lancashire County Council v G (No. 1)* I observed as follows:

“[71] As I have noted above, it is a fundamental principle of a democratic society that the State must adhere to the rule of law when interfering with a person’s right to liberty and security of person. Within this context, I am left asking myself whether, where there is only one, sub-optimal option open to the court apart from allowing G back into the community where she may well end her own life, the court is really exercising its welfare jurisdiction if it chooses that one option, or if it is simply being forced by mere circumstance to make an order irrespective of welfare considerations. At best, the decision can be based on only the narrowest of such considerations, namely the bare need to prevent G from harming herself.”

In *Lancashire County Council v G (No. 4) (Continuing Unavailability of Regulated Placement)* [2021] EWHC 244 (Fam) I revisited this issue and further observed that:

“[29] With respect to best interests, as I have observed repeatedly over the course of the last three judgments I have delivered in this matter, the current acute shortage of regulated placements able to meet the welfare needs of children in the position of G renders the proper application of the best interests principle in cases of this nature extremely difficult. Once again, whilst required to make my decision having undertaken a careful assessment of G’s global welfare needs and having applied the lodestar that is the paramount nature of G’s best interests, the fact that there is only one placement option before the court means that the test applied by the court comes far closer to being one of necessity than it does to being one of best interests, the continuing unavailability of the regulated provision that G requires meaning that the court can only rely on the barest considerations of safety in making its decision, rather than the global welfare assessment it should be conducting in order properly to inform its decision as to best interests.”

59. In the case of *Lancashire County Council v G*, whilst entertaining grave reservations, I concluded that the fact that the sole placement available for G was the only means of keeping her safe in the broadest sense was, albeit based on only the narrowest of welfare

considerations pertaining to safety, sufficient for the court to conclude that it remained in G's best interests to authorise the deprivation of her liberty in that placement.

60. The question of the court's approach where only one placement is available was also considered by Cobb J *North Yorkshire County Council & A CCG v MAG & GC* [2016] EWCOP 5, albeit in the context of the Court of Protection. In that case, at first instance the District Judge had refused to authorise the deprivation of P's liberty on the ground that the placement risked breaching his Art 5 rights, notwithstanding that it was the only placement then available, the District Judge not accepting that she could authorise a deprivation of liberty on the grounds that no other placement was available. On appeal, Cobb J held that the questions the court must ask in such circumstances are twofold. First, is it in the subject's best interests to live at the placement, noting that although the subject is deprived of his or her liberty, there is no alternative available which offers a lesser degree of restriction. Second, is the placement so unsuitable as to breach subject's rights (in particular those under Art 5) such that it is unlawful.
61. In answering the second question, in *North Yorkshire County Council & A CCG v MAG & GC* Cobb J drew on the following principles articulated by the Master of the Rolls in *R (Idira) v Secretary of State for the Home Department* [2015] EWCA Civ 1187:
 - i) Art 5 is concerned with the reasons for the deprivation of liberty and is not, in principle, concerned with suitable treatment or the conditions of that deprivation, per *Ashingdane v United Kingdom* (1985) 7 EHRR 528 at [44].
 - ii) The overarching purposes of Art 5 is to protect the individual from arbitrary action per *R (Idira) v Secretary of State for the Home Department* [2015] EWCA Civ 1187.
 - iii) To comply with the obligations imposed under *Article 5*, all that is required is that the conditions are appropriate, not that they are the *most* appropriate for the detained person per *R (Idira) v Secretary of State for the Home Department* at [49].
 - iv) Under Art 5 a "high threshold" needs to be crossed, and a breach would only be made out if there was a finding that the place and conditions were "seriously inappropriate" per *R (Idira) v Secretary of State for the Home Department* at [52].
 - v) In answering the foregoing questions, the court is required to undertake an evaluative exercise which takes into account all material facts and not only the question whether the detention furthers the relevant Art 5(1) purpose.
62. Within this context, Ms Keehan relies on the following additional authorities where the conditions arising from a deprivation of liberty *have* resulted in a finding that there has been a breach of Art 5. In *Rooman v Bulgaria* [2019] ECHR 105 the Grand Chamber, in the context of an adult prisoner in a "social protection facility" noted that the current case law indicates that the administration of suitable therapy has become a requirement in the context of the wider concept of the 'lawfulness' of the deprivation of liberty. Within this context, the ECtHR stressed that, irrespective of the facility in which a person is placed, that person is entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them

for their eventual release. In *Blokhin v Russia* [2016] ECHR 300 at [167], the Grand Chamber affirmed that detention for educational supervision pursuant to Article 5(1)(d) must take place in an appropriate facility with the resources to meet the educational objectives and security requirements.

63. In addition, I also note the decisions cited by Cobb J in *North Yorkshire County Council & A CCG v MAG & GC of Aerts v Belgium* (1998) 29 EHRR 50, where the unsuitability of the detention was demonstrated because, for a person detained on grounds of mental illness, there was virtually no, and certainly no effective, treatment available in the prison wing in which he was detained, and *Mayeka v Belgium* (2008) 46 EHRR 449, in which a 5 year old child separated from her family was "left to her own devices" in an immigration detention centre for two months being held with adults and her Art 5(1) rights were found to be contravened. In addition, in per *R (Idira) v Secretary of State for the Home Department* the Court of Appeal highlighted the case of *Bouamar v Belgium* (1987) 11 EHRR 1, noting at [20] that:

“[20] *Bouamar v Belgium* (1987) 11 EHRR 1 was an article 5(1)(d) case (detention of a minor by lawful order for the purpose of educational supervision). The applicant was placed in a remand prison where, he claimed, he could not receive supervised education. The court noted (para 50) that "confinement of a juvenile in a remand prison does not necessarily contravene article 5(1)(d) even if it was not in itself such as to provide for the person's educational supervision." But the state was "under an obligation to put in place appropriate institutional facilities which met the demands of security and the educational objectives of the [domestic] Act in order to be able to satisfy the requirements of Article 5(1) of the Convention" (para 52). The court held that there was a breach of article 5(1)(d) on the facts of that case. The detention of the applicant "in conditions of virtual isolation and without the assistance of staff with educational training cannot be regarded as furthering any educational aim". The state was therefore in breach of article 5(1).”

64. Within the context of the cases set out in the foregoing paragraphs, in *North Yorkshire County Council & A CCG v MAG & GC* at [26] Cobb J recognised that:

“What one collects from these authorities, and indeed the others referred to, is that context is everything. The court must consider the relationship between the ground of permitted deprivation of liberty and the place and conditions of the detention;...”

I again pause to note within this context, that deprivation of liberty for the purposes of securing a child’s welfare has been deprecated by the UN Committee on the Rights of the Child (Committee on the Rights of the Child Report on the Tenth Session, October/November 1995 CRC/C/46 at [228]).

65. With respect to the relevant legal principles, I am also mindful that, in addition to Art 5, Arts 8 of the ECHR is also of relevance in cases of this nature. As Ms Keehan correctly submits, by operation of s. 6 of the Human Rights Act 1998 the court may not endorse a plan which involves a breach of Art 8 of the ECHR. Within this context, any step that constitutes an interference in L’s right to respect for private and family life, or that of his parents, will only be lawful if, pursuant to Art 8(2) of the ECHR that step is

necessary and proportionate having regard to the aim it is sought to achieve. In particular, in the context of this case, it is important to bear in mind that L's right to respect for private and family life includes a right to psychological and physical integrity, personal development and the development of social relationships and physical and social identity (see *Botta v Italy* (1998) 26 EHRR 241 at [32] and *Bensaid v United Kingdom* (2001) 33 EHRR 205 at [46] and [47]).

66. Finally, where the non-secure placement being considered in the context of an application for an order authorising the deprivation of a child's liberty is an unregulated placement, the guidance issued by President of the Family Division entitled *Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales* applies. Paragraph [1] of that guidance provides that:

“The primary focus of this Guidance is to ensure that, where a court authorises placement in an unregistered unit, steps are immediately taken by those operating the unit to apply for registration (if the unit requires registration) so that the placement will become regulated within the statutory scheme as soon as possible. The Guidance requires the court to monitor the progress of the application for registration and, if registration is not achieved, to review its continued approval of the child's placement in an unregistered unit.”

67. The guidance requires the following steps to be taken when an application is made to the court for an order under the court's inherent jurisdiction to authorise the deprivation of the liberty of a child:
- i) The applicant should make the court explicitly aware of the registration status of those providing or seeking to provide the care and accommodation for the child.
 - ii) If those providing, carrying on and managing the service are not registered, this must be made clear to the court. The court should be made aware of the reasons why registration is not required or the reasons for the delay in seeking registration.
 - iii) The applicant must make the court aware of the steps it is taking (in the absence of the provision falling within Ofsted or CIW's scope of registration) to ensure that the premises and support being provided are safe and suitable for the child accommodated.
 - iv) Due to the vulnerability of the children likely to be subject to an order authorising a deprivation of their liberty, when a child is to be provided with care and accommodation in an unregistered children's home or unregistered care home service, the court will need to be satisfied that steps are being taken to apply for the necessary registration.
 - v) The court should also be informed by the local authority of the steps the local authority is taking in the meantime to assure itself that the premises, those working at the premises and the care being given are safe and suitable for the accommodated child.

- vi) Where an application for registration has been submitted to Ofsted or CIW, the court should be made aware of the exact status of that application.
- vii) If an order is granted and no application for registration has been made, then the court order should provide that the application for registration should be submitted to Ofsted or CIW within 7 working days from the date of the order.
- viii) Once the court is satisfied that a complete application has been received by Ofsted or CIW, the court will review the situation regarding the registration status of those carrying on and managing the children's home or care home service in a further 12 weeks. Such review (which may be on paper) will be in addition to any review the court requires to ascertain whether the deprivation of liberty should continue.
- ix) If the court has not received confirmation from the local authority within 10 working days of the initial order that a complete application for registration has been received by Ofsted or CIW, the court should list the matter for a further immediate hearing.
- x) If registration is refused or the applications for registration are withdrawn, the local authority should advise the court of this as a matter of urgency. The court will take this into account when deciding whether the placement of the child in the unregistered children's home or unregistered care home service continues to be in the child's best interests.

DISCUSSION

- 68. Having regard to the evidence and the careful and helpful submissions in this difficult case, I am satisfied on a fine balance, and with significant reservations, that it is in L's best interests for the court to grant a further, *short*, authorisation with respect to the deprivation of L's liberty in his current temporary placement. My reasons for so deciding are as follows.
- 69. There is no dispute in this case that the restrictions that are currently in place with respect to L amount to a deprivation of his liberty for the purposes of Art 5 of the ECHR. The evidence before the court plainly establishes the 'acid test' in circumstances where L is unable to consent to the deprivation of his liberty, L is subject to continuous supervision and control and L is not free to leave and I so find. L remains the subject of a care order in favour of the applicant local authority who placed him in his current placement. In the circumstances, the restrictions on L are plainly therefore imputable to the State.
- 70. I am next required to consider whether it is in L's best interests for the court to authorise the current restrictions that I am satisfied constitute a deprivation of his liberty for the purposes of Art 5 of the ECHR. As I have noted, the authorities establish clearly that the evaluation by the court of L's best interests encompasses a holistic welfare appraisal in the widest sense that will range over every matter that conduces to the child's wellbeing, health and safety. Within this context, and after careful consideration, I cannot accept the submission of Ms Keehan on behalf of L that the unavailability of another placement is irrelevant to the best interests evaluation that I am required to undertake in this case. Such a course would, I am satisfied, be antithetic to the approach

that the court is required to take with respect to L's best interests, namely the evaluation of L's best interests using a holistic welfare appraisal in the widest sense.

71. In circumstances where it is rarely, if ever, the case that a particular welfare option will meet *perfectly* all of a given child's welfare needs, safeguarding and promoting a child's best interests will almost invariably involve a degree of compromise. The extent to which a given welfare compromise is or is not acceptable will in turn depend, in part, on whether or not another welfare option that does not require such a compromise is or is not available. A course of action that can meet some of the child's needs may well not be acceptable where a course of action that meets all of the child's needs is available. But where a course of action that meets all of the child's needs is not available, a course that meets only some of the child's needs *may* become acceptable, particularly where the alternative is that none of the child's welfare needs will be met. Thus, for example, a placement that keeps a child physically safe from sexual exploitation but lacks appropriate therapeutic provision to address sexual trauma may not be in a child's best interests where a safe placement with therapeutic provision is available. However, a placement that keeps a child safe from sexual exploitation but lacks appropriate therapeutic provision may, depending on the facts of the case, be capable of being held to be in a child's best interests where a safe placement with therapeutic provision is not available, particularly in the shorter term whilst further searches are made and where otherwise the safety of the child would be threatened.
72. In these circumstances, whilst not determinative, I am satisfied that the lack of availability of any alternative course of action with respect to welfare *is* one factor to be taken into account in evaluating properly the extent to which in it is in L's best interests for the court to authorise the current restrictions that I am satisfied constitute a deprivation of his liberty. I accept that, where the merit of the sole placement available is limited to keeping the child safe in the broadest sense, taking into account the unavailability of alternatives risks the welfare outcome arrived at being one that is based on an undesirably narrow welfare formulation that can come closer to a test of necessity than a test of best interests. As this court recognised in *Lancashire County Council v G (Continuing Unavailability of Regulated Placement)(No.4)* at [30]:
- “The judgment of the Supreme Court in the appeal against the decision of the Court of Appeal in *T (A Child)* [2018] EWCA Civ 2136 is awaited. However, as in previous judgments, in the foregoing circumstances I am again left asking myself whether, where there remains, six months after the commencement of proceedings, only one sub-optimal, unregulated placement option open to the court, the court is really exercising its welfare jurisdiction by reference to G's best interests if it chooses that one option, or if the court simply being forced by necessity to make an order irrespective of welfare considerations. If the latter, then it is difficult to see how the decision I have made can be lawful by reference to the current law governing the use of the inherent jurisdiction to authorise the deprivation of a child's liberty.”
73. However, and with a degree of weary resignation, I further accept Mr Carey's submission that the welfare analysis of the court has to be realistic and not idealistic in its approach and, accordingly, pending any revision to the current law the court simply has no choice but to grapple as best it can, within the best interests paradigm, with the reality of the ongoing paucity of appropriate resources for children who do not meet the criteria for detention and treatment under the Mental Health Act 1983, but nonetheless

require urgent assessment and therapeutic treatment for acute behavioural and emotional issues within a restrictive clinical environment by reason of their past traumas.

74. Accordingly, the question of whether it is in L's best interests for the court to authorise the current restrictions that I am satisfied constitute a deprivation of his liberty falls to be answered in the clear eyed knowledge that his current arrangement is the only one presently available. The child's welfare needs must be considered both holistically and realistically, which approach demands that the court consider the likely consequences of any order it does or does not make. Within that context, to leave out of the best interests equation the lack of availability of an alternative course of action with respect to L's welfare would be to artificially constrain the court from evaluating fully the extent to which it is in L's best interests for the court to authorise the current restrictions that constitute a deprivation of his liberty
75. Within this context, I respectfully adopt a version of Cobb J's formulation of the question to be asked by the court where a placement is the only one available, as set out in *North Yorkshire County Council & A CCG v MAG & GC*. Namely, is it in L's best interests for an order authorising the deprivation of his liberty at his current placement, noting that, although L is deprived of his liberty, there is no alternative available which offers a lesser degree of restriction. As noted by Cobb J, this approach will involve consideration of whether the placement is so unsuitable as to breach L's rights under Art 5 of the ECHR.
76. In considering this question, I accept that there are significant limitations to the ability of his current residential placement to meet L's welfare needs. In particular, the placement is unregulated and Ofsted have declined to register it due to concerns regarding compliance with policy and regulation. L is not accessing education within the placement and has not been provided with any education, apprenticeships, traineeships or employment. The therapeutic provision that has been recommended consistently since 2016 is not available within the placement and the placement is not staffed by workers trained in the provision of trauma informed care and attachment theory. L confines himself to his room for extended periods of time, lacks stimulation and routine and, whilst he is provided with his own bedroom and a comfortable bed, chooses to sleep on the bathroom floor. He has difficulties with cleanliness and hygiene. By reason of his placement he lives away from his family and his community. The Children's Guardian does concede however, that within the current placement L has developed some positive relationships with staff, engaging with the social work team and being able to leave the placement on a supervised basis. The Children's Guardian further acknowledges that there has been a reduced need to use of force and restraint on L when compared to previous placements.
77. Against the limitations inherent in the placement in which L is currently the subject of restrictions that amount to a deprivation of his liberty, the court must give weight to the fact that L presents a very serious risk of harm to himself. L has exhibited self-harm and has made threats of suicide. It is also clear from the papers that there is a high risk of L engaging in aggressive and violent behaviour towards others. L can exhibit high levels of aggression combined with a lowered ability to regulate himself emotionally. In addition, L has highly compromised interpersonal functioning and continues to express a desire to kidnap, rape and kill others. It is apparent from the papers that there is a concerning link between L's violent and sexualised behaviours. Within this

context, L exhibits a very high number of risk factors for causing harm to himself and harm to others in the form of violence and sexually inappropriate behaviour. With respect to the latter, this places L's welfare at considerable risk in circumstances where it exposes him to the risk of arrest, prosecution and incarceration. In these circumstances, the Children's Guardian herself concedes that:

“...it would be naïve to conclude that L no longer requires deprivation of his liberty as were this removed without evidence of internal progress it is highly likely the risk would immediately increase.”

Within this context, L's parents also made clear during their submissions that they continue to support certain elements of the order depriving L of his liberty in circumstances where he at times requires restraint to prevent him harming both himself and other people, albeit that they contend that other elements of the current order authorising the deprivation of L's liberty should be dispensed with, including the prohibition on L having a mobile phone.

78. Within the foregoing context, I am satisfied that in this case the court has to have regard to the fact that no alternative course of action to that of depriving L of his liberty in his current placement is available as a means of safeguarding and promoting his welfare. Dr Ross has confirmed that (as at the date of his report) L does not meet the criteria for admission into a medium secure adolescent mental health in-patient unit. Whilst L's parents seek his return to their care, the comprehensive assessments of the parents before the court do not admit of that possibility and, in any event, the parents realistically acknowledge that they could not resume care of L immediately. Further, whilst Ms Keehan is strictly correct that the refusal of authorisation of arrangements amounting to a deprivation of liberty will not, as a matter of law, bring the placement itself to an end, as a matter of practicality that is highly likely to be the result by reason of either the arrangements being brought to an end by the local authority and / or the provider to avoid a risk of there being a breach of Art 5 or by L absconding as a result of the current restrictions being removed. Finally, I accept the submission that, having regard to the President's Guidance dated 12 November 2019, absence of registration does not prevent authorisation of a child's deprivation of liberty, albeit that the court will take that absence of registration into account when deciding whether the placement of the child in the unregistered children's home or unregistered care home service continues to be in the child's best interests.
79. Having regard to the competing matters that I have set out above I am on balance, and with considerable reservations, satisfied that it is in L's best interests to grant a further *short* authorisation with respect to the deprivation of L's liberty at his current temporary placement. Having regard to what I am satisfied is the high risk of L causing harm to himself and harm to others in the form of violence and sexually inappropriate behaviour leading to a risk of arrest, prosecution and incarceration, I am satisfied that it is in L's best interests for to be deprived of his of liberty in his current temporary placement, notwithstanding the significant issues with that placement. Not to do so would expose L to an unacceptable risk of harm in the context of there being no alternative welfare provision currently available for L. I am further satisfied that that risk of harm to L is, at present, greater than the risks presented to him by the identified deficiencies in his current placement. Keeping L safe from harm is, at least in the short term whilst alternative suitable provision is identified, a legitimate function of current restrictions amounting to a deprivation of his liberty. Without such restrictions L would be exposed

to an unacceptable risk of physical and emotional harm arising from his acute behavioural and emotional difficulties. That would not be in his best interests.

80. I, of course, remain conscious of the significant difficulties with L's placement that are articulated above and that are relied on by Ms Keehan on behalf of L. I am however satisfied that those concerns do not amount to a breach of L's Art 5 rights at this point in time. As Cobb J articulated in *North Yorkshire County Council & A CCG v MAG & GC* by reference to the decision of the Court of Appeal in *R (Idira) v Secretary of State for the Home Department*, Art 5 is concerned with the reasons for the deprivation of liberty and is not, in principle, concerned with suitable treatment or the conditions of that deprivation. The overarching purposes of Art 5 is to protect the individual from arbitrary action. Within this context, to comply with the obligations imposed under Art 5, what is required is that the conditions are appropriate rather than that they are the most appropriate for the person who is deprived of his or her liberty and breach will only be established where the place and conditions are "seriously inappropriate". In determining whether that is the case, the court is required to undertake an evaluative exercise which takes into account all material facts and not only the question whether the detention furthers the relevant Art 5(1) purpose.
81. I accept that the closest relevant Art 5(1) purpose in this case is that articulated by Art 5(1)(d), namely detention of a minor by lawful order for the purpose of educational supervision. I further accept that the ECtHR has held in previous cases that the absence an appropriate facility with the resources to meet the educational objectives and security requirements may amount to a breach of Art 5(1) and that administration of suitable therapy has become a requirement in the context of the wider concept of the 'lawfulness' of the deprivation of liberty irrespective of the facility in which a person is placed. However, as I have noted, in undertaking its evaluative exercise with respect to Art 5, the court must take into account *all* material facts and not only the question whether the detention furthers the relevant Art 5(1) purpose. In this case, L's residential current placement has a wider purpose than educational supervision, including the vital aim of keeping L safe from physical and emotional harm having regard to his acute emotional and behavioural difficulties. Further, the local authority is clear that the authorisation it now seeks is one that is to cover the period whilst a search continues in order to identify the correct placement to meet L's needs in place of his current, temporary placement. In addition, I bear in mind that the following steps are being taken by the local authority:
- i) The local authority has arranged for trained residential staff to visit the provision on weekends to support and advise staff within the provision.
 - ii) A request has been made to the Head of Service for access to specialist training around attachment, trauma, inappropriate sexualised behaviours, adolescent training and risk based training to further staffs understanding and approach to support L's complex individual needs.
 - iii) The local authority will make a referral to Adolescent at Risk Forensic Service at Maudsley Hospital and The Child Psychology Service to offer assistance to current and prospective placements to support, educate and assist with meeting L's presenting needs.

- iv) A team of three social workers will visit L on a weekly rota. L has engaged with all three social workers in some capacity.
 - v) Social workers will continue to seek L's wishes and feelings and encourage L to engage in small goal setting activities to encourage him to partake in the community with support from staff members.
82. Within this context, and again noting that Art 5 is concerned with the reasons for the deprivation of liberty and is not, in principle, concerned with suitable treatment or the conditions of that deprivation and that the overarching purposes of Art 5 is to protect the individual from *arbitrary* action, I am on balance not satisfied that it can be said at the present time that the place and conditions in which L is currently deprived of his liberty are seriously inappropriate. However, and in circumstances where L has now been in his present temporary placement since February 2021, I must make clear that should the search for an appropriate placement become significantly more protracted, whether by reason of the absence of suitable resources or otherwise, then there is an exponentially increasing risk that L's current temporary placement, and in particular the absence of educational and therapeutic provision in it, *will* come to amount to a breach by the State of L's Art 5 rights.
83. I am equally cognisant that s. 6 of the Human Rights Act 1998 prevents the court from endorsing a course of action that would involve a breach of L's Art 8 rights. Within this context, the interference in L's right to respect for private and family life that I am satisfied his current circumstances, and an order authorising the deprivation of his liberty, amount to will only be lawful if, pursuant to Art 8(2) of the ECHR such circumstances and order are necessary and proportionate having regard to the aim it is sought to achieve. Within this context, I have no hesitation in accepting that L's right to respect for private and family life includes a right to psychological and physical integrity, personal development and the development of social relationships and physical and social identity. Once again, having regard to the fact that I am satisfied that L's current residential placement is the only available means of keeping him safe from harm having regard to his acute emotional and behavioural difficulties and where local authority is clear that the authorisation it now seeks is one that is to cover the period whilst a search continues in order to identify the correct placement to meet L's needs, I am on balance satisfied that the interference in L's rights under Art 8 is currently necessary and proportionate. However, and again, I must make clear that should the search for an appropriate placement become significantly more protracted, whether by reason of the absence of suitable resources or otherwise, then there is again an exponentially increasing risk that L's current temporary placement, *will* come to amount to a breach by the State of L's Art 8 rights, particularly in circumstances where those rights, as I have noted, include a right to psychological and physical integrity, personal development and the development of social relationships and physical and social identity.
84. Within the foregoing context, whilst prepared to authorise the deprivation of L's liberty at his current unregulated placement for the reason I have described, I make clear that that decision is subject to the following caveats:
- i) That the matter be listed for directions before this court every 14 days until appropriate placement provision has been found in order that the local authority can provide the court with an update with respect to progress towards providing

L with appropriate placement provision comprising a solo, regulated placement with therapeutic support with an experienced team to support L's complex needs.

- ii) That there remains senior management oversight of this case co-ordinated by the Director of Children's Services with a view to identifying as a matter of urgency an appropriate placement option for L having regard to the recommendations of Dr Ross.
- iii) That the local authority files and serves a statement confirming (a) the arrangement for trained residential staff to visit the placement on weekends to support and advise staff within the provision has commenced, (b) the outcome of the request made to the Head of Service for access to specialist training around attachment, trauma, inappropriate sexualised behaviours, adolescent training and risk based training to further staffs understanding and approach to support L's complex individual needs, and (c) that the referrals to Adolescent at Risk Forensic Service at Maudsley Hospital and The Child Psychology Service to offer assistance to current and prospective placements to support, educate and assist with meeting L's presenting needs have been made and the outcome of the same.
- iv) That the local authority files and serves a comprehensive amended care plan for L identifying the local authority's plan for meeting L's short, medium and long term welfare needs.
- v) That the local authority confirms that the Independent Reviewing Officer is fully updated in respect of the position in this case and has been provided with a copy of this judgment.

85. To repeat, and for the reasons set out above, a protracted search for a suitable placement driven by a continuing acute lack of resources must in my judgment lead to an exponentially increasing risk that L's current temporary placement, *will* come to amount to a breach by the State of both L's Art 5 and his Art 8 rights.

CONCLUSION

86. I remain acutely aware that this is a further case in which the court is presented with only one, sub-optimal, option for promoting and safeguarding the child's welfare on the narrow basis of ensuring the child's physical safety and supervision. I am equally aware that, as I have observed elsewhere, that situation risks moving the test applied by the court further from welfare and closer to necessity. However, for the reasons I have given, I am not able to ignore the fact that only one welfare option for L currently subsists and that, absent that option being utilised, L would be exposed to an unacceptable risk of harm arising from his acute behavioural and emotional difficulties. That would, I am satisfied, not be in his best interests, acknowledging as I do that the uncomfortable corollary of that position is that deprivation of liberty in his current placement is in his best interests only in the narrow sense of keeping him safe from physical harm, and from causing harm to others, by reason of his behavioural and emotional difficulties.

87. L's case is only one of a number of similar cases in my list, and the lists of the Designated Family Judges of the Northern Circuit, this week in which a local authority is placed in the position of having to seek authorisation to deprive a highly vulnerable child of his liberty in a placement not equipped to meet his highly complex behavioural and emotional needs. In this case, since 2016, there have been no less than five evidence based recommendations that L requires a stable, secure and sustainable therapeutic placement with adequate supervision to address his emotional needs arising out of the trauma he suffered in early childhood. Five years later, a stable, secure and sustainable placement of this nature has still not been achieved for L. Whilst L was placed in a placement that provided therapy around problematic sexualised behaviour between June 2018 and August 2019, that placement concluded with an emergency move to a short-term crisis placement. A further placement in 2021 in which a therapeutic environment was intended, along with a recruiting process that ensure sufficiently qualified staff, broke down within a month. In 9 months' time the opportunity to provide L during his childhood with the urgent therapeutic help he needs will be lost forever.
88. Within this context, I feel compelled to highlight once again the shortage of provision in this jurisdiction for children, like L, with highly complex behavioural and emotional needs arising out of past physical, emotional and sexual abuse by adults. As I noted in *Lancashire County Council v G (No.3) (Continuing Unavailability of Secure Accommodation)* [2020] EWHC 3280 (Fam) at [15], highly vulnerable children in L's position who do not meet the criteria for detention and treatment under the Mental Health Act 1983, and for whom secure accommodation under s.25 of the Children Act 1989 is not appropriate, nonetheless require assessment and treatment for emotional and behavioural issues consequent upon early trauma in a restrictive clinical therapeutic environment. The continuing and acute shortage of such provision means that L and children like him fall through the gaps, leading to the situation described in this judgment. In so far as this problem is caused by a lack of funding, I am satisfied that, sadly, there is a likelihood that the money not spent on the provision for L of a restrictive clinical therapeutic environment during his childhood to address his complex behavioural and emotional needs will be spent, and perhaps spent many times over, by the criminal justice and penal systems.
89. I will direct that a copy of this judgment is provided to the Children's Commissioner for England; to the Rt Hon Gavin Williamson CBE MP, Secretary of State for Education; to Josh MacAllister, Chair of the Review of Children's Social Care; to Vicky Ford MP, Minister for Children; to Isabelle Trowler, the Chief Social Worker; and to Ofsted.
90. That is my judgment.