



Neutral Citation Number: [2022] EWHC 1406 (Fam)

Case No: MA22P00322

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9/06/2022

Before:

MRS JUSTICE THEIS

Between:

TRAFFORD BOROUGH COUNCIL	<u>Applicant</u>
- and -	
B	<u>1st Respondent</u>
- and -	
C	<u>2nd Respondent</u>
-and -	
MANCHESTER UNIVERSITY	<u>3rd Respondent</u>
NHS FOUNDATION TRUST	
- and -	
X	
(by her Children’s Guardian, Alicia Lambley)	<u>4th Respondent</u>

Ms Niamh Ross (instructed by **Trafford Borough Council**) for the **Applicant**
B - 1st Respondent appeared in person assisted by Mr F
C – 2nd Respondent appeared in person
Ms Hannah Haines (instructed by **Hill Dickinson Solicitors**) for the **3rd Respondent**
Ms Samantha Birtles (instructed by **Bromley Solicitors**) for the **4th Respondent**

Hearing date: 9 May 2022:
Judgment: 9 June 2022

Approved Judgment

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MRS JUSTICE THEIS

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. 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 Theis DBE:

Introduction

1. This matter concerns the application by the local authority for an order under the inherent jurisdiction for declarations authorising the deprivation of liberty ('DoL order') of a young person, X age 14, in circumstances where there was no suitable residential therapeutic placement to meet her needs. The application was made on 8 February 2022 in the context where X was in hospital after the expiry of a period of detention under section 2 Mental Health Act 1983 (MHA 1983) on 4 February 2022. The relevant NHS Trust is the 3rd Respondent. The other parties are X's grandmother, B, her mother, C and X, through her Children's Guardian.
2. The application was issued on 8 February 2022 and first came before this court on 15 February 2022. At that hearing the court expressed concern at the delay in the application being made and the consequences of that for X in circumstances where her restrictions included physical and chemical restraint and up to 6:1 staffing levels. The court made a DoL order at the hearing on 15 February 2022, which has continued to date. That order has the support of X's mother and maternal grandmother (who is X's Special Guardian), as well as the Children's Guardian.
3. The case has returned to court on five occasions since that initial hearing whilst the search for a suitable placement for X has been made. The local authority commenced its search on 14 January 2022 and was only able to confirm it had identified a placement at the hearing on 18 March 2022, some two months later. The fact that a placement has been found is due to the considerable efforts made by the local authority, particularly the allocated social worker, but demonstrates, once again, the acute shortage of suitable residential placements to meet young people with X's needs. The placement is an unregulated placement, with applications having been made for Ofsted and CQC approval. It is described as a bespoke placement and X will be the only child living there. X moved there on 23 March 2022. This move has the support of the mother, maternal grandmother and the Children's Guardian.
4. As has been highlighted in other cases, such as *Lancashire CC v G (Unavailability of Secure Accommodation)* [2020] EWHC 2828, there is a significant shortage of suitable placements for young people in X's position, with the consequence they are being kept in hospital long after they are fit for discharge, with delays in the young person being able to receive the appropriate support they clearly require and causing significant disruption to the day to day operation of the hospital.
5. The particular focus in this judgment is to highlight two matters:
 - (i) the need for applications in circumstances such as this to be issued promptly, and
 - (ii) when made for the application to highlight the need for the child to be joined as a party as a matter of urgency, to ensure a Children's Guardian and solicitor can be allocated without delay and be present at the first hearing. In almost every case this direction can be done on the papers, so at the first hearing the child is properly and effectively represented.
6. Although the parties have helpfully addressed issues relating to the legal framework that governed the period between the expiry of the section 2 MHA 1983 order and the

order made by this court on 15 February 2022 there is no separate application made on behalf of X under the Human Rights Act 1998, providing the framework when directions could be made for that issue to be determined.

Relevant background

7. X was removed from her mother's care in 2016 due to neglect. A care order was made in December 2016. That order was discharged in April 2020, when a special guardianship order was made in favour of X's maternal grandmother, B.
8. X's relationship with B is described as a loving and caring relationship and B has done her best to protect X. Difficulties arose due to the amount of time X was missing from home. During 2021 the case summary notes there were 46 missing from home reports recorded.
9. In November/December 2021 X was taken to hospital on a number of occasions following overdoses and was voluntarily admitted to a specialist CAMHS provision. After her discharge from there on 4 January 2022, she was subsequently admitted to hospital following a paracetamol overdose. On 7 January 2022 she was detained under section 2 MHA 1983, that expired on 4 February 2022.
10. During the time X was in hospital she continued to behave in a way which was very challenging and required a number of restrictions to be in place to prevent her harming herself and others, this included both physical and chemical restraint. The Trust position statement summarised the position then as follows:
 - 6:1 supervision. X is on enhanced monitoring and must always be in sight of the persons monitoring her;
 - If X attempts to abscond the persons monitoring her will try and de-escalate the situation and return her to her room. If she tries to leave she is placed in a safe-hold and returned to her room by either staff or security;
 - If X displays behaviour which is harmful to herself or others staff will attempt to de-escalate the situation verbally and offer oral medication to sooth her agitation;
 - However, if the behaviour continues X will be placed in a safe hold to try and ease her agitation.
 - Finally, if these options don't work then she will be administered with intra-muscular medication
11. At the first hearing on 15 February 2022 the court raised concern about the fact that the need for X to be made a party had not been highlighted by the applicants with the result that it only became possible to have the duty Children's Guardian and X's solicitor instructed just before the hearing.
12. Directions were made, including a short term DoL order, and the matter was restored back to court on 18 February 2022.
13. On 18 February 2022 the court renewed the DoL order, made directions for further evidence and skeletons to address the legal framework for the restrictions X was placed

under after the expiry of the s2 MHA 1983 detention on 4 February 2022 until the court made the DoL order on 15 February 2022.

14. On 11 March 2022 the court heard oral submissions from the parties and reserved judgment. The DoL order was renewed until 18 March 2022. X joined this hearing following a meeting with me prior to the hearing starting.
15. On 18 March 2022 X joined the hearing again. The local authority were able to outline the steps they had taken to identify a placement and the plans for X's move to the identified placement on 23 March 2022. The DoL order was renewed again, with a varied DoL order to take effect on 23 March 2022 to cover the restrictions proposed at the new placement. The order provided as follows:
 - i) X to be supervised during her time at the placement on a 3.1 in the day and 2.1 at night. This is due to the risk of self-harm and the risk of absconding.
 - ii) X has been informed that if her behaviour becomes risky towards others or X tries to abscond safe holds can be used to keep X and others safe.
 - iii) If X attempts to abscond the persons monitoring her will try and de-escalate the situation and return X to her room.
 - iv) X is to be supervised using sharp objects and all knives and sharp utensils will be kept in a locked cupboard.
 - v) If X wants to go out, she will need support to do this, and the placement staff will need to support X with community activities.
16. Other directions were made leading to the hearing on 11 April 2022.
17. The placement found by the local authority had been approved by the local authority Director of Children's Services. It is currently unregulated although applications have been made for Ofsted and CQC approval. These applications are being expedited.
18. At the hearing on 11 April 2022 X's move to the new placement was described as going well.
19. Both X's mother and grandmother have been wholly supportive of this placement, although their wish is for X to have a time limited period there before she returns to her grandmother's care. The local authority and Children's Guardian are concerned about having a fixed time, they take a more cautious approach and would want the aim to be for certain goals to be met prior to X leaving the placement, as they consider that will minimise the risks of the return to her grandmother's care breaking down.
20. In her discussions with the Children's Guardian on 5 April 2022 X understood the need for certain changes to take place before she could return to her grandmother's care. The Children's Guardian's view is that X is establishing relationships with the staff who care for her, is able to be reflective about her behaviour and was beginning to discuss the triggers that result in her behaviours which put her at risk.
21. On 11 April 2022 the court made a further extension to the DoL order to 9 May 2022 to support the progress in this placement with the aim of the identified support and

intervention enabling X, in due course, to be restored to her grandmother's care. The parties agreed there would be regular reviews. At that hearing the court raised the recently reported case of *An NHS Trust v ST (Refusal of Deprivation of Liberty Order) [2022] EWHC 719 (Fam)* and gave the parties the opportunity to make further written submissions about the issues raised in that case. The court has received further written submissions on behalf of the local authority and the NHS Trust.

22. At the hearing on 9 May 2022 the court was updated about X's progress. Unfortunately X's behaviours since the previous hearing have escalated. There are reports of her being verbally abusive and physically aggressive towards staff in the placement, she has made a number of attempts to abscond and presented at hospital in poor mental health. The local authority believe X has started a new relationship which they consider is contributing towards her current instability, including X being charged with criminal offences for which she is due to appear in court.
23. In the allocated social workers updated statement dated 5 May 2022 she has outlined a series of recent events, including attempts to abscond, verbal and physical assaults on staff at the placement, police and ambulance call outs instigated by X resulting in attendances at hospital. X has been referred to CAMHS. X has made an allegation of historical sexual abuse which has been reported to the police. At present, X does not wish to take this issue any further. X's grandmother continues to visit the placement, staying with X each weekend. X has still not received any education as she is not attending school due to the risk of absconding. Further assessment of other educational provision is awaited pending X's review by the educational psychologist in accordance with X's EHCP plan.
24. The updated social work statement confirms the maternal grandmother continues to receive weekly support from action for children and family focus. There is concern as to whether in the light of recent events and X's complexities the maternal grandmother would be able to care for X, although this remains part of the longer term plan of the local authority. The local authority has commenced pre-proceedings to ensure robust assessment is undertaken and timely decisions made regarding X's care. A further hearing is listed in July.

The period immediately prior to 15 February 2022

25. In email exchanges between the Trust and the local authority on 27 and 28 January 2022 the local authority accepted it would issue these proceedings. The local authority candidly accept there was then a delay before the application was lodged with the court on 8 February 2022. They have apologised to the court, the parties and, importantly, to X for that delay.
26. In her skeleton argument on behalf of the local authority, Ms Ross submits the essential characteristics of a deprivation of liberty are formed by three component parts; (i) the objective component of confinement in a particular restricted place for a not negligible length of time; (ii) the subjective component of lack of valid consent; and (iii) the attribution of responsibility to the State.
27. Ms Ross acknowledges the evidence demonstrates the objective component was satisfied bearing in mind the level of restraint that was in operation during the relevant period.

28. In relation to (ii) the local authority supports the argument put forward by the Trust that the maternal grandmother, who holds enhanced parental responsibility through the special guardianship order in her favour, was able to and did provide consent to X's confinement.
29. That submission is founded on the decisions of Keehan J in *Re D (A Child: deprivation of liberty)* [2015] EWHC 922 (Fam) and *Re AB (A Child: deprivation of liberty)* [2015] EWHC 3125 (Fam). In *Re D* Keehan J considered the circumstances in which the parents could exercise their parental responsibility to consent to restrictions involving constant supervision regarding the placement of their 15 year old son who was autistic and displayed erratic, challenging and potentially harmful behaviours. Keehan J acknowledged the particular circumstances of each case was relevant, including the age of the child and the extent of any disabilities. He stated:

'56. An appropriate exercise of parental responsibility in respect of a 5 year old child will differ very considerably from what is or is not an appropriate exercise of parental responsibility in respect of a 15 year old young person.

57. The decisions which might be said to come within the zone of parental responsibility for a 15 year old who did not suffer from the conditions with which D has been diagnosed will be of a wholly different order from those decisions which have to be taken by parents whose 15 year old son suffers with D's disabilities. Thus a decision to keep such a 15 year old boy under constant supervision and control would undoubtedly be considered an inappropriate exercise of parental responsibility and would probably amount to ill treatment. The decision to keep an autistic 15 year old boy who has erratic, challenging and potentially harmful behaviours under constant supervision and control is a quite different matter; to do otherwise would be neglectful. In such a case I consider the decision to keep this young person under constant supervision and control is the proper exercise of parental responsibility.

58. The parents of this young man are making decisions, of which he is incapable, in the welfare best interests of their son. It is necessary for them to do so to protect him and to provide him with the help and support he needs.

59. I acknowledge that D is not now cared for at home nor 'in a home setting'. His regime of care and treatment was advised by his treating clinicians and supported by his parents. They wanted to secure the best treatment support and help for their son. They have done so. It has proved extremely beneficial for D who is now ready to move to a new residential home out of a hospital setting. What other loving and caring parent would have done otherwise?

60. Those arrangements are and were made on the advice of the treating clinicians. All professionals involved in his life and in reviewing his care and treatment are agreed that these arrangements are overwhelmingly in D's best interests. On the facts of this case, why on public policy or human rights grounds should these parents be denied the ability to secure the best medical treatment and care for their son? Why should the state interfere in these parents' role to make informed decisions about their son's care and living arrangements?

61. I can see no reasons or justifications for denying the parents that role or permitting the state to interfere in D's life or that of his family.

62. I accept the position might well be very different if the parents were acting contrary to medical advice or having consented to his placement at Hospital B, they simply abandoned him or took no interest or involvement in his life thereafter.

63. The position could not be more different here. D's parents have regular phone

calls with him. They regularly visit him at the unit. Every weekend D has supported visits to the family home. He greatly enjoys spending time at home with his parents and his younger brother.

64. In my judgment, on the facts of this case, it would be wholly disproportionate, and fly in the face of common sense, to rule that the decision of the parents to place D at Hospital B was not well within the zone of parental responsibility.'

30. Keehan J drew a distinction between cases in which the parent and the local authority are working co-operatively in the interests of the child, and those in which section 20 accommodation is utilised as a prelude to care proceedings. In *Re AB* he stated at paragraph 26

'Do the same considerations apply when a child is accommodated by a local authority pursuant to s.20 of the Children Act 1989? The only possible answer is they may do. It will all depend on the facts of the individual case. At one extreme, an agreed reception into care of a child, that is beneficial and for a short-lived period, where the parent and the local authority are working together co-operatively in the best interests of the child, may be an appropriate exercise of parental responsibility. Thus it would be appropriate for that parent to consent to the child residing in a place (for example, a hospital) for a period and in circumstances which amount to a deprivation of liberty.'

31. In *Re D (a child)* [2019] UKSC 42 the Supreme Court concluded that parental responsibility does not extend to providing valid consent to a confinement that which would satisfy the objective component where a child is 16 or 17. Ms Ross submits the issue of whether a parent can provide valid consent to the confinement of a child under the age of 16 years was not determined in *Re D*, as a result Keehan J's analysis remains in effect.
32. Ms Ross submits in those circumstances the maternal grandmother could properly consent to X's confinement in hospital, particularly for the limited period from 4th – 15th February 2022. She submits the maternal grandmother was fully involved in the decisions relating to X, understood the need for X to remain in hospital until a suitable placement was found and the need for restrictions to be imposed to protect X and safeguard her from further harm. Having regard to X's complex PTSD, self-harming and other risk taking behaviours, consenting to her continued confinement and treatment in hospital to ensure she was kept safe falls well within the reasonable exercise of parental responsibility.
33. In agreeing to issue these proceedings she submits the local authority recognised the highly intrusive nature of the restrictions in place and the need to afford X the protection of the independent oversight of the court. Pending that application being determined, she submits, the maternal grandmother was able to provide valid consent to X's confinement.
34. During the relevant period Ms Ross submits the Trust was the sole detainee authority. The restrictions placed upon X were both determined by and enforced by the Trust. Whilst the local authority had commissioned an agency to provide support to X, they were not involved in any form of physical or chemical restraint. Physical and chemical restraint was at all times throughout the relevant period administered by clinical staff on the ward or by security officers, all of whom were employed by the Trust.

35. In her submissions on behalf of the Trust, Ms Haines accepts that between 4 – 15 February 2022 X was deprived of her liberty. She was not allowed to leave the ward unsupervised and was subject to daily physical restraint and occasional chemical restraint. She had four security staff, provided by the Trust, positioned at different doorways on the ward and two care staff, provided by the local authority, present outside her room during the day, reducing to one at night.
36. In support of this the Trust have produced copies of X's management support plan, medication plan and the Trusts 'Rapid Tranquilisation Use of medication re disturbed behaviour' policy. Each of these documents, Ms Haines outlines, set out details of the escalating levels of physical and chemical restraint to ensure that any interventions required are the least restrictive.
37. At the relevant time X was presenting a serious risk to herself due to self-harming and absconding and displayed targeted aggression to security. The notes from Dr Williams on 9 February 2022 detail how vulnerable X was at that time and pending the court's determination regarding the DoL application the decision was made to keep X on the ward using safe holds, and medication as a last resort.
38. The Trust sought to rely on what Knowles J set out in *Re Z* [2020] EWHC 3038 (Fam) at paragraph 27 when she stated
- 'Parents can, pursuant to the exercise of their parental responsibility, permit or authorise the use of reasonable force on a child particularly if the child will suffer immediate and significant harm by them not so acting: see A Metropolitan Borough Council v DB [1997] 1 FLR 767 per Cazalet J at 777:*
- "The local authority, which also has parental authority under the care order, is empowered, like the mother, to take such steps as may be appropriate to protect the best interests of the child; that in my view can permit the use of reasonable force for the purpose of imposing intrusive necessary medical treatment on her where a life-threatening situation arises or where a serious deterioration to health may occur if appropriate treatment is not administered"*
- In this jurisdiction, I note the ambit of parental responsibility to delegate reasonable and measured chastisement of one's child is long-standing in the common law: see R v Hopley [1860] EW Misc J73; (1860) 2 F&F 202; 175 ER 1024.*
39. The Trust submit the whilst the Supreme Court decision in *Re D* dealt with the position regarding children age 16 and 17, determining that as a matter of common law parental responsibility in those circumstances does not extend to authorising the confinement of a child in circumstance that would otherwise amount to a deprivation of liberty, that decision did not say that position would apply to children under the age of 16 years. As a consequence, the common law position as outlined in *Re Z* remains.
40. The Trust submits that given the serious risk there would have been to X had she been allowed to leave the hospital, X's grandmother was able to consent to her deprivation of liberty and the use of restraint to prevent the immediate and significant risk of harm to X until the matter came before the court.

41. In addition, the Trust seek to rely on regulation 10 of The Children (secure Accommodation) Regulations 1991 which provides that the maximum period beyond which a child to whom section 25 of the Children Act 1989 (CA 1989) applies may not be kept in secure accommodation without the authority of a court is an aggregate of 72 hours in any period of 28 days. Regulation 10(3) provides that Sundays are not included. Regulation 7 provides the regulations apply to children accommodated by NHS Trusts. Ms Haines submits that as the four days between the expiry of the s 2 MHA 1983 detention on 4 February 2022 and this application being issued on 8 February 2022 includes a Sunday any detention is authorised. What that submission does not deal with is whether the issuing of any application can amount to ‘*authority of a court*’ as provided for in regulation 10(1). In this case the court order was not made until 15 February 2022. In addition, as a matter of fact X was arguably not accommodated for the purpose of restricting her liberty, she remained in hospital in the absence of a suitable placement being available for her.
42. The other basis upon which the Trust submits the detention was authorised is based on s 3 (5) Children Act 1989, which provides that a person who does not have parental responsibility for a particular child but has care of the child may do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.
43. Ms Haines also submits this period could be covered by the common law power of necessity which allows such steps as are necessary and proportionate to protect others from the immediate risk of significant harm. This power, she sets out, can be exercised whether or not the patient lacks capacity to make decisions for himself but is subject to limits. In *R (on the application of Munjaz) v Mersey care NHS Trust* [2003] EWCA Civ 1036 Hale LJ (as she then was) stated as follows at paragraph 47
- ‘The fact that there exists a power to control or protect cannot mean that any and every use of that power is lawful. There must be limits. If there were not, it would still be lawful to confine patients in the shackles and other mechanical restraints which were commonly employed in the madhouses and asylums of the past. The abolition of legal regulation in the 1959 Act did not mean there was licence to return to the past. The criterion must be one of reasonable necessity judged against the purpose for which the restraint is employed. Hence, a detained patient may be kept in the hospital with no more force than is reasonably necessary in the circumstances to achieve this. Any patient may be restrained from doing harm to others with no more force than is reasonably necessary in the circumstances. An incapacitated patient may be given such treatment as is reasonably necessary in his own best interests.’*
44. Ms Haines accepted this power is not open ended and could only be used where there is an objective basis for believing the person needs such steps to be taken due to the level of risk that person poses to themselves or to others. This would need to be based on an assessment of risk which would need to be documented.
45. Ms Haines submits in the circumstances of this case the Trust had in place robust policies and procedures for the use of chemical and physical restraint with the result that any deprivation of liberty was not arbitrary.
28. On behalf of X, Ms Birtles submits X Article 5 rights were engaged. Article 5(1) provides that:

"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 a procedure prescribed by law –

d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e) the lawful detention of persons.... of unsound mind...."

46. Ms Birtles argues this court's jurisdiction is there for the purpose to protect children who are subject to restriction and treatment as occurred to X. A key feature of these proceedings is the joining of the child, the appointment of the Children's Guardian to represent the child, to set out the child's wishes and to provide an independent view on the proposed package of care.
47. Any submissions that place any reliance on the maternal grandmother's consent through the exercise of her parental responsibility has to be viewed in the context of what was set out in *Re Z*, that the child will suffer *'immediate and significant harm'* by that consent not being given. Ms Birtles submits *'the essential component of the consent of a parent or guardian with parental responsibility being able to consent to the use of force to restrain is the immediacy of harm and the imminence of risk'*. In this case she submits X was continuing to be treated in the same way as she had during the currency of the s 2 MHA 1983 detention. She submits there was no immediacy of significant harm that had not been present during the previous 28 days. In those circumstances consent by X's special guardian could not replace consideration by a court of that regime. As Ms Birtles submits *'this was an enduring situation rather than a new structure of care being placed round X'*. The reality was X's confinement had not changed and consent via the exercise of parental responsibility in the circumstances of this case should not be substituted for the exercise of this jurisdiction that considers the nature of the confinement and the best interests of the child in circumstances where the child's position is separately considered. The jurisdiction the court exercises in these applications is protective and necessary in situations where the Article 5 rights of the child are engaged.
48. As regards the common law principle of necessity, Ms Birtles submits in the circumstances of this case X's behaviour was entirely foreseeable and the arrangements had been in place for some time and the risks to X were already well known. Whilst necessity might justify actions to restrict the liberty of a person in their best interests it cannot be invoked retrospectively to make lawful the continuation of an established treatment and management plan such as was in place for X.
49. Both the mother and maternal grandmother were present for the submissions on the applicable legal principles, they did not wish to add anything to the submissions from the legal representatives.

Discussion and decision

50. This case highlights, once again, the difficulties in managing and providing for the appropriate care of young people, such as X. There can be little doubt that X's

behaviour during the latter part of 2021 was particularly challenging and actions she took placed herself at very great risk of physical and psychological harm.

51. X's maternal grandmother remained committed to X and their relationship is strong, however she was unable to manage X's escalating self-harming behaviour. She has remained a constant figure for X and has largely supported the steps that have been taken by the local authority to support X.
52. I accept the position of the local authority that in the absence of a claim under the Human Rights Act 1998 by X there is no formal structure for the court to determine what was the legal framework that governed X's situation between 4 – 15 February 2022. I have set out the parties' submissions above, without comment, to illustrate that the relevant legal framework between 4 – 15 February 2022 is not agreed between the parties.
53. As outlined above, the purpose of this judgment is to emphasise the critical importance, in situations like this, where no party has sought to suggest X's situation did not amount to a deprivation of liberty, for the application under the inherent jurisdiction for declarations authorising the deprivation of liberty of children and young people to be issued without delay.
54. Where the child or young person is placed in a hospital in circumstances such as in this case there should be effective and robust procedures in place between the Trust and the local authority agreed in advance for situations such as that X was in as to who should be taking primary responsibility for issuing the application to this court. Once the application is issued the court should be requested by the applicant to join the child as a party, without delay, and setting out, with brief reasons in support, how urgently the application needs to be considered by the court.
55. Any delay in making the application is detrimental to the welfare of the child or young person, as there may be a lack of clarity about the legal structure under which they are being deprived of their liberty. Also, they do not have the safeguard of an effective voice in the process, as they do within proceedings if they are joined as a party and separately represented through a Children's Guardian within the proceedings under the inherent jurisdiction.
56. In the supplementary submissions on behalf of the Trust they state they remain '*committed to learning from cases such as this one, and to improve care for patients*'. They continue '*The Trust has already taken a number of actions including the development of guidelines for use by clinical staff in relation to complex children and young people who are admitted to the acute setting as a 'place of safety'. These guidelines include clear routes of escalation and the requirements to ensure a seamless transition between legal frameworks when these vulnerable patients are deprived of their liberty. The Trust is also ensuring the learning from An NHS Trust v ST case is incorporated into the guidelines. These guidelines will be approved through the Trust's Group Safeguarding Committee in May 2022 to ensure effective Trust-wide input and dissemination*'. This is welcomed by the court. Consideration should be given as to whether such guidelines, when approved, are published to help inform other Trusts who face similar situations.

57. Having considered the updated evidence, as well as the background which is well known to this court, a further DoL order was made in the same terms as on 11 April 2022.
58. I am satisfied that order is required to protect X, is necessary to meet her welfare needs with the safeguard provided for in the order that in depriving X of her liberty the local authority and their employees' agents are directed to use the minimum degree of force or restraint required. The use of such force/restraint is lawful and in her best interests provided always that the measures are:
- a. *The least restrictive of the child's rights and freedoms.*
 - b. *Proportionate to the anticipated harm.*
 - c. *The least required to ensure the child's safety and that of others; and*
 - d. *Respectful of the child's dignity.*
59. This order has the continuing support of X's grandmother, mother and Children's Guardian.