PUBLIC LAW UPDATE – AUGUST 2019

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1. The purpose of this update is to provide the reader with an overview of recent cases and a summary of the principles arising out of those cases.

2. The following cases shall be covered within this update:

   (a) A City Council v LS & Ors (Secure Accommodation: Inherent Jurisdiction) [2019] EWHC 1384 (fam)
   (b) London Borough of Wandsworth v Lennard (Application for Committal) [2019] EWHC 1552 (Fam)
   (c) T (A Child): Care Order: Beyond Parental Control: Deprivation of Liberty: Authority to Administer Medication) [2018] EWFC B1
   (d) Worcestershire County Council v AA [2019] EWHC 1855 (Fam)

A City Council v LS & Ors (Secure Accommodation: Inherent Jurisdiction) [2019] EWHC 1384 (fam): McDonald J

3. MacDonald J was tasked with answering the following question: *"Does the High Court have power under its inherent jurisdiction, upon the application of a local authority, to authorise the placement in secure accommodation of a 17 year old child who is not looked after by that local authority within the meaning of s 22(1) of the Children Act 1989, whose parent objects to that course of action, but who is demonstrably at grave risk of serious, and possibly fatal harm?".* MacDonald J concluded that the answer to the question is "no".

4. The child, KS, was believed by the local authority to be at risk of criminal exploitation as a consequence of his suspected involvement with an organised crime group. The group in question was believed to be involved in violent feuds over drug trafficking territory. Police intelligence suggested that KS had found himself in conflict with other members of the criminal community who had access to firearms, conduct retaliatory attacks and had tendencies to seek violent acts of retribution.

5. KS was involved in or connected to several incidents related to the organised crime group, for example:

   (a) KS was found in the company of a drug dealer in August 2017;

   (b) KS witnessed a young male being stabbed in the neck during a gang related attack in September 2017;

   (c) KS was arrested for racially aggravated assault in September 2017 and was found to be in possession of a baseball bat and a brick;

   (d) KS was found to be in possession of heroin and was arrested for conspiracy to supply Class A drugs in May 2018;

(e) KS was arrested in July 2018 on suspicion of selling drugs at a festival. He was found to be in possession of cocaine;

(f) KS was suspected to have wounded a person with a knife in July 2018;

(g) KS was convicted of possessing an offensive weapon and assault occasioning actual bodily harm in October 2018. This conviction arose out of the incident in September 2017;

(h) KS was attacked in the street and stabbed five times in late 2018. KS refused to make a complaint and claimed not to know any of the attackers;

(i) KS was suspected to have been involved in the discharge of a firearm in February 2019;

(j) KS was arrested in March 2019 in connection with a knife attacked believed to have been orchestrated by the organised crime group. Two large knives were found in KS's home during the investigation;

(k) KS was identified as a suspect in the shooting of a male who had been shot in the leg in broad daylight. Police believed KS to be at risk of reprisal attacks following the shooting and advised him to leave the area. KS refused to do so. KS's mother and siblings were advised to leave the home and the area due to concerns for their safety. They followed this advice.

6. The local authority therefore felt it necessary to step in to protect KS by issuing an application to deprive KS of his liberty. KS was not given notice that the application was to be made.

7. The matter was first heard by HHJ Sharpe on 26 April 2019 and a very wide order was granted to the local authority in the following terms:

"The Court declares that the Local Authority together acting in conjunction with the Chief Constable of [named area] Police and his officers may:

(i) Enter any premises identified as being places where it is reasonably believed that the child may be present;

(ii) Detain the child therein;

(iii) Search the child for the purpose of identifying weapons in his possession and devices capable of communicating with those not in his immediate vicinity (whether by audio, video or otherwise);

(iv) Remove the child from such premises;

(v) Restrain the child for the purposes of transporting him to the location identified as being a place of safety;

(vi) Restrain the child during such transportation;

(vii) At the place of safety so identified restrain the child so as to enable him to be kept at such place pending further order of the court."

8. The wording of this order appears to have intended to replicate the terms of a recover order under Section 50 of the Children Act 1989 under the inherent jurisdiction of the High Court.

9. The local authority was not able to locate a secure placement for KS. KS was therefore deprived of his liberty and placed at a non-secure unit on 27 April 2019. KS promptly absconded from the placement and the local authority was not able to locate him. KS's whereabouts continued to be unknown to the local authority by the time the matter came before MacDonald J on 23 May 2019.

10. KS wrote to the court and made contact with his legal representative shortly before the hearing commenced. His position was summarised by his counsel as follows:

    (a) KS resists the application of the local authority. He wishes to return home to the care of his mother.

    (b) He does not accept that the police intelligence in respect of him is accurate.

    (c) He understands why the court and the local authority have concerns for his welfare and for the safety of his family.

    (d) He has been driven away by the fear of secure accommodation. If he knew that secure accommodation had been "taken off the table" he would co-operate with the police and the local authority and would move away from the area with his family.

    (e) If secure accommodation were "taken off the table" he would even contemplate returning to the residential unit from which he had absconded.

11. KS's mother also opposed the local authority's application and sought the return of KS to her care. The mother partially accepted the local authority's account of the incidents involving KS.

12. The Children's Guardian supported the local authority's application.

13. The local authority submitted that a statutory lacuna exists as a consequence of the statutory regime not providing a remedy for the grave risk to KS's welfare by reason of him not being "looked after" for the purposes of Section 25 of the Children Act 1989. The local authority invited the court to address the lacuna by authorising KS's secure accommodation under the inherent jurisdiction.

14. MacDonald J summarised the legal position as follows:

    (a) Section 25 of the Children Act 1989 provides that a looked after child may not be kept in accommodation provided for the purpose of restricting liberty unless it appears that (a) he has a history of absconding and is likely to abscond from any other description of accommodation and 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.

    (b) Section 105(1) of the Children Act 1989 defines a child as "a person under the age of eighteen".

(c) *A Local Authority v S* [2016] 2 FLR 616: the court has power to make an order under s25 in relation to a child who is over the age of sixteen (unless the child is already sixteen and accommodated under s20(5)).

(d) Section 22(1) of the Children Act 1989 provides that any reference to a child who is "in the care of" any authority means a "child who is in their care by virtue of a care order".

(e) Section 31(3) of the Children Act 1989 provides that the court cannot make a care order in respect of a child who has reached the age of seventeen.

(f) Section 20(7) of the Children Act 1989 provides that a local authority may not provide accommodation under s20 of the Act for a child if any person who has parental responsibility for that child objects.

(g) The jurisdiction of the High Court with respect to children derives from the Royal Prerogative, as parents patriae (parent of the nation), to take care of those who are not able to take care of themselves.

(h) The inherent jurisdiction with respect to children is exercised by reference to the child's best interests, which are the court's paramount concern. The boundaries of the inherent jurisdiction, whilst malleable and moveable in response to changing societal values, are not unconstrained.

(i) Section 100 of the Children Act 1989 imposes specific prohibitions on the use of the inherent jurisdiction where the applicant for relief under the inherent jurisdiction is a local authority. The most relevant restrictions for the purpose of this case are, firstly, s100(2)(a) which provides that no court shall exercise the High Court's inherent jurisdiction with respect to children so as to require a child to be placed in the care, or put under the supervision of a local authority. Secondly, s.100(2)(b) prohibits the exercise of the inherent jurisdiction so as to require a child to be accommodated by or on behalf of a local authority.

(j) In *Re E (A Child)* [2012] EWCA Civ 1773 Thorpe J stated: *"…Plainly the intention and effect of Section 100 is to prevent the court in wardship making any order which has the effect of requiring a child to be placed in care or under the supervision of a local authority. That end can only be achieved by going through the proper route of threshold finding opening the court's discretionary jurisdiction to make either a care order or a supervision order. The same result cannot be achieved under the court's inherent jurisdiction…"*

(k) MacDonald J referred to several examples of the inherent jurisdiction being used for the purpose of restricting liberty. These examples do not fall foul of s100(2) because the children in those case were already looked after children.

(l) The case of *Re B (Secure Accommodation: Inherent Jurisdiction) (No 1)* [2013] EWHC 4654 (Fam) should be treated with considerable caution. There are reasons to doubt that this case has been correctly decided.

15. Having reviewed the above legal framework, MacDonald J concluded that the court is not permitted to use its inherent jurisdiction to authorise KS's placement in secure accommodation. The reasons for this are:

    (a) There is no care order in force in respect of KS and an application for such an order cannot be made by virtue of his age;

    (b) KS has not been accommodated for the purposes of the Children Act 1989. HHJ Sharpe's order authorising KS's placement at a non-secure facility is not capable of causing KS to be "accommodated" by the local authority for the purposes of the Children Act 1989.

    (c) KS's mother retains exclusive responsibility and she does not consent to his accommodation and therefore s20 cannot be utilised.

    (d) KS's is not a "looked after child for the purposes of s25 and does not therefore fall within the terms of that section.

    (e) The order sought by the local authority would have the effect of authorising KS's removal from his mother's care without her consent when she (as the exclusive holder of parental responsibility) objects to the course of action to be taken. The order sought by the local authority would have the effect of causing KS to be accommodated by the local authority and this is prohibited by s100(2)(b).

    (f) MacDonald J referred to Hayden J's judgment in *London Borough of Redbridge v SA* [2015] 3 WLR 1627 in which he stated:

    "…the inherent jurisdiction cannot be regarded as a lawless void permitting judges to do whatever we consider to be right for children or the vulnerable, be that in a particular case or more generally (as contended for here) towards unspecified categories of children or vulnerable adults"

London Borough of Wandsworth v Lennard (Application for Committal) [2019] EWHC 1552 (Fam): Macdonald J

16. The local authority applied for an order committing Mr Lennard to prison for contempt arising out of his alleged breach of an order made by Parker J. The terms of the order stated:

    "Mr Neil Lennard is prohibited from behaving in the following ways:

    (a) Using offensive, foul, threatening words or behaviour towards Alana Bobie or Grace Okoro-Anyaeche as employees of the applicant local authority working in the Children Looked After Team 2.

    (b) Sending offensive, foul or threatening communications, emails or messages to Alana

Bobie or Grace Okoro-Anyaeche as employees of the application local authority working in the Children Looked After Team No (2) by texting or using the internet or social media to communicate.

This order shall remain in force until 5 July 2019 or further order."

17. MacDonald J provided a "checklist of cardinal requirements" which a court should remind itself of prior to the commencement of a committal hearing. The requirements are:

(a) The committal application must be dealt with at a discrete hearing and not alongside other applications.

(b) The order, the breach of which the alleged contempt is founded upon, must contain a penal notice in the required form and in the required location of the order.

(c) The order, the breach of which the alleged contempt is founded upon, must be proved to have been personally served on the defendant or it must be proved that the defendant has otherwise been made fully and properly aware of its terms in accordance with the rules.

(d) The alleged contempt must be set out clearly in a notice of application or document that complies with FPR 2010 r 37, FPR 37.10(3) requiring that the summons or notice identify separately and numerically each alleged act of contempt.

(e) The application notice or document setting out separately each alleged contempt must be proved to have been served on the defendant in accordance with the rules. FPR 37.27 requires a period of 14 clear days after service. Where the committal hearing is adjourned personal service of the adjourned hearing is required unless the respondent was in court at the time of the adjournment.

(f) The defendant must be given the opportunity to secure legal representation as he or she is entitled to.

(g) The committal hearing must be listed publicly in accordance with the Lord Chief Justice's Practice Direction: Committal/Contempt of Court – Open Court of 26 March 2015 and should ordinarily be held in open court.

(h) Consideration must be given to whether the allocated judge should hear the committal or whether the committal application should be allocated to another judge.

(i) The burden of proving the breaches lies on the person or authority alleging the breach of the order.

(j) The defendant is entitled to cross-examine the witnesses, to call evidence and to make a submission of no case to answer.

(k) The alleged breaches must be proved to the criminal standard of proof i.e. beyond reasonable doubt. A deliberate act or failure to act (actus reus) with knowledge of the terms of the order (mens rea) must be proved.

(l) The defendant must be advised of his or her right to remain silent and informed that he is not obliged to give evidence in his own defence.

(m) Where a breach or breaches are found to be proved on the criminal standard the committal order must set out the finding made by the court that establishes the contempt.

(n) Sentencing must proceed as a separate and discrete exercise, with a break between the committal decision and the sentencing of the contemnor. The contemnor must be allowed to address the court by way of mitigation or to purge his or her contempt.

(o) The court can order imprisonment (immediate or suspended) and/or a fine or adjourn consideration of penalty for a fixed period or enlarge the injunction.

(p) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future. Committal to prison is appropriate only where no reasonable alternative exists. Where the sentence is suspended or adjourned the period of suspension or adjournment and the precise terms for activation must be specified.

(q) The court should briefly explain its reasons for the disposal it decides.

18. The alleged breach in this case arose out of an unfortunate incident which involved Mr Lennard attending at Wandsworth Town Hall and behaving in a threatening and hostile manner towards several staff members. Mr Lennard was angry and frustrated because he believed that the local authority was not involving him in decisions surrounding his son, who was in the local authority's care. Mr Lennard made several threats to harm Grace Okoro-Anyaeche (an individual named in the protective order). For example, he threatened to "burst her head open". It was an agreed fact that Ms Okoro-Anyaeche was not present during the incident. The threats were witnessed by her colleagues.

19. The terms of the protective order prohibited Mr Lennard from using offensive, foul, threatening words or behaviour towards Ms Okoro-Anyaeche. Given that she was not present during the incident, the court was required to consider how the word "towards" was to be interpreted.

20. The local authority argued that Ms Okoro-Anyaeche was the subject of the threatening words and therefore the words were used towards her.

21. Mr Lennard's counsel relied upon the *Atkin v Director of Public Prosecutions* (1989) 89 Cr App R 199, which stated:

"The phrase "use towards another person" means, in the context of section 4(1)(a) [of the Publix Order Act 1986] 'use in the presence of and in the direction of another person directly'. I do not think, looking at the section as a whole, the words can bear the meaning 'concerning another person' or 'in regard to another person'".

22. MacDonald J agreed with Mr Lennard's position and found that the word "towards" should be interpreted in a narrow and plain sense manner. Quite simply, the words used by Mr Lennard could not have been towards Ms Okoro-Anyaeche because she was not present. The local authority's application was therefore dismissed.

T (A Child: Care Order: Beyond Parental Control: Deprivation of Liberty: Authority to Administer Medication) [2018] EWFC B1: Mr Recorder Howe QC

23. This case is older than I would ordinarily include within such an update. However, one of the issues addressed by this case is one that I have come across in several cases recently, namely threshold findings that a child is beyond parental control.

24. I have seen a number of local authorities, social workers and children's guardians be reluctant to accept a threshold finding of beyond parental control because they mistakenly believe that such a finding allocates blame to the child. A finding of beyond parental control does not allocate blame the parent or to the child. It is a neutral, factual finding.

25. The case is lengthy, and its entire contents will not be discussed here, only those aspects which relate to beyond parental control.

26. T was a child who had been diagnosed with autistic spectrum disorder (ASD) and severe learning disability. T attended a specialist school for children with complex needs. He lived at home with his mother and the family received some support from the local authority.

27. T had a particular talent for deconstructing items around the home. He was able to deconstruct almost any item within his environment. For example, he was able to dismantle a toilet that had been installed for him, he caused several large holes in the walls of the home and dismantled an extractor fan in the bathroom. He also particularly enjoyed throwing items from the windows of the home, such as broken beds. T would also pull clothes from the wardrobes and shred them, eventually developing into a tendency to remove and shred the clothes he was wearing.

28. T had a tendency to wake in the night and explore the house while his mother was sleeping. This is something which caused his mother great anxiety because she was unable to supervise him during these times. As a result of this, the mother placed a lock on the bathroom door and installed a bucket in T's bedroom for him to use as a toilet during the night. The introduction of the bucket prompted T to begin smearing faeces on the walls of his bedroom.

29. Recorder Howe QC summarised the legal framework as follows:

    (a) Section 31(2)(b)(ii) permits a court to make a care order if it is satisfied that a child is suffering, or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the child being beyond parental control.

    (b) *Lancashire County Council v B* [2000] 1 FLR 583, Lord Nicholls said *"…the phrase 'attributable to' in section 31(2)(b) connotes a causal connection between the harm or likelihood of harm on the one hand and the care or likely care or the child's being beyond parental control on the other…the connection need not be that of a sole of dominant or direct cause and effect; a contributory causal connection suffices".*

    (c) In *Re K (Post-Adoption Placement Breakdown)* [2013] 1 FLR 1 HHJ Bellamy stated: *"In my judgment it is clear from that explanation* (given by Lord Nicholls, above) *that even if a child is likely to suffer significant harm as a direct result of a disorder which affects that child's behaviour, if the consequent behaviour is such that a parent is unable to control the child then*

the child's being beyond parental control is, at the very least, a contributory cause of the likelihood of future harm".

(d) In *Re L (A Minor)* [1997] EWCA Civ 1268 Butler Sloss LJ stated the following: *"We should be very careful not to look at the words of the Children Act other than broadly, sensibly, and realistically…Quite simply this child is beyond the control of his parents. It is extremely sad. It is not apportioning blame".*

(e) Recorder Howe QC concluded at paragraph 89 of his judgment that s31(2)(b)(ii) was intended to be a true "no fault limb of the threshold criteria".

(f) Recorder Howe QC went on to say:

"*In my judgment it is immaterial whether a child is beyond parental control due to illness, impairment or for any other reason. The court simply has to consider if, on the facts, the child is beyond the control of the parent or carer. If that condition is satisfied, the court then has to determine if the child is suffering or is likely to suffer significant harm as a result of being beyond the control of the parent. If the answer to that 2nd question is 'yes', then section 31(2)(b)(ii) threshold is, in my judgment satisfied"* (para 90).

30. Recorder Howe QC concluded that the criteria in s31(2)(b)(ii) were satisfied and T was beyond parental control.

31. Recorder Howe QC's decision is consistent with a common sense interpretation of the Children Act 1989. An interpretation that s31(2(b)(ii) places blame upon a child is inconsistent with the ethos of the Children Act 1989.

Worcestershire County Council v AA [2019] EWHC 1855 (Fam): Mr Justice Keehan

32. This case concerned a child who was residing in local authority foster care until the auspices of an agreement under Section 20 of the Children Act 1989 for almost eight years. The local authority was heavily criticised throughout the judgment for its approach towards AA and his carers.

33. AA lived with his birth family until his accommodation in 2010. AA's experience with his birth family was not positive. AA was exposed to poor and frightening parenting and experienced physical and emotional abuse. AA presented with bruising on his ribs, elbows and head on 2 November 2010. AA stated that he had fallen down the stairs, but a consultant was unable to rule out the possibility of a non-accidental injury.

34. AA was accommodated by Worcestershire County Council on 2 November 2010 when he was 5 years old. AA was placed with foster carers, Mr and Mrs C.

35. The local authority completed an updated parenting assessment of the mother, which recommended that AA remain in foster care. Yet, it did not issue proceedings.

36. Mr and Mrs C moved to Cheshire with AA in late 2013. By the time AA moved to Cheshire, the local authority had not provided any therapeutic support to AA as a consequence of a dispute over

which local authority (Worcestershire or Cheshire) was responsible for providing this support. This dispute continued over the following five years. Keehan J stated that *"the consequence is that a desperately damaged, vulnerable and needy child/young person has received no therapy, no treatment and no professional support for the whole of his time being 'looked after' by this local authority".*

37. Mr and Mrs C considered applying for a Special Guardianship Order in 2014, but this did not go ahead due to a dispute between Mr and Mrs C and the local authority regarding the support package to be offered.

38. AA's contact with his birth family came to an end in 2015 and the IRO was unable to offer an explanation for why this had occurred.

39. AA's mother died in 2017 and the local authority still did not issue public law proceedings.

40. AA was fortunate enough to still be residing with Mr and Mrs C when the local authority eventually issued care proceedings on 13 July 2018. AA was 13 by the time the local authority issued proceedings. It is important to highlight that neither the local authority, nor Mr and Mrs C held parental responsibility for AA for nearly eight years of his life. AA was made the subject of an interim care order on 27 July 2018.

41. Throughout AA's placement with Mr and Mrs C, he had demonstrated signs of trauma. He was observed to regress quickly from a state in which he presents one minute as functioning in a broadly age-appropriate manner, to the next minute in which he can behave in an almost infantile state. This was noted to be triggered by:

    (a) Separation from Mr and Mrs C;
    (b) Change from established routine;
    (c) Threatening or even just boisterous behaviour;
    (d) Toileting;
    (e) Loud noises;
    (f) Washing machines; and
    (g) Stairs

42. As a result of his abuse prior to residing with Mr and Mrs C, AA has a very great fear of baths and staircases. Mr and Mrs C asked the local authority for financial assistance to alter their home to create a ground floor shower room for AA. The local authority refused to release any funds to Mr and Mrs C until they had signed the final version of the special guardianship support plan. Keehan J and the Children's Guardian both described this condition as *"outrageous".*

43. Mr and Mrs C had to assist AA in meeting his most basic care needs, such as crossing the road and going to the toilet. AA was often housebound by choice and was unable to function in the world without support. Mr and Mrs C's commitment to AA was described as *"heroic"* and the progress he had made was a testament to *"their total and humane commitment to a young boy who has been severely abused and traumatised".* Keeehan J noted that Mr and Mrs C have been caring for AA with no support from the local authority.

44. The local authority's care plan was for AA to remain in the care of Mr and Mrs C under the auspices of a special guardianship order.

45. The local authority, in its evidence, acknowledged that AA's accommodation under s.20 for eight years was unacceptable. The IRO also acknowledged that there had been significant drift and delay, with no escalation from the IRO.

46. Civil proceedings were initiated on AA's behalf for damages flowing from breaches of AA's human rights by the local authority. The Official Solicitor agreed to act as AA's litigation friend within those civil proceedings.

47. When the case came before Keehan J, AA asked to attend to meet the judge. Keehan J agreed. Instead of assisting with this trip the local authority, once again, placed obstacles in the way of Mr and Mrs C by instigating what Keehan J described as *"a mind numbingly sanctimonious quibble"* about the cost of accommodation in London.

48. The local authority also entered in to what appears to be lengthy discussions between the parties regarding the support to be offered to AA and Mr and Mrs C under a special guardianship support plan. Eventually an appropriate package of support was agreed.

49. Keehan J summarised the relevant law as follows:

    (a) The duty of a local authority to provide accommodation for a child is contained within Section 20 of the Children Act 1989. Section 20 places a duty upon a local authority to provide accommodation where (a) there is no person who has parental responsibility for the child, or (b) where the child is lost or abandoned, or (c) where the child's care giver is prevented from providing suitable accommodation or care.

    (b) Under s.20(4) a local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

    (c) *Williams & Anor v London Borough of Hackney (Rev 1)* [2018] UKSC 37: Lady Hale warned of the problems associated with the use of s.20, including consent being given in questionable circumstances, local authorities retaining children when parents have indicated that they wish to care for the child and lack of action/assumption by local authorities regarding whether parents object. Lady Hale went on to describe the advantages of issuing care proceeding:

    "Care proceedings have obvious advantages for the child. They involve a rigorous scrutiny of the risk of harm to her health and development if an order is not made, of the assessment of her needs and of the plans for her future. Her interests are safeguarded by an expert children's guardian. If an order is made, it means that the local authority have parental responsibility for her and can put their plans into effect. But, as pointed out by Judge Rowe QC in re AS *(para 30 above) there are also advantages for the parents and for the wider family. The parents are entitled to legal aid. Their rights are safeguarded in the proceedings. Even if a care order is*

made, the court may make orders about their continued contact with the child. Hence it is scarcely surprising that the President and other judges have deplored the delay in bringing care proceedings in cases where it was obvious that they should have been brought. Section 20 must not be used in a coercive way: if the state is to intervene compulsorily in family life, it must seek legal authority to do so".

(d) Keehan J offered the following (non-exhaustive) list of examples of the appropriate use of s.20:

i. A young person where his/her parents have requested their child's accommodation because of behavioural problems and where the parents and social services are working co-operatively together to resolve the issues and to secure a return home in early course;

ii. Children or young people where the parent or parents have suffered an unexpected domestic crisis and require support from social services to accommodate the children or young people for a short period of time;

iii. An unaccompanied asylum-seeking child or young person requires accommodation in circumstances where there are no grounds to believe the threshold criteria of s.31 of the Children Act 1989 are satisfied;

iv. Children or young people who suffer from a medical condition or disability and the parent or parents seek(s) respite care for a short period of time; or

v. A shared care arrangement between the family and the local authority where the threshold for s.31 care is not met, yet where support at this intensive level is needed periodically through a childhood or part of a childhood.

(e) It is wholly inappropriate and an abuse of s.20 to accommodate children or young people as an alternative to the issue of public law proceedings or to provide accommodation and to delay the issue of public law proceedings.

(f) In *Northamptonshire County Council v AS & Ors (Rev 1)* [2015] EWHC 199 (Fam) the local authority removed a 15-day-old baby from his mother and accommodated him under s.20. It took the local authority, for no good reason, three months to decide to issue care proceedings and a further five months thereafter to issue those proceedings. The case was allocated to an inexperienced social worker who was inefficient, leading to court orders being ignored and assessments not being completed. As a consequence, the case did not conclude until the child was nearly 2 years old. The court granted a final care order and awarded the child damages for breaches of his human rights. The following was said:

"The use of the provisions of s.20 Children Act 1989 to accommodate was, in my judgment, seriously abused by the local authority in this case. I cannot conceive of circumstances where it would be appropriate to use those provisions to remove a very young baby from the care of its mother, save in the most exceptional of circumstances and where the removal is intended to be for a matter of days at most.

The accommodation of DS under a s.20 agreement deprived him of the benefit of having an independent children's guardian to represent and safeguard his interests. Further, it deprived the court of the ability to control the planning for the child and to prevent or reduce unnecessary and avoidable delay in securing a permanent placement for the child at the earliest possible time".

(g) In *Re N (Children) (Adoption: Jurisdiction)* [2016] 1 FLR 621 the court found that accommodating a child under s.20 and delaying issuing proceedings for over eight months was a misuse by the local authority of its statutory powers.

(h) In *Re A (A Child) in Darlington Borough Council v M* [2015] EWFC 11 Keehan J expressed that there is far too much misuse and abuse of section 20 and stated that this can no longer be tolerated.

(i) In *Herefordshire Council v AB* [2018] EWFC 10 Keehan J stated: *"EF and GH were denied a voice in the determination of their future care. The same may be said about their parents. The boys were both denied the opportunity for clear and focused planning about their respective futures to be undertaken and for the same to be endorsed by the court. The early issue of care proceedings would have enabled a decision to be made about their legal status and their future in a structured and time-limited manner".*

50. Keehan J found that the local authority had *"serially and seriously failed to meet the needs of AA over a very prolonged period of time".*

51. Keehan J had grave concerns about the effective functioning of the IRO team within the local authority. Keehan J commented that the two IROs allocated to AA's case had done nothing of any substance to *"right the wrongs"* of the failings of this local authority. Keehan J explained the importance of the IRO as follows:

"…If an IRO does not protect the interests of a child looked after by a local authority or cared for by a local authority, it is most likely a child or young person will have no one else with a responsible and effective voice to protect them or to promote their welfare. This is why the IRO system is so vital to the protection of children and young people in public care".

52. Keehan J was extremely critical of the local authority's failure to seek therapeutic support, its failure to provide a clear plan for AA and its failure to issue public law proceedings.

53. What occurred in this case was a system failure across a range of departments and teams. This case provides a stark example of how a local authority should not conduct itself in relation to children accommodated under s.20. It also demonstrates the dangers of allowing cases such as this to 'fall through the cracks'.

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6 August 2019

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