



Neutral Citation Number: [2022] EWHC 2687 (Fam)

Case No: FD22P04067

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Date: 12 October 2022

Before:

**MR JUSTICE POOLE**

-----  
**Re J (Deprivation of Liberty: Hospital)**

Between:

**Manchester City Council**

**Applicants**

- and -

**(1) K (J's Mother)**

**(2) An NHS Trust**

**(3) J (By her Children's Guardian)**

**Respondents**

-----  
**Peter Rothery** (instructed by the Legal Department, Manchester City Council) for **the Applicants**

**Anna White** (instructed by Garratts law Solicitors) for **the First Respondent**  
**Sophie Hurst** (instructed by Hill Dickinson Solicitors) for **the Second Respondent**  
**Kalsoom Maqsood** (instructed by Alfred Newton Solicitors) on behalf of **the Third Respondent**

Hearing date: 12 October 2022  
-----

**JUDGMENT**

**This judgment follows a hearing in public but a Reporting Restriction Order has been made, and remains effective until further order, prohibiting the publication or broadcast of any information (including any photograph, name and/or address) that is likely to lead to the identification of any of, amongst others, the Third Respondent child, the First Respondent or any member of their family including other children of the family, the location of the family home, the hospital where the child has been or is being cared for or her proposed placement. The full Reporting Restrictions Order is available on request. 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 J, the subject of proceedings and members of their family must be strictly preserved and the Reporting Restrictions Order shall be complied with. 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.**

**Mr Justice Poole:**

1. J is a 13 year old girl with complex needs who was made the subject of an interim care order on 20 July 2022 in favour of the Applicant Council/Manchester City Council. The Council has a statutory duty to place J in a placement but for about three months now it has not been able to find any accommodation for her and so she has been living in a hospital. J does not want to live in a hospital. She has no physical or mental health requirement for in-patient treatment and the environment of a hospital is not at all suitable for her needs but the Council has not been able to find any alternative place for her to live. A team of agency care staff funded by the Local Authority attend the hospital to look after her. J's presence in the hospital and the attention she requires cause disruption and adversely affect the ability of hospital staff to care for their patients. Resources that should be used to treat someone who requires in-patient care are being used to house a child who does not require in-patient care. All parties in this case agree that J needs to be placed somewhere else but such is the state of provision for children with complex needs in England and Wales that there has been nowhere else for J to go.
2. J previously lived at home with her mother and other younger siblings. She has been diagnosed as having Autistic Spectrum Disorder and Attention Deficit Hyperactivity Disorder. She has problems with attachment. She has difficulties with hyperactivity, impulsivity and inattention. She can become agitated very quickly such that her behaviour towards others becomes aggressive. She has assaulted others, including hospital staff, damaged property, she has engaged in risk taking behaviour such as absconding, and she has self-harmed on multiple occasions. J has received support from the Child and Adolescent Mental Health Service (CAMHS), from the Local Authority, and from psychiatric services. Her mother has tried her best to support and care for J but she is unable and unwilling for J to return home unless or until the risk to her and her other children is reduced.
3. J's recent history is set out in full in the documentation provided to the court. For the purposes of this short judgment it is necessary only to provide a summary. J was referred to the Local Authority's social work team on 27 May 2022 having been admitted to hospital following an overdose and self-harming. She absconded from the hospital and threatened to jump off a bridge. She was detained under s.136 of the Mental Health Act 1983 and a day later the police invoked their powers of protection and J was placed in foster care. J overdosed again. Her mother agreed to her being returned home but two days later J was readmitted to hospital having deliberately hit her head against a wall. She was an in-patient for six days before being discharged with follow up support from CAMHS. Within hours of being discharged she was readmitted having had suicidal thoughts. She was discharged again but on 10 June she assaulted her mother and self-harmed. The next day she took an overdose and was admitted to hospital. She was discharged on 14 June but absconded. She was back in hospital by 16 June 2022 but absconded on 19 June. She was re-admitted to hospital after an attempted overdose on 21 June 2022. Whilst in the hospital waiting room she assaulted her mother.
4. On 26 June 2022 whilst in hospital as an in-patient J was assaulted by a member of the agency security staff (not a Trust employee) who hit her around the back of the head. The person responsible was dismissed. J was discharged from hospital on 5 July

but re-admitted on the same day and detained under s.2 of the Mental Health Act 1983.

5. J has been assessed as not being Gillick competent to make decisions about her treatment and care. Her detention under s. 2 MHA 1983 was rescinded on 11 July 2022. In a statement to the court dated 7 July 2022 a Consultant Child and Adolescent Psychiatrist at the Trust said that J,

“is not presenting with a mental illness that would require inpatient admission ... admission to a CAMHS inpatient bed would be inappropriate and an appropriate discharge location, understanding of her difficulties, needs to be identified as soon as possible.”

In a further statement dated 18 August 2022 he wrote,

“J remains on the ... ward which is not a suitable environment for a child with complex developmental and attachment needs. She requires an environment that is calm and predictable where she can develop healthy and trusting relationships with adults who are attuned to her needs. Frequent staff changes are not conducive to develop trusting relationships. The hospital environment is not conducive to the therapeutic environment J urgently needs.”

6. Due to the inability of the Local Authority to find anywhere else to accommodate J, she has remained in hospital. Remarkably, she attends school daily and there have been no problems at school. However, whilst living in the hospital there has been a series of incidents of damage to property, threats and assaults on staff, and self harm including by cutting. Following a particularly troubling assault on staff in late August 2022, J was moved to another hospital where she now remains.
7. At seven previous hearings, including three before me, the court has authorised the deprivation of J’s liberty in a hospital setting. This is the eighth hearing. I have listed this hearing to be heard in public but with a Reporting Restrictions Order (“RRO”) in place to protect J’s anonymity. I shall consider the terms of the RRO later in this judgment. I considered it appropriate to conduct this hearing in public because it was in the public interest to do so. Very sadly this case is not unique. J’s plight highlights an ongoing problem that is blighting the lives of many children with complex needs whose behaviour presents very significant challenges to those who are caring for them:
  - i) The number of available suitable placements for these children is far below the number needed; therefore
  - ii) Local Authorities with responsibility to accommodate and care for these children cannot find suitable places for them. To be clear, as this Applicant has done, Local Authorities search around the country for suitable

accommodation, not just in their own areas. This is a national problem seemingly affecting all Local Authorities; therefore

- iii) These children - children who are the most in need of support from skilled and experienced carers in safe and suitable placements - are accommodated in unsuitable places, such as holiday accommodation, homes that are not subject to any regulation, and sometimes, as in this case, even in hospitals where they do not belong.
  - iv) The care regimes designed to keep these children safe often involve depriving them of their liberty; therefore
  - v) The High Court is asked to authorise the deprivation of these children's liberty in unsuitable placements.
8. Recently a national DOL court was established to hear new applications for authorisation of the deprivation of liberty of children. The Nuffield Family Justice Observatory has recently reported that in July and August 2022 there were 237 applications to that court. In some of those cases children will have been placed in suitable accommodation from the outset, but in many, as here, there are great difficulties in finding suitable placements.
9. This case has marked similarities to *Wigan MBC v W, N and Y* [2021] EWHC 1982 (Fam) in which MacDonald J refused to authorise the deprivation of liberty of a 12 year old who, like J, had diagnoses of ADHD and Autistic Spectrum Disorder, and who was inappropriately placed on a hospital ward when he did not meet the relevant criteria for detention under the Mental Health Act 1983; and *Nottinghamshire County Council v LH (No. 1)* [2021] EWHC 2584 (Fam) and *Nottinghamshire County Council v LH (No. 2)* [2021] EWHC 2593 (Fam). Mr Justice MacDonald set out the applicable law in *Wigan MBC* and in *Lancashire County Council v G and N* [2020] EWHC 2828. Subsequently, the Supreme Court in *Re T* [2021] UKSC 35 considered the exercise of the court's inherent jurisdiction to authorise the deprivation of liberty of children in unregistered placements when no secure accommodation was available. I am also assisted by a third, first instance judgment of MacDonald J, *Tameside MBC v AM and others* EWHC 2472 (Fam) and the Court of Appeal decision in *A mother v Derby City Council* [2021] EWCA Civ 1867. I adopt the analyses in those judgments of the law applicable to the exercise of the inherent jurisdiction in a case such as the present one, including the very helpful summaries by MacDonald J at [34] of *Wigan MBC* and [61] of *Tameside MBC*.
10. There is no dispute that the restrictions imposed on J deprive her of her liberty. They amount to her continual confinement, she does not and could not consent to them and they are imputable to the state. As the authorities establish, the court may only authorise the deprivation of a child's liberty if it is necessary, proportionate and in her best interests. In *Re T* (above) Lady Black said,

“145. I have been particularly concerned as to whether it is a permissible exercise of the inherent jurisdiction to authorise a local authority to place a child in an unregistered children's home in relation to which a criminal offence would be being committed. Ultimately, however, I recognise that there are

cases in which there is absolutely no alternative, and where the child (or someone else) is likely to come to grave harm if the court does not act. I also have to recognise that there are other duties in play, in addition to those which prohibit carrying on or managing an unregistered children's home. I gave an idea earlier (see para 30 et seq) of the duties placed upon local authorities to protect and support children. How can a local authority fulfil these duties in the problematic cases with which we are concerned if they cannot obtain authorisation from the High Court to place the child in the only placement that is available, and with the ability to impose such restrictions as are required on the child's liberty? It is such imperative considerations of necessity that have led me to conclude that the inherent jurisdiction must be available in these cases. There is presently no alternative that will safeguard the children who require its protection."

11. A hospital is not a children's home and cannot not fall within Ofsted's regulatory regime. A hospital is at least subject to regulation by the Care Quality Commission and it is not a criminal offence to place a child in a hospital, as it is to place a child in an unregistered children's home. By Section 27A of the Care Planning, Placement and Case Review (England) Regulations 2010, as amended in 2021, it is lawful for a Local Authority to place a child in a hospital. However, the court has still to be satisfied that it is necessary, proportionate and in J's best interests for the authorisation to be given. As *Re T* establishes (see for example the first sentence of [145] above) the court must consider whether to authorise the deprivation of liberty in the setting where the child is being accommodated or is going to be accommodated.
12. At the seven previous hearings of this application the court has found that it was necessary, proportionate and in her best interests to authorise the deprivation of J's liberty in hospital. The reason for so concluding, certainly on the three occasions I have done so, has been that there has been no alternative place for J to live and that restrictions amounting to the deprivation of her liberty have been needed to keep her safe whilst living at the hospital. At each hearing, the court has been told that the Local Authority is actively searching for alternative accommodation but, in three months, its searches have been in vain. The court is unable to find alternative placements and so, if the deprivation of a child's liberty is authorised, judges are limited to trying to ensure that the child is kept safe and is well cared for, and to cajole others to act to find suitable accommodation and care arrangements. At previous hearings I have insisted on regular review hearings, I have ordered the attendance of the Director of Children's Services, and I have directed that details of the case be provided to the Secretary of State for Education and the Children's Commissioner. All to no avail.
13. As an alternative to her continuing to live in a hospital, the possible options are a return home, a foster placement, secure accommodation, placement in a children's home, or placement in a bespoke placement.

- i) J cannot return home. The Local Authority has sought K's agreement to take J back home but the Guardian has been very concerned about that prospect and K has decided that she cannot agree to look after J at home. J's conduct and circumstances whilst at home resulted in an interim care order. She has younger siblings at home who are put at risk by J's behaviour. Even with an extensive package of support it would not be safe for J and her family for her to return home at present.
- ii) Given J's challenging behaviour, a foster placement would be unsafe and unsuitable for her and is not a viable option.
- iii) J would meet the threshold for a secure accommodation order under s.25 of the Children Act 1989. The Local Authority does not consider that secure accommodation is suitable for J but, in any event, as Counsel for the Local Authority put it to the court at the last hearing on 29 September 2022, the prospects of a place in secure accommodation being found for J are "vanishingly small". At that hearing I was told that there were 59 children on the waiting list for secure accommodation and, that day, there was one space available in the whole country. Today I was told that on 10 October there were 62 referrals for places in secure accommodation across the country and only one vacancy for a female.
- iv) The Local Authority has been unable to find a single children's home that would accept J. I have been told at the hearings of this case before me that children's homes are reluctant to accept children with a history of behaviour of the kind displayed by J because of the effect on other residents and because incidents such as assaults and self-harm (which are frequent for J) have to be reported. Once a certain number are reported, Ofsted, the regulator for children's homes, will carry out an investigation. The operators of children's homes want to avoid such investigations. There are few registered children's homes for sole children. Children's homes are also wary of accepting a child such as J because of the DOL restrictions that would be required and the demands on staffing levels.
- v) In many similar cases Local Authorities will set up what is called a "bespoke placement". That usually entails the Local Authority identifying a house or flat where the child can be accommodated and engaging agency care staff to provide care within the accommodation. These are unregulated placements – they are not registered children's homes – and so there is no regulatory oversight by Ofsted or any other body. The package of care required will often involve a team of eight or more carers on a shift pattern. If they are provided by an agency there may be a high turnover of staff caring for the child in the placement. In this case the Local Authority told the court on 29 September that a care team could not be in place for eight weeks, such was the shortage of available carers.

14. In *Re T*, Lord Stephens referred at [166] to the,

“enduring well-known scandal of the disgraceful and utterly shaming lack of proper provision for children who require approved secure accommodation. These unfortunate children,

who have been traumatised in so many ways, are frequently a major risk to themselves and to others. Those risks are of the gravest kind, and include risks to life, risks of grievous injuries, or risks of very serious damage to property. This scandalous lack of provision leads to applications to the court under its inherent jurisdiction to authorise the deprivation of a child's liberty in a children's home which has not been registered, there being no other available or suitable accommodation”

Here, since early July 2022, there has not been any home for J, either registered or unregistered, and she has been left to live within a hospital which is effectively being used as a space in which to accommodate a child when it should be a valuable resource for patients who require hospital care.

15. I turn now to the evidence as to current position at this eighth hearing. I have a large bundle of documentation including statements from medical and other personnel at the Trust, some medical records, statements from social workers and others from the Local Authority, and position statements from the Guardian, the Trust and the Local Authority.
16. The Local Authority has filed evidence showing its continuing, daily attempts to find an alternative placement. At my request, the trust has provided a log of incidents from 17 August 2022 to 10 October 2022. There are 63 incidents on the log, nearly all being incidents of disruptive and aggressive behaviour, self-harm, or absconding. At the last hearing before me on 29 September 2022 the Local Authority had two possible providers for an alternative placement. Neither has chosen to proceed. The Local Authority has now approached eleven providers with a view to commissioning bespoke placements which can meet J's needs, all unregistered. Potential providers have highlighted the potential commercial risk to them of being involved in the provision of unregistered placements particularly if they also have registered provision elsewhere.
17. I am told that the Local Authority has nevertheless identified a private landlord who will provide a property, to be rented by the Local Authority, at which care could be provided for J. There will be a delay in J being able to move to the placement because the core staff would need to undergo restraint training. The aim is for J to be able to move into the placement by the end of October 2022. The Trust is prepared to delay J's discharge until the training has been completed and the placement is ready for J. I have been provided with a proposed multi-agency transition and support plan which is a carefully drafted, structured plan for J's introduction and move to the proposed bespoke placement. The plan should ensure education provision is maintained at J's present school, that there is input from the Child and Adolescent Mental Health Service, that J is introduced to the new care team whilst she is still at the hospital, that K is involved, and that J is introduced to the new placement and has some input to preparing it for her move there.
18. This plan would provide an alternative to J remaining in hospital for a further unspecified period. It is therefore to be welcomed. However, it would be an unregistered placement and the Local Authority anticipates that Ofsted may serve

cease and desist notices on the provider and the property owner. Those notices highlight the risk of prosecution. The provider and/or the landlord might then withdraw. The President of the Family Division issued guidance on 12 November 2019 - Practice Guidance: Placements in unregistered children's homes in England or unregistered care home services in Wales - together with a later addendum dated 1 December 2020, which must be followed, requiring the Local Authority to inform Ofsted of any order authorising the deprivation of a child's liberty in an unregistered children's home, and application for registration being made within a prescribed timetable. Whatever monitoring requirements the court might impose on the Local Authority as a condition of authorising deprivation of J's liberty in an unregistered placement, the court is not a regulator and cannot replace the level of oversight that a regulator provides.

19. I cannot be certain that the proposed arrangements will be implemented but the Local Authority expects that they will be and they are currently the only hope for J to be able to move out of hospital.
20. One factor in this case that is important to J's welfare is that daily she attends her school. It would be contrary to her best interests for her to move to a placement that would disrupt her schooling. However, the search for alternative placements has been fruitless even when that condition has not been applied, i.e. there are no available placements within the region or nationally. The proposed placement will allow her to continue at her school.
21. J's mother, K, the Trust and the Guardian support the plan to move J to the proposed bespoke placement.
22. The court is therefore being invited to authorise the continued deprivation of J's liberty at the hospital where she currently lives until her transfer to the bespoke placement, and then at that placement. The current restrictions are:
  - i) J is not free to leave the hospital.
  - ii) J is subject to a maximum of 2:1 supervision at all times, save and except for when she has supervised access to the hospital grounds and/or the community as set out in detailed provisions, which shall be a maximum of 4:1 supervision. When J is in the hospital, she will have at least one carer with her inside her cubicle at all times.
  - iii) During term time, J is allowed to leave the hospital, with supervision, for eight hours to attend school. J is taken by carers to school in a taxi from the hospital and collected from school in a taxi with carers so she can be returned to the hospital.
  - iv) J is not allowed to access the hospital grounds after 20:00 each night.
  - v) If J were to attempt to leave the hospital outside of the specified times, she would be prevented from doing so. If she were to leave, she would be returned by emergency services.



- vi) For her own safety, the safety of others and to prevent J from attempting to leave the hospital, J may be physically restrained (Ms Hurst for the Trust advised the court that in fact, at present, if J attempts to leave the hospital grounds then she is not prevented from doing so but is returned, with her compliance, by emergency services).
- vii) The voluntary administration of oral sedative medication, subject to application of the principles for the use of restraint.
- viii) Two members of the hospital security staff shall be available in the hospital grounds and attend as soon as possible once requested if required to provide support when J's behaviour escalates and intervention is required.
- ix) J will not have access to a mobile phone or social media during her stay in hospital.

In depriving the child of her liberty, the applicant, second respondent and care agency providing care at the hospital are directed by the court to use the minimum degree of force or restraint required. The use of such force/restraint has been authorised by the court as lawful and in J's best interests provided always that the measures are:

- x) the least restrictive of the child's rights and freedoms;
- xi) proportionate to the anticipated harm;
- xii) the least required to ensure the child's safety and that of others, and;
- xiii) respectful of the child's dignity.

I also require that physical restraint shall only be used by those trained and competent in the techniques deployed.

- 23. J has nowhere else to go. There would be a grave risk of harm to her and to others were these restrictions not in place. The goal must be to reduce and then remove the restrictions. The number of incidents logged in the last two to three months, with the restrictions in place, shows that the restrictions do not prevent all incidents of aggressive behaviour, assaults on others, self harm, and absconding attempts. I am aware of the possibility that the very existence of the restrictions can provoke J to react against them. However, having regard to all the evidence, including the nature of the incidents logged, and comparing the actual harm suffered by J and the risk she placed herself in before these restrictions authorised, with the actual harm suffered and level of risk with authorisation, I conclude that without the restrictions J would be at a much greater risk of serious harm and would place others at a greater risk of harm.
- 24. I have not been asked to meet J but her Guardian has conveyed J's own, clear views about the restrictions. She would like to go for walks as and when she can. She is happy for the walks to be with the support workers at all times. J does not eat hospital food so she likes to get her own and would like to be able to go to the shops around the hospital at mealtimes to get food. She would like her curfew to be extended to 10pm. She would like to attend an activity centre where she can access a gym. For the Trust, Ms Hurst has told the court that daily risk assessments are carried out and that J

is often given more freedom than would be suggested by the list of permitted restrictions. The authorisation is permissive not directive. For example, J has been on walks out of the hospital for more than the permitted restricted times. The more restrictive measures are reserved for when the risks are assessed as being higher. I am told that physical restraint, whilst permitted in certain circumstances, has not had to be used for some time.

25. Following consideration and submissions at the hearing I am satisfied that the least restrictions necessary would be those previously authorised.
26. Those restrictions amount to a deprivation of J's liberty – she is continually confined and is not free to leave the hospital other than on the terms set down. There is no consent to the deprivation of liberty and it is imputable to the state. It is open to the court to refuse to authorise the deprivation of J's liberty. The consequence would be either that the restrictions would be removed, in which case J would leave the hospital and would be at a very high risk of coming to harm, or she would remain at the hospital with unauthorised and therefore unlawful restrictions imposed upon her to try to keep her safe.
27. Had there not been the alternative bespoke placement available within a reasonable time, I would have been unlikely to authorise the continuation of J's liberty in a hospital. As it is, I struggle to find that the continuation of the present arrangements even for a relatively short time is in J's best interests. A hospital is not a suitable home for this 13 year old girl who has no need for treatment. It is surely harmful to her to spend any more time in hospital than is absolutely necessary. However, due to the national lack of resources to accommodate and care for children with complex needs, that appears to be the only place where she can live until, as is hoped and expected, the Local Authority is able to arrange and have ready the proposed bespoke placement. The redeeming feature of this case is that under the plan put forward, J will be able to continue at her school before the move. Remaining at the hospital during the transition period to the new placement will afford her some stability at least.
28. Hence, after anxious consideration I shall authorise the continuation of the restrictions that deprive J of her liberty whilst she remains at the hospital as being necessary, proportionate and in J's best interests.
29. The proposed restrictions at the new placement are:
  - i) 2:1 support to J within the placement; she would be supervised and supported during waking hours and during the evening.
  - ii) There would be two members of staff available on a waking nights basis, one positioned directly outside the bedroom, the other located in the downstairs of the property. The bedroom door would be closed at these times to protect J's privacy.
  - iii) In circumstances where J is threatening to self-harm or threatening others the care staff will seek to support de-escalation through the use of techniques developed whilst J has been in hospital.

- iv) In the event that J attempts to abscond from the placement, the staff would follow J, keep her in sight where possible, contacting the police should staff lose sight of J or become concerned for her safety and well-being.
- v) Should J become dysregulated and in the event that de-escalation techniques are not successful, and she is considered to present a risk to herself or others, the use of physical restraint may be required.

Again, I require that any physical restraint may only be used by staff trained and competent in the techniques deployed. No restrictions are proposed to prevent J being able to come and go from the property subject to the restrictions set out above. No curfew is proposed. Nevertheless, the proposed care regime will mean that J will be under constant supervision and control and she will be subject to restrictions which other children of her age would not be subjected to. J would be unable to engage in day-to-day activities and enjoy family life without a level of support and supervision. The restrictions will amount to a deprivation of her liberty to which she cannot consent and which is imputable to the state.

30. At my request I have been provided with the following further material and information:
- i) the cost of the proposed placement will be just over £9,600 per week. This is comparable to the present costs of providing agency care for J in hospital which are at least £7,000 per week and sometimes higher. There are also the ongoing costs incurred by the Trust. However, it is not for the court to take into account resource allocation but to focus on J's best interests.
  - ii) Photographs of the proposed accommodation show it to be a well presented three bedroom house in a residential area with a small lawned garden.
  - iii) Details of the care team to be deployed at the proposed placement show them to be suitable to care for J.
31. I am satisfied that it is necessary, proportionate and in J's best interests to move from the hospital to the new proposed placement and for her to be deprived of her liberty at that placement with the restrictions set out above permitted. It is an imperative necessity that she is transferred out of the hospital and into this new placement and be subject to the restrictions. She cannot remain in the hospital a day longer than is absolutely necessary. I am grateful to Manchester City Council for having eventually put together an alternative placement and for the efforts they have made over three months to find a placement for J.
32. The Council will continue its search for a registered placement for J. A copy of this judgment should be provided to Ofsted. The proposed placement is unregistered and Mr Rothery tells me that the provider, which offers agency care not the operation of children's homes, will not apply for registration. It would be extremely unfortunate if, after three months living in a hospital awaiting a placement, J's new placement were to break down because it remains unregistered, given that I am satisfied on the current evidence that it is an imperative necessity and in her best interests to move to the new placement even though it is not registered.

33. A copy of this judgment should also be provided by the Local Authority to the Secretary of State for Education and to the Children's Commissioner for England.
34. If the plan is implemented, I should review this application one to two weeks after J has moved to the new placement, subject to availability and on a date to be fixed after confirmation from the Clerk of the Rules. That hearing can take place remotely. I would be happy to meet J remotely before that hearing if she wishes and the Guardian considers it appropriate to do so.
35. I shall also take the precaution, given the history of this case, of listing it before me for review on 26 October at 10.00 am for one hour, to be heard remotely. If the transfer to the new placement is going to be effective, there are no further issues for the court to consider, and all parties agree, I can vacate that hearing administratively.
36. This case, as do many others involving the care of children with complex needs, calls into question the court's role. Very often the court is told that there is only one place where the child can be accommodated. The court's role is therefore very limited. There are no real choices for the court to make. The court cannot direct that placements shall be made available. The court is not a regulator and cannot inspect potential placements or oversee care regimes. On the other hand, even when there are no other placement options, the court does not merely provide a rubber stamp for the restrictions sought, and there are decisions to be made about the extent of the restrictions that are necessary and proportionate and in a child's best interests. However, the courts, like the parties, continue to be confined by the consequences of what Lord Stephens called a "scandalous lack of provision" for which it appears that there is no end in sight.

### Reporting Restrictions

37. Having decided that the hearing today should be in public, I made, of the court's own motion, a reporting restrictions order dated 4 October 2022. That order did not include anonymisation of the applicant Local Authority. Identification of the Local Authority places J in a specific location. The Local Authority applied for the RRO to be varied to prohibit publication of any information that would identify the location where J lives, including the name of the Local Authority. On 11 October 2022 I so ordered on an interim basis only pending representations at this hearing.
38. I have received a witness statement on behalf of the Local Authority and submissions from the parties and from Ms Tickle an accredited freelance journalist. The mother, K, says through Counsel that she will be guided by the professionals. The Trust takes a neutral position on the application to vary. Ms Maqsood has been unable to obtain instructions on the application from the Guardian who is on leave but says that the Guardian would be very concerned about any risk of identification.
39. Ms Tickle made submissions that it is in the public interest for the Applicant to be named. Her most powerful submission was that it was essential as part of the process of democracy and democratic accountability to locate the child in a case such as this. Councillors and voters need to know what the Council is doing or not doing, and how children being looked after by their Local Authority are being provided for. Also,

naming the Applicant is important for policy decisions which might follow from knowledge of a case such as this. It is important for the public to be able to compare cases or accounts which might involve the same Local Authority or comparable authorities.

40. The Local Authority says that the variation is required to ensure that J cannot be identified by jigsaw identification – few children in J’s situation will be looked after by this Local Authority. Further, it may adversely impact J to know that her location has been identified in reports of this case. Finally, the Local Authority is concerned about the potential impact that reporting identifying the geographical location would have on potential providers of a placement for J.
41. Notice of the RRO of 4 October 2022 and my interim order of 11 October 2022 was sent to the national news media through the copy direct scheme.
42. Articles 8 and 10 of the European Convention on Human Rights and Fundamental Freedoms are engaged.

#### Article 8

##### Right to respect for private and family life

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Article 10

##### Freedom of expression

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in

confidence or for maintaining the authority and impartiality of the judiciary.

43. Section 12 (4) of the Human Rights Act 1998 provides that:

The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appear to the court, to be journalistic, literary or artistic material (or to conduct connected with such material) to (a) the extent to which (i) the material has, or is about to, become available to the public, or (ii) it is, or would be, in the public interest for the material to be published, [and] (b) any relevant privacy code.

44. The leading case on the approach to be adopted is the decision of the House of Lords in *Re S (a child) (Identifications: Restriction on Publication)* [2005] 1 AC 593. It was held that an intense focus on the comparative importance of competing rights under Articles 8 and 10 was required. Neither Article has presumptive weight over the other; the proportionality test must be applied to each. The court should always ask whether there is any less restrictive or more acceptable alternative to a RRO – see also *JIH v News Group Newspapers Ltd* [2011] 1 WLR 1645.
45. In the present case there is a strong public interest in knowing the identity of the applicant Local Authority. First, the applicant is a public body and is accountable. Scrutiny of public authorities requires it to be known which authority is doing what. Councillors within the Local Authority area should know what is being done in their name. Voters need to be able to hold their Council to account. Second, it is pertinent that the applicant is a large Local Authority covering a large population. Even with its resources it is struggling to find an alternative placement for this child. It is in the public interest to know the reality of the problems highlighted in this case.
46. The court has to be very mindful of the risk of identification of J. It would be contrary to her best interests for her to be identified as the subject of this case. What is the extent of that risk? Manchester is a large city with a population of over half a million and several hospitals within the Greater Manchester area serving the population of the city of Manchester and beyond. The risk of identification is therefore much lower than it would be if the Local Authority covered a smaller population. To reduce the risk of identification via knowledge of location, I can order that there shall be no information that would identify or be likely to identify the hospitals where J has and is living, the staff working there, or the location of her family home, or the location of the hospitals within Greater Manchester. My RRO of 4 October prohibited identification of the Trust that is responsible for the hospital where J is. No objection is taken to that reporting restriction.
47. In my judgement, the public interest in knowing the identity of the Applicant Local Authority comfortably outweighs the risk of identification of J by the Applicant Local

Authority being identified. That risk is extremely small. As to the suggestion that J herself would be harmed or distressed by knowing that the Council was being identified, I reject that. I don't believe that she would consider that identification of the Council would jeopardise her anonymity. That is speculation. It is also very speculative to suggest that potential providers would be put off offering services because the Council was named. I do not believe that that is a realistic suggestion.

48. I am aware that there has been a recent Court of Appeal decision allowing an appeal against a decision of HHJ Wildblood KC in a similar case to allow the Local Authority to be named. That judgment has not been published. I do not know when it will be published and I do not know what the facts of that case were. None of the parties have asked me to defer my decision on the application to vary the RRO and I do not consider it necessary to do so. There have been many cases in which Local Authorities have been named even when the identity of the child or children involved have been protected. Cases are fact sensitive. For the reasons given I shall not vary the RRO to prohibit naming Manchester City Council, but I shall vary it to protect the identity of those who have worked with and cared for J and who will do so at the proposed placement. The hospitals where J has lived must not be named but it can be reported that they are in the Greater Manchester area. The full RRO is available on request.