Neutral Citation Number **[2023] EWFC 98 (B)**
IN THE FAMILY COURT AT LIVERPOOL

Case No: B122F00153

Courtroom No. 25

35 Vernon Street
Liverpool
L2 2BX

Thursday, 16th February 2023

Before:
HIS HONOUR JUDGE PARKER

B E T W E E N:

A

and

B (a child) by his litigation friend

and

a local authority

MR BRINDLE appeared on behalf of the Applicant
B (a minor) acting via his litigation friend, C
MR SENIOR appeared on behalf of the Respondent

EX TEMPORE JUDGMENT

information, ask at the court office or take legal advice.

HHJ PARKER:

1. I am dealing with a child, B. B was born on 4 June 2006, and he is presently aged 16, and will be 17 in June this year. He is a respondent to an application for injunctive relief that was made by his mother, A, who appears today before me represented by Mr Brindle. B as a respondent to the application and he, being 16 years of age, has a litigation friend for the purposes of proceedings, who is the social worker, C. The local authority also appear before me today and they are represented by Mr Senior.

2. The basis for the mother's application can be summarised thus, that B has unfortunately, and as so many young people in Cheshire and Merseyside do, fallen into the clutches of organised criminals and illicit drug supply. He is undoubtedly a vulnerable young person and is already exhibiting the hallmarks of somebody enmeshed in this pernicious culture. He is engaged in criminality and also unfortunately is being investigated following an allegation of sexual assault on another female child. The mother it seems is, or was, at her wits end with B's behaviour and the impact that it was having on her family life because of his involvement in organised crime and drug supply which exposed the family and the family home to all the risks that flow from such involvement. On one occasion the house was visited by a number of males who were wearing balaclavas and were, it seems, intent on causing B harm. There is evidence in the mother's statement that he appears to almost relish being chased by gangs and the mother's case quite simply is that B being in and around her, her family, and the family home exposes not only B but also them to the risk of serious if not catastrophic physical and emotional harm. The mother in her statement set out a number of incidents really beginning in July 2021 and continuing until July 2022 in support of her application.

3. The matter came before the Z Family Court where the Court was keen for B not only to be involved, but also to have a litigation friend. The matter appears to have come before DJ X, and DJ X was clearly troubled by the fact that B had essentially become detached from his family, his mother and his siblings, and also was keen to consider whether this might be an appropriate case for the Local Authority to apply for a care order. Indeed, the judge directed a section 37 report from the Local Authority on 2 August. The matter came back before the judge on 29 September, and again on 23 January 2023 where the judge expressed in the recordings of the order that she was very concerned about B given his alleged cognitive age, that currently there was no-one able or willing to take parental responsibility for him, his vulnerabilities and the possibility of him coming to real harm The judge transferred the matter

to the Family Court at Liverpool where there are District Judges who can deal with public law cases. The matter came before DJ 'Y' earlier this week.

4. The Judge noted that a non-molestation order was no longer sought by the mother. Judge X had noted the same but had refused to bring the proceedings to an end because of concerns about B, and Judge Y noted that the proceedings had been kept alive due to the Court's serious concerns that the child was a high risk to others and himself, and it seemed that no-one was exercising parental responsibility. Judge Y asked if he could refer the case to me as DFJ because of his concerns about the case and I agreed to hear the matter today, listing the matter at 11.30am.

5. I have had the benefit of the section 37 report that was prepared by the local authority in September last year, in which the local authority set out what it is doing both with and for B pursuant to section 20 of the Children Act 1989, the mother having signed a section 20 agreement (as I understand it from Mr Senior) in August last year. In short, the Local Authority have accommodated B in residential semi-independent living which the Local Authority recognises is 'not ideal' through Mr Senior, but it was a significant improvement on what he had before, and it enables him to continue with his apprenticeship in scaffolding which appears to be the one significant positive in this case, in that B is apparently committed to this apprenticeship. He turns up at work consistently, and he appears to be well thought of by his employer.

6. The Local Authority, in addition to providing accommodation, describes that it has a multi-agency team of professionals dedicated to disrupting perpetrators of child criminal exploitation, and that he is subject to multi-agency child exploitation planning, 'MACE'. A National Referral Mechanism has been completed on the basis of his exploitation. There are regular looked-after child reviews. He has someone by the name of F from Response who is working hard to build a relationship with him and provides him with activities such as fishing and boxing. In other words, a buddy or a mentor. He is visited regularly by G from Youth Offending Team to complete preventative work. A specialist nurse, H, is visiting B fortnightly, supporting him with emotional, physical, and mental health needs, and he is under the care of Dr I for his ADHD. In addition, he has regular visits from the social worker.

7. I also have an updating statement from C, a social worker, dated 15 February. She confirms B is in a semi-independent placement where his independence is promoted to help for when he becomes an adult, and he will of course turn 17 in June. He is working five or six days a week pursuant to his scaffolding apprenticeship which, in my experience of dealing with

many, many cases of this nature involving teenagers who are victims of organised criminals and child criminal exploitation, and child sexual exploitation for that matter, is extremely rare. I think in the last 12 months I have had one or two cases where children and young people like B have actually got gainful employment.

8. The Local Authority is being invited to consider a care order by the Judges before me, and there was a legal gateway on 9 February, and it was felt during the discussion that a care order would not offer B any additional support and would not prevent him from harm or safeguarding from being targeted by external influences or risk of exploitation. He is also able to offer consent to any health and medical appointments. The local authority also make the point that if there was a care order, the local authority would not be offering more than it is offering now through the auspices of section 20 provision. He has wrap around support. He has the placement staff at his semi-independent living, his social worker, his personal advisor, looked-after child nurse, youth offending worker, response worker, Polaris therapist. He is also under active review by MACE, multi-agency child exploitation, regularly and he has a plan supporting him around exploitation. There are also regular care planning meetings, risk management meetings, looked-after child reviews, in which all professionals work together to ensure B remains safe. What it amounts to is that B is visited almost daily by different professionals.

9. The Local Authority say that subsequent to that there was a meeting between team manager, J and K, and it was concluded that whilst the local authority maintains its position that a care order would not offer B any additional support and he remains able to make his own decisions regarding his health, the local authority would no longer offer a challenge to the granting of a care order if the Court was minded to order one. B's view, 'I'm not bothered. I think I get enough support from you and L and everyone else'.

10. In terms of deprivation of liberty, the Local Authority say this, that that would not be possible in his current accommodation. B has expressed a wish to stay in his current setting and of course a move into any deprivation of liberty provision would make maintenance of his current employment at least more difficult, if not impossible. Currently he is managing a budget; he is food shopping and preparing meals. He is currently maintaining his own flat to a high standard and his care plan includes work with him with the various services, as well as ongoing MACE plan, and the Local Authority make it clear that he will also be subject to pathway planning so that when he is 18 they will not simply abandon him at that point. He is and remains a looked-after child.

11. The legal position surrounding section 20 provision has been the subject of a number of appellate decisions and High Court decisions. In the decision of Coventry City Council v CBCA and CH, reported in the Law Reports England and Wales High Court [2012] at page 2190, the decision of the then Mr Justice Hedley on 30 July 2012, he said this in respect of the use of section 20 agreements, paragraph 25:

> "25. Section 20 appears in Part III of the Act; that Part is entitled 'Local Authority support for children and families.' With the exception of Section 25 that Part contains no compulsive powers. Those are found in Parts IV (Sections 31-42) and V (Sections 43-52). The emphasis in Part III is on partnership and it involves no compulsory curtailment of parental responsibility.
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> 26. All parties accept the importance of this and acknowledge that any attempt to restrict the use of Section 20 runs the risk both of undermining the partnership element in Part III and of encroaching on a parent's right to exercise parental responsibility in any way they see fit to promote the welfare of their child. I recognise and accept that.
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> 27. However, the use of Section 20 is not unrestricted and must not be compulsion in disguise. In order for such an agreement to be lawful, the parent must have the requisite capacity to make that agreement. All consents given under Section 20 must be considered in the light of Sections 1-3 of the Mental Capacity Act 2005.
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> 28. Moreover, even where there is capacity, it is essential that any consent so obtained is properly informed and, at least where it results in detriment to the giver's personal interest, is fairly obtained. That is implicit in a due regard for the giver's rights under Articles 6 and 8 of the European Convention on Human Rights."

12. There is no doubt in this case that the mother has freely and willingly consented to section 20 provision, and presently it seems that B, too, is engaging willingly with the Local Authority and the various support services that are being provided for him. Thus, this is, as far as the mother and B are concerned, an entirely consensual position.

13. The provision of section 20 was also considered by the Supreme Court in Williams v London Borough of Hackney [2018] UKSC 37, and the lead judgment of Baroness Hale. At paragraph 18 of her judgment, she said this:

> "These conclusions were reflected in the 1989 Act, which brought together the two review processes in a single piece of legislation covering all aspects of the care and upbringing of children. Part 1, "Introductory", is derived from the Law Commission's proposals. The concept of "parental rights and duties", "parental powers and authority" and similar phrases used in statute and common law are replaced with "parental responsibility", defined in section 3(1) as "all the

rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". Under section 2(1), "Where a child's father and mother were married to each other at the time of his birth" - a phrase which has an extended meaning by virtue of section 1 of the Family Law Reform Act 1987 - "they shall each have parental responsibility for the child". Under section 2(9), "A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf."

14. Most recently, the provision of section 20 has been considered by the Court of Appeal in *Re: S* (a child) *and Re: W (a child) (section 20 accommodation)* [2023] EWCA Civ, 1. In that decision the Court of Appeal were very keen to address the practice that had, in my judgment, grown within the Family Courts of section 20 agreements being regarded as short term only. The Court of Appeal stressed that that is wrong; that section 20 in an appropriate case can be a longer-term provision, the Court noting in particular that there is no time limit imposed by section 20 of the Children Act 1989

15. In their decision the Court of Appeal considered the judgment of Sir James Munby, the then President in *Re: N Children Adoption Jurisdiction*, [2015] EWCA Civ at page 1112, and at paragraph 58 Lady Justice King said this:

> "Sir James at para. [157] under the heading of 'Other matters: section 20 of the 1989 Act', said that too often arrangements under section 20 are allowed to continue for far too long and, having set out future good practice in relation to the obtaining of consent, he went on at para [171] to say:
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> "171. *The misuse and abuse of section 20 in this context is not just a matter of bad practice. It is wrong; it is a denial of the fundamental rights of both the parent and the child; it will no longer be tolerated; and it must stop. Judges will and must be alert to the problem and pro-active in putting an end to it. From now on, local authorities which use section 20 as a prelude to care proceedings for lengthy periods or which fail to follow the good practice I have identified, can expect to be subjected to probing questioning by the court. If the answers are not satisfactory, the Local Authority can expect stringent criticism and possible exposure to successful claims for damages".'*

16. At paragraph 59 of her judgment, Lady Justice King said this:

> "The PLWG report concluded that these trenchant observations had "significantly contributed to the decline in the (appropriate) use of s20". In summarising the current situation, the PLWG report went on at para [232] to say:
> *"In summary, s20, contains important statutory provisions and the (appropriate) use of these provisions has sharply declined. This may have contributed to the increase in public law applications in circumstances where the use of s20 may*

have better met the needs of the subject children and their families. There is an urgent need to reverse the trend in the decline of the appropriate use of these provisions".”

17. . At paragraph 84 Lady Justice King said this:

> “I would simply conclude by saying that each of these two cases must be viewed in the context in which they have come before this court, that is to say in relation to children who are settled in long-term placements which are meeting their respective needs in circumstances where both the placements and the accompanying care plans are supported by the parents. As the judge in *Re W* observed, no court has hitherto considered the use of a section 20 order in this type of situation and it is hoped that this appeal will have served to fill that gap.”

18. I wholeheartedly and respectfully agree with the observations that were made by Lady Justice King about the move that has taken place in the family justice system, away from appropriate use of section 20 Children Act 1989 provision, local authorities choosing instead to launch into care proceedings. The previous Court of Appeal and High Court decisions relating to what was then perceived to be the overuse of section 20 were in cases where children were perceived to be languishing without proper provision, pursuant to section 20, without the oversight of a children’s guardian and where their welfare needs were not being met. They were simply drifting. Rather than moving towards a situation of proper balance in meeting the welfare needs of children, in my judgment, the pendulum has swung too far, and it is now time to redress the balance in the use of section 20 which can in appropriate cases be for longer rather than shorter periods.

19. Hence, the question in my judgment in this case is ‘would it be necessary and proportionate and consistent with B’s welfare for the Local Authority to apply for, and the Court to grant, a care order.’ In my judgment the answer to that question is no. He is presently being treated as a looked-after child by the Local Authority. That is a consensual position, both the mother and he consent. The Local Authority is providing a raft of support and services for B which, in my judgment, is the best that they can do. In addition to that there is the one ‘golden nugget’ in this case which is his commitment to his apprenticeship. If he successfully completes his apprenticeship then not only will he become a qualified scaffolder, but he will also receive the remuneration that scaffolders receive and that, in my judgment, is likely to mark a watershed in B’s life.

20. The mother through Mr Brindle at least invites consideration of secure accommodation for B, although Mr Brindle is very careful to make it clear that the mother is not advancing a positive

case. I have explained during my exchange with Mr Brindle that currently, and on most occasions when I am dealing with potential applications for secure accommodation or deprivation of liberty, I am being told that there are in the region of 60 or more outstanding requests for secure accommodation and, more often than not, only one or two places available. I have also made it clear that I know that that is not a queuing system. It is a beauty parade, and therefore there are children and young people for whom requests for secure accommodation are made that never get to the front of the queue, and they remain as unmet requests. That would leave deprivation of liberty in a situation where I have evidence from the Local Authority that B is attending work five or six days a week, and that deprivation of liberty would not be available for his current placement, and he has expressed a wish to remain there. Again, in my experience, a successful outcome in these cases where children and young people are being exploited by organised criminals and engage in drug supply is only ever achieved if the child or young person buys into the project and engages with Local Authority professionals and agencies who are charged with the task of trying to turn their lives around.

21. Currently, the engagement of B with the Local Authority is exceptionally good compared to most other cases that I deal with, and in my judgment the risk, if deprivation of liberty or secure accommodation for that matter were adopted as an appropriate placement for B, would not only be that he would lose his job, but also that the Local Authority would lose any hope of meaningful work with B. Time is preciously short, and he will be 17 in June, and therefore it is absolutely vital and in his welfare interests that everything is done to maintain that engagement. Therefore, in all the circumstances I am not satisfied that it would be necessary and proportionate to make a care order, even if one was applied for.

22. In terms of the concern of the judges before me that nobody is effecting parental responsibility on a day-by-day basis for B, that in my judgment is misplaced . I have already referred to the Supreme Court decision of *Williams v The London Borough of Hackney* [2018] UKSC 37 and also the Court of Appeal decision in *Re: S and Re: W (*section 20 accommodation) [2023] EWCA Civ 1, both of which make it clear that a parent delegates either part or all of parental responsibility in the event that there is a section 20 agreement. The mother has parental responsibility. She has delegated that role to the Local Authority to carry out on her behalf, and in my judgment that is what they are in effect doing. Whilst the meeting of section 31 threshold opens the gateway to the making of a care order, the Court then has the important task of analysing its welfare decision by reference to section 1 of the Children Act. The Court

must be satisfied that a care order is necessary, proportionate in terms of interference with Article 8 rights, and also consistent with B's welfare. I am not satisfied on any of those points and in those circumstances these proceedings will now terminate.

End of Judgment

Transcript from a recording by Ubiqus
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