



IN THE HIGH COURT FAMILY DIVISION

SITTING AT LIVERPOOL

neutral citation number: [2024] EWHC 2477 (Fam)

Case No. FD23P04487

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

B

EX TEMPORE JUDGMENT

MR WRIGHT appeared on behalf of the Local Authority

MR MCLOUGHLIN appeared on behalf of the Child through their children's guardian.

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JUDGE PARKER:

1. I am dealing with B. B is 14. He is the subject of an application by the Local Authority for further Deprivation of Liberty provision. B's case is yet another in a long line of deeply troubling cases involving teenage children who are troubled, damaged, and present with extreme behaviours from time to time, which makes keeping them, and those around them safe, extremely difficult for Local Authorities who have parental responsibility for the child. The local authority have PR for B pursuant to the care order made by the Liverpool Family Court.
2. The Local Authority in this case is represented by Mr Wright. Mr Wright invites the Court to make further Deprivation of Liberty provision in accordance with the restrictions which are set out for ease of reference, under section 3 of his case summary. In addition to that, the local authority seeks authorisation to monitor and supervise B whilst asleep by sitting outside of his room. The Deprivation of Liberty provision is essentially designed to be a continuous provision following on from previous orders made by the High Court sitting at Liverpool.
3. However, B is placed in an unregistered placement which is thereby an unlawful placement in light of his age. There is no alternative placement open to this local authority. They say that it would be unsafe to return B to the community.

Background

4. B has an extremely difficult history, and it is fair to say that he has moved from placement to placement. Very sadly in his case, his father committed suicide whilst in prison. His mother does not attend today although she has expressed her support for ongoing Deprivation of

Liberty provisions She sees him presently on a couple of occasions each week at his existing placement.

5. In terms of previous placements, B has had a lengthy period, some 10 months or so in secure provisions in Scotland. The reasons for that are quite simple. The Local Authority, despite extensive searches were unable to secure more local provision for him. I am bound to say, as a judge who has dealt with many of these cases, it is an all too familiar tale.
6. Having left secure accommodation, in which B was placed between July 2022 and May 2023, B eventually ended up in his current placement. He went initially to a placement in (redacted) for two months. That was an Ofsted registered provision. They gave notice after one month because of his escalating behaviour. He then moved to a placement in (redacted) in July 2023 which is the placement that he is presently in. That placement is a children's home, but it is not registered with Ofsted. In those circumstances, it does not comply with the Regulations.
7. The problem that often presents in these cases is that the child is moved many miles away from home and everything the child knows, with consequential emotional harm for the child. However, the Local Authorities are in a 'catch 22' because, as is the case here, the nature and magnitude of the risk of physical and emotional harm in the community is so great that the Local Authority is left with no alternative but seek to provide accommodation for B in the best placement that is available. They are left having to balance the risk of harm. Having determined that the balance of harm test results in a conclusion that there is too big a risk leaving the child in the community, unfortunately in cases like this, the Local Authorities are often faced with Hobson's choice. What I mean by that is they only have one potential placement. I note how extensive the searches have been previously in this case during the evidence of the social worker A. I also note the huge cost to the local authority of providing this accommodation namely £13,600 per week.
8. There is clear evidence in this case that B has been and, in my judgment, is likely, still enmeshed in organised crime and county lines. That is entirely consistent with his current behaviour. The regular missing from home episodes. Returning under the influence of drugs. Also, being in possession of numerous vapes without any proper explanation about how any of that could be funded.
9. In addition to that B has demonstrated a serious propensity for violent behaviour in the past. In 2021, he was convicted of section 18 wounding, which was committed against another

child and the child suffered a very unpleasant injury indeed. What was concerning about that offence was the use of weapons or implements that were used as weapons.

10. In addition to that, B has displayed many episodes of very serious and dangerous behaviour. For example, trying to open a car door to get out of a car that was being driven along a motorway, grabbing hold of the steering wheel to try and make the car change course on the motorway. He has punched walls and pulled electrical wires leaving them exposed. He has also kicked through glass with bare feet and has committed a number of unpleasant and violent acts of assault against staff members such as punching, kicking and spitting at them.
11. There is little doubt that B presents as a real risk of significant physical harm to those around him. Also, by his behaviour, he exposes himself to a risk of significant harm, both through activities with organised criminals where the risks are of catastrophic harm or death, and also in terms of exposure to the criminal justice system. He has already been through the criminal justice system with a serious section 18 offence for which he was sentenced. He is at risk of that exposure continuing and, in my judgment, spiralling.

The Law

12. 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 the additional 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;”

13. The fact that this is unregistered accommodation, leads me to consider the decision of McDonald J in *Tameside MBC v AM and Others* [2021] EWAC 2472 in which he decided that the inherent jurisdiction can be invoked to authorise the placement of a child under 16 in an **unregulated** placement, (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 imperative conditions of 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 when deciding if deprivation of liberty is in the child's best interests, and what constitutes imperative conditions of 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.
14. 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.”

15. 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.

16. The current placement say that they are presently seeking Ofsted registration, but understandably A could not give me any time period for that, and the Local Authority are twin planning in the sense they are continuing to search for suitable Ofsted registered accommodation. However, I recognise the tremendous task for the Local Authority. Time and time again in these cases, I am faced, as is the Local Authority, by the complete dearth of provision. The Local Authority is left scratching around, trying to find somewhere that can and will provide good enough and safe enough care for children like B. The current placement is described by A as relatively stable. However, he recognised that B is still regularly missing from the home.

My decision

17. Overall, I have undertaken a considerable exploration of the circumstances surrounding the Local Authority’s proposal. That has included my pre-reading of all the evidence filed by

the Local Authority in support of its application, in previous proceedings, as well as evidence filed by other parties.

18. The child has been joined as a party to the proceedings. He has a Children's Guardian. I have received evidence of the nature of the proposed regime and justifying why the arrangements are necessary and proportionate in meeting B's welfare needs. I have taken into account of the child's view of the matter. In my judgment they are likely to fluctuate. For example, the social worker said B was clearly unhappy with this application and terminated the telephone call with him. However, when speaking to the Children's Guardian's legal representative, Mr McLoughlin, B said in terms of the deprivation liberty that was "sound" and he was "happy".
19. I am satisfied pursuant to section 100 of the Children Act 1989 that the Local Authority should have leave to make the application for the exercise of the Court's inherent jurisdiction. With respect to B, I am satisfied that the result which the Local Authority wish to achieve could not be achieved through the making of any other order of any kind, to which Section 100 (5) Children Act 1989 applies. There is reasonable cause to believe that if the Court's inherent jurisdiction is not exercised in respect of B, 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 the case. I very deliberately identify a risk of catastrophic harm or death in this case. I am satisfied that B has a history of missing episodes and absconding and if he was to be placed in the other accommodation, he will continue to abscond and would be likely to suffer significant harm. Whilst I recognise that he goes missing from this accommodation, at least there is a degree of control and monitoring through the current placement. He cannot be safely returned into the community.
20. I am satisfied the proposed order would safeguard and promote his welfare. I am satisfied that the order the Local Authority seek is proportionate in that the benefits of the proposed placement outweigh the infringement of B's Article 5 Right to liberty under the ECHR.
21. The restrictions which the Local Authority seek are that;
 - a. the placement should be able to lock doors and windows,
 - b. the placement to provide up to three to one staffing at all times, both in placement and in the community,
 - c. the use of reasonable restraints including safe holds. However, only in circumstances where (i) there is a significant risk to B's safety or the safety of others, (ii) to prevent B from absconding either from the unit or in the community and (iii)

to remove from B any device or item that has previously been requested of him to surrender and which is likely, if he retains it, to expose B to significant harm. I will add another condition to that. No member of staff should exercise any restraint of B unless that member of staff has been suitably and appropriately trained in safe restraint techniques by a reputable training organisation and has provided a certificate confirmation of that training being successfully completed and that the training is up to date in the sense of any necessary refreshers having been undertaken,

- d. when travelling by car, travel safety locks can be engaged, and he would be supervised again on a three to one basis,
 - e. at night, supervision by a member of the staff seated outside of his room.
22. I am satisfied that the restrictions which the Local Authority seeks to impose amounts 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 mother cannot consent in light of the care order that is in place. I am satisfied that the restriction which the Local Authority seek to impose are the least restrictive of B's rights and freedoms and are necessary and proportionate to meet his welfare needs. I have also considered the need for the Court to review the case and how soon that should be. I have decided there should be no review and I make another order for three months which shall be a final order.
23. This placement is an unregistered children's home. The Local Authority has made enquiries as to the registration status and the placement has said they are in the process of applying for Ofsted registration. No timescale was provided for that. Because B is under the age of 16, that means this is an unlawful placement.
24. I am satisfied in this case there are imperative conditions of necessity sufficient for me to exercise my discretion under the inherent jurisdiction to authorise the Deprivation of Liberty safeguards in this case. The situation concerning B is so serious that I am satisfied that if the Local Authority did not maintain this placement with the benefit of Deprivation of Liberty provisions, then there is an unacceptable risk that B will come to some harm that could be catastrophic or fatal. He cannot simply return into the community. There are no other placements available. I am absolutely satisfied that this Local Authority should have the authorisations it seeks with the conditions I have attached. I am satisfied that a period of three months strikes a sensible balance between his Article 5 Right to liberty, his Article 8

Right to private and family life under the ECHR, whilst at the same time keeping B safe with specific regard to Article 2 Right to life under the ECHR.

25. The sharp interference with ECHR Article 5 Right to liberty, and Article 8 Right to private and family life I recognise. That is why any interference with those rights must be necessary and proportionate. I am satisfied that the restrictions proposed by the Local Authority, for the time period proposed, are necessary and proportionate and consistent with B's welfare. The steps that I am allowing the Local Authority to take are steps that are proportionate to the nature and magnitude of risk in this case. Therefore, there will be a Deprivation of Liberty Declaration as sought. That concludes this judgment.

End of Judgment.

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