



Neutral Citation Number: [2021] EWHC 2066 (Fam)

Case No: FD21P00173

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/07/2021

Before :

THE HONOURABLE MR JUSTICE COBB

Between :

A Local Authority

Applicant

- and -

M

Respondents

G

(By his Children's Guardian)

Re G (Young Person: Threat to Life: Unavailability of Secure Placement)

Ms Elizabeth O'Donnell (of the Local Authority solicitor's department) for the Local Authority

Ms Sheila Phil-Ebosie (instructed by All Family Matters) for the First Respondent mother (M)

Ms Nilouka Peiris (of Lawrence & Co. Solicitors) for the Children's Guardian for G

Mr Jonathan Auburn QC (instructed by Government Legal Department, Treasury Solicitor)
for the Secretary of State for Education

Ms Beatrice Longmore from the office of the Children's Commissioner

Hearing dates: 21 July 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.

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in **public**. 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.

The Honourable Mr Justice Cobb :

Introduction and Summary

1. G is 15 years old. He has had an extremely troubled and traumatic childhood. He is believed to have experienced, and/or been exposed to, domestic abuse within the family home. He has been routinely absconding from home since he was about 11 years old. He has been out of the education system for about two years. He has considerable experience of the criminal justice system, and is known to have been involved in serious offending over a period of time; he has a number of criminal convictions and cautions. He has affiliations with known gangs, and is recognised by the National Referral Mechanism as a victim of criminal exploitation. There are concerns about his mental health; he has been referred to CAMHS and psychotherapy is planned for him. For some of this year he has been on remand in custody awaiting trial on drugs charges. He has recently been acquitted of those charges.
2. Reliable intelligence reveals that there is a serious and credible threat to his life; an ‘*Osman*’¹ warning has been issued to him by the police. This is a warning of a death threat or risk of murder, issued by the British police or authorities to a prospective victim; the police have not, so far as I know, offered him a safe house. He is currently living at home with his mother and his younger siblings. It goes without saying – but I shall say it for emphasis – that he is plainly extremely vulnerable in this situation, and, on the information presented to the court, I am satisfied that his life is in real and immediate danger.
3. The Local Authority for the area in which G lives considers that G needs to be in secure accommodation, or otherwise in a highly protected environment where he can be shielded from harm, and which will reduce the risks to himself and others in the community. The Local Authority considers that there are grounds on which it can and should acquire parental responsibility for G under *Part IV* of the *Children Act 1989* (‘the *1989 Act*’) and have applied for an interim care order.
4. The application for an interim care order is accompanied by an application for a secure accommodation order (*section 25* of the *1989 Act*); both applications were made on 15 July and listed before Peel J on the following day. He gave directions and adjourned the applications for a short time; the parties attended as directed on 21 July (yesterday) for further directions and consideration of interim substantive orders. The Local Authority however came to court submitting that it does not feel able to pursue the applications at present, because it cannot identify a safe or secure placement for G, and

¹ After *Osman v UK* [1998] ECHR 101

it feels that it cannot effectively exercise any parental responsibility for G while he remains living at home.

5. The Local Authority advises me, and on the documents I confirm that I am satisfied, that it has been looking for a placement for G since April 2021. It has made enquiries of more than 250 establishments in England and in Scotland. It has approached the hub known as the Secure Welfare Coordination Unit which administers secure placements around the country. It has had no success; there are currently 53 young people referred to that unit and only 1 bed showing as available on the system for a male young person. There are, ostensibly, no other placements available for G or a young person such as G.
6. The Local Authority has considered whether it can create a bespoke secure or protected placement for G in accordance with its duties under *section 22C(5) / section 22C(6)(d)* (“placement in accordance with other arrangements”) and *section 22D(2)*; such a placement would, it is apprehended, need to be buttressed by court-authorized arrangements to deprive G – at least in certain respects – of his liberty. However, it does not advance this proposal at this stage for two reasons:
 - i) Such a bespoke placement would require the identification of a suitable placement/property and the employment of four trained workers per shift (probably over thirty trained workers assigned to the placement). The Local Authority does not feel able to put together such a placement in a short space of time to accommodate G as an emergency alternative to a secure placement;
 - ii) A bespoke placement such as that outlined above would not in any event be regulated; such a placement would, within the next few weeks, become unlawful (see §11 below). Such a placement has therefore not been approved by the Director of Children’s Services for the relevant Local Authority.
7. Currently therefore G remains in the community, at home, and obviously at considerable risk. At the hearing, I have directed the Local Authority to prepare a statement urgently setting out in detail its proposals to try to keep G safe while he is at home, given its duties to this child in need. I have adjourned the applications until 26 July 2021 to give the parties the opportunity to consider those measures. I know that the Local Authority would like to commission an independent psychological assessment of G, but this is not feasible while he remains at such risk.
8. This short judgment is given in open court in order to raise awareness of the plight of G, and the many young people like him who require specialist secure placements, but who cannot be so placed given the scarcity of such resources.

The implications of the current situation

9. The intolerable consequence of the current situation is that the State – in its embodiment as the Court and/or as the Local Authority – is wholly unable to ensure the safety of G who is not yet 16 years of age, notwithstanding its positive obligation under *Article 2* of the *ECHR*.
10. G’s situation is grave, but it is I regret far from unique. There are characteristics of this case which are similar to those which have been highlighted in recent months through the publication of court judgments concerning other young people; I have in mind my

own decision in *Re S (Child in care: Unregulated placement)* [2020] EWHC 1012 (Fam), *Re T (A Child)* [2018] EWCA Civ 2136, *Re B (Secure Accommodation Order)* [2019] EWCA Civ 2025; the threat to G's life in this case makes it even more urgent and serious a case than other comparable cases such as *Re Z (A Child- DOLS Lack of Secure Placement)* [2020] EWHC 1827 (Fam) and the series of decisions of Macdonald J including but not limited to *Lancashire v G (Unavailability of Secure Accommodation)* [2020] EWHC 2828 (Fam), *Tameside MBC v L (Unavailability of Regulated Therapeutic Placement)* [2021] EWHC 1814 (Fam).

11. The challenges for those who have responsibility for the well-being of young people in finding and/or authorising lawful secure placements is already immensely hard as is clear from what I have said already; compliance with the statutory duty under *Section 22(3)* of the *1989 Act* (the general duty of the local authority looking after a child to safeguard and promote the welfare of the child) is indisputably onerous. The current challenges are only likely to be significantly greater following the implementation of the *Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021/161)* (the '2021 Regulations') which amend the *Care Planning, Placement and Case Review (England) Regulations 2010*. The *2021 Regulations* will have the effect of prohibiting the placement of looked after children under the age of 16 in "other arrangements" settings as provided for under *s.22C(6)(d)* of the *1989 Act*. The aim of the amendment is to ensure that looked after children under the age of 16 are only placed in children's homes or foster care; however laudable that objective (and there are obvious concerns about placing young people in unregistered accommodation), it will be apparent that it will make finding or creating a bespoke placement for G, and for those young people like him who urgently need secure arrangements, even as an interim measure, considerably harder.
12. The direct impact of the *2021 Regulations* on G, and on his situation (from 9 September 2021), is illustrated by the Explanatory Memorandum to the *2021 Regulations*. This memorandum contains the following explanation for the amendments, which, it is said, are designed:

"... to prohibit placement of a child under the age of 16 in 'other arrangements' settings with limited exceptions. The effect of the amendments will be that looked after children under 16 can no longer be placed in unregulated settings while continuing to allow 'other arrangements' placements in alternative regulated settings by exemption. Unregulated independent and semi-independent settings cannot meet the needs of looked after children under the age of 16 who are very vulnerable and often have complex needs which require the care and support provided by regulated settings ... The intention of the ban is to ensure that looked after children under 16 are placed in children's homes or foster care instead of unregulated settings...

... local authorities will have a six-month grace period in which to find children under 16 placed in unregulated independent and semi-independent provision alternative placements in either a children's home, foster care or one of the limited exemptions should such a setting be consistent

with the child's welfare. On or after 9 September 2021 (the coming into force date) it will no longer be lawful for local authorities to place children under 16 in other arrangement settings other than those specifically exempted where it is consistent with the child's welfare.”.

The position of the Parties

13. G's mother is understandably very worried for the welfare of her 15-year-old son, and for the welfare of her other children. She is willing to continue to look after G and will accept any support to keep him safe at home. She has applied to the Local Authority for alternative housing, away from the area where she lives with G. This is being actively considered; one alternative home has been offered but it was deemed unsuitable.
14. There is no Children's Guardian yet appointed for G; this perhaps reveals the current pressures on Cafcass which are extreme. The duty Guardian wishes active steps to be taken to raise the cordon of protection around G until a secure placement can be found for him. She hopes that a Children's Guardian will be appointed within a matter of days.

The Secretary of State for Education / the Children's Commissioner

15. At the hearing on 16 July, Peel J requested the attendance of the Secretary of State for Education and the Children's Commissioner at the hearing. In a letter sent to the court prior to this hearing, the following points were made on behalf of the Secretary of State:

“While there is no duty to provide secure accommodation in their area, there are general duties on Local Authorities to provide accommodation for looked-after children. In particular, *section 22G* of the *Children Act 1989* imposes a duty on each Local Authority to take steps that ensure so far as reasonably practicable that they are able to provide accommodation in their area that meets the needs of children who are looked after by that Local Authority and fall within the *section 22G(3)* criteria. This is commonly known as the ‘sufficiency duty’. In taking steps to secure that outcome the Local Authority must have regard to the benefit of having a number and range of accommodation providers that is, in their opinion, sufficient and capable of meeting different needs”.

“While clear that Local Authorities must fulfil their sufficiency duty, the Secretary of State is sympathetic to the challenges presented in this case and recognises the difficulty in commissioning suitable accommodation for some children with complex and very high needs. The Department for Education is currently working to support Local Authorities in England in fulfilling their statutory duties, including expanding and refurbishing secure provision available in England through a £24 million capital programme for this

financial year. The department is working with others across Government to also consider the needs and characteristics of young people across the estate and how provision can better meet their needs”.

16. These proposals will not yield a placement for G.
17. Ms Longmore advised me of the concerns which the Children’s Commissioner has for G and for the many young people like G. She has indicated an intention to discuss G’s situation with the Independent Children’s Homes Commissioner, and to pursue her own enquiries with the SWCU.

Conclusion

18. I have directed that the applications will be re-listed before the Court in three working days’ time. All parties are keen that the court should have the chance to review the proposed safety measures. I continue to hope, albeit without much expectation, that in the meantime there is progress in locating secure accommodation for G. As I said over a year ago (*Re S* at §3), and repeat and underline today:

“There is currently very limited capacity in the children's social care system for young people with complex needs who need secure care; it appears that demand for registered places is currently outstripping supply. This is the frustrating experience of the many family judges before whom such difficult cases are routinely presented.”

19. The frustration of the judiciary is but nothing when compared to the precariousness of G’s situation, and the real threats which are being made on his young life.
20. That is my judgment.