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Case Nos: OX20P00300/OX20C00063

IN THE FAMILY COURT AT OXFORD

Date: 1st September 2020

Before: HHJ Vincent sitting as a section 9 judge

Between :

Oxfordshire County Council

Applicant

and

(1) A mother

(2) A father

(3) J (by her Children's Guardian, Maria Kirnig)

Respondents

Miss Justine Ramsden, instructed by the Applicant local authority
The Respondent mother represented herself
The Second Respondent father represented himself
Miss Alison Williams, instructed by TV Edwards solicitors for the child

Hearing date: 27th August 2020

JUDGMENT

Introduction

1. J is a young woman of seventeen who has been living in the care of the local authority for the past eighteen months. She suffered trauma in her early life, including sexual abuse, and as a vulnerable teenager struggled to manage her emotions. She used drugs and alcohol to self-medicate. Her vulnerabilities were exploited by others, compounding the traumas she had experienced. At the time she went into care she was placing herself in increasingly risky situations, and became a victim of significant and repeated sexual and physical assault.
2. Since coming into care she has been in a number of different placements, including three months in a secure accommodation unit in Wales. She made good progress and moved to Hull towards the end of November last year. She is now the sole resident of a care home and is supported and supervised twenty-four hours a day. I made the order approving the interim care plan for her to move to Hull, and separately made an order under the inherent jurisdiction authorising the deprivation of her liberty. The home was not registered at the time, but it was a new addition to an existing group of care homes, and was in the process of obtaining registration in line with the *President's Practice Guidance: Placements in unregistered children's homes*¹.
3. In January 2020 I made a final care order securing J's placement in Hull. The local authority's final care plan was for her to move to a placement in Oxfordshire closer to her family, as soon as one could be found, and when it was felt that she was sufficiently stable and ready to make the transition. The DOLS order has been reviewed and renewed at further Court hearings since then.
4. An application for a secure accommodation order was made in March 2020 due to increased concerns about J's welfare and safety due to the escalation in her self-harming behaviour. This has not been pursued until now, because no secure accommodation (a secure unit or otherwise) could be found for J, despite continual searching, review meetings and pressure from the mental health team in Oxford to add weight to the voice of the team manager.
5. The staff in the care home in Hull have been dedicated, understanding and committed to J. They have provided a high standard of care and support. However, it has been extremely difficult for social workers in Oxfordshire or staff to source mental health support for J from local clinicians who were unwilling or unable to accept a referral from Oxfordshire. What was offered by Hull was only 'crisis intervention', despite the Oxfordshire commissioning team committing to funding the mental health intervention and long term psychological therapy recommended by Dr Hindley, consultant child and adolescent forensic psychiatrist at the Oxfordshire Child and Adolescent Forensic Mental Health Service, who has assessed J within these proceedings.

¹ <https://www.judiciary.uk/wp-content/uploads/2019/11/PG-Placements-in-unregistered-childrens-homes-in-Eng-or-unregistered-care-home-services-in-Wales-NOV-2019-1.pdf>

6. Since January, J has experienced a deterioration in her mental health, characterised mostly by a significant escalation in self-harming. The isolation and limitations brought on by lockdown has not helped. J has spent the past seven months in a fairly persistent state of crisis, with a number of hospital admissions due to self-harm, including the need for surgery to remove swallowed objects or to repair self-inflicted wounds. The plan to move her back to Oxfordshire has been delayed because despite continued diligent efforts by the social work team, they could not find an appropriate or available placement for her in Oxfordshire. They turned to creating a bespoke placement to meet her needs, but it has taken further time to secure the necessary care and support package, the property, and to coordinate the services involved to ensure a robust care plan was in place.
7. J's self-harming has been a long-standing issue for her. When she first came into care she was self-harming at a much lower level than currently, although professionals have identified the sexual exploitation as a form of self-harm; they suggest at the time J felt she did not deserve more, did not value her safety, and sought out highly risky men who were involved with gangs, carrying weapons and drug dealing.
8. J is a strong, bright young woman who has shown great resilience. She has the full support of her parents who love her dearly and have shown their commitment to her by attending professionals' meetings, court hearings, and making long journeys to visit her whenever they can.
9. Still, there can be no doubt that the past months and years have been an ordeal. J and her parents have experienced significant delays, uncertainty and worry. Months passed by and a clear plan of action never materialised, or else was unable to be put into action because the resources were not there. Her parents have engaged fully with the local authority and other agencies. They have tried their best to raise their concerns and to advocate for J, while at the same time trying to avoid unsettling her. This is not at all easy as her anxiety levels rise if she sees her parents expressing worries about her safety or highlighting concerns about the plans.
10. Dr Hindley has diagnosed J as having a complex form of post-traumatic stress disorder with borderline personality disorder features. There is no quick fix, she will need the continued support of mental health and social work professionals into adulthood. However, she has much to offer the world, and much to gain from it. She deserves every chance to have a brighter future.

What is the local authority's plan for J?

11. In collaboration with a number of experienced professionals from different agencies in Oxfordshire the social work team has worked hard to formulate a plan for J. A three-bedroom property in Oxfordshire has been secured and six Key 2 staff recruited (two permanent and four agency). The intention behind the placement is for J to be re-established in Oxfordshire near her family, in a home where she can be kept safe so far as is possible. The plan is that she will continue to live there past her eighteenth birthday, and where she can continue to receive care and support from NHS mental health services - OSCA (Outreach Service for Children and Adolescents) – and from the

local authority Kingfisher team, which provides specialist support to child victims of sexual abuse.

12. The plan has been developed with input from J's parents and J herself. They support J's move to this placement and, broadly, the restrictions on J's liberty that are proposed to safeguard her health and welfare. All parties, and the professionals in Oxfordshire involved in the care planning, are concerned about the impact of the change in environment as well as the sudden removal of the protection of the DOLS currently in place, and worry that J would be at serious risk if this is not reduced gradually and while she builds up relationships with her key 2 staff.
13. In the placement J would be under continuous supervision and control and would not be free to leave of her own accord. The doors would be locked at all times. This is a deprivation of her right to liberty as set out in Article 5 of the European Convention of Human Rights² and is a breach of her Article 8 rights to family life. Whether or not she consents to the deprivation of liberty in advance does not change its essential nature –she cannot authorise for herself, her placement by the state in a setting in which her article 5 rights are breached. Nor can her parents do so by giving their consent to the placement³.

What orders are sought by the local authority?

14. The local authority asks the Court to authorise J's deprivation of liberty in the placement. It has made two separate applications to the Court:
 - (i) For a secure accommodation order pursuant to section 25 of the Children Act 1989 on the basis that the placement is designed or has its primary purpose as a secure accommodation unit⁴; alternatively,
 - (ii) If the Court finds the case falls outside the section 25 regime, for authorisation of J's deprivation of liberty pursuant to the inherent jurisdiction⁵.
15. I am grateful to counsel for helping me with the legal issues in this case. Mr Aidan Vine QC and Miss Justine Ramsden prepared a helpful skeleton argument for the local authority, as did Miss Alison Williams who represents J. At the hearing of the application I heard from Miss Ramsden, Miss Williams and from J's parents. All parties agree with the local authority's primary position and invite me to make a secure accommodation order pursuant to section 25 of the *Children Act 1989*. It is their joint submission that if I find that the relevant criteria for making a section 25 order are met, then I must use the statutory route to depriving J of her liberty, and exercise of the inherent jurisdiction does not arise.

² *Cheshire West and Chester Council v P* [2014] UKSC 19; *Re D (a child)* [2019] UKSC 42, *Storck v Germany* 61603/00 [2005] ECHR 406;

³ *Re D (a child)* [2019] UKSC 42

⁴ *Re B (a child)(Association of Lawyers for Children Intervening)* [2019] EWCA 2025

⁵ Section 100(4) *Children Act 1989*

Discussion

16. There have been a large number of cases over recent years involving young people in care like J who need to be placed in some form of secure accommodation, but their local authorities have been unable to find suitable placements for them due to a nationwide, severe shortage of placements in secure accommodation.
17. Many of these young people have experienced significant trauma, and present with highly complex needs. Like J, many are close to adulthood and need long-term therapeutic and multi-disciplinary support which may be better provided outside an institutional environment. Local authorities need to be imaginative in their approach, and create packages of support developed around the particular young person's needs, often requiring input from professionals from a number of different agencies.
18. As a consequence of the lack of suitable available placements, many of these children experience multiple placement moves in temporary or makeshift accommodation, or are sent to live in unfamiliar towns and cities hundreds of miles away from their families and from their existing often fragile support networks, while attempts are made to find something better. These most vulnerable children in our society come into the care of their local authorities in desperate need of stability, a consistent routine and security. The local authorities are entrusted by their parents to keep them safe and to make things better, but all too often, these young people continue to experience a degree of chaos, disruption, trauma, rejection and uncertainty in their lives after they enter the care system. A number of leading family judges have commented about the desperate situations in which this widespread shortage of suitable options has placed many children and their families.⁶
19. In *Re T (A Child) (ALC Intervening)* [2018] EWCA Civ 2136, Sir Andrew McFarlane, President of the Family Division, explains how the shortage of suitable secure accommodation has led to an increase in applications under the inherent jurisdiction for orders authorising local authorities to restrict a child's liberty in a setting that is either not a children's home, or not a children's home approved for use as secure accommodation by the Secretary of State (at paragraphs 2, 5 and 6):

'2. This court understands that, in recent years, there has been a growing disparity between the number of approved secure children's homes and the greater number of young people who require secure accommodation. As the statutory scheme permits of no exceptions in this regard, where an appropriate secure placement is on offer in the unit which is either not a children's home, or is a children's home that has not been approved for secure accommodation, the relevant local authority has sought approval by an application under the inherent jurisdiction asking for the court's permission to restrict

⁶ *Re A-F (children)* [2018] EWHC 138 (Fam) Sir James Munby P; *Re S (Child in Care: Unregistered Placement)* [2020] EWHC 1012 Cobb J; *Re T (a child)* [2018] EWCA Civ 2136 Sir Andrew McFarlane; *Re Z (a Child)(DOLS: lack of secure placement)* [2020] EWHC 1827 (Fam) Judd J.

the liberty of the young person concerned under the terms of the regime of the particular unit on offer. ...

5. It is plainly a matter for concern that so many applications are being made to place children in secure accommodation outside the statutory scheme laid down by Parliament. The concern is not so much because of the pressure that this places on the court system, or the fact that local authorities have to engage in a more costly court process; the concern is that young people are being placed in units which, by definition, have not been approved as secure placements by the Secretary of State where that approval has been stipulated as a pre-condition by Parliament.

6. In the present appeal, no party takes issue with the use of the inherent jurisdiction to meet the needs of the group of vulnerable young people, who would otherwise be the subject of a Children Act 1989 s.25 secure accommodation order, but who fall outside the statutory scheme solely as a result of the lack of available approved secure children's homes. Indeed, as a primary justification for the continued use of the inherent jurisdiction with respect to children in modern times is to provide protection for young people where their welfare demands it, it would be difficult to argue against the assumption of jurisdiction in such cases"

20. The order enables the local authority to place the child and allows them to restrict their liberty to the extent necessary to safeguard their welfare, but the President notes the concern that children subject to these orders do not get the statutory and regulatory protection they would otherwise be entitled to if they were placed in secure accommodation pursuant to section 25 of the *Children Act 1989*. See also Holman J in *A Local Authority v AT and FE* [2017] EWHC 2458 (at paragraph 6):

'I am increasingly concerned that the device of resort to the inherent jurisdiction of the High Court is operating to by-pass the important safeguard under the regulations of approval by the Secretary of State of establishments used as secure accommodation. There is a grave risk that the safeguard of approval by the Secretary of State is being denied to some of the most damaged and vulnerable children.'

21. It is not just that these young people fall outside the protections of the section 25 regime, they may be placed in a setting which is effectively acting as a children's home, but is not registered as such, and therefore not subject to regulation and inspection by Ofsted. See Mr Justice Cobb's comments at paragraph 6 of *Re S (Child in Care: Unregistered Placement)* [2020] EWHC 1012:

'All those working in the Family Court are familiar with the situation of a child who at a point of crisis is placed, or is to be placed, in an unregistered children's home, as an often unavoidable, urgent and temporary measure. The urgency of a situation, however, does not truly make it any more acceptable. It is important to emphasise that it is a criminal offence to run a children's home without the appropriate registration (section 11 CSA 2000); concerns have been widely raised across the professional spectrum about the quality of the care, support and safeguarding offered by some of the providers.'

22. The purpose of registering children's homes is to ensure that children who are living in them are afforded the protection that the framework of regulation and inspection by

Ofsted provides. This framework ensures the care provider is fit to work with children, staff are properly trained, accommodation suitable and the care provider is accountable by law to meet certain standards.

23. A child who is living in an unregistered care home is entitled to the same rights and protections as a child in a registered care home. The Court should not readily sanction anything less. The *President's Practice Guidance: Placements in unregistered children's homes*, and a number of recent cases make it clear that the inherent jurisdiction should not be used to make a DOLS order where a child is placed in a setting which is not registered but should be (and there is no proposal to register with Ofsted), unless it is an urgent and temporary measure. Judges who have made a DOLS order in these circumstances, have done so with reluctance, describing the order as a last resort, and have stated that they regard the situation as unacceptable, but unavoidable in the particular circumstances⁷.

Is J's placement unregistered or unregulated? How does that affect the local authority's applications to deprive her of her liberty?

24. J's current setting is going through the process of registering with Ofsted as a children's home, and so is subject to regulation and inspection. There are no concerns about the quality of care that she is receiving from a dedicated team who have demonstrated kindness, understanding and professionalism. Having previously authorised J's deprivation of liberty under the inherent jurisdiction, and her situation having been kept under consistent review ever since, I am satisfied that the DOLS order should remain in place for the week or so that she remains in this setting.
25. The proposed new placement is not registered as a children's home.
26. If it is a children's home and is not registered, then the local authority would be caught by section 11 of the *Care Standards Act 2000*, which requires children's homes to be registered with Ofsted. Further, children's homes cannot be used as secure accommodation unless approved by the Secretary of State for that purpose⁸.
27. The local authority's position, supported by all parties, is that the placement is not a children's home. That means that there is no requirement to register it with Ofsted - it is an unregulated placement - and there would be no restriction on it being used as secure accommodation.⁹
28. The local authority previously considered whether it could take steps to register the property as a children's home with Ofsted, but for a number of good reasons set out in

⁷ See most recently, *Re S (Child in Care: Unregistered Placement)* [2020] EWHC 1012, Cobb J, and *Re Z (a Child)(DOLS: lack of secure placement)* [2020] EWHC 1827 (Fam) Judd J.

⁸ reg 3 of the *Children (Secure Accommodation) Regulations 1991* as amended by regulations 2 and 3 of the *Children (Secure Accommodation) Amendment Regulations 1995*

⁹ There are no restrictions on the use of any type of property other than 'children's homes' as secure accommodation under the various regulations.

the social worker's evidence, it is not a realistic option. It is unlikely the registration process could be completed before J's eighteenth birthday which is in less than six months' time. To register with Ofsted, the individual manager of the care home would need to make the application, the local authority cannot do it for him or her. The key workers supporting J are employed directly by the local authority, it does not fit the terms of their employment to be individually responsible for registering the property, or to be responsible for their own training or risk assessments. J has previously been in placements where the local authority has hired the services of care providers who were or should have been registered with Ofsted to provide a package of care and support. Frankly, this has not gone well. It is important that the package of support provided to J is provided directly to her by the local authority. It is a carefully designed package, bespoke to her needs, with a view to being her long-term placement past her eighteenth birthday which is in less than six months, and for now, includes proposals to restrict her liberty.

29. I have been referred to s.1(3) of the *Care Standards Act 2000*, which provides that '*an establishment is not a children's home merely because a child is cared for and accommodated there by a parent or relative of his or by a foster parent*'. The local authority submits that this placement falls into the category of establishments that are excepted from the section 1(2) *Care Standards Act 2000* definition of a children's home. I have been referred to the *Care Planning, Placement and Review (England) Regulations 2010*, in which settings not requiring registration include independent or semi-independent living (although those do not envisage support workers living on site with the young person, nor providing a package of care as opposed to support). I have been referred to section 3 of the *Children's Home (England) Regulations 2015*. Those exceptions include for example accommodation for children aged sixteen or over to enable them to undergo an apprenticeship or training.
30. Having regard to all the circumstances of this particular case, I am persuaded that the proposed placement is not correctly described as a children's home. That means there is no requirement to register it, and it falls within the category of an unregulated placement. As it is not a children's home, there would be no restriction on it being used as secure accommodation for J, providing I found the section 25 criteria to be met.
31. If I am wrong about it being an unregulated placement, it is arguable that, whether or not the placement is a children's home and whether or not it is authorised as secure accommodation by the Secretary of State, if I find the relevant criteria to be met under section 25, then I would be required to make the secure accommodation order.
32. Section 25 has been the subject of recent and detailed analysis by Baker LJ in his judgment *Re B (a child)(Association of Lawyers for Children Intervening)* [2019] EWCA 2025. He cited with approval *obiter* remarks of Lady Justice Black in *Re D* [2019] UKSC 42. At paragraphs 98 and 99 she was noted to have expressed scepticism at submissions made on behalf of the Secretary of State that only children's homes approved by the Secretary of State for use as secure accommodation can count as secure accommodation:

'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 placed or 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, such children might be doubly prejudiced, i.e. placed in an unapproved children's home and outside the protective regime of section 25.'

'... even if the approach commended by the Secretaries of State is correct, it would not serve to identify "secure accommodation" in all its various settings, but only in so far as children's homes are concerned, and it would leave unanswered questions in relation to many other children. Accordingly, there being no reliable and universally applicable shortcuts to identifying secure accommodation, it is necessary to look more closely at the wording of section 25(1) in order to determine what circumstances fall within it.'

33. As all parties agreed with the local authority's primary submission that the proposed placement is not a children's home, I did not hear argument on this point. I proceed on the basis that the placement is an unregulated setting.

Authorisation of deprivation of liberty under section 25 of the Children Act 1989

34. Section 25(1) provides as follows:

'Subject to the following provisions of this section, 'a child who is being looked after by a local authority in England or Wales may not be placed, and, if placed, may not be kept, in accommodation in England or Scotland provided for the purpose of restricting liberty ('secure accommodation') unless it appears—

(a) that –

*(i) he or she has a history of absconding and is likely to abscond from any other description of accommodation,
and*

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

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

35. Section 25(3) of the Act provides that, *'it shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied'*.
36. Section 25(4) provides, *'if a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which he or she may be so kept'*.
37. At paragraph 62 of his judgment in *Re B*, Baker LJ discussed what is meant by *'any relevant criteria'* at sections 25(3) and 25(4):

'What is meant by "any relevant criteria"? At first sight, it might appear that the criteria that are "relevant" to the court's decision are merely the conditions in s.25(1). On closer examination, however, that is plainly not the whole answer. S.25(3) does not simply require the court to determine whether the conditions in s.25(1)(a) or (b) are satisfied,

and s.25(4) does not oblige the court to make the order if it determines that one or other of those conditions is satisfied. Plainly there are other "relevant criteria" which must be satisfied before an order must be made. These include (1) whether the child is being "looked after" by a local authority (or alternatively comes under one of the other categories of children identified in Regulation 7); (2) whether the accommodation proposed by the local authority is "secure accommodation" in the sense already discussed; (3) whether, if the local authority is proposing to place the child in a secure children's home, the accommodation has been approved by the Secretary of State for that use, and (4) whether, if the child is aged under 13, the placement of that specific child has been approved by the Secretary of State.'

38. In addition, Baker LJ set out a further two questions intrinsic to the Court's analysis; consideration of welfare and proportionality.
39. In determining whether the 'relevant criteria' under s.25(3) and (4) are satisfied, Baker LJ sets out a total of six questions for the Court to answer. I deal with each of those in turn as they apply to J's case.

(i) ***Is the child being "looked after" by a local authority, or, alternatively, does he or she fall within one of the other categories specified in regulation 7?***

40. Yes, J is subject to a care order made by me in January 2020.

(ii) ***Is the accommodation where the local authority proposes to place the child "secure accommodation", i.e. is it designed for or have as its primary purpose the restriction of liberty?***

41. In *Re B*, Baker LJ agreed with Lady Black's obiter observations in *Re D (a child)* [2019] UKSC 42 as to the meaning of 'secure accommodation':

'Like her, in considering this issue I have been increasingly drawn back to Wall J's analysis in Re C. In my judgment, "secure accommodation" is accommodation designed for, or having as its primary purpose, the restriction of liberty. As Wall J acknowledged, however, premises which are not designed as secure accommodation may become secure accommodation because of the use to which they are put in the particular circumstances of the individual case.'

42. I was told that the local authority is concerned that members of the Key 2 team may be somewhat apprehensive at the thought of being categorised as providers of secure accommodation. Like others involved in the case, my first instinct was to regard this placement as some form of 'semi-independent living plus', rather than secure accommodation. An essential part of this package is to provide care and support to J in a placement in which she may establish greater independence and autonomy. However, I have read paragraphs 46 to 60 of Baker LJ's judgment in *Re B*, in which he agrees with

Lady Black's *obiter* comments at paragraphs 90 to 115 of her judgment in *Re D (a child)* [2019] UKSC 42. At paragraph 113 she said, '*there is much force in the argument that it is upon the accommodation itself that the spotlight should be turned, when determining whether particular accommodation is secure accommodation, rather than upon the attributes of the care of the child in question.*'¹⁰

43. Having considered that analysis, I am clear that the question that I have to ask myself is not about the nature of the care package as a whole, nor the ultimate intentions of the placement, but to consider, now, at the time it is proposed J enters the setting, what is its primary purpose? It is clear that the primary purpose of the provision of the accommodation is to prevent J from causing injury to herself.
 44. The house has three bedrooms so that staff members can live on site. The package of support around J has been put in place with the aim of keeping her as safe as possible. The safety measures identified represent a significant restriction on her liberty. There will be staff on site twenty-four hours a day. She will not be free to leave the property unless accompanied by staff members and if she does not agree to that, then they can lock the door to prevent her leaving. A member of staff will keep a line of sight on her at all times. She will be restricted to access to dangerous items. Restrictions on her access to money and use of internet are also envisaged. The placement is designed so that there is flexibility, and the hope is that it will eventually become a standard key 2 placement for J to be supported in living a more normal life without restriction. However, in its original incarnation and for the time being, its primary purpose is the restriction of J's liberty so as to prevent her, so far as is possible, from causing harm to herself.
 45. I note that the accommodation in *Re B (a child)(Association of Lawyers for Children Intervening)* was also a house where the child was the sole resident. The restrictions imposed concerning supervision, not being able to leave the premises and access to dangerous items were the same as those now proposed for J. Although he acknowledged that it was not easy to determine whether this accommodation was being provided for the purpose of restricting liberty, Baker LJ held that the first instance judge had been wrong to proceed on the basis that it was not secure accommodation. Baker LJ found that the arrangements '*plainly satisfied the acid test for deprivation of liberty*'¹¹.
- (iii) Is the court satisfied (a) that (i) the child has a history of absconding and is likely to abscond from any other description of accommodation, and (ii) if he/she absconds, he/she is likely to suffer significant harm or (b) that if kept in any other description of accommodation, he/she is likely to injure himself or other persons?**

¹⁰ *Re B (a child)(Association of Lawyers for Children Intervening)* [2019] EWCA 2025;

¹¹ *Re B (a child)(Association of Lawyers for Children Intervening)* [2019] EWCA 2025, at paras 9 and 10, 107 and 108

46. All parties agree that the second limb of the section 25(1) test applies: *'if kept in any other description of accommodation J is likely to injure herself'*.
- (iv) ***If the local authority is proposing to place the child in a secure children's home in England, has the accommodation been approved by the Secretary of State for use as secure accommodation? If the local authority is proposing to place the child in a children's home in Scotland, is the accommodation provided by a service which has been approved by the Scottish Ministers?***
47. For reasons given above, I am persuaded that the property is not a children's home, so the question of whether it would have to be approved for use as secure accommodation by the Secretary of State does not arise.
- (v) ***Does the proposed order safeguard and promote the child's welfare?***
48. Yes. I have read a number of statements from the social work team manager Alison Ritchie. She is a specialist social worker with the local authority's Kingfisher team, which supports children who have suffered the form of sexual abuse identified as child sexual exploitation. She explains clearly the thinking and creativity that has gone into formulating the plan for J. She has worked tirelessly to pull a number of different strands together and to put the plan into action. I have read the minutes of multi-disciplinary professionals' meetings, reports filed in the previous care proceedings including from Dr Nick Hindley. The group is well-informed and made up of experienced professionals, who have a good understanding of J, her particular needs, her personality. Together they have considered a range of options, settled on this as the best one and devised a way to co-ordinate services from different agencies to provide the care and support J needs.
49. The plan recognises the importance of sustaining family relationships through regular contact, and ensures she will get the therapeutic support for her mental health needs that has been the key element missing from the package in her current placement. The plan doesn't just think about J's current needs, but looks ahead to her future; a social worker from the adult mental health team is closely involved. It is an essential part of the plan that J will get to know staff who will be preparing her for life as an adult, and have confidence that she will continue to have the support she needs past her eighteenth birthday.
50. Importantly, J and her parents have played a significant role in the planning, and helped work out practical details. J's parents are very pleased that she is coming back to Oxfordshire. They expect her to need a lot of support when she makes the transition to a new setting and have been understandably very worried about her, but they fully support the plan and consider that it will safeguard and promote J's welfare. J is really looking forward to returning to Oxfordshire and supports the plan.
- (vi) ***Is the order proportionate, i.e. do the benefits of the proposed placement outweigh the infringement of rights?***

51. J's father expressed some concern that under section 25 the local authority is not fettered in the way it would be by a DOLS authorisation. Section 25(5A) provides:

*'Where a local authority in England or Wales are authorised under this section to keep a child in secure accommodation in Scotland, **the person in charge of the accommodation may restrict the child's liberty to the extent that the person considers appropriate, having regard to the terms of any order made by a court under this section.**'*

(emphasis added)

52. I acknowledge the potential for concern, but note that the section requires the person in charge of the accommodation to have regard to the terms of any Court order. In the circumstances of this case there are clear terms of reference from the care plan which sets out the proposed restrictions, and in accordance with section 25 (and planned by the local authority in any event) there will be weekly reviews of J's situation including careful consideration of the extent to which her liberty is being restricted. J, her parents and a group of experienced professionals will be involved in these reviews.
53. The local authority proposes to record the agreed restrictions in a written agreement and has agreed that this should form part of an ongoing conversation with J. Restrictions on her liberty may need to be increased, but may also be reduced as she settles into placement, receives the support she needs and starts preparing for a more independent life. In this respect an order pursuant to section 25 provides greater flexibility than the DOLS authorisation. A DOLS order sets out the highest level of interference with a child's rights that would be permitted at the time the order is made, and then leaves to the discretion of the local authority the level of intervention required up to that. Parties have to come back to Court to have the DOLS reviewed.
54. J has shown characteristic maturity and reflection. She has carefully considered the proposed restrictions, explained why she thought some went too far, giving reasons and sometimes made counter proposals. Alison Ritchie and her professional colleagues have listened to what she has to say, considered the points made and responded to as flexibly as they felt they reasonably could. In this way J facilitated constructive discussions about what level of interference with her rights might be proportionate. She accepts that to keep her safe there needs to be a high level of restrictions in place, and as a consequence her right to liberty will be compromised.
55. J has self-harmed to a serious degree in other forms of accommodation. I am satisfied that the accommodation to be provided, together with the package of care, therapeutic support and the restrictions on her liberty represent the only option which would meet her welfare needs. The restrictions on her liberty are necessary to keep her safe so far as is possible; unless she is kept in this accommodation with these restrictions, she is likely to injure herself and/or others.
56. I am satisfied that secure accommodation is a proportionate response to the risks to her safety, and that J's care needs cannot be met unless her liberty is restricted in the ways identified within the secure accommodation package proposed.

57. Having considered the six questions Baker LJ set out in *Re B*, I find that all the ‘relevant criteria’ for keeping a child in secure accommodation referred to in section 25(4) are satisfied.

Conclusions

58. Having concluded that the relevant criteria are satisfied, the wording of section 25(4) *Children Act 1989* is clear that I must make an order authorising J to be kept in secure accommodation¹². In doing so, I authorise the local authority to deprive J of her liberty to the extent identified in its plan, but enabling her to benefit from the safeguards that the section 25 statutory and regulatory regime provides.

59. All parties agree that I should specify the maximum period of three months. J finds attending Court very stressful and would wish to avoid any more Court hearings if at all possible.

60. Given that I must make an order under section 25, the question of exercising the Court’s inherent jurisdiction to make a DOLS order effective beyond her current placement does not arise.

61. For reasons given above, I authorise the continuation of J’s deprivation of liberty in her current setting for a further short period of time until she moves to Oxfordshire.

62. I first met J a year ago. She wrote me a letter telling me why she did not want to go to the secure accommodation unit in Wales, and also came to meet me in Court. She showed insight, reflection and her language was powerfully expressive and persuasive. Even though she did not want me to make the order it was clear that she understood the reasons why the local authority was asking for it; she is able to see things from others’ perspectives. Although the last weeks and months have been painful and challenging for her, I am so pleased to see that she has not lost her powerful voice. She has fully participated in discussions with professionals, and by contributing in a mature, reflective and constructive way, she has used her voice to good effect; professionals listened, and responded positively.

63. I very much hope that this return to Oxfordshire marks the beginning of a much brighter and positive stage in her life. I would like to wish her and her family the very best for the future.

¹² *Re B (a child)(Association of Lawyers for Children Intervening)* [2019] EWCA 2025, para 99

HHJ Joanna Vincent
Family Court, Oxford
1st September 2020