



IN THE HIGH COURT

FAMILY DIVISION

SITTING AT LIVERPOOL

Neutral citation [2024] EWHC 2476 (Fam)

Case No. FD24C40796

LV24C50356

Courtroom No. 25

35 Vernon Street
Liverpool
L2 2BX

Tuesday, 13th August 2024

Before:

HIS HONOUR JUDGE PARKER

Sitting as a Judge of The High Court pursuant to Section 9(1) Senior Courts Act 1981

B E T W E E N:

THE LOCAL AUTHORITY

and

A

MS PROCTOR appeared on behalf of the Local Authority
NO APPEARANCE by or on behalf of the Respondent Mother
MS LIDGERWOOD appeared on behalf of the Respondent Father
MS DELANEY appeared on behalf of the Child through their children's guardian

EX TEMPORE JUDGMENT

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court..

HHJ PARKER:

1. I am dealing with a child called A. A is 14 years of age. He appears today through the Children's Guardian, B, and is represented by Ms Delaney. The Local Authority, making this application for a Deprivation of Liberty Declaration, is represented by Ms Proctor. The social worker attending, who gave evidence, is C. I also heard from the Head of Service, D, and I will return to her evidence shortly. The mother is E, she has not attended. She has played no part in these proceedings, and that is consistent with her absence in A's life presently. The father, on the other hand, is here, and he is F, and he is represented by Ms Lidgerwood.
2. The local authority wishes to place A in an unregistered children's home. He is under the age of 16 and that is therefore an unlawful placement.
3. The Statutory and Regulatory regime was set out by MacDonald J in *Deby City Council and others* [2021] EWHC 2931 (Fam);

"21. Section 22(3) of the Children Act 1989 places on local authorities a duty to safeguard and promote the welfare of any child looked after by the local authority. Section 22(1) defines a child who is looked after by the local authority as a child in the care of the local authority or a child provided with accommodation by the local authority in the exercise of any of its functions, save from those under ss. 17, 23B and 24 B of the 1989 Act. Within this context, s.20 of the 1989 Act places a duty on local authorities to provide accommodation to a child in need who appears to it to require accommodation and s. 22A of the 1989 Act places a duty on the local authority to provide children in care with accommodation. Within this context, pursuant to s. 22G of the 1989 Act, local authorities are subject to an overarching duty to ensure sufficient accommodation is available to accommodate children with different needs. This is otherwise known as the "sufficiency duty".

22. In meeting its duty under s.20 or s.22A of the 1989 Act to provide children who are looked after with accommodation, pursuant to s.22C(5) and s.22C(6) of the Children Act 1989 the local authority may, inter alia, place the child in a placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000 (or, in Wales, Part one of the Regulation and Inspection of Social Care (Wales) Act 2016), or in a placement in accordance with other arrangements which comply with any regulations made for the purposes s.22C of the 1989 Act.

23. Dealing first with placements in a children's home, the term "children's home" in s.22C(6)(c) of the 1989 Act is defined in s.105(1) of the Children Act 1989 as having the same

meaning as in the Care Standards Act 2000. The Care Standards Act 2000 s 1(2) defines “children’s home” widely, providing that an establishment in England is a children’s home if it provides care and accommodation wholly or mainly for children. The term ‘care and accommodation’ is not defined in the 2000 Act.

24. The power accorded to a local authority pursuant to s.22C(6)(c) to place a child in a children’s home as defined above is qualified by the requirement that the children’s home in question must be one in respect of which a person is registered under Part 2 of the Care Standards Act 2000... Such placements are accordingly referred to as registered placements.”

The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2010 from 9 September 2021 established further duties in relation to children under the age of 16 who are looked after by local authorities. MacDonald J in *Tameside MBC and others* [2012] EWHC 2472 (Fam) set out the statutory and regulatory position;

“ 35. With respect to “other arrangements” under s.22C(6)(d) of the 1989 Act, regulations made for the purposes of s. 22C include the Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959). Prior to 9 September 2021, r. 27 of those regulations provided that “other arrangements” under s.22C(6)(d) constituted placements in an “unregulated setting” and set out various steps that had to be taken before such a placement could be made. From 9 September 2021 those regulations will stand amended by the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021/161). It is useful to set out what will be the final form of the amended Care Planning, Placement and Case Review (England) Regulations 2010 from 9 September 2021 with respect to the duties in relation to children who are looked after by local authorities:

“General duties of the responsible authority when placing a child in other arrangements

27. Before placing C in accommodation in accordance with other arrangements, under section 22C(6)(d), the responsible authority must—

(a) be satisfied that the accommodation is suitable for C and, where that accommodation is not specified in regulation 27A, must have regard to the matters set out in Schedule 6,

(b) unless it is not reasonably practicable, arrange for C to visit the accommodation, and

(c) inform the IRO.

“Prohibition on placing a child under 16 in other arrangements

27A A responsible authority may only place a child under 16 in accommodation in accordance with other arrangements under section 22C(6)(d), where the accommodation is—

(a) in relation to placements in England, in—

(i) a care home;

(ii) a hospital as defined in section 275(1) of the National Health Service Act 2006;

(iii) a residential family centre as defined in section 4(2) of the Care Standards Act;

(iv) a school within the meaning of section 4 of the Education Act 1996 providing accommodation that is not registered as a children’s home;

(v) an establishment that provides care and accommodation for children as a holiday scheme for disabled children as defined in regulation 2(1) of the Residential Holiday Schemes for Disabled Children (England) Regulations 2013;”

4. However the local authority say that this is the only option it has to provide a placement where necessary and proportionate Deprivation of Liberty restrictions can be employed in a bid to keep A safe. It has no alternatives at this stage. His current unregulated placement is unsuitable and is not keeping him safe.
5. The providers are said to be seeking Ofsted registration. They operate other such homes that are registered.

Background

6. This is a very worrying case involving a young person who is and remains very vulnerable, but undoubtedly exhibits behaviour that has a negative impact on those around him. He has mental health issues. He has special educational needs and has been diagnosed with ADHD. He presents as a risk of both physical and sexual harm to others around him. He has been violent towards staff. On the 10th July 2024 he returned to placement after absconding with his shirt covered in blood. The blood was not his. A matter of grave concern considering his admission that he has access to weapons. At the same time being at least equally exposed to sexual harm and a risk of catastrophic injury or even death, because of his being enmeshed in organised crime and drug supply. He undoubtedly presents as a considerable challenge to safeguarding professionals who clearly want what is best for him. I have no doubt he is also a source of considerable anxiety for his father, who presents today, as he has done before in this courtroom, entirely supportive of the Local authority's efforts to try and ameliorate A's position.

7. The concerns in this case are based largely around A's ongoing involvement in organised crime. He regularly goes missing from his current placement, he misuses drugs, he has not engaged in education for some four or five months. According to the social worker, he demonstrates violent and aggressive behaviour to others. He can be seen on a social media account holding a knife and a gun.
8. He accepts having a gun, which he describes as a BB gun, but he says that that is hidden, together with cash from drug dealing in a warehouse somewhere. He refuses to cooperate with the social work team to provide any information about the people with whom he is associating when he is regularly missing. He gives no information that will enable safeguarding professionals to work together on a multi-agency basis, to keep him safe from organised criminals, those significantly older and more street wise than he is, and he refuses to cooperate to enable safeguarding professionals on a multi-agency basis to extricate him from the clutches of criminals, who undoubtedly exploit him.
9. This is a classic case of child criminal exploitation. There is evidence that he has also been sexually exploited, and there is a report of a woman in her thirties plying him with drink and engaging in sexual intercourse with him. Unfortunately, there are also allegations against A of sexual harm perpetrated by him (redacted). All in all, it is a deeply worrying situation, and I note that in the 10-month period between 22 January 2023 and 1 November 2023, 54 missing episodes were recorded in respect of A. That is entirely consistent with county lines child criminal exploitation activity.
10. The position is that he has been in a placement which is presently an unregulated placement, and whilst he has what is reported to be a good relationship with the staff provided by the organisation, they are unable, to operate any deprivation of liberty provision as agents for the Local Authority, and they are unable, it is clear, to prevent him from absconding.
11. The Local Authority, I accept, has worked extremely hard to find suitable provision for A, and at this point I say something about the evidence that I heard from D, whom I found to be a compelling witness.
12. She was called to give evidence about the extent to which this Local Authority are working to provide suitable accommodation for children in their care, and the huge cost that the Local Authority is exposed to in the current market.
13. In giving this judgment, I express no political views whatsoever. I respect entirely the 'separation of powers' principle. It is a matter for the government and the Houses of Parliament to decide policy and to enact legislation. My job as a judge is simply to apply the

law. What I can do, however, is to set out in this judgment how it feels and how it looks on the front line in the family justice system.

14. The evidence that I heard from D was utterly compelling in terms of the very substantial costs that local authorities like hers are now having to meet to try and provide suitable accommodation for those children for whom they owe a duty under the Children Act and for whom they have parental responsibility under a care order. She gave evidence about how she has in the past, herself, been the manager of a registered children's home. She is the 'responsible person' for the Local Authority, and she gave clear evidence to the Court to suggest that the costs that local authorities must meet in providing accommodation, the like of which is required for A, is regularly between £13,000 and £16,000 per week; that is per child. Even that can increase due to the behaviour of the child, if that results in greater risk and requires, for example, an increase in staffing.
15. When this matter came before me within the care proceedings at the previous hearing, the Local Authority at that stage had one potential placement for A, and the cost of that was £18,000 per week. Bearing in mind that the written application for deprivation of liberty from this Local Authority was for 12 months of provision, (although I recognise in oral evidence that has now been lowered to six months), that would give rise to a cost of just shy of £1 million per annum to provide accommodation for one child. That is, on any view, a breathtaking sum of money. His current accommodation costs £13,580 per week. The proposed accommodation will cost £12,000 per week. In the financial year 2021/22 the local authority spent £7.5m on residential placements excluding foster care. This year they are forecasting a total spend of £16.5m. The projected costs this year have increased by 116%. Again, these are breathtaking figures. The witness also identified for me that the problem is right across the board because of the lack of available foster carers to provide care for children, meaning that Local Authorities have to fall back on residential care. She readily accepted that there would be some children currently in residential care who would be suitable for foster care, were there any available. The problems also extend to those that are leaving the care sector by reason of their age and the lack of suitable provision for them, such that they are presently paying £4,500 per week to provide accommodation for one adult who has recently ceased to be a looked after child by age.
16. The clear impression that D left me with was that this is a situation where local authorities are essentially being left to the mercy of the private sector, where market forces appear to be ruling the day, where the dearth of provision that there is for children like A means that

demand far exceeds supply, and so the costs for the Local Authorities are rising and rising, with the unsurprising consequence that they have overspent in terms of their provision by £2.5 million. She said the alternatives are to take money from another part of the Local Authority, or simply to be “bankrupt”. It is a situation, on the basis of her evidence, that is unsustainable, and the impact on the Local Authority, I accept, is profound.

17. That is the backdrop to the Local Authority explaining that the situation as far as A is concerned, is a serious situation that requires a suitable placement for him as quickly as possible, and that at the moment, the place that they have identified is a children's home, unregistered with Ofsted, and in those circumstances, the Local Authority have enquired of the placement to see if they are intending to try to secure Ofsted registration and the answer is that they are. This organisation has other homes that are Ofsted registered. The Local Authority is satisfied that they do intend to try and secure Ofsted registration. That provision is now available to the Local Authority, and that itself will cost £12,000 without more.
18. The Local Authority say that the present situation is such that there are imperative conditions of necessity that mean that A should be moved to that placement immediately, and potentially today. The court is therefore invited to support both the transportation of A and his placement with the restrictions that are sought and set out in the application and the statement in support of that application at paragraphs 15 and 16.
19. In terms of the duration of the deprivation of liberty declaration, the Local Authority, initially in their written application asked for 12 months. As I say, that has been amended now in oral evidence to six months. The father contends for 12 months, and he does so, if I may say, with a perfectly understandable and respectable argument. It is his case that A, so far, has had a number of short-term placements, and none of them have been able to establish any meaningful work with A. What is needed now is a concerted period of time in a placement with the correct support and therapeutic treatment for him to improve A's situation significantly.
20. The position of the Children's Guardian is that first of all, she agrees with the Local Authority and the father that had A been told of this application before it was being made, he would have absconded again and gone even further underground, and that therefore it is right to proceed. However, as she has not yet spoken to A, she would like to review the situation at the IRH on 15 October within the care proceedings, and if necessary, extend the deprivation of liberty provision at that stage. In fact, by the conclusion of evidence and closing submissions, it became clear that that was really the only issue between the parties.

My decision

21. I have undertaken a considerable exploration of the circumstances surrounding the Local Authority's proposal, which included my pre-reading of all the evidence filed by the Local Authority in support of its application, as well as any evidence filed by other parties. The child has been joined as a party to the proceedings. There is a Children's Guardian. I have read evidence of the nature of the proposed regime and justifying why the arrangements are necessary and proportionate in meeting A's welfare needs. I am unable to take into account the child's views on deprivation of liberty for the reasons that I have given and accepted.
22. I am satisfied, pursuant to section 100 of the Children Act 1989 that the Local Authority should have leave to make an application for the exercise of the court's inherent jurisdiction with respect to A. I am satisfied that the results which the Authority wish to achieve could not be achieved through the making of any other order of a kind to which section 100 (5) Children Act 1989 applies, and there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to A, he is likely to suffer significant harm; likely meaning a real possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm in this case. I am satisfied that the proposed order does safeguard and promote the child's welfare. I am satisfied that the order is proportionate in that the benefits of the proposed placement outweigh the infringement of his Article 5 rights to liberty and Article 8 rights to private and family life under the ECHR.
23. The restrictions which the Local Authority seek to impose are as follows:
 - (1) **three to one supervision** in that he would have up to three members of staff whilst he remains in placement. He would also have supervision from staff out in the community.
 - (2) **Confinement** to ensure A was kept safe at all times, and for his whereabouts to be known, alarms would be fitted to the doors and windows to ensure he does not leave the property without detection, and locks on front and back doors and window restrictors to prevent exit.
 - (3) **Restriction:** if A was to go missing or intended to go missing from home, staff would be able to physically intervene to prevent A from going missing and would be able physically to restrict A's movements in the event that he was missing. I intend to add an additional condition to that, which is that no member of placement staff should exercise any physical restraint of A unless they have provided evidence that they have been suitably and appropriately trained by a recognised trainer in safe restraint, that that is certified and that any necessary refreshers have also been undertaken and completed successfully.

(4) In terms of **restriction on communication of devices**, in my judgment, that is a matter that falls under the Local Authority's parental responsibility, and in those circumstances, I do not intend to include those in any Deprivation of Liberty Declaration, but I recognise and make it clear that the Local Authority seeking to supervise and monitor use of devices like mobile phones, particularly in the county lines case is entirely sensible and consistent with A's welfare.

(5) I also intend to authorise the use of **three to one staff for transportation** of A from the existing placement to the new placement, and to authorise **locks being operated** in terms of car doors.

24. I am satisfied that the restrictions which the Local Authorities seek to impose amount to a confinement having regard to a comparative child of the same age. I am satisfied that the confinement is imputable to the state. The Local Authority, and the father or the mother, for that matter, cannot consent in light of the interim care order in place. This is a placement in a presently unregistered children's home. I am satisfied that the applicant Local Authority has enquired around the whole issue of registration with Ofsted, and I am satisfied that the placement are in the process of applying for Ofsted registration, and they are an organisation that has other children's homes that are Ofsted registered.
25. The fact that the placement is to be in unregistered accommodation, leads me to consider the decision of McDonald J in *Tameside MBC v AM and Others* [2021] EWAC 2472 when he considered that the inherent jurisdiction can be invoked to authorise the placement of a child under 16 in an **unregulated** placement, of course, this is **unregistered**, despite the statutory prohibition, and he relied upon *Re T (A child)* [2021] UKSC 35. He concluded that a lack of placements has created conditions of imperative necessity for the High Court to exercise its inherent jurisdiction to protect and safeguard the child through Deprivation of Liberty Declarations. Any imperative conditions of necessity are factors to consider as to whether any deprivation of liberty is in the child's best interests, and what constitutes conditions of imperative necessity will depend on the facts of the case. Parliament did not restrict the exercise of the inherent jurisdiction in these cases, and a DOL authorisation permits a Local Authority to deprive the child of their liberty but does not authorise the placement as such.
26. The Court of Appeal in *Re A Mother v Derby City Council* [2021] EWCA Civ 1867 held that the inherent jurisdiction may be used to authorise a deprivation of liberty in an unregistered children's home, so long as the requirements set out by the Supreme Court in *Re T* are met. The lead judgment was given by Sir Andrew McFarlane President of the Family Division;

“Conclusion

87. *On the central point of law upon which this appeal turns my conclusion is that where a local authority places a child under CA 1989, Part III in an unregistered children's home, that placement is outside the statutory scheme established by CA 1989, s 22C and the regulations. The Supreme Court determined in Re T that the High Court nevertheless has jurisdiction, in an appropriate case, to authorise that restrictions may be placed on the liberty of a young person placed in such a placement where imperative conditions of necessity justify doing so.*
88. *We have found that the scheme does not allow unregistered placements, but does not expressly prohibit them. In those circumstances, as in Re T, where conditions of imperative necessity require, the common law steps in and allows the High Court to exercise its inherent jurisdiction. That exercise of the inherent jurisdiction is not in breach of Art 5 and nor does it cut across the statutory scheme. As it is not the High Court that is making the placement, the exercise of the inherent jurisdiction is not part of the statutory scheme at all. In this respect, the situation is exactly as it was in Re T where the Supreme Court did not feel the need to read any words into the statute.”*
27. I have also considered the ‘Revised Practice Guidance on the Court’s Approach to Unregistered Placements’ published by Sir Andrew McFarlane President of the Family Division in September 2023.
28. In this case, I can do no better than to remind myself that the social worker, when asked if the situation could be so serious through the organised criminal activities of A that he could encounter a situation where he could kill or be killed, the social worker unhesitatingly agreed, and in my judgment, was right to do so. As a Designated Family Judge in Liverpool, I see time and time again, children and young people wrapped up in the pernicious activities of organised criminals, who seek to exploit children for their own selfish financial gain and are prepared to expose those children to a risk of the most grave of outcomes, catastrophic injury or even death.
29. The risks in this case are such that, in my judgment, imperative conditions of necessity exist. This Local Authority must be given the tools to try and stabilize A's situation as quickly as possible, to try to extricate him from the clutches of organised criminals and hopefully to provide the therapeutic support and treatment that clearly he needs on a number of different levels, in light of the various risks that he faces, and that is before one considers the potential for further exposure to the criminal justice system if this sort of conduct continues.
30. The necessity for and the use of restrictions should be kept under close review by the Local Authority and considered specifically at each looked after child review.

31. I have also considered the appropriate duration for the deprivation of liberty declaration, and whether it should be for two months, as suggested by the Children's Guardian, six months, as suggested by the social worker, or 12 months, as the father contends for, and as was set out in the Local Authority written application.
32. I have decided that the right balance is one of six months and I say so for the following reasons. First of all, the behaviours of A are so entrenched and have been going on for such a lengthy period of time that in my judgment, it is highly unlikely that there will be any meaningful improvement in his behaviour in anything less than six months. The danger of running it for 12 months is that that is too long to start off with, bearing in mind that there has been no prior consultation with A, and that the length of time may be such a crushing blow for him that he is completely demotivated. By the same token, the suggestion that the order should simply be made for two months would be likely, in my judgment, to lead him to think that here is another short-term elastoplast fix by the Local Authority that never achieves anything for him, and may simply seek to run the clock down on the basis that his expectation then would be that there would be no deprivation of liberty thereafter. If one was then imposed, that may again demotivate him, he having expected there to be no further provision. The right balance, in my judgment, is six months.
33. In any event, there will be a liberty to apply in the event that any party wishes to bring the matter back as a matter of urgency because of a change in circumstances (I can do that through the prism of the care proceedings), and in addition A's general situation will be further considered by me within the care proceedings at the issues resolution hearing, which will take place on 15 October. I intend to make a final deprivation of liberty declaration that will run for a period of six months from today. That is the judgment of the Court.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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