



Neutral Citation Number: [2021] EWHC 2699 (Fam)

Case No: PR20C00634

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sessions House
Lancaster Road
Preston, PR1 2PD

Date: 11/10/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

Between:

A Borough Council

Applicant

- and -

E

(A Minor by her Children's Guardian)

First Respondent

-and-

B

-and-

Second Respondent

N

Third Respondent

Mr Peter Rothery and Mr Liam Kelly (instructed by the Local Authority) for the Applicant

Ms Samantha Bowcock QC and Mr Christopher Blackburn (instructed by John Whittle

Robinson) for the First Respondent

Mr Michael Jones (instructed by Woodcocks Haworth and Nuttall) for the Second Respondent

Mr Bansa Singh-Hayer (instructed by Watson Ramsbotton) for the Third Respondent

Hearing dates: 7 October 2021

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. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am noon on 11 October 2021.

Mr Justice MacDonald:

INTRODUCTION

1. I am again concerned with the welfare of E, born in 2005 and now aged 16. E is represented by Ms Samantha Bowcock QC and Mr Christopher Blackburn on the instruction of her Children's Guardian. E's mother is B, represented by Mr Michael Jones of counsel. E's father is N, represented by Mr Bansa Singh-Hayer of counsel. The applications before the court are for a care order, an order under the inherent jurisdiction of the High Court authorising the deprivation of liberty and a secure accommodation order. The applications are brought by [a Borough Council], represented by Mr Peter Rothery of counsel and Mr Liam Kelly of counsel.
2. On 1 February 2021 I gave judgment authorising the deprivation of E's liberty in an unregulated placement. That judgment was published with the neutral citation [2021] EWHC 183 (Fam). On 12 March 2021 the court made a secure accommodation order in respect of E pursuant to s.25 of the Children Act 1989 by consent. E has now been accommodated in a secure accommodation unit called X for a period of some seven months.
3. At this hearing the local authority submits that the criteria for an order pursuant to s.25 of the Children Act 1989 remain satisfied and that, accordingly, E should remain the subject of a secure accommodation order whilst work is completed to provide a bespoke therapeutic placement for her. The timetable for the completion of that work is, at best, unclear. All of the other parties before the court, including the Children's Guardian on behalf of E, submit that in line with the conclusion of the local authority's Secure Accommodation Review Panel following meetings on 22 September 2021 and 4 October 2021, the criteria under s.25 are no longer met and that, accordingly, E should be discharged from secure accommodation.
4. In determining the issue before the court I have had the benefit of reading the court bundle and the Position Statements prepared on behalf of each of the parties. I have also heard helpful and concise oral submissions from Mr Rothery, Mr Jones, Mr Singh-Hayer and Ms Bowcock QC. I also heard directly from E, who attended the hearing by video-link. E made clear that she strongly objects to remaining in secure accommodation in circumstances where she contends to the court that she has done everything that has been asked of her over the course of the past seven months in her secure placement.

BACKGROUND

5. The initial background to this difficult matter is set out in my previous judgment and I do not repeat it here. This judgment should be read with my previous judgment, which dealt with the history of this case from March 2020 to 25 January 2021. As I have noted, on 1 February 2021 I gave judgment authorising the deprivation of E's liberty in an unregulated placement.
6. With the endorsement of the court, E was discharged from hospital on 4 February 2021 to the unregistered placement identified. The local authority had agreed to fund the fees for the placement to be registered by Ofsted. The placement was a four-bedroomed house, where E was the only child in placement. During this time E initially settled well

and felt that the new start would be good for her and liked the placement as she described this as being more homely. E returned to education on a part time basis.

7. Thereafter however, and sadly, E's behaviour again deteriorated. In particular, the following matters are highlighted in the statement of the social worker that was before the court in support of the local authority's application for a secure accommodation order in March 2021.
 - i) On the 10 February 2021, E became challenging within the placement and refused to turn off her TV and broke dishes in the kitchen;
 - ii) On 16 February 2021 E started to target a specific member of staff and called her names, E tried to take the lightbulbs out of the lights and couldn't reach, she also tried to flood the kitchen by blocking the drains and running water, E also broke a glass plant pot and ran upstairs with broken glass. E put the glass to her arm and checked for a reaction from staff, she also raised the glass towards the staff member who she had targeted, which resulted in restraint being used. E tried to pull staff member's hair and then punched and kicked the staff member whilst still in hold.
 - iii) On the 26 February 2021, Police were called to the placement because E was being violent towards staff and damaging property. The Police arrested E initially but then returned her as she was calm. When the Police left, E continued to be violent towards staff and assaulted two members of staff. E tried to choke a member of staff by pulling his hood/collar from behind.
 - iv) A further incident occurred on 28 February during which a member of staff was cut after E had swung a smashed jar. E attempted to run from the police whilst being escorted to the police van.
 - v) On 2 March 2021 E threw an object at the psychologist, prevented her leaving and threatened that "you'll be traumatised by the time you leave this house".
 - vi) On 3 March 2021 E bit a staff member on his arm and neck and pulled his hair.
 - vii) On 5 March 2021 there was an incident at St Thomas's PRU whereby E did not enter school but attempted to abscond from carers. E refused to sit in the car with carers, she threatened to harm the care staff and refused to put her seatbelt on
8. Within this context, the placement gave notice on 4 March 2021. On 8 March 2021 a referral for secure accommodation was made and at 3.30pm on the same day E was offered a placement at X. She arrived at X at 5pm on 9 March 2021, having been resistant to getting on the transport and having tried to kick the gear stick in the car in which she was being transported whilst on the motorway.
9. It is important to make clear that the behaviours I have detailed above were a function of E's inability to contain her emotional responses in light of her psychological needs, including Post Traumatic Stress Disorder. The strength of the emotional forces acting on E were perhaps best illustrated by fact that E was, as I have noted, initially enthusiastic about the unregulated placement. With respect to her own views, in a

virtual meeting with Mr Blackburn E had expressed excitement about moving to the placement and was “proper happy”, “well excited” and “can’t wait”. In a letter to me, E stated that “I’m really excited for [the placement] I’ve met most of the staff. I want to go to [the placement] until I can go home to my family. I love my family.” Notwithstanding this, E was unable to prevent herself from behaving in the manner described.

10. Within the context of the recent history set out above and the history set out in my previous judgment, the social worker concluded as follows in March 2021:

“Since the Interim Care Order and DOLs Order was granted, E has continued to abscond, she has made both planned and ‘spur of the moment’ efforts to abscond from the placement. When E has absconded, she has continued to be at risk of sexual exploitation. Whilst E’s move to her recent placement has reduced the risk of her absconding, she has continued to use opportunities to abscond, e.g. on the 28th February 2021 when the Police were escorting her to the van and on the 5th March 2021 outside of her school. E has a history of absconding, she is likely to abscond from any other class of accommodation given the opportunity. If E continues to abscond, she is likely to be at risk of significant harm.”

11. In his helpful Position Statement on behalf of E at the hearing in March 2021, Mr Blackburn concluded as follows with respect to the application by the local authority for a secure accommodation order pursuant to s.25 of the Children Act 1989:

“11. Secure accommodation for E must be regarded as a measure of last resort. There is an obligation to consider alternative arrangements. Many types of accommodation and regimes have been tried and have been unsuccessful. E has continued to abscond and put herself in harm’s way. She has continued to assault carers and professionals. As things stand there appears to be no alternative arrangements which will safeguard and protect E.”

12. I have spoken this morning to E. She has acknowledged that she has, in her own words “messed up”. She wants to put this right. She does not challenge the making of a Secure Accommodation Order. She wants to know what she must do to be able to leave secure accommodation.”

12. Within this context, in March 2021 the mother did not oppose the making of a secure accommodation order and, indeed, was supportive of the making of such an order as the only measure that could keep E safe. The position of the Father was not clear. Within this context, on 12 March 2021 I made a secure accommodation order until 23 April 2021. On 23 April 2021 I extended the secure accommodation order until 17 August 2021.

13. It is common ground between the parties that, until the incidents that occurred recently and to which I will come in more detail below, E has made significant progress with respect to her behaviour whilst accommodated at X, in line with her stated aim of putting things right. This progress by E was made notwithstanding the following description of life in secure accommodation provided by E on 26 July 2021, entitled “Life in Secure”:

“I have to ask someone to open my wardrobe so I can get my stuff. I have to ask someone to open my en suite so I can use the bathroom. We only get two 15 minute pushes on the shower before it goes off completely. When its time of the month we have no bin so we have to give staff our dirty sanitary products. In cells you sleep on a mat. Ours is a thick mat with a bed sheet on. It hurts my back. I would like to be more independent but no I can’t. Theres cameras everywhere. I stay with the same girls day in day out. We eat, sleep, go school. I never get my own time. We only get to go out once a week on mobility. If I want a drink I have to ask someone to get it. We can only east a certain times, not after or before. Breakfast – 8am, lunch – 1pm, dinner – 5pm. If I want time on my own and I spend too much time in my room, I get marked down. It’s like being in prison. You get forced to engage with your peers even if you not in the mood. We restricted on what we can wear. It’s not very cultural our belongings most are in a our contraband which is locked away. We are not allowed until we leave. It is horrible living here, like this.”

14. On 3 August 2021, just prior to a hearing before Cohen J, X emailed the local authority to inform it that X did not believe that the criteria under s.25 of the Children Act 1989 were any longer met in respect of E. On 13 August 2021, a Secure Accommodation Review Meeting concluded the criteria for maintaining E in s.25 accommodation remained satisfied and therefore the placement for E at X remained necessary. Within this context, the local authority made a fresh application for a secure accommodation order on 16 August 2021 and invited the Court to make an interim order until 5 October 2021, which was granted. At this time, the exit plan for E was for her to transition to a therapeutic placement. E wished to leave the placement. Whilst the Children’s Guardian considered that the s.25 criteria were no longer met, she conceded that an interim order should be made until the matter could be listed for a contested hearing.
15. On 22 September 2021 a Secure Accommodation Review took place and determined that the s.25 criteria were no longer met and E should transition from secure accommodation to a further placement. At this time the local authority had identified an unregistered placement with Y and it was intended that E should begin transitioning to that placement. The local authority considered that notwithstanding the decision of its Secure Accommodation Review Panel and until such time a successful transition had taken place, the criteria for a secure accommodation order remained engaged.
16. Mr Rothery, on behalf of the local authority, now levels some criticism at the approach adopted by the local authority’s Secure Accommodation Review Panel on 22 September 2021. In particular, Mr Rothery asserts that the reasons for the Panel’s conclusion are not set out clearly, Mr Rothery submitting that it is accordingly hard to discern the rationale for their conclusion that the s.25 criteria are not met, and that the focus on the Panel was less on the criteria than on E’s general welfare and needs, Mr Rothery submits to the exclusion of a rigorous analysis of the evidence about whether the s.25 criteria were met. In the circumstances, it is necessary to consider that meeting in a little more detail. In particular, it is important to note that the position of the local authority was recorded as follows:

“Following on from the last Secure Review, the Local Authority report that there has been an escalation with E’s behaviour within placement. However when members of X have been spoken to they feel that this is normal and

typical for a young person in transition as this is a period of unknown. E has been clear with the social worker that she wants to leave and feels ready for this. Further placement searches were completed and an appropriate placement has been identified in [named city]. E has begun to pack for her new placement and appears hopeful and looking forward to moving on. The Local Authority are very clear that E requires a clear and detailed transition plan. If this is rushed this increases her levels of anxiety and decreases her ability to regulate her emotions; thus increasing the risks and her vulnerability to harm outside the home and to herself.”

And within this context, to note X’s assessment of E’s behaviour:

“X reported that E has been unsettled over the last few weeks and this is expected. There have been a number of incidents with peers and this has been out of character. Staff have reflected with E after the events and they feel that her behaviours are ways she can express how worried she is. E is positive about her move. She has expressed that she is worried about moving to her new home and whether staff will like her.”

17. Notwithstanding the concerns summarised in the foregoing extracts, it is clear from the minutes of the Secure Accommodation Review Panel held on 22 September 2021 that the transition plan remained the subject of some confusion:

“It was evident in the meeting that views of X at the secure review were somewhat different to the transition plan developed by the Local Authority and another team manager within X. This needs immediate resolution to ensure that the plan is clear and E is provided with every opportunity to transition positively to her new home.”

18. As I have noted, at the Secure Accommodation Review Panel on 22 September 2021 it was concluded that the s.25 criteria were no longer met and E should transition from secure accommodation to a further placement. The Panel expressed its conclusion as follows:

“Following lengthy deliberation, it was unanimously agreed that the criteria for secure order is no longer met. The reasoning for this is based on the information provided today. Whilst it is evident that E will need on going support, risk posed to E was not the forefront of concern for professionals today. It is evident that E has made considerable progress and the support identified can be delivered to E within the community. A secure provision is no longer appropriate or proportionate to E needs.”

19. As part of the transition arrangements for the move to Y in [named city] E visited Y on 29 September 2021. During the return journey, E became heightened and became violent in the car resulting in the police being called to assist. E was transferred to a secure accommodation unit in [named city] whilst secure transport was arranged to return her to X. The incident is described in the statement of the allocated social worker dated 4 October 2021 as follows:

“[11] On the 29.09.2021 E visited the proposed placement in [named city]. On the way home a serious incident occurred whereby E removed her seatbelt

and lay down on the back seat of the car. She was asked to put her seat belt back on, however refused to do so. Due to this, staff had to pull over on the hard shoulder of the road to ensure their and E's safety. Staff moved into the back seat which led E to try to push forward into the front seat. This was stopped and E began to scream, she tried to pinch, scratch and bite staff whilst continuing to try to get into the front seat.

[12] E had to be restrained and the police were called. E did calm down and it was explained that the police would soon arrive. When police arrived E became agitated again, and tried to get into the front of the car. E had to be restrained to prevent her from getting out of the car onto the dual carriageway. During this restraint E was trying to bite the staff member calling him a paedophile and stated that he "liked touching girls". When a police officer tried to speak to E she pulled the headrest out of the seat and this led to her being placed in handcuffs. They travelled to a car park where E appeared calm and quiet and the staff left the car to seek instruction. At this time E got into the front of the car, and began pushing buttons. She had to be restrained again. E was placed into the back seat of the car where she began to kick at the windows. She continued to try to scratch and bite staff and called one of the staff members a "fucking bald bastard paedo".

[13] Staff from a local Secure Unit had to attend to support the staff to transport E to R, a secure unit in [named city]. She required secure transport to take her back to X."

20. Within the context of this incident, it is clear that X initially took the view that a further secure accommodation order should be sought in respect of E. However, this position was subsequently reconsidered. Following her return to X on 29 September 2021, E authored a letter in which she reflected on her behaviour. The local authority made clear that it considered Y may remain a suitable placement and that E's behaviour may have been caused by her fear of rejection and the uncertainty around a change of placement. This reflected E's own understanding of her behaviour. In the circumstances, X decided it would be in E's best interests to move on to the placement in [named city] as originally planned.
21. In her letter written on 29 September 2021, E sought to explain in her own words why she behaved the way she did on that date when returning from the proposed placement:

"Im really sorry about what happened today. I understand it was my fault and I understand why I got held. But when I got to the placement I was happy but nervous at the same time. In the past I've got rejected so many times from family, friends and even placements and I'm scared the placement wont like me because at first I might be shy and they might think Im weird for not talking.

When we was travelling back I had this pain in my stomach, like butterflies that what if they don't want me, they might reject me. This last month Ive been a bit unsettled cuz Im nervous of leaving. Ive been displaying behaviours. I don't want this to jeperdise my placement because of what happened today. I understand Im in the wrong today. Ive been on mobility several times not once have I done this before. I don't usually say to staff Im

scared/nervous of leaving because you might think Im crazy. Now Ive got time to reflect I know I could have handled things better but that moment of time I panicked.

I think this new placement will be a good start for me. It seems better than [identified placement]. [A] really reacted well with me, there was no awkward silence. But now Im just scared the placement wont want me.

I don't think I need another order at X. I think Im ready to move on. But Ive been stressed. About placement. Family. Weather people are going to like me. And I kind of push people away before they do it to me. After everything that happened today I never ran away or never tried to. But I am really sorry and I hope you tell my placement but I do still wanna go there. If they'll have me. If they still want me."

22. Further, and in this context, I note that in her letter to the court on 5 October 2021 E expresses clearly her own view of why she behaved as she did on 29 September 2021. In that letter, E stated as follows:

"I'm really sorry what happened on Wednesday. I panicked bcuz I was expecting not to like it and I actually liked it and it was overwhelming. Ive been on mobility several times before not once have a done anything like that."

23. On 30 September 2021 X notified the local authority of a conversation during which E made threats to abscond and to harm herself or others. The relevant recording notes as follows:

"E has said she will leave [X] and go to her mum's house and break the windows and then burn the place down. E has said she will kidnap her siblings and take them somewhere on the train. E does not understand why [X] staff are dropping her off on Tuesday and has questioned if her risk is so high why is she not travelling with secure escorts. E said her placement do not know her like we do so how will they read the signs that she could become unsettled in the car. E has also said maybe 'strong' people should take her who could restrain if needed. E mentioned that her medication may not be locked in her new placement (not sure how true this is) and should she be trusted with medication if she won't be trusted with knives that are going to be locked away. E has said that if she gets hold of a knife then she will threaten to slit her throat with it and keep staff hostage."

24. At this point, the local authority decided that the severity of the threats and E's recent behaviour meant that a transition to Y would no longer be suitable and a further secure accommodation order would be required to keep E safe until such time a therapeutic placement could be identified, which therapeutic placement would likely require an order authorising the deprivation of E's liberty order to keep her safe.

25. On 1 October X notified the local authority of further incidences of E threatening to injure staff and being verbally abusive toward them. Again, the relevant recording from X indicates as follows:

“Just to make you aware a incident form shall be sent to inform you of E trying to grab and break staff glasses and pushing furniture on to staff to try and hurt them. In addition, she has been inciting peers behaviour throughout the day today and being verbally abusive to staff and making threats to try and scald staff with hot water. It resulted in her being taken to her room in a PI (physical intervention). Due to this continued behaviour, she has remained in her room for the rest of the evening on a single separation plan due to risk. Further details shall follow.”

26. Within the foregoing context, on 4 October 2021 the local authority convened a further and urgent Secure Accommodation Review Panel to review whether, considering recent events, the s.25 criteria were now again met. The Panel, however, concluded that the criteria continued not to be met on the basis that E’s troubling recent behaviour was likely a manifestation of her anxiety about moving on from secure accommodation.
27. Mr Rothery on behalf of the local authority also criticises the conduct of the local authority Secure Accommodation Review Panel on 4 October 2021. In addition to the criticisms levelled at the approach of the Panel on 22 September 2021, Mr Rothery submits that the Panel on 4 October 2021 did not place sufficient weight on what E said she would do by way of threats of harm and what she had done recently, and that the presence of E throughout the Panel meeting may have affected the professionals’ approach during the meeting and the ability to freely discuss the behaviours and risks. Once again, in these circumstances it is necessary to consider that meeting in a little more detail.
28. At the meeting on 4 October 2021, E’s allocated social worker expressed the reservations that are set out to her statement to this court, as detailed below. Against this, X informed the Secure Accommodation Review Panel that it considered that E’s behaviour since 30 September 2021 was not uncommon for young people and would evidence the level of worry and anxiety E was feeling. X further highlighted that E had had her mobility time and it was positive that she had continued with this without any absconding or escalated behaviours. Within this context, the panel reached the following conclusion:

“The reasoning for this is based on the information provided today. Whilst the panel do not wish to minimise the threats made, it is evident that E’s escalated behaviours were not unexpected and have followed a visit to the new placement; when her anxiety and worries will have been heightened. Whilst considering the view of all professionals and E, it is the panels view that prolonging E’s stay within secure based on the need to find alternative provision is not wholly satisfactory. It is clear that E will require increased support which has been identified through the transition however this is not a reason to reinstate the criteria being met. There may never be an ‘ideal’ placement for E which meets all her needs and therefore professionals need to mould support around her in addition to placement provision to manage these potential risks rather than she remain in secure.”

29. Notwithstanding the conclusions drawn by the Secure Accommodation Review Panel on 22 September 2021 and on 4 October 2021, E’s allocated social worker is of the view that the criteria under s.25 of the Children Act 1989 remain satisfied. In a

statement dated 4 October 2021, Miss T relies on the following matters in support of that conclusion:

- i) The incident on 29 September 2021 demonstrates that E’s ability to hurt others poses a risk to others and to herself. E caused a significant incident on a dual carriageway, whereby the police had to be called. E, staff members and members of the public could have been at risk during this incident, demonstrating that E risks are high at this time.
 - ii) The statements made by E at her placement on 30 September 2021 demonstrates a clear risk to both E, given her threats about a knife, but also to others. E clearly stated that she will burn her family home down, and that she will kidnap her siblings. There is also a risk to staff in any placement, of E holding them hostage with a knife.
 - iii) The statements made by E at her placement on 1 October 2021 and her conduct on that day likewise demonstrate the risks to E and others.
 - iv) Within this context, E’s behaviour continues to escalate and she poses a risk to herself and others, E has made very clear threats to set her family home on fire and kidnap her siblings, posing a clear risk to her family members. E is an impulsive young person, who could carry out these acts, if in the frame of mind to do so.
 - v) Within this context, E being supported in any other provision at this time is not safe or suitable. E’s behaviour has demonstrated that she is not ready to be discharged from X.
30. Within this context, the local authority propose the Court to make a further secure accommodation order until the 8 December 2021 to allow a plan for the provision of a bespoke placement to be advanced. However, at best, those plans remain vague. As at 4 October 2021 the social worker was only able to say in her statement that:

“If granted, it is the intention of the Local Authority to continue to search for an alternate placement to which E can be transitioned from X, and the search will include alternate secure accommodation providers with onsite step down facilities, and DOLS capable provision which can provide onsite therapeutic support, as well as access to other health, and education provision.”

Even today the best that can be said by way of an updating statement from the allocated social worker is that there *might* be a transition plan in place (as distinct from implemented) in six weeks’ time. Within this context, the furthest Mr Rothery was able to go with respect to an adjourned hearing on 8 December 2021 is that that hearing might function as a “review” of E’s position. Mr Rothery properly conceded there remains scope for further delay. Within this context, it is important to note that during his oral submissions Mr Rothery further conceded, as the evidence before the court compelled him to, that X can no longer be said to be the right placement for E in terms of meeting effectively her needs.

31. Within the context of the foregoing matters, and as I have noted, notwithstanding the decisions of its Secure Accommodation Review Panel on 22 September 2021 and 4

October 2021, the local authority contends before the court that the s.25 criteria continue to be made out in respect of E. During his oral submissions, Mr Rothery made clear that, in support of this submission, the local authority relies primarily on the conduct it says has been exhibited by E between 29 September 2021 and the date of today's hearing. Mr Rothery submits that whilst the behaviours exhibited by E during this period have arisen in the difficult environment of uncertainty described above, in light of the history of this matter the court cannot be confident that this is the only context in which the behaviours will arise. As I have noted, were the court to grant a further secure accommodation order, the local authority intends that E remain at X whilst a bespoke placement that is able to meet her emotional and psychological needs is assembled.

32. Each of the other parties before the court, including the Children's Guardian on behalf of E, submit that her behaviour over recent days is simply a product of the anxiety that has been generated by being told that she is moving on, only to be told that she is not. Within this context, all parties save for the local authority submit that the incidents that have occurred since 29 September 2021 are not sufficient, whether by themselves or within the context of the history of this matter, to satisfy the s.25 criteria. In her letter of 5 October 2021, E stated to the court as follows:

“Yesterday the panel agreed I don't meet the criteria. My anxieties will rise because I mentally prepared myself for leaving. I've engaged with everything that was asked of me (KW, psychology, art therapy) There's nothing else X can do for me. My keyworkers agree I've engaged well and no longer meet the criteria. I don't believe the social worker knows me well because she doesn't really call me. I really like the placement in [named city]. I'm gonna take it as a fresh start + they already struggled to find this placement. I'm 2 months behind collage I really wanna move on but you's arnt letting me. I feel like I need to move on.”

33. In the Position Statement prepared on behalf of the Children's Guardian the position of the Guardian within the context of the matters set out above is set out as follows:

“The Children's Guardian therefore questions how a further period at X is going to benefit E in anyway. It appears this will do nothing other than contain her and keep her safe until a suitable placement is found. Sadly, there is no quick fix for E and there doesn't appear to be any suggestion that she can start any therapeutic work during the life of a further 3-month order. X have informed the local authority they are unable to commence an Autism assessment as per Dr C's recommendation and the secure panel's recommendations, therefore this is also on hold until she moves on. The therapy recommended by Dr C is due to start in January 2022, she needs to be settled for this to commence. In the Children's Guardian's view, such therapy would prove ineffective at a time when she is experiencing so much uncertainty and unsettlement... E displayed behaviour which poses a risk to herself and others on 29.09.21. Her behaviour at X has been unsettled, she has been volatile towards staff and has made comments which have concerned professionals about past harmful behaviour reoccurring. The Children's Guardian feels it is unrealistic to expect a young person like E who is experiencing continuous fear of further rejection and uncertainty to have complete control over her behaviour and emotions. The Children's

Guardian feels on balance such behaviour can and should be managed in a lesser restrictive setting in a solo placement with a DOLS. This will assist E in feeling less overwhelmed by there being a gradual reduction of restrictions whilst she settles into a new placement and is able to engage with therapy. This will enable professionals to test out her ability to keep herself safe before she enters semi-independent provision.”

THE LAW

34. Parliament has enacted a statutory regime to regulate the use of secure accommodation in respect of children. That statutory regime provides, *inter alia*, as follows:

25. Use of accommodation for restricting liberty

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

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

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

35. With respect to the first limb concerning a history of absconding and a likelihood of future absconding, in *Re W (A Child)* [2016] EWCA Civ 804 the Court of Appeal held that ‘absconding’ equates to an intention to permanently leave/escape indefinitely and not to return, with the Court of Appeal making the following observation in this regard:

“In determining that W had absconded, Keehan J invoked the facts that W had 'disengaged' with the unit, returning not "just a few hours later but well into the following day". I do not consider that this meant that W was 'absconding' from the unit, in terms of escaping indefinitely from an imposed regime, as opposed to deliberately absenting herself for a limited period, knowingly and disdainfully in breach of the night-time curfews imposed.”

36. Section 25(3) of the 1989 Act imposes a duty on the Court to determine whether the criteria for secure accommodation are met. The questions that the court must consider when determining whether to grant an application for a secure accommodation order under s.25 of the Children Act 1989 were set out by Baker LJ in *Re B (Secure Accommodation)* [2019] EWCA Civ 2025 at [98] as follows:

- i) Is the subject 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 of the Children (Secure Accommodation) Regulations 1991?

- 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?
 - 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?
 - 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?
 - v) Does the proposed order safeguard and promote the child's welfare?
 - vi) Is the order proportionate, i.e. do the benefits of the proposed placement outweigh the infringement of rights?
37. As Mr Jones points out on behalf of the mother, in *Re B* the Court of Appeal made clear that the child's welfare, although not paramount, is an important element in the Court's own independent analysis and that the Court must undertake a proportionality evaluation before granting an order under s.25 of the 1989 Act.
38. On behalf of E, Ms Bowcock submits that it is an unprecedented step for a local authority to ignore the outcome of its own Secure Accommodation Review Panel. The Secure Accommodation Review Panel is established under regulation 15 and 16 of the Secure Accommodation (Children) Regulations 1991:

“Appointment of persons to review placement in secure accommodation in a community home

15. Each local authority looking after a child in secure accommodation in a community home shall appoint at least three persons, at least one of whom must not be employed by the local authority by or on behalf of which the child is being looked after, who shall review the keeping of the child in such accommodation for the purposes of securing his welfare within one month of the inception of the placement and then at intervals not exceeding three months where the child continues to be kept in such accommodation.

Review of placement in secure accommodation in a community home

16. –

(1) The persons appointed under regulation 15 to review the keeping of a child in secure accommodation shall satisfy themselves as to whether or not–

(a) the criteria for keeping the child in secure accommodation continue to apply;

(b) the placement in such accommodation in a community home continues to be necessary; and

(c) any other description of accommodation would be appropriate for him,

and in doing so shall have regard to the welfare of the child whose case is being reviewed.

(2) In undertaking the review referred to in regulation 15 the person appointed shall, if practicable, ascertain and take into account the wishes and feelings of–

(a) the child,

(b) any parent of his,

(c) any person not being a parent of his but who has parental responsibility for him,

(d) any other person who has had the care of the child, whose views the persons appointed consider should be taken into account,

(e) the child's independent visitor if one has been appointed, and

(f) the local authority managing the secure accommodation in which the child is placed if that authority are not the authority who are looking after the child.

(3) The local authority shall, if practicable, inform all those whose views are required to be taken into account under paragraph (2) of the outcome of the review and the reasons for such outcome.”

39. The local authority submits that, whilst the court must take into account the views expressed by the Secure Accommodation Review Panel when determining whether to grant an order under s.25 of the 1989 Act, those views are advisory only, the local authority having the final say as to whether the criteria remain met or not. Mr Rothery submits that the decisions of the Panel must be treated accordingly in terms of their evidential weight.

40. In *LM v Essex County Council* [1999] 1 FLR 988. Holman J concluded as follows at 998 regarding the relationship between the local authority and the panel:

“...the regulations themselves require regular review of the keeping of the child in secure accommodation. Regulation 16 requires the panel on each

review to satisfy themselves as to whether or not, amongst other things, the criteria continue to apply. Review by the panel necessarily requires review also by the local authority themselves.”

41. In the case of *R (on the application of FD) v X MBC* [2019] EWHC 3481 (Admin) at [19] Lieven J held as follows regarding the respective roles of the Secure Accommodation Review Panel and the local authority:

“[19] The Regulations are silent as to the effect of a decision by the review panel that the criteria for keeping the child in secure accommodation are no longer satisfied. However, it can be inferred from Regulation 16(3) that the ultimate decision is for the local authority, and that the view of the panel is a recommendation only. This is accepted on behalf of the Claimant.”

42. Within the foregoing context, statutory guidance to the Children Act 1989 at Chapter 4, para 50 makes clear that where the Secure Accommodation Review Panel concludes that the criteria under s.25 are no longer met:

“Any secure accommodation order made is subject to review. This review must take place within one month of the placement commencing and then at intervals of no more than three months. These reviews are not the same as reviews of the child's overall care plan and are restricted to the specific question about the necessity of a placement in secure accommodation. *Where a 'secure accommodation review' concludes the criteria for the child's detention no longer apply, the authority responsible for the child's care should immediately convene a care plan review, chaired by the child's IRO.*” (emphasis added)

43. As to the effect of the s.25 criteria no longer being met, the decision of Holman J in *LM v Essex County Council* is once more of importance. In that case, following the local authority Secure Accommodation Review Panel determining that the s.25 criteria were no longer made out, a local authority informed the child's solicitor that, as it was not possible to make alternative arrangements immediately following the expiry of the s.25 criteria, the local authority proposed to keep the subject child in secure accommodation. Holman J held that on a proper construction of s 25(1) of the 1989 Act, a local authority could only lawfully keep a child in secure accommodation for so long as it was within the maximum period permitted without the authority of the court, or the maximum period specified in an order under s 25(4) and it continued to appear to the local authority themselves that the criteria in s 25(1) were satisfied. Within this context, Holman J was satisfied that if it appeared to the local authority that the criteria were no longer satisfied, the local authority had to cease to keep the child in secure accommodation.

DISCUSSION

44. In this matter, I am satisfied on balance that the criteria for a secure accommodation order pursuant to s.25 of the Children Act 1989 are no longer met with respect to E. My reasons for so deciding are as follows.
45. As made clear by the Court of Appeal in *Re B*, the court must consider whether (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.

46. Within this context, I bear in mind that the local authority's Secure Accommodation Review Panel has twice answered these questions in the negative. The panel members were aware on 4 October 2021 of the incidents between 29 September 2021 and 1 October 2021 in which E behaved, it is accepted on her behalf, in a dangerous way to herself and others and made threats in relation to her family. However, whilst mindful of the outcome of the Panel meetings on 22 September 2021 and 4 October 2021, I am satisfied that it falls to the court to undertake its own independent assessment of whether the s.25 criteria are met in respect of E, not least because the court is seised of that question at a date subsequent to the last decision of the Panel on 4 October 2021. In carrying out that exercise, the views of the panel will be a factor to be taken into account by the court but will not be determinative.
47. With respect to the first limb of the s.25 criteria, whilst I accept that it remains possible in this case to identify a history of absconding when the court surveys the totality of the background to this matter, I am not satisfied that it can any longer be said that E is likely to abscond from any other description of accommodation. As E herself points out, over the course of the seven months she has been in secure accommodation, which period has included periods of "mobility" once per week, E has not attempted to abscond. Further, she is correct in pointing out that whilst the incident on 29 September 2021 was difficult, it did not involve an attempt by her to abscond from the car. Further, and for reasons I expand on below, her stated threat to abscond from Y must be viewed in the context of the stress and anxiety caused to E by the uncertainty of her current situation. Within this context, and bearing in mind that the concept of absconding for the purposes of s.25 involves escaping indefinitely from an imposed regime as opposed to deliberately absenting herself for a limited period, I am not satisfied that it can be said on the evidence currently before the court that E is likely to abscond from any other description of accommodation.
48. With respect to whether the second limb of the s.25 criteria remains satisfied, this is a more finely balanced question.
49. I am satisfied that the question of whether the second limb of the criteria remains satisfied falls to be considered by reference to the incidents that have occurred between 29 September 2021 and the date of this hearing. Prior to that date, it is plain on the evidence that the local authority, in line with the decision of its Secure Accommodation Review Panel, considered that the criteria were no longer met and that it was appropriate for E to 'step down' to semi-independent accommodation at Y. On the evidence then available, that was plainly the correct analysis, E having done extremely well in secure accommodation over the course of the previous seven months. Within this context, the evidence that must be considered when asking whether, if kept in any other description of accommodation, E is likely to injure herself or other persons, is that of the incident of 29 September 2021, and E's subsequent statements and conduct at X prior to this hearing.
50. It is important to start by acknowledging the context in which the incident on 29 September 2021 occurred and in which E made the statements she did, and conducted herself in the way that she did thereafter. It is plain on the evidence before the court

that E had been given an expectation that she would be moving on from X, an expectation that had been confirmed, at least in her mind, by the decision of the Secure Accommodation Review Panel on 22 September 2021. It is equally clear from the evidence before the court that a degree of confusion and potential contradiction existed amongst the positions of the various professionals as to the plan for stepping E down to semi-independent accommodation. For E herself, it is clear from her writing at this time that the foregoing circumstances generated considerable anxiety in E as she faced the reality of far reaching change in where she would live and who would care for her, in the context of her already considerable emotional and psychological needs. Within this context, I accept the analysis of the Children's Guardian that:

“Knowing E, and the Children's Guardian would say the same applies for any young person, it is extremely important for her to be fully kept in the loop and to know exactly what is happening when. Any changes to a plan made can prove unsettling and anxiety provoking for her.”

51. Given the history of this matter, the concerns of the allocated social worker regarding E's behaviour and what it may signal in terms of likely future conduct are understandable. It is however, always important to ask *why* a child or young person behaves in the way that they do in a given situation. To do otherwise risks the long litany of difficult behaviour that is often seen in the cases of this nature becoming too blunt an instrument for determining whether the s.25 criteria are met. Within this context, I am satisfied that there is force in the argument of the Children's Guardian, and the view taken by the Secure Accommodation Review Panel, that the recent behavioural difficulties exhibited by E are explained by the anxiety and uncertainty that E is faced with in relation to her transition from secure accommodation to a less restrictive environment. E has herself repeatedly made this clear in her writing. In the experience of the court, whilst alarming on their face, the conduct of, and statements made by E since 29 September 2021 are not unusual in the context of significant change and transition.
52. In the foregoing circumstances, I am satisfied that the weight to be attached to E's recent conduct when considering whether if kept in any other description of accommodation E is likely to injure herself or other persons is not as great as the local authority contend. Placed in the wider context of the progress E has made in placement over the course of the past seven months, and in the context of the uncertainty and anxiety generated in E during a period of change, I am not satisfied that a straight line can be drawn between the incident on 29 September 2021, and E's subsequent statements and conduct, and the second limb of the s.25 criteria.
53. In deciding whether to accede to the application of the local authority, I am further required to consider whether the order sought by the local authority will safeguard and promote E's welfare. I am not satisfied that it would. The secure unit is clear that E is no longer benefiting from that provision and that the unit is not able to meet the needs E now has. In particular, the urgent requirement for E to undergo an assessment with respect to autism cannot be achieved whilst she remains in X. In attaching weight to this evidence, I bear in mind that the professionals from X not only care for E on a daily basis but are also highly experienced in meeting the needs of children in a secure setting. Further, in circumstances where E is aware that the Secure Accommodation Review Panel and the Children's Guardian consider that the criteria are no longer met, and that E's welfare requires an alternative placement, there is a real risk that E will become

trapped in a cycle of behaviour generated by anxiety, frustration and uncertainty, which behaviour will then be argued to justify the continuation of the restrictions that are placed upon by a secure accommodation order.

54. I am of course mindful that there remains a question as to whether Y remains the correct placement for E following her discharge from X or whether a bespoke placement supplemented by an order authorising the deprivation of her liberty is the proper course. However, the authorities are clear that it is not lawful to keep a child in secure accommodation once the criteria for the same are no longer met. Within this context, and as made clear in *LM v Essex County Council*, it is not open for the local authority (or indeed the court) to keep a child in secure accommodation simply because there is a delay in procuring or implementing an alternative placement. That this is the position also emphasises the importance of exit planning for children in secure accommodation to begin from the moment it is determined that secure accommodation is the appropriate course to take in respect of the child.
55. Finally, within the foregoing context, I am further unable to conclude that the benefits of the placement at X continue to outweigh the infringement of E's rights constituted by the secure accommodation regime that applies in that placement. Once again, X has made clear that that E is no longer benefiting from that provision and that the unit is not able to meet the needs E now has. Within this context, I am satisfied that it can no longer be said that secure accommodation is proportionate in E's case.

CONCLUSION

56. In the circumstances, I am on balance not satisfied that the criteria for a secure accommodation order pursuant to s.25 of the Children Act 1989 are met in respect of E.
57. I accept that the concerns articulated by the social worker with respect to E's recent behaviour are not without foundation. Within this context, I recognise that there is a risk that the trust that will be reposed in E by stepping her down from secure accommodation will not be repaid by her. In those circumstances, E will not be able to complain if she finds herself once again the subject of a more restrictive regime, the burdens of which she so eloquently described in her letter of July 2021, should she fail to live up to the promises she has made in the context of her wish to make a new start outside the confines of a secure unit.
58. However, for the reasons I have given, I am not satisfied that the recent difficulties related in this judgment are capable of continuing to meet criteria for making an order under s.25. In the circumstances, I refuse the application of the local authority for a further secure accommodation order.
59. That is my judgment.