IN THE HIGH COURT FAMILY DIVISION
SITTING AT STOKE ON TRENT

Before HHJ Harris sitting as a judge of the High Court

BM 19P09473

IN THE MATTER OF THE INHERENT JURISDICTION
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF C (DOB:09.11.05)

BETWEEN:-

Z COUNTY COUNCIL

Applicant

-and-

M

First Respondent (mother)

-and-

F

Second Respondent (father)

-and-

C
(via her Guardian, Kerry Hand)

Third Respondent

Miss Alev Giz (instructed by the legal department) for **Z County Council**

Mr Martin Henley (instructed by SBS Solicitors Ltd) for the **First Respondent Mother**

Ms Gemma Bowes (instructed by David J Foster & Co Solicitors) for the **Second Respondent Father**

Mr William Horwood (instructed by McGuinness Legal) for the **Child**

Hearing on 6 November 2019

JUDGMENT

11th November 2019

1. This is an application by Z County Council for permission to invoke the inherent jurisdiction of the High Court. They have been represented at this hearing by Ms Giz. The Local Authority

seek declarations pursuant to the High Court's inherent jurisdiction that the care regime in place for C, which involves a deprivation of her liberty, is lawful. The matter was heard by the Court on Wednesday 6th November and a decision given with short ex tempore reasons. Due to the pressures of the court list it was not possible to deliver a fully reasoned judgment. The Court now provides its reasons in writing.

2. C turned 14 years old two days ago. She has been subject to an interim care order in favour of Z County Council since 13th December 2018. The Issues Resolution Hearing within the care proceedings is listed on 20th December 2019. C's mother is M. She is currently residing in another European country. She is represented by Mr Henley. C's father is F. He is represented by Ms Bowes. The Guardian is Ms Kerry Hand, represented by Mr Horwood.

Background:

3. C, along with her two siblings, A and B, became subject to care proceedings in December 2018. In autumn 2018, it is alleged that C attacked another young person with a knife. The attack appears to have been pre-meditated and unprovoked. C has not been able to give any explanation to professionals for her actions. Further concerns emerged: that C had been accessing the 'dark web', pornography sites and speaking online to unknown adults. M agreed section 20 accommodation on 19th September 2018. C has resided in Local Authority care since that date. She has been subject to a psychological assessment and two psychiatric assessments. It is agreed C has complex mental health needs and requires intensive therapeutic intervention. Frustratingly that work is yet to commence due to delays encountered with CAMHS.

4. C is currently placed at X House, a registered residential children's home. She has lived there since 15th October 2018.

5. At earlier hearings concerns have been raised by the Guardian and the Court that C's care regime may constitute a deprivation of her liberty. The Local Authority urgently reviewed matters and issued this application. There may be legitimate questions to be asked of the Local Authority as to why they did not make this application sooner.

6. All parties, except the respondent mother, support the Local Authority's application for declarations pursuant to the Court's inherent jurisdiction, that the care regime in place for C is lawful. C herself does not challenge the restrictions in place. Indeed, they help alleviate many of her anxieties. She is happy, settled and making very good progress in the current placement. It is important to note that the Respondent mother also does not challenge the care regime in place for C at X House. She agrees that the current placement is meeting C's complex needs and that the current restrictions are necessary and proportionate in her daughter's best interests. The respondent mother does not therefore seek to challenge any aspect of the placement or care regime currently being provided to C by the Local Authority.

7. The respondent mother's opposition to the Local Authority's application is one of legal principle. Mr Henley, on her behalf, argues that it is not open to the Court to sanction the deprivation of C's liberty under the inherent jurisdiction. Relying on obiter dicta of Lady Black in *Re D (a child)* [2019] UKSC 42 at paragraphs 91 to 115, he argues that C has in fact been

placed in secure accommodation since October 2018 and the ongoing restrictions on her liberty can only properly be sanctioned in accordance with the statutory regime governing secure accommodation under s 25 of the Children Act 1989. He asserts that the proper application by the Local Authority must be for a secure accommodation order and X House to be regulated and approved by the Department of Education as a secure unit. Anything else, he says, constitutes an improper use of the inherent jurisdiction.

Evidence:

8. The Court has had the benefit of a detailed witness statement from C's allocated social worker dated 8th October 2019 and a welfare analysis by the Guardian dated 5th November 2019. I have also considered the Statement of Purpose for X House. Both the social worker and the Guardian are very clear that it would be disastrous for C if she were to be moved from her current placement.

9. All parties filed position statements/skeleton arguments in advance of this hearing.

C's care regime:

10. X House is a solo placement. The unit provides care for one person (male or female) up to 18 years of age. The child in placement may have a variety of different emotional and behavioural problems. C is supervised and supported at all times on a 2 – 1 basis. Within the home she is able to spend time in her bedroom alone but is checked at regular intervals. She also spends some time alone in the living room with staff in close proximity. She has a highly structured routine and becomes very anxious if it is deviated from. She is awaiting an assessment as to whether she is on the Autistic Spectrum.

11. C is anxious when spending time in the community. She does however attend a weekly youth group supported by staff and a provision called SF. She also attends trampolining allowing interaction with peers. She is transported to her educational provision by the unit staff and has 1-to-1 support with her tutor. Care staff remain on site. Contact with her father currently takes place on a weekly basis and is supervised, usually within the home.

12. X House is an ordinary detached residential property in a residential street. Doors are unlocked during the day but locked at night. Windows are not locked but they do not open beyond a certain point. There is no secure perimeter. C has never tried to leave the home but if she were to choose to do so she would be followed by staff. If staff lost sight of her she would be reported as missing to the police and their assistance sought to return her. Physical intervention would only be employed as a very last resort. All staff are MAPA trained. C has never required physical restraint.

13. C does not have access to a mobile phone or unsupervised access to a computer.

14. Both the allocated social worker and the Guardian are of the clear view that C has made very significant progress since residing at X House. The psychiatric and psychological assessments support her continued placement there. The professional consensus is that C will continue to need the high level of support and stability offered by X House for a number of years whilst she receives treatment for an attachment disorder and trauma. Within the care proceedings, the Local Authority will seek final care orders to enable them to support C into adulthood.

15. It is agreed between all parties that C's lack of freedom to leave the unit, the continuous supervision and control to which she is subject and the restrictions on her access to a telephone and internet, freedoms enjoyed by most young people of her age, meet the 'acid test' for a deprivation of liberty in accordance with the leading authority of *P v Cheshire West and Chester Council and another* [2014] UKSC 19. This issue has not therefore detained the Court.

Law:

Applications under the inherent jurisdiction:

16. Article 5 of the European Convention provides:

> 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 the procedure prescribed by law.

That fundamental right applies equally to children.

17. In determining applications under the inherent jurisdiction, the Court must ask itself first whether there is, *prima facie,* a deprivation of liberty and, if so, whether there is a valid consent to such deprivation. As C is a looked after child for whom the Local Authority shares parental responsibility, neither Z County Council nor her parents are able to consent to the deprivation. The State's responsibility is clearly engaged. To be lawful either the deprivation of liberty must be in accordance with statute (e.g. under s 25 of the Children Act 1989 or the Mental Health Act 1983) or the sanction of the Court pursuant to its inherent jurisdiction is required. The Court reminds itself of the guidance given by the then President, Sir James Munby, in *Re A-F (Children)* [2018] EWHC 138 Fam to determining such applications.

18. S 100(3) of the Children Act 1989 provides that no application for any exercise of the Court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court. S 100 (4) provides:

> The court may only grant leave if it is satisfied that—
>
> (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and
>
> (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

19. As Article 5 applies, the Court must be satisfied that any deprivation of the child's liberty is both necessary and proportionate in the child's best interests.

20. Applications under the inherent jurisdiction seeking the Court's authority for a deprivation of liberty are increasingly common. There is now a body of case law dealing with different aspects of such applications (see, for example, *A Local Authority v D and others* [2015] EWHC 3125, a decision of Keehan J which is very similar on its facts to the current matter before this

Court). Within the area within which C resides, there are sadly a number of vulnerable young people subject to DOLS orders to keep them safe from the activities of criminal gangs engaged in criminal exploitation, drugs, county lines and child sexual exploitation.

21. The crux of Mr Henley's argument is that the High Court has been wrong to exercise its inherent jurisdiction in this way, at least where s 25, broadly construed, can be said to apply. In such circumstances, he says there is only one lawful route to depriving a child such as C of her liberty and that is s 25 of the Children Act 1989. Thus, if the statutory criteria set out in section 25 is satisfied and the young person placed in secure accommodation, a secure accommodation order must be made. Outside of this framework, any deprivation of the young person's liberty (assuming no other statutory provisions apply) would be unlawful. There is, in other words, no juridical space for the Court to exercise its inherent jurisdiction to sanction a deprivation of liberty, even in a child's best interests.

22. I pause to note now that, if Mr Henley is correct, the consequences for C and her welfare would be disastrous. X House is not an approved secure children's home in accordance with Reg 3 of the Secure Accommodation Regulations. Reg 3 provides:

> Accommodation in a children's home shall not be used as secure accommodation unless:
>
> (a) In the case of accommodation in England it has been approved by the Secretary of State for that use…

If this Court were to accede to Mr Henley's argument and C meets the criteria under s 25 for a secure accommodation order to be made, there would be no lawful way in which the current deprivation of liberty at X House could be maintained. Under a secure accommodation order, the Local Authority would have no choice but to remove C from her current placement. X House is not an approved secure children's home, and therefore it would be unlawful for the Local Authority to leave her placed there under the secure accommodation regulations. The alternative for the Local Authority would be to leave her placed at X House but the current restrictions on her liberty would need to be removed. Both of those alternatives would be clearly inimical to her welfare. C needs the current restrictions in place to keep her safe. She would struggle to cope without them.

23. Given that stark reality, the Court pressed Mr Henley as to what the Respondent mother was asking of the Court in the best interests of C. Mr Henley was clear that M does not seek the removal of C from X House. She supports that placement. Mr Henley therefore proposed an alternative approach whereby the Court exercise its inherent jurisdiction to authorise the placement and the deprivation of liberty on an interim basis, whilst directing the Local Authority to seek approval of X House as a secure unit from Ofsted and the Department of Education. Whilst the Court has received no information regarding how such an approval process would work in practice, brief investigations from what is available online (see, e.g. *Memorandum of understanding between the Department of Education and Ofsted in respect of secure children's homes*, updated March 2019) suggests that even if the Court had the jurisdiction to direct the Local Authority to take such steps, it would be likely to take several months.

The scope of section 25 and its relationship to the inherent jurisdiction:

24. Based on experience within these courts, there are a variety of circumstances in which a local authority may seek to invoke the inherent jurisdiction of the Court rather than seek an order under section 25. They include:

- The professional view is that on a welfare basis the environment and care regime offered within a residential care home together with a deprivation of liberty order meets the safety and welfare needs of the particular child more effectively than secure accommodation under s 25. Such an approach allows the Local Authority to put together a bespoke and nuanced care package driven by the individual child's welfare. Placement within an approved secure accommodation unit does not. The Local Authority and Guardian are clear that this is such a case.
- The Local Authority may consider placement within a residential unit with DOLS restrictions in place to be the more proportionate approach. With a mind to the nature of the current approved secure estate and the environment it offers, local authorities tend to regard secure accommodation as a measure of very last resort. Placement within a residential unit with bespoke restrictions approved by the Court is generally perceived as less interventionist. In such cases, there is a clear argument that the criteria for secure accommodation under s 25 will not be met in that the child's safety and welfare can be met by placement within an alternative residential care environment. Again, the Local Authority and Guardian would argue that this is such a case.
- The Local Authority may look to invoke the inherent jurisdiction and the making of a DOLs order as part of an exit strategy from secure accommodation. In other words, it forms part of a step-down transition plan with restrictions on the child's liberty gradually reduced within a community setting in a planned and considered manner.
- In some cases, the Local Authority consider the criteria for secure accommodation is met and that placement within a secure unit would best meet the child's needs but there are no secure beds available. It is a situation that this Judge is aware has sadly occurred more than once within recent months whereby through no fault of the Local Authority, and despite strenuous efforts over a number of weeks, the Local Authority has been unable to obtain a secure bed for a child, even being told in some cases that the child poses too high a risk for placement in secure accommodation. The Court was advised by counsel for the Local Authority that nationally there are currently 35 children for each secure bed available. The lack of secure placements across the country places the Local Authority in acute difficulty. The local authority may seek to invoke the inherent jurisdiction to regulate bespoke placements for children outside of the secure estate with the intention of at least keeping the young person safe.

25. It is right to recognise that whilst the use of the inherent jurisdiction to regulate deprivation of a child's liberty has become increasingly common, there is some disquiet about its use (see for example, *Re A (Secure Accommodation Availability: Deprivation of Liberty* [2017] EWHC 2458 (Fam)). As noted by Lady Black in *Re D*:

> [98] Whilst it can readily be accepted that the intention is that only properly authorised children's homes are to be used as accommodation for the purpose of

> restricting liberty, it does not necessarily follow that, in practice, a child could not find him or herself kept in a children's home which, but for the fact that it does not have the Secretary of State's approval, has every appearance of being secure accommodation. If the argument advanced by the Secretaries of State is right [it can only be a secure home if approved as a secure home], such children might be doubly prejudiced i.e. placed in an unapproved children's home and outside the protective regime of section 25.

Section 25 of the Children Act 1989 and the accompanying statutory regulations contain important statutory safeguards for children subject to a secure accommodation order including age specific requirements, time limits, review mechanisms and a clear regulatory regime for approval of all secure units (see Secure Accommodation Regulations 3, 4, 10, 11, 12, 15 and 16). Arguably by operating outside of that statutory framework, children are deprived of those safeguards and left vulnerable to potential abuse.

26. There are, however, in my judgment compelling arguments as to why an expansive approach to s 25 which significantly curtails the use of the inherent jurisdiction to authorise deprivation of a child's liberty cannot be right.

27. As Mr Henley on behalf of the Respondent mother correctly observes, s 100 operates to exclude the use of the inherent jurisdiction when the Local Authority can achieve their objectives through a statutory order. It is an ouster provision. However, it is also clear that the inherent jurisdiction survives to enable the Courts to determine specific questions about a looked after child's future welfare and care. As Lowe and Douglas observe, the courts should be slow to hold that the Court's inherent powers have been abrogated or restricted by Parliament and should only do so where it is clear that that is what Parliament intended (*Bromley's Family Law*, 10th ed, p 906).

28. The scope of section 25 and whether it can or should be interpreted widely to exhaustively cover the broad range of circumstances in which a child may be deprived of his/her liberty is key to Mr Henley's argument. In advancing his case he relies heavily on the judgment of Lady Black in *Re D*. Although Lady Black's comments on section 25 of the Children Act 1989 at paragraphs [91] - [115] of her judgment are *obiter* and made without having had the benefit of oral argument, they are of course highly persuasive. Her judgment does not, however, in my view, support the position for which Mr Henley contends. Indeed, to the contrary, her judgment confirms that a narrow approach to the scope of s 25 should be maintained.

29. Mr Henley argues that the essential 'message' to be taken from Lady Black's judgment is that whether or not particular accommodation qualifies as secure accommodation and thus should be regulated by means of a secure accommodation order under s 25, cannot turn solely on whether or not the accommodation has been approved for such purpose by the Secretary of State. It is a question of fact in each case. Reg 2 of the Secure Accommodation Regulations provides:

> "Secure accommodation" means accommodation which is provided for the purpose of restricting the liberty of children to whom s 25 of the Act applies.

In accordance with reg 2, Mr Henley thus argues the Court's focus should be on the accommodation and whether its purpose is to restrict the child's liberty rather than any existing approval under regulation 3.

30. None of the parties before me took particular issue with that proposition. However, two points were emphasised in opposition to Mr Henley's position:

    (i) Such an approach does not negate the separate requirement under reg 3 that a ***children's home*** must still be approved by the Secretary of State for use as secure accommodation.

    (ii) The focus must remain on the accommodation itself and not the care regime in place. It is argued that in seeking to persuade the court that X House constitutes secure accommodation, Mr Henley failed to maintain that important distinction, relying almost exclusively on the details of C's care regime to justify his position rather than the nature of the accommodation itself.

31. On this latter point, Lady Black draws a clear distinction between the accommodation itself and the care regime which may be in place for an individual child. She recognises in clear terms that there may be children whose care needs cannot be met without restrictions but who do not fall within s25, observing that it is "unlikely that s 25 was intended to preclude a Local Authority meeting the care needs of such a child." She acknowledges that if one interprets s 25 too widely there is a risk it could have that effect. She thus reiterates that the focus should be on the accommodation and the purpose for which it is provided rather than the care regime within the accommodation.

> [113] The exercise in which we have engaged has, however, been sufficient to persuade us that s 25 is not intended to be widely interpreted, so as to catch all children whose care needs are met in accommodation where there is a degree of restriction of their liberty, even amounting to a deprivation of liberty. There is much force in the argument that it is upon the accommodation itself that the spotlight should be turned when determining if particular accommodation is secure accommodation, rather than upon the attributes of the care of the child in question. This fits with the language used in section 25(1) when read as a whole. It is also consistent with the objective of ensuring that the section is not so widely drawn as to prejudice the local authority's ability to offer children the care that they need….

32. In my judgment, three key points emerge clearly from the dicta of Lady Black:

    (i) That the focus within section 25 remains on the accommodation itself, its design and the purpose for which it was provided, not the care regime in place, even if it amounts to a deprivation of liberty.

    (ii) The requirement for a children's home to be registered as secure accommodation if it is to be used as such remains untouched.

    (iii) There must exist juridical space outside of s 25 whereby a Local Authority can lawfully create and implement a care regime for an individual child which amounts to a deprivation of liberty and which is provided in accommodation which is not an approved secure children's home. Such circumstance may exist either where the criteria for the making of a s 25 order is not met or the Local Authority seek to place a child in accommodation other than a secure children's home or, indeed, both.

33. A much narrower approach to the scope of s 25 than that contended for by Mr Henley is in my view supported by a number of other factors. Focusing on the design and purpose of the accommodation – rather than individual care regimes in place at any one time and which may change from resident to resident - ensures stability as to a unit's permissible function and use and who is to be ultimately responsible for its maintenance, regulation and approval. It also underlines the important distinction between, on the one hand, secure accommodation which forms part of the secure estate, and, on the other, residential children's homes, the former being intended only as a measure of very last resort and when no other type of accommodation can meet the child's need to be protected from absconding behaviours or other significant harm.

34. A narrow interpretation of s 25 is also consistent with the fact that it is a blunt instrument. Indeed, although there is authority to the contrary (see Hayden J in *Re M* [2017] EWHC 3021), Lady Black notes at paragraph [101] of her judgment in *Re D,* that s 25(4) is in mandatory terms and therefore it is clearly arguable that it does not permit welfare to be considered when determining whether or not a secure accommodation order should be made. In other words, if the criteria under s 25(1) are satisfied, the order must be made and the child placed in an approved secure unit.

35. In my judgment it would be a somewhat startling proposition that if, in decisions with such grave implications for a child's liberty, safety and welfare, the Court was precluded from exercising its welfare driven jurisdiction to ensure a child is placed in the right type of accommodation and with a care regime that is responsive to and proportionate to the needs of the individual child. If s 25 were to be interpreted to have a broader reach, s 25(4) would in my judgment pose considerable difficulties for the courts.

36. There is thus nothing within the judgment of Lady Black to suggest she had in mind such a radical expansion of the scope of s 25 with the inherent jurisdiction being significantly curtailed as a result. Moreover, such an interpretation of her judgment would create very significant and immediate practical challenges. The current approved secure estate is very small. There would simply not be enough beds in approved secure children's homes to meet the needs of all children currently subject to deprivation of liberty orders. If those existing placements cannot be regulated under the inherent jurisdiction the restrictions will need to be removed with far-reaching consequences for the safety and welfare of a significant number of young people. To address this challenge there would need to be an immediate overhaul of the secure estate and the regulatory and approval framework within which it operates to ensure there are sufficient numbers of beds to meet demand. Such a wholescale re-structuring of responsibility for the provision of and regulation of secure children's homes would in my judgment be a matter more suited for Parliament than the courts.

37. As noted above, it was suggested by Mr Henley that whilst these practical matters of regulation and approval are addressed the Court could exercise its inherent jurisdiction to render lawful any existing placements (such as C's) in which children are deprived of their liberty within residential care homes that are not approved as secure. In my judgment such an approach is inherently contradictory. Either the inherent jurisdiction exists outside of section 25 to regulate and render lawful such placements or it does not. This Court can see no legal basis for the argument that such jurisdiction can be exercised only on an interim or temporary basis whilst these broader matters of policy are resolved.

38. In my judgment, section 25 should thus be narrowly interpreted as applying only to children placed in accommodation which is designed for, and has the primary purpose of restricting liberty. Beyond section 25, children may lawfully be accommodated in residential children's homes, subject to various restrictions which may constitute a deprivation of their liberty, if approved and sanctioned by the High Court pursuant to its inherent jurisdiction. That permits the Court to authorise placements with bespoke and nuanced care plans for children which respond to and are proportionate to the needs of the individual child. The necessary safeguards for the child are provided by the oversight of the High Court, exercising its jurisdiction in accordance with the guidance provided by Sir James Munby in in *Re A-F (Children)* [2018] EWHC 138 Fam. It is in my view notable that Mr Henley was unable to point to any respect in which the safety and welfare of C was compromised by the oversight of her care regime being placed in the hands of the High Court rather than proceeding only through the gateway of s 25.

C's care regime and the application under the inherent jurisdiction:

39. Within this legal framework, the Court therefore turns to the Local Authority's application with respect to C. As noted above, it is agreed between the parties that the care regime in place at X House constitutes a deprivation of C's liberty.

40. I remind myself that pursuant to s 100 (4), the court may only grant leave for the Local Authority to invoke the inherent jurisdiction if (a) it is satisfied that the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

41. Turning to s 100(4)(a), I am satisfied that the Local Authority could not achieve their desired result through the making of any other statutory order. In my judgment, it is clear that s 25 of the Children Act 1989 does not apply for the following reasons.

42. First, the Court is satisfied that X House does not constitute secure accommodation for the purposes of s 25. It is not approved as a secure unit by the Department of Education, nor is it, taking the slightly broader approach suggested by Lady Black in *Re D*, accommodation designed for or having its primary purpose as the restriction of liberty. X House is an ordinary detached house in a residential street. It does not have a secure perimeter. The doors are not locked during the day. It does not consider itself to be a secure unit (see Statement of Purpose). C is able to leave the unit should she choose to do so albeit she will be followed by care staff. The restrictions on C's liberty arise from her individual care regime, not the design, nature or purpose of the accommodation in which she resides. I am therefore satisfied that X House is not and almost certainly would not be capable of being approved as a secure children's home by Ofsted and the Department of Education. If the court were to make a secure accommodation order this crucial pillar of C's care plan, her continued placement at X House, would therefore be defeated. Continued placement at X House would be unlawful and she would need to be moved immediately. That would be wholly inimical to her best interests.

43. Moreover, I am satisfied on the facts that the s 25 criteria for the making of a s 25 order is not satisfied. Section 25(1) provides, a child who is looked after by a Local Authority may not be placed, and if placed, may not be kept in secure accommodation in England or Scotland for the purpose of restricting liberty unless it appears:

    a) that

    i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

    ii) if he absconds he is likely to suffer significant harm; or

    b) that if he is kept in any other ***description of accommodation*** he is likely to injure himself or other persons.

44. It is agreed by all parties that s 25(1)(a) does not apply. In my judgment the alternative ground for the making of a secure accommodation order under s 25(1)(b) is also not met.

45. On the evidence before the Court C continues to pose a risk to herself and others. Professor Wilcox is clear on this point. The difficulty for professionals is in quantifying the risk C may pose. As she has not been able to explain the reasons, trigger or motivation for her unprovoked attack, management of the risk is challenging. There is a professional consensus that C requires long term therapeutic work to address her underlying difficulties. That work is yet to commence. I am therefore satisfied that C does continue to pose a risk of causing injury to herself and others.

46. The question under s 25(1)(b) is however narrower and more specific: it is whether C is likely to injure herself or others ***if she is kept in any other description of accommodation.*** The guardian's approach to this issue is in my judgment correct. The focus remains on the design, nature and purpose of the different types of accommodation in which children may be placed, with secure accommodation correctly regarded as the very last resort when no other description of accommodation will do. Yet, it is clear from the last 12 months that C has been successfully prevented from injuring herself or others whilst placed in a residential care home with a restrictive care regime in place. She has never had to be subjected to a physical restraint. She does not therefore require confinement within secure accommodation to keep herself and others safe. To place her within a secure unit in such circumstances would in my judgment be unnecessary and disproportionate and thus subject to challenge as a breach of Article 5.

47. In my judgment the Court cannot and should not therefore make an order under s 25. Section 100(4)(a) of the Children Act 1989 is satisfied.

48. Turning to s 100(4)(b) of the Children Act 1989, I am satisfied that there is reasonable cause to believe that if the Court's inherent jurisdiction is not exercised with respect to C she is likely to suffer significant harm. In light of the ongoing risks posed by C to herself and others as assessed by Professor Wilcox, I am satisfied that without the current regime in place of supervision and support, there is reasonable cause to believe she is likely to cause significant harm to herself or others. It is that regime of supervision and support that is keeping C safe rather than any internal changes leading to a reduction in the risk she poses. Furthermore,

the restrictions that are in place assist C to manage her anxieties enabling her to make the progress she has. I am therefore satisfied s 100(4)(b) is satisfied.

49. The criteria for permission to invoke the inherent jurisdiction is thus met. Whether the Court should now exercise its jurisdiction to sanction the current care regime and deprivation of liberty is in my judgment clear. C has made very significant progress at X House. She is happy and settled. She urgently requires her therapeutic work to begin whilst she is able to enjoy stability and security of placement. In my judgment it is clear that it is in her best interests for the current care regime to continue and that the deprivation of liberty is both necessary and proportionate to keep C safe. The restrictions will however be reviewed again by this Court when the matter returns for IRH on 20th December 2019.

50. I will make the declaration as sought by the Local Authority.

HHJ Sonia Harris

Sitting as a Judge of the High Court

11th November 2019