Neutral Citation Number: [2021] EWHC 123 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/01/2021

Before :

MRS JUSTICE KNOWLES

- -

Between:

A CITY COUNCIL	**Applicant**
- and -	
X	**Respondents**
and	
Y	
and	
Q	
(A Child)	
and	
The Children's Guardian	

- -

Q (A Child) (DOLS: Lack of Secure Placement)

- -

Miss Kirstie Danton for the local authority
Mr Oliver Lycett for Q
The Children's Guardian represented himself
X was present but unrepresented
Y was neither present nor represented

Hearing date: 18 January 2021

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mrs Justice Knowles:

1. This is yet another addition to the long line of recent cases addressing the unavailability of secure accommodation provision for troubled young people and, in those circumstances, the use of the inherent jurisdiction to make orders depriving young people of their liberty. The lack of appropriate placements for highly vulnerable children and adolescents identified in much of the recent case law is, in the words of Sir James Munby, former President of the Family Division, *"disgraceful and utterly shaming"* (see paragraph 37 of Re X (A Child) (No 3) [2017] EWHC 2036 (Fam)).

2. The local authority's application is for a secure accommodation order and, in the event that a suitable placement in secure accommodation cannot be found, for an order under the inherent jurisdiction to deprive Q, the young person with whom I am concerned, of his liberty.

3. I have dealt with this case since 24 November 2020 and have taken a variety of steps detailed in this judgment in what presently remains an unsuccessful attempt to obtain for Q a suitable placement in secure accommodation.

4. I am grateful to Ms Danton who represents the local authority for her energetic assistance with this difficult case. At the outset, I record that the local authority has done everything it could to find a suitable placement for Q. I am also grateful to Mr Lycett who represents Q. Q appeared via video-link at each of the hearings I have conducted and has made his desire not to go to a secure placement clear. He is separately represented from his Children's Guardian, Mr Smith who appears in person, there being no public funding available to him for representation at hearings.

Background

5. Q is now aged 16 years old. He will be 17 in February 2021. At the age of 2 years, Q was taken into police protection with his younger sister, having been found in circumstances of severe neglect. Q was placed in the care of the local authority and was subsequently adopted with his sister when he was three years old. His adoptive parents reported developmental delay consistent with neglect and Q's behaviour at home and school was said to have been extremely challenging. Q's adoptive parents separated when he was eight years old and his adoptive mother found it difficult to manage his behaviour as a single parent. Aged eight years, Q was referred to Child and Adolescent Mental Health Services (CAMHS) and was diagnosed as having Attention Deficit Hyperactivity Disorder (ADHD), for which he still receives medication. Since the age of 4, Q has engaged in harmful sexual behaviours with others, both male and female. This sexually harmful and violent behaviour escalated to the extent that, when Q was aged 10 years, his adoptive mother asked for him to be accommodated by the local authority. It is a matter of great regret that Q's adoptive parents have struggled with his behaviours and found it difficult to support him at the present time. Neither of them have been represented at the hearings which I have conducted. The mother has attended the hearings in December and January. The father has not attended any hearing since the issue of proceedings in May 2020.

6. Q was placed with foster carers and stayed with these carers for 12 months. His placement broke down due to (a) his aggression and threats to other children living in

the foster home; (b) concerns that he was preparing to set fires; and (c) alleged abuse of the family pet. In February 2015, Q moved to a residential school, but this placement ended in July 2017 after concerns about his harmful sexual behaviour, him concealing weapons, his use of lighters, and his assaults on staff. In July 2017, Q moved to a residential unit, but this placement ended within a month. The problems included: Q being arrested for carrying a knife; Q stealing items; Q burning items in the bathroom of the placement; Q absconding; Q ingesting glue; Q assaulting care staff; and Q climbing onto the roof of the placement and threatening suicide.

7. In August 2017 Q was placed in secure accommodation in Scotland until a specialist placement that met his complex needs could be sourced. During his time in secure accommodation, Q continued to display challenging behaviour such as destroying property, burning items, and threatening and targeting female staff.

8. The local authority issued care proceedings in September 2017 and interim care and concurrent secure accommodation orders were made later that month. Those orders continued in tandem until February 2018 when the secure accommodation order was discharged. On 26 March 2018 Q was made subject of a final care order.

9. In February 2018, Q was placed in a single occupancy placement. He settled well and began to make good relationships with staff. He continued to display extreme behaviour such as exposing himself to a teenage girl and photographing his genitals. In February 2019, a risk planning meeting took place with the local authority in which the placement was situated because of the risk that this local authority asserted Q posed to the wider public. In consequence, risk management meetings took place every six weeks until Q's placement broke down in autumn 2019. The placement ended when it was alleged that Q had caused the six-year-old child of a neighbour to touch his penis. The incident was investigated by police and the local authority in whose area the placement was situated refused to permit Q to remain in his placement as he was deemed too serious a threat to the public.

10. Alongside Q's problematic placement history, the local authority applied in October 2018 for an order under the inherent jurisdiction to deprive Q of his liberty. Following several adjournments by which the court sought greater clarity as to the restrictions said to be necessary in respect of Q, HHJ Perry sitting as a deputy High Court judge granted the local authority's application on 13 December 2018. The order recorded that Q was living in a residential environment where he was supervised by two members of staff throughout the day and by two night-waking staff. He was the sole occupant in the placement and was not free to leave. Regrettably, the order did not provide for any review date of the restrictions on Q's liberty.

11. In April 2019, CAMHS recommended that Q should have specialist work from an organisation called G-Map. This is an independent, nationally accessible, specialist service with over 30 years' experience of assessment and therapeutic intervention with children and young people, both male and female, who display problematic or harmful sexual behaviour. Following an intensive assessment, G-Map reported in November 2019 that Q required therapeutic intervention of 18-24 months' duration to address, among other matters, his inappropriate and harmful sexual behaviours. In a report dated 25 June 2020 written at the start of these proceedings, G-Map listed incidents of Q's inappropriate and harmful sexual behaviour from the age of four years to October 2019 and stated the following:

"... These behaviours have occurred across different environments with males and females of various ages (including child, peer and adult). Seemingly, victim accessibility and the opportunity to be sexual with others took precedence over influences such as having a particular victim profile, or his behaviour being triggered by sexual attraction to others. Our hypothesis is that [Q's] harmful sexual behaviours are driven by a preoccupation with, and reliance on, sex. To our knowledge, [Q's] inappropriate and harmful sexual behaviours were non-penetrative although given the sexual thoughts that [Q] has reported and the increased sophistication through the use of weapons and locking the door when [Q] displayed harmful sexual behaviour against his female carer, it is important for professionals to be aware of the significant level of harm he has the potential to perpetrate. Additionally, the frequency and apparent opportunistic nature of these behaviours have meant that high levels of support and supervision have been required to manage [Q's] sexual behaviour and his risk to the public..."

G-Map recommended that Q be supervised during activities and in environments where he was in contact with peers and children of all genders in addition to adult females, and for the supervision to be provided by an appropriate adult who was aware of the risks he posed. Q should not be allowed to be in a one-to-one situation with a younger child or a vulnerable child/young person of any age. Where possible and defensible, it should be explored how and whether supervision levels for Q could be reduced in some situations. Public protection should be paramount in the decision-making process and any changes to supervision should be decided in a multi-agency arena. Finally, Q's internet use and access to mobile communication devices should also be supervised. G-Map recommended therapeutic intervention for a further 18 months, based on weekly sessions and Q commenced this work with G-Map in February 2020.

12. From October 2019 to the beginning of June 2020, Q was placed in a single occupancy placement. Again, he settled well and began to attend education supported by staff. However, Q's sexual behaviour became increasingly difficult to manage. In March 2020, he exposed himself to children aged seven and nine years and, in April 2020, it is alleged he was trying to expose himself to a vulnerable neighbour.

13. In May 2020, the local authority applied once more for an order under the inherent jurisdiction to deprive Q of his liberty. The application noted that the order made in December 2018 had no expiry date and the local authority invited the court to review matters and extend the deprivation of liberty order. On 16 June 2020 HHJ Harris, sitting as a deputy High Court judge, granted an order depriving Q of his liberty. The restrictions were that he was to be supervised one-to-one at all times; he was not permitted to leave the placement without a supervisor present; and he was not permitted to have unsupervised access to the internet, to a telephone or to social media. The order was to expire on 20 July 2020 with the matter being listed before HHJ Harris for further consideration on 17 July 2020. In June 2020, Q moved to another residential unit where there was a young female in placement (though she moved out in October 2020).

14. On 17 July 2020, the court extended the deprivation of liberty order until 27 July 2020. The short duration of that order was explained by several serious incidents occurring in the placement, the most notable of which occurred on 15 July 2020 when Q left the placement unattended and was alleged to have attempted to entice a child

aged 10 years into a field with him. The police found Q and returned him to his placement. Restrictions upon Q were that (a) he was to be supervised 2 to 1 during the daytime and one-to-one during sleeping hours; (b) he was to be under constant watch and within touching distance of a member of staff at all times; (c) all doors and windows in the placement were locked; and (d) any attempt by Q to leave the placement or cause harm or damage was to be immediately reported to the police via 999.

15. On 24 July 2020, the court extended the deprivation of liberty order until 8 August 2020. At the hearing, the court expressed grave concern that the current placement was unsuited to managing the risk involved or delivering the highly complex therapeutic work which Q needed. The court noted that there was to be a strategy meeting on 4 August 2020 to review the placement. The restrictions upon Q's liberty remained the same as on 17 July 2020.

16. On 5 August 2020, the court noted that the local authority was concerned about Q's escalating harmful behaviours and no longer asserted that his current placement was able to meet his needs and deliver the therapeutic work identified by G-Map. The deprivation of liberty order with the same restrictions was extended until 26 August 2020. Regrettably, despite the restrictions imposed by the deprivation of liberty order, Q absconded on 15 August 2020 for a period in excess of 24 hours. During that time, he committed several criminal offences, namely: (a) causing or inciting a boy under the age of 13 to engage in sexual activity without penetration; (b) causing or inciting a boy under the age of 18 to engage in sexual activity without penetration; (c) exposure; and (d) two counts of possessing a knife blade/sharp pointed article in a public place. Q pleaded guilty to these offences and, in October 2020, was sentenced to an Intensive Referral Order for a period of 12 months.

17. At a hearing on 25 August 2020 before HHJ Harris, the local authority submitted that Q met the criteria for and was best served by a placement in secure accommodation. It is plain, that the change of position with respect to Q's placement was strongly influenced by his absconsion and offending on 15 August 2020. A recital to the order recorded that the local authority would make an urgent application for a secure accommodation order upon offer of such a placement for Q, the court then considering that such a placement met his welfare needs and was both proportionate and necessary. HHJ Harris extended the deprivation of liberty order until 31 October 2020. The restrictions imposed by the order on 25 August 2020 were more severe, namely: (a) Q was to be supervised 3 to 1 at all times; (b) he was not permitted to leave placement without a supervisor present including into the community or to education; (c) he was not permitted to have unsupervised access to internet or telephone; (d) he was not permitted to access social media; and (e) he was not permitted to go outside into the placement grounds (including the garden).

18. On 16 October 2020, HHJ Harris extended the deprivation of liberty order until 11 November 2020. By that time, Q had been sentenced and the court was clearly frustrated by the unavailability of any secure placement. A recital to the order recorded that the court expected the Director of Social Services to write to the Secretary of State for Education immediately, setting out the delay in obtaining a placement and requesting the further authorisation of secure accommodation beds without delay. HHJ Harris expressed the view that the current placement could not be sustained indefinitely but a secure placement must be found prior to the next hearing.

If no such placement could be found, HHJ Harris indicated she would consider transfer of this case to either the President of the Family Division or Mr Justice Keehan, then Family Division Liaison Judge for the Midlands Circuit.

19. On 10 November 2020, HHJ Harris endorsed the view of Q's Children's Guardian and the Independent Reviewing Officer that the local authority's placement team should make contact with the secure accommodation panel on a daily basis as the need to identify a placement for Q was of the utmost urgency. At that stage, the local authority had not yet received a response from the Secretary of State for Education and the court indicated that it was considering an invitation to the Secretary of State to attend the next hearing. It was plain on the face of the order that the court was of the view that Q's placement could not be sustained indefinitely and that a place in secure accommodation must be found prior to the next hearing. The order was extended with the same restrictions as previously until 16 December 2020.

20. Such was her concern about Q's situation that HHJ Harris reallocated these proceedings to me in my capacity as FDLJ for the Midlands and the matter was listed before me on 24 November 2020. The local authority was invited by her, at my suggestion, to write, without delay, to Sir Alan Wood, Chair of the Residential Care Leadership Board, to make him aware of Q's circumstances.

Recent Developments

21. On 24 November 2020, I gave further directions and listed the matter for a hearing on 14 December 2020. The local authority had - on the morning of the hearing - received a letter from the Secretary of State for Education which indicated his concern on learning of Q's circumstances. He gave assurances that the Secure Welfare Coordination Unit (SWCU) was doing everything it could to help identify a placement for Q. His letter identified that: *"... Under contractual arrangements between Youth Custody Service (YCS) and SCHs (Secure Children's Homes) it is possible for the Secretary of State for Justice to invite the Registered Manager of a SCH to make a justice bed available temporarily for a welfare placement. You can ask the SWCU to discuss this with the YCS on your behalf. However, whether the YCS agreed to release a bed temporarily is a decision for them and the decision to accept the referral would fall to the registered manager of the home and cannot be directly influenced by either my [sic] or the YCS."* Given this information, the local authority informed the court that it intended to write to the Secretary of State for Justice to invite him to consider, on a temporary basis, approving the conversion of a justice bed to a welfare bed to accommodate Q as a matter of urgency. I gave permission for the case papers and my order to be sent to the Government Legal Department for the urgent attention of the Secretary of State for Justice. Additionally, I invited the Secretary of State for Justice and/or the Director of the Youth Custody Service to attend, represented by counsel, the hearing listed before me on 14 December 2020 so that I might be updated as to the availability of a youth justice bed for Q.

22. I also had sight of an email dated 23 November 2020 from Sir Alan Wood to the local authority's Director of Children and Family Services. He expressed great empathy with the challenges the local authority was facing with respect to placing Q. He had contacted the acting Permanent Secretary at the Department for Education and the Director General at the Department for Education responsible for children's social care, stressing both this case and the national challenge of ensuring that there were

sufficient secure beds for children like Q. He had also contacted the Director of the Youth Custody Service at the Ministry of Justice, having been informed by the Director of Children's Services that there was a possibility of changing a justice bed to a welfare bed in one of the secure children's homes. He expressed the hope that assistance would be offered to the local authority in this case. Sir Alan Wood confirmed that he had chaired the Residential Care Leadership Board which oversaw a programme of work on residential care, but this work was complete, and the Board had, therefore, ceased to exist in March 2020. His email confirmed that he had recommended an increase in the number of secure beds for children with the same issues as Q.

23. I also record that, at the time of my hearing on 24 November 2020, there were eight beds available in secure accommodation, but 27 young people were waiting for a placement. Three of those beds were designated female-only.

24. By the time of the next hearing on 14 December 2020, the local authority had received a letter dated 23 November 2020 from Ms Swidenbank, Executive Director of the Youth Custody Service within Her Majesty's Prison and Probation Service. Her letter addressed the local authority's request for a secure justice bed to be transferred to a welfare secure bed and stated the following:

"I thought it may be useful to outline the Youth Custody Service (YCS) position on this request and any further requests. Under contractual arrangements between YCS and Secure Children's Homes, it is possible for the Secretary of State for Justice to invite the registered manager of a home to make a justice bed available temporarily for a welfare placement - we did this in June upon receipt of your request. However, whether the registered manager chooses to take the decision to accept the child who has been referred, is a choice for them and cannot be directed or influenced by the YCS.

We have a long-standing agreement with the Secure Welfare in which they are able to request the "spot purchase" beds for welfare cases when there is no suitable accommodation available within the welfare sector. The spot purchase arrangement is for a limited and agreed time and availability of beds is dependent on our population within the youth secure estate. The YCS currently offer four spaces for welfare use, only one of these beds is currently being used. All requests for accommodation should be made to the YCS via the Secure Welfare Unit."

25. At the hearing before me, Ms Dean attended in place of Ms Swidenbank. She is the head of the placements and casework referral team at the Youth Custody Service. She confirmed that the Youth Custody Service received requests on a fairly regular basis for the spot purchase of justice beds so that they might be used for welfare placements within the secure estate. She confirmed that four such beds had been released to the Secure Welfare Coordination Unit and that the Youth Custody Service could not be involved in allocating its beds to welfare cases. All such referrals had to be made via the Secure Welfare Coordination Unit.

26. In an effort to obtain further clarity as to the referral process, I directed that my order should be served upon the head of the Secure Welfare Coordination Unit, Ms Gunniss, and invited her to provide a letter addressing the following;

a) How the process of referral was conducted when there was an approach made by a local authority;

b) What information to possible placements was provided by the Secure Welfare Coordination Unit in respect of any child and, in the case of this child, what information about his needs and the risks he posed was provided to any unit;

c) What information concerning any placements was made available to the applying local authority and, in the case of this child, were details of locations, specialist provision and therapeutic services provided;

d) When a search for placement was made, were justice and welfare beds made available to each child and, if not, had both types of placement been considered and offered to this child;

e) On what date and by what power was the decision taken to change the way in which secure accommodation beds were advertised, detailing who was involved in such process and the decision for change, setting out the impact of any change upon the identification of a suitable placement for vulnerable children and teenagers;

f) and, in relation to Q, explaining why no placement had yet been offered despite there being places available and, in particular, three justice beds available for "spot purchase".

27. I also sought information as to whether the Intensive Referral Order was effective given the restrictions placed upon Q and, if not, the circumstances in which the Youth Offending Service would remit Q's case to the Youth Court for further consideration. I listed the matter for a further hearing on 22 December 2020, having extended the order authorising the deprivation of Q's liberty.

28. By the time of the hearing on 22 December 2020, Miss Gunniss had provided information to the court in accordance with my invitation. Some of the information provided in her letter accorded with the summary contained in paragraph 22 of the judgment of MacDonald J in Lancashire CC v G (Unavailability of Secure Accommodation) (No 1) [2020] EWHC 2828 (Fam) and I endorse his view that the information provided by the Secure Welfare Coordination Unit was designed to make clear to the court that it had only the bare minimum of responsibilities towards the children for whom secure placements was sought via the service it offered. In her letter to me, Ms Gunniss stated the following:

a) Data from secure children's homes is collected by the unit on a daily basis, and referrals are then sent to homes if a placement is available. The home will then indicate whether they can accept the young person, having considered the existing cohort of young people in their care, their needs, and the skills and ability of the staff to manage and meet their needs;

b) if a young person is not offered a bed in the first instance, then the referral will continue to be sent to all secure children's homes with projected beds each day. Unless a secure children's home provides written feedback that they categorically are unable to accept the young person, the referral will continue to be sent for the duration that the referral is live. If a secure children's home has categorically declined a young

person, the unit will continue to make the secure children's home aware that the referral is still live to give them the opportunity to reconsider;

c) the unit has a standardised referral form used by all local authorities in England and Wales which is sent to all secure children's homes;

d) when a secure welfare search is undertaken, this will only be for beds within the secure welfare estate. Local authorities can request the unit explores a "spot purchase" bed which will be a bed from the justice estate. This is only explored if requested as this is not a standard process and the Youth Custody Service will not always have availability to support this request. A request for a spot purchase bed was made on 24 November for Q, but unfortunately there were no secure children's homes with justice beds that were able to consider a spot purchase referral. This remains the position to date;

e) A decision was recently taken to cease providing the names and locations of secure units available at any given time. This change was implemented *"due to the intense pressure on homes during the pandemic period the aim of increasing the efficiency of the estate by reducing times when beds were empty awaiting an admission. By providing local authorities [with] the details of the beds that are due to become available, placement teams are able to plan potential placements based on the projected availability and it also enables SCH managers more time to read referrals and think about plans for admission"*. Prior to the trial of the projected bed system, discussions were held with various stakeholders to assess the impact that this would have on both the placement teams and the homes themselves. The feedback received to date since August 2020 has been "wholly positive";

f) to date the unit has only received feedback from one secure children's home outlining that it was unable to accept Q as he had previously spent a period of six months in secure accommodation during which he physically assaulted staff on several occasions and displayed concerning behaviour of risk to himself and others. The home was unable to offer the degree of staffing necessary to manage the risk it considered Q presented; and

g) all the secure children's homes were approached to see if they would accept a spot purchase placement, but none were able to consider such a placement for Q.

29. I also had a statement from the Youth Offending Service. It confirmed that Q had attended all arranged supervision sessions and had engaged with the tasks required of him. There were significant barriers in delivering the offending behaviour programme because of the restrictions imposed by the deprivation of liberty order. The Youth Offending Service considered that any long-term changes in Q's thinking and behaviour were unlikely given the limitations of his current environment. He had no freedom of movement and therefore no responsibility in any aspect of his life which meant that levels of rehabilitation and desistance would remain untested in *"real-life"* situations. A key area of concern was a lack of self-regulation, but the longer Q remained in an environment where he was under-stimulated, the more chance there was of him becoming dysregulated and triggered by ordinary situations from which he was presently shielded. Q was no longer able to have therapeutic support from G-map, but the Youth Offending Service was able to offer Q a substitute intervention via his Intensive Referral Order. The Youth Offending Service would remit Q's case back

to the Youth Court if he were found to be in breach or assessment indicated that the order was unworkable. The Service considered that, at present, the Intensive Referral Order was workable. Delivering interventions in the current placement was challenging but Q was engaged and there was some limited progress. Without a relaxation of current external controls, the Youth Offending Service could not assess whether risk could be managed should Q's supervision reduce.

30. The Youth Offending Service had referred Q's case to Multi Agency Public Protection Arrangements [MAPPA] and, following a panel meeting on 2 December 2020, it was the decision of MAPPA to leave the management of risk at level 1. This meant that risk was being well managed by agencies currently involved with Q and that additional oversight was not needed to protect the public.

31. At the hearing on 22 December 2020, the local authority proposed that Q should move to a different registered children's home in the local area where he would be the only young person in placement. The move would not mean a change in the care staff working with Q as they would move with him to the new placement. Additionally, the manager of the new placement had training in how to manage and respond to sexually harmful behaviours, having previously worked with children who presented with similar needs to Q. All the parties agreed that the move was appropriate and met Q's needs. I extended the deprivation of liberty order until 18 January 2021 and sought further information from the Youth Offending Team.

32. Since the hearing on 22 December 2020, there have been incidents of concern over the Christmas period when Q managed to access the placement office and mobile phones. When staff recovered the mobile phones, they found a picture had been taken of male genitalia and the matter was reported to the police. I understand there will be an investigation to explore whether Q has committed any offences by using the phones in this way.

The Law

33. The statutory regime to regulate the use of secure accommodation in respect of children is set out in paragraphs 29 and 30 of Lancashire CC v G (Unavailability of Secure Accommodation) (No 1) [2020] EWHC 2828 (Fam) and so I do not repeat it here. An increasing shortage of secure placements and an increasing reluctance on the part of those secure placements to accept young people with the level and complexity of needs demonstrated by Q has meant that the courts have accordingly been asked to sanction the placement of young people in Q's position in regulated and unregulated placements under the auspices of an order made under the inherent jurisdiction of the High Court authorising the deprivation of their liberty as an alternative to secure accommodation authorised under s.25 of the Children Act 1989.

34. In this case, a placement in secure accommodation is not available and I am satisfied that the inherent jurisdiction therefore remains available to the court because the criteria pursuant to s.25 cannot be met. However, the absence of available secure accommodation does not lead to the structure imposed by s.25 being avoided. Its terms should be treated as applying to the same effect as when an order under that section is being sought (paragraph 79 of Re T (Secure Accommodation Order) [2018] EWCA Civ 2136 per McFarlane P).

35. The principles governing the determination of an application for an order authorising the deprivation of the child's liberty under the inherent jurisdiction are set out in paragraphs 36-46 of Lancashire v G (see above). I do not repeat them in this judgment.

Discussion

36. Q is a young person in the care of the local authority. In my judgment, there can be no doubt that Q meets the criteria in s.25(1) for the making of a secure accommodation order. He has a history of absconding and would be likely to abscond from any other description of accommodation. Additionally, if he is kept in any other description of accommodation, he is likely to injure himself or other persons in that he is a real danger to carers other occupants of placement, himself, and the wider public. Even with constant supervision on a ratio of 3:1, Q has been able to engage in harmful sexual behaviour and when he has absconded, he has committed sexual offences and offences involving weapons. All the professionals involved with Q are satisfied that he meets the statutory criteria for placement in secure accommodation. However, I am prevented from authorising Q's placement in secure accommodation because there is no secure unit with a bed suitable for him. This situation has persisted since summer 2020 and the local authority, with the active encouragement of this court, has done everything it could to identify a suitable secure placement for Q.

37. The process for identifying secure placements identified in the documents before this court gives rise to additional concern. The Secure Welfare Coordination Unit is the single point by which secure accommodation placements for children are identified. At the point that the search takes place, the local authority is not provided with any details of the secure units that may have placements and thus does not know, for example, where such units are located, whether they have specialist services or whether they are single sex units. No secure children's home is required to give feedback as to why a child is not offered a place and, in this case, only one unit has offered feedback as to why it could not accommodate Q. Until a secure home offers a placement to a child, the local authority is unable to discuss an individual case with a home or offer greater information about a child unless requested to do so. I note that there have been placements available in secure children's homes throughout this local authority's search for a placement for Q.

38. Miss Danton submitted that the inability to obtain a secure placement for Q could not be solely attributed to a lack of placements or resources and pointed the finger at the ability of secure children's homes to reject a child without constructive feedback or reasons in a process which lacked transparency. The children and young people most in need of secure accommodation were those being summarily refused the places available. I have some considerable sympathy with that submission. I have no evidence available to me as to the method by which secure justice placements are obtained so a comparison of the two systems might well be useful in another case or context. By way of completeness, I was informed by Miss Danton that the local authority was in the process of taking senior counsel's advice as the merits of a claim in the Administrative Court about the changes made to the process for identifying secure welfare placements.

39. In circumstances where there is no secure placement available for Q, the local authority seeks an order authorising the deprivation of Q's liberty in a non-secure

placement. Fortuitously, I note that Q's present placement is a placement regulated by OFSTED, but that is little comfort as the remainder of this judgment makes plain. Both the local authority and the Children's Guardian have genuine concerns as to whether Q's present placement can meet his needs. The reality is that there appears to be no other option available for keeping Q safe.

40. The restrictions on Q's liberty are at the most extreme end of the spectrum. He has no interaction at all with any persons other than professionals working with him. He has no unsupervised access to social media or the internet. He is not permitted to even hold a mobile phone. During waking hours, he is subject to monitoring by three people at all times, and, at night-time, he is subject to a waking watch. He cannot leave his placement as he is locked into it. He cannot even go outside to enjoy fresh air or outside space. He is not even permitted to open a window in his placement. I observe that, were Q placed in secure accommodation, the level of restriction would be significantly less than that for which the local authority now contends. Q would at least have access to outside space and have interactions with other young people.

41. Having regard to the relevant legal principles, I am satisfied on the evidence before the court that, if placed in his present placement, Q will be deprived of his liberty for the purposes of Article 5 of the ECHR. I approve the following restrictions:

a) Q is supervised 3:1 at waking times;

b) Q is subject to a waking watch throughout the night with a staff ratio of 2:1;

c) Q is not permitted to leave the placement without a staff ratio of 3:1. Trips out of the unit are avoided wherever possible;

d) Q is not permitted to have unsupervised access to any telephone or the internet, including holding any device;

e) Q is not permitted to access social media in any form;

f) Q is not permitted to access the grounds of the home, which includes the garden;

g) Q has frosted windows to his room; and

h) Q is not permitted to open a window or have access to an open window.

I am also satisfied that Q is unable to consent to the deprivation of his liberty, is subject to continuous supervision and control, and is not free to leave the placement.

42. With considerable reservations, I am further satisfied on balance that it is in Q's best interests to authorise the deprivation of his liberty in the placement identified by the local authority notwithstanding that this placement is plainly suboptimal from the perspective of meeting Q's identified welfare needs.

43. The most recent statement from the Youth Offending Service makes for alarming and depressing reading. It is absolutely plain, that the likelihood of Q's reoffending is high, and his present circumstances do little more than contain rather than treat and engage with his harmful behaviours so as to reduce them. Relevantly, the statement reads as follows:

"… The nature of harmful sexual behaviours is so wide ranging it is difficult to predict how he may offend in the future and who the victims may be. There are some consistent themes in his previous behaviours which are suggestive of particular preferences. He has a sexual interest in pre-pubescent boys who we know he has targeted in his offending. He has discussed a fantasy to use weapons and violence to render potential victims unconscious so he can have sex with them. He lacks the ability to self-regulate so when heightened is likely to utilise any opportunities to achieve gratification or relieve anxiety…. He is most likely to display these behaviours when unsupervised as he has better access to potential victims…. He may also be violent towards any person who intervenes or thwarts attempts to abscond or challenge his behaviours. Q appears to find enjoyment in manipulating and intimidating others, particularly carers…. The majority of his negative behaviours stem from resentment at being subject to DOLS restrictions and a desire to abscond. Q's behaviours are likely to continue to be challenging and escalate in risk because he is very determined and fixated on this desire… We would strongly discourage any relaxing of restrictions in his current placement now or in upcoming months. Although Q is complying with his order and engaging in rehabilitative programs, I cannot give a realistic assessment of efficacy of his intervention in supporting desistance from offending. As I have discussed in previous statements, we cannot test efficacy effectively without enabling Q to have more responsibility for self-management which requires relaxing restrictions. A secure placement would be the best environment in which to test capacity for change. However, if a secure placement cannot offer a programme reflective of his Intensive Referral Order he is unlikely to develop the skills and tools needed to achieve change in his thinking and behaviour. The Youth Offending Service is of the opinion that a secure order would be in Q's best interests in the absence of a therapeutic community placement… His Referral Order intervention plan may not be transferable to a welfare secure setting and this causes me concern. The window of opportunity to rehabilitate Q is very narrow, we would not support a move to a secure setting if the facility were not able to offer the therapeutic intervention he needs…. His transition back into the community would need to be robustly planned. Health assessments undertaken by specialists within the Youth Offending Service indicate that Q needs continued therapeutic support into adulthood…"

44. To be blunt, Q is being failed by the care system given the inability to locate a suitable secure placement in which he can receive the intensive therapeutic work which he so plainly and urgently needs. If he does not receive this work soon, he will be a huge risk to young children and others. The nature of his likely offending behaviour also places him at risk of being a victim of serious harm, both in the community and in custody. As this judgment makes clear, Q is – through no fault of his own - a profoundly damaged young person who desperately needs care and help. The window of opportunity to tackle and address his difficulties is running out since he will be 18 years old in just over a year's time. At that point, no order that this court can make could prevent him from leaving a placement and living in the community where he will be at significant risk of harm himself and where he will present a significant danger to others.

Conclusion

45. Whilst I am presently prepared to authorise the deprivation of Q's liberty, I am also convinced that the local authority should begin what will be a lengthy process of planning for Q's eventual move out of the care system once he is 18 years old. I have invited the local authority to convene a multi-agency professionals' meeting prior to the next hearing on 23 February 2021 to look at (i) whether an alternative therapeutic placement outside the secure estate can be found; (ii) pathway planning preparatory to Q's 18th birthday; (iii) whether any potentially useful therapy can be delivered in Q's present placement; and (iv) whether G-Map may be re-engaged to assist Q.

46. I have not yet abandoned hope that a suitable secure welfare placement might be available for Q and I have invited the Secretary of State for Education to attend the next hearing, represented by counsel, to assist the court in this regard.

47. I direct that this judgment shall be sent forthwith to the Children's Commissioner for England, to the Secretary of State for Education, to the Secretary of State for Justice and Lord Chancellor, to the Minister for Children, to the Parliamentary Under Secretary of State in the Justice Department, to the Chief Social Worker, to OFSTED, and to the Secure Welfare Coordination Unit.

48. That is my decision.