Neutral Citation Number: [2019] EWHC 512 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/03/2019

Before:

THE HONOURABLE MRS JUSTICE KNOWLES

- -

Re Q (Child: Interim Care Order: Jurisdiction)

- -

Edward Devereux QC and Ben Mansfield for the local authority
Damian Woodward-Carlton instructed by **Burke Niazi Solicitors** for the mother
Chris Barnes instructed by **ITN Solicitors** for the father
Martin Kingerley for Q
Brendan Roche for the Children's Guardian

Hearing date: 28 February 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE KNOWLES DBE

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

Mrs Justice Knowles:

1. On 15 February 2019 I made interim care orders in respect of four children, one of whom is Q now aged sixteen. Q will be seventeen years old in a relatively short period of time. The background to the care proceedings is largely irrelevant given that this judgment concerns itself with an issue of jurisdiction, namely whether an interim care order can subsist after the subject child reaches their seventeenth birthday. It will be obvious from the above that this issue arises with respect to Q and that it must be resolved before she reaches her seventeenth birthday.

2. My decision on this issue is one with potentially wide-ranging ramifications as there has been extremely limited previous consideration of this issue in the reported case law. Whilst the question within the public law proceedings with which I am concerned is whether Q, aged seventeen, is susceptible to an interim care order pursuant to section 38 of the Children Act 1989 ["the Act"], my decision will also apply to:

   a. A child over the age of sixteen who is married [see section 31(3)]; and

   b. A child aged seventeen where an interim supervision order is sought by a local authority.

3. I read and heard submissions from counsel over the course of one day and reserved my judgment for a short time. I am very grateful to counsel for their assistance. I am particularly indebted to Mr Barnes for drawing the jurisdictional issue to my attention so that I could list it for argument and proper consideration.

THE LEGAL FRAMEWORK

The Children Act 1989

4. The following provisions of the Act are of relevance to my decision.

5. Section 31 of the Act provides as follows:

   "(1) On the application of any local authority or authorised person, the court may make an order –

   a) placing the child with respect to whom the application is made in the care of a designated local authority; or

   b) putting him under the supervision of a designated local authority.

   (2) A court may only make a care order or supervision order if it is satisfied –

   a) that the child concerned is suffering, or is likely to suffer, significant harm; and

   b) that the harm of likelihood of harm is attributable to –

   (i) the care being given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

(3) No care or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen in the case of a child who is married).

…

(11) In this Act – "a care order" means (subject to section 105(1)) an order under subsection (1)(a) and (except where express provision to the contrary is made) includes an interim care order made under section 38."

6. Section 38(1) and (2) provide that:

"(1) Where –

(a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or

(b) the court gives a direction under section 37(1), the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or an interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2)."

As originally drafted, section 38(4) was in the following terms:

"(4) An interim care order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on which ever of the following events first occurs –

a) the expiry of the period of eight weeks beginning with the date on which the order is made;

b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;

c) in a case which falls within subsection (1)(a), the disposal of the application;

d) […]

e) […]"

The relevant period was defined as either four weeks or the period of eight weeks beginning with the date on which the first order was made if later than four weeks.

7. Section 38(4) was amended with effect from 22 April 2014 by the Children and Families Act 2014. This amendment deleted the former subparagraphs (a) and (b), leaving paragraph (c) as the only provision applicable to interim orders made pursuant to section 38(1)(a). The other provisions relate to interim orders following the making

of a direction for assessment pursuant to section 37(1) of the Act. The amendment to section 38(4) was intended to reduce the administrative burden upon courts and local authorities of the need to administratively renew an interim care order on a periodic basis.

8. Section 91 of the Act concerns itself with the effect and duration of orders. In relation to public law orders, section 91(12) provides that *"any care order, other than an interim care order, shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier"*. Section 8 private law orders cease to have effect when a child reaches the age of sixteen unless they are to have effect until the age of eighteen by virtue of section 9(6). Section 9(6) states that *"no court shall make a section 8 order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional"*. Additionally, section 9(7) provides that *"no court shall make any section 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional"*. Section 8 orders which have effect with respect to a child who has reached the age of sixteen will cease to have effect once that child is eighteen [section 91(11)]. For the purposes of this analysis, a child is defined in section 105(1) as a person under the age of eighteen.

9. Section 20 concerns the duty of local authorities to provide accommodation for children in need within their area. A child may require accommodation if there is no person who has parental responsibility for them; if that child is lost or abandoned; or if the person caring for a child is being prevented (whether or not permanently and for whatever reason) from providing the child with suitable accommodation or care [section 20(1)]. Local authorities are obliged to provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation [section 20(3)]. Young persons aged sixteen to twenty-one may be provided with accommodation in a community home for those aged over sixteen if the local authority considers that to do so would safeguard or promote their welfare [section 20(5)].

10. Local authorities may not provide accommodation for any child if a person with parental responsibility for that child objects and that person is willing and able to provide accommodation for the child concerned or arranges for accommodation to be provided for that child [section 20(7)]. A person with parental responsibility may at any time remove the child from accommodation provided by or on behalf of the local authority under this section [section 20(8)]. However, subsections (7) and (8) of section 20 do not apply where a child has reached the age of sixteen years and agrees to be provided with accommodation by a local authority [section 20(11)].

Case Law

11. As I noted earlier, there has been very limited consideration of the issue before me in reported case law. Mr Justice Williams considered, in obiter dicta, whether an interim care order could extend beyond a child's seventeenth birthday in Re A (Wardship: 17-Year Old: Section 20 Accommodation) [2018] EWHC 1121 (Fam). He said at paragraph 38 of his decision:

"In relation to care orders, of course, s.31(3) provides that no care order may be made with respect to a child who has reached the age of 17. Just for the sake of clarity, because an issue was raised but ultimately not pursued, the interim order that was made in September endured by operation of s.38(4) of the Children Act 1989 for such period as may be specified. S.38(4) provides that it would cease to have effect on the occurrence of certain events. The only event which applies in this case is s.38(4)(c) which is the disposal of the application. So the interim care order would endure until the disposal of the application, i.e. today. There is no provision for it to cease on the child reaching the age of 17."

12. Some further light is shed on this issue by Re M (Jurisdiction: Wardship) [2016] EWCA Civ 937 though I note that the assumption underlying the following observations was not the focus of the appeal nor part of the ratio of the court's decision. In that case, a child, T, was the subject of care proceedings which had commenced when she was about fifteen/sixteen years old. T and a number of her siblings were made subject to interim care orders during the proceedings. On appeal from the decision of Hogg J, the Court of Appeal encapsulated the issue before it as *"the extent of the court's jurisdiction, if any, to make orders in wardship and/or under the inherent jurisdiction for the accommodation of a young person who is 17 years of age".* At paragraph 4 McFarlane LJ said as follows:

"There is no jurisdiction under CA 1989 to make a care order with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married). (CA 1989, s 31(3)). That provision applies to an interim care order just as much as it does to a final care order (CA 1989, s 31(11)). In consequence, shortly before T's seventeenth birthday, at which time the final interim care order expired, the local authority issued wardship proceedings making T a ward of court. Without prejudice to their ability to argue the point at the final hearing, the parents did not challenge those proceedings at that time, with the result that, upon the issue of the originating summons, T automatically became a ward of court in August 2015."

Further, in paragraph 10, McFarlane LJ went on to say:

"It is common ground before this court that, as T was over the age of 17 by the time the judge came to make final orders, there was no jurisdiction to make a care or supervision order with respect to her in consequence of s 31(3), notwithstanding that if a final order had been made prior to her seventeenth birthday it would have continued to be in force until the age of 18 (unless it had been brought to an end earlier)."

THE PARTIES' POSITIONS

13. The local authority submitted that, whilst no care order including an interim care order could be made after a child's seventeenth birthday, there was no express provision in the Act preventing a court from making an interim care order before a child's seventeenth birthday. The only provision that expressly determined the duration of an interim care order made before a child was seventeen was section 38(4) of the Act. In this case, the interim care order in relation to Q would endure for such period as may be specified in the order or the disposal of the application (whichever shall be the earlier).

14. The mother, the father, Q and the Children's Guardian all submitted that an interim care order could not extend beyond Q's seventeenth birthday. Mr Woodward-Carlton made the following points in argument: (a) from the date of Q's seventeenth birthday, an interim care order became immediately without purpose; (b) it could not have been an intended consequence of the 2014 amendments to the Act to create a scenario where a child was potentially subject to an interim care order until the age of eighteen; (c) continuing an interim care order at a point where a full care order could not be made would mean that the child would be subject to a non-consensual order without the level of scrutiny that would otherwise be required when making a full care order; and (d) making an interim care order which would last beyond a child's seventeenth birthday interfered with the autonomy otherwise accorded to a child of that age by the Act.

15. Mr Barnes for the father objected to the interpretation of section 38 sought by the local authority for the following reasons, some of which overlap with those made by Mr Woodward-Carlton. Public law proceedings could only continue whilst there was a jurisdiction to make the final order being sought by the applicant local authority. The jurisdiction to make an interim care order only arose on an adjournment or a direction pursuant to section 37 – it was not available as a freestanding remedy. Even if the local authority succeeded in establishing threshold, the proceedings served no purpose once final public law orders could not be made. There were no alternative remedies, such as a section 8 order or an inherent jurisdiction order, properly available to the local authority. It would be absurd if an interpretation was given to section 38 that permitted compulsory care arrangements to continue to be imposed by the adjournment of purposeless proceedings – this would be an approach in conflict with the court's overriding objective and section 1(2) of the Act. These submissions went with, rather than against, the grain of the wider Act and were respectful of the original provisions of section 38 prior to its amendment.

16. Mr Kingerley and Mr Roche's submissions were essentially reformulations of the arguments made by Mr Woodward-Carlton and Mr Barnes.

17. If I decided that I had jurisdiction to make an interim care order in relation to Q beyond the date of her seventeenth birthday, the local authority, supported by the Children's Guardian, urged me to do so for the reasons I gave in my judgment on 15 February 2019. The mother, the father and Q opposed that course. Mr Kingerley on behalf of Q urged me not to do so because, amongst other matters, it would not give due weight to Q's wishes and feelings and her emotional need (a) to remain at home and (b) to be free of the fear of removal once more into foster care.

DISCUSSION

18. In 1984 the Law Commission decided to review the law relating to children with the aim of making it clearer, simpler and fairer for families and children alike. In 1985 four Working Papers were published for consultation. A largely positive response to the Working Papers together with the Government's own review of public law children proceedings resulted in the Law Commission's 1988 Report on Family Law: Review of Child Law, Guardianship and Custody. That report gives some insight into the thinking behind the age-related provisions in what was eventually to become the Children Act. Paragraph 3:25 reads as follows:

"One further point may be conveniently mentioned here. The courts' present powers to make custody and access orders endure until the child reaches 18, although the court will rarely, if ever, make a custody order which is contrary to the wishes of a child who has reached 16. Any other approach is scarcely practicable, given that this is the age at which children may leave school and seek full-time employment and become entitled to certain benefits or allowances in their own right. However, the matter goes beyond the question of what is practicable. There are powers of direct enforcement of custody orders which operate upon the child rather than the adults involved. The older the child becomes, the less just it is even to attempt to enforce against him an order to which he has never been a party. As we explain below, it is usually thought unnecessary to accord party status to children in family disputes and in general we would not disagree. We recommend, therefore, that orders relating to the child's residence, contact or other specific matters of upbringing should not be made in respect of a child who has reached 16 unless there are exceptional circumstances and that orders made before that age should expire then unless in exceptional circumstances the court orders otherwise. There may be exceptional cases in which it is necessary to protect an older child from the consequences of immaturity but these will be rare and the court will no doubt always wish to make the child a party before doing so."

In paragraph 4:50 the Law Commission noted that the relationship between public law and private law orders was neither clear nor consistent and that the reform proposals it was making were intended to remedy that defect. Thus, the legal effects of a care and residence order should be the same [paragraph 4:51].

19. The Law Commission's intentions were no doubt also shaped by the impact of Gillick v West Norfolk and Wisbech Area Health Authority and Another [1986] 1 AC 112 which made clear that the older a child became, the less likely it was that orders would be made with which s/he did not agree. Recognition of the developing autonomy of the older child together with the need to bring into broad alignment the effect of and duration of public and private law orders is seen very clearly in the Act's provisions. Thus, private law section 8 orders cannot be made once a child has reached the age of sixteen unless exceptional circumstances apply [section 9(7)]. Care/supervision orders cannot be made once a child has turned seventeen or, in the case of a child who is married, sixteen [section 31(3)]. The difference in age threshold between these provisions is accounted for, in my view, by the state's obligation to protect a young person in circumstances where s/he may be suffering or likely to suffer significant harm.

20. If made before the age of seventeen (or sixteen if a child is married), a care order will endure until the age of 18 unless it is discharged earlier [section 91(12)]. Other forms of public law order are time limited such as supervision orders which may be made for a period of up to one year in the first instance and then extended for a period of up to three years in total from the date of the original order [Schedule 3, paragraphs 6(1) and 6(4)]. Final supervision orders are of course subject to the age threshold of seventeen [section 31(3)].

21. Emergency public law intervention is not however confined to those below the age of seventeen (or sixteen if married). A child assessment order may be made with respect to a child, that is a young person under the age of 18, but if the child is of sufficient understanding s/he may refuse to submit to a medical or psychiatric or other

assessment [section 43(7)]. In practice, the latter provision means that such an order is unlikely to be made with respect to an older child who is *"Gillick competent"*. Emergency protection orders can be made with respect to a child who is aged seventeen (or sixteen if married) but are strictly boundaried by the effect of section 45(4)(b) which does not permit an application for their extension by a local authority where a local authority is not *"entitled to apply for a care order with respect to a child"*. Additionally, a child of sufficient understanding may refuse to submit to any direction for medical or psychiatric examination contained within an emergency protection order [section 44(6) and 44(7)]. These emergency provisions, though applicable to those over the age of 17 (or sixteen if married) are, in practice, boundaried by the ability of the Gillick competent child to refuse to submit to assessment and by their limited duration (without the possibility of extension, in the case of an emergency protection order, if the local authority is not entitled to apply for a care order).

22. Recognition of the autonomy of the older child is also seen in the provisions of section 20 which permit a child aged 16 to consent to accommodation in their own right over the objection of a holder of parental responsibility [section 20(11)].

23. I have had regard to all the above in interpreting the provisions of section 38. The following matters seem to me to be highly pertinent to that exercise. First, a child is defined in the Act as any person under the age of eighteen yet Parliament specifically chose to curtail the court's jurisdiction to make final and substantive public law orders in respect of children who had reached the age of 17. Insofar as an exception applies to the jurisdiction to make public law orders, it is a downward revision of the age limit to sixteen years in the case of a child who is married. Second, the Act consistently emphasises the age of sixteen in recognition of a child's developing autonomy hence (a) the provision that section 8 orders may only be made in exceptional circumstances if a child is aged 16 and (b) the provisions of section 20 which provide for a child aged 16 to consent to accommodation even if a holder of parental responsibility objects. The downward revision of the age at which substantive public law order can be made reflects the fact that, in marrying, a child has taken a step to establish their own family separate from the care and control of a parent. Third, whilst the ability of a parent, local authority or court to impose arrangements under the Act on an unwilling child diminishes as the child approaches adulthood, it is important to bear in mind that, in the case of a sixteen or seventeen year old who lacks capacity, they are capable of being subject to powers exercised by the court under the Mental Capacity Act 2005 [section 2(5) of that Act].

24. Turning to section 38 itself, I have already referred to the amendments made by the Children and Families Bill 2014. Those amendments were intended to reduce the administrative burden on courts and local authorities of having to renew interim orders on a periodic basis. That this was the intention behind those legislative changes is clear from perusal of the Family Justice Review completed by Sir David Norgrove in 2011. The amendments to section 38 appear to have been tied to the twenty-sixweek limit within which care proceedings should ordinarily be completed. The Review recommended that *"judges should be allowed discretion to grant interim orders for the time they see fit subject to a maximum of six months and not beyond the time limit for the case. The courts' power to renew should be tied to their power to extend proceedings beyond the time limit"* [Executive Summary, paragraph 77]. The

Explanatory Notes to the 2014 Act provided that provision was made to *"remove the eight week time limit on the duration of initial interim care orders and interim supervision orders and the four week time limit on subsequent orders and allow the court to make interim orders for the length of time it sees fit, although not extending beyond the date when the relevant care or supervision order proceedings are disposed of"*.

25. Until this amendment to section 38, no interim care order could have theoretically lasted more than seven weeks and six days beyond a child's seventeenth birthday. No new interim order could be made after a child's seventeenth birthday. The obiter dicta of Williams J in Re A (see above) interpret section 38(4) in a manner which would extend the jurisdiction of the court to make interim orders for a further forty-four weeks or more.

26. I do not accept that the amendments to section 38(4) made by the Children and Families Bill have the effect signalled by Williams J. He did not hear full argument on this issue and was concerned with an application for a secure accommodation order where no specific age limit applies as section 25 of the Act simply refers to *"a child"*. Furthermore, as Mr Barnes submitted, the reasoning of Williams J would suggest that there was no specific provision for an interim order to cease to have effect on a child's eighteenth birthday. Section 38(4) as originally drafted conferred no power on a court to retain a child under an interim care order until one day short of their eighteenth birthday. I accept Mr Barnes' submission that, where section 38 (as amended) contains no explicit power to continue an interim care order beyond a child's seventeenth birthday, I must be cautious about interpreting the provision to extend the intrusive powers of local authorities and of the court. Such an extension would come into clear conflict with the overall scheme in the Act. Further, there is force in Mr Woodward-Carlton's submission that a child of seventeen would be impermissibly placed in care by the extension of interim orders in circumstances where only the threshold pursuant to section 38(2) had been established. Having considered matters carefully, I have decided that it would be wrong to interpret the amended section 38(4) as having substantially extended the court's jurisdiction without (a) that being explicitly recognised either in the Explanatory Notes to the Act or in the contents of the Family Justice Review and (b) when the stated intention of the amendments was that of reducing the administrative requirements of public law proceedings. To do otherwise would (a) represent a substantial interference with the Article 8 rights of the subject child to a private and family life and (b) undermine the carefully calibrated age thresholds in the Act.

27. I endorse Mr Barnes' submissions that Parliament chose in passing the Act to demarcate seventeen or sixteen (if married) as the age after which a child could not be placed in the care or supervision of a local authority without a full disposal of the case having been achieved. That was a recognition of the growing autonomy of the individual child. Likewise, the ability of a final care order to persist until the age of eighteen is a recognition of the obligations placed on a local authority, once parenting has been established to fall below the reasonable standard expected, to ensure a child is not left without appropriate care before becoming an adult. Those matters support my analysis of section 38(4) as amended.

28. All the above brings me to the conclusion that no interim care or supervision order will endure beyond the date of a child's seventeenth birthday or the date of a child's

marriage if aged sixteen. To be clear, interim care and supervision orders made for a period during which the child turns either seventeen or gets married (if aged sixteen) are impermissible. If, prior to the 2014 amendments, interim public law orders were being made which extended beyond the child's seventeenth birthday, they should not have been given (a) the absence of an explicit power to continue such orders beyond a child's seventeenth birthday and (b) the age thresholds set out in the Act. The dicta of McFarlane LJ in Re W [see above] support this proposition.

29. If my interpretation of section 38(4) is correct, where does that leave the existing section 31 proceedings? Mr Woodward-Carlton submitted that an interim care order which continued beyond a child's seventeenth birthday led nowhere. It was not a precursor to a final section 31 order as there was no jurisdiction to make such orders after a child turned seventeen. Mr Barnes strongly supported those submissions, suggesting that it would be absurd if an interpretation were given to section 38 which permitted the imposition of compulsory care arrangements on an adjournment of proceedings without purpose. Such an approach would conflict with section 1(2) of the Act and the court's overriding objective. Contrariwise, Mr Devereux QC submitted that the continuation of the existing section 31 proceedings may have a purpose in that the court might be able to make findings of fact which might inform either the making of other orders or future local authority decision-making.

30. I observe that the jurisdiction to make an interim care or supervision order only arises on an adjournment or in the event of a direction pursuant to section 37 of the Act. It is thus not available as a freestanding remedy. Lord Nicholls in paragraph 89 of Re S (Care Order: Implementation of Care Plan) [2002] UKHL 10 noted that the source of the court's power to make an interim care order arises on an adjournment of section 31 proceedings and in paragraph 90 he stated as follows:

"90. From a reading of section 38 as a whole it is abundantly clear that the purpose of an interim care order, so far as presently material, is to enable the court to safeguard the welfare of a child until such time as the court is in a position to decide whether or not it is in the best interests of the child to make a care order. When that time arrives depends on the circumstances of the case and is a matter for the judgment of the trial judge. That is the general, guiding principle. The corollary to this principle is that an interim care order is not intended to be used as a means by which the court may continue to exercise a supervisory role over the local authority in cases where it is in the best interests of the child that a care order should be made."

Those words support the proposition that interim public law orders are not freestanding remedies but take their life from proceedings in which the court has the jurisdiction to make substantive public law orders. Where those remedies are not available, the continuation of the proceedings appears, at first glance, illogical. By analogy, the court cannot maintain public law proceedings in circumstances where it has been established that the threshold criteria cannot be satisfied as, even on an interim basis or in wardship, no continuing reasonable belief could be maintained that, if the court's jurisdiction were not exercised, a child was likely to suffer significant harm [see the analysis of Munby P (as he then was) in paragraphs 120-126 of Re X (Children) (No 3) [2015] EWHC 3651 (Fam)].

31. In my view, there is a distinction between the making of interim public law orders on an adjournment where a child has turned seventeen and the continuation of the section

31 proceedings themselves. I remind myself that no court seised of public law proceedings is required to make either interim or final public law orders. It may decide that a section 8 order or indeed no order is an appropriate disposal at either an interim or final stage. Whilst no interim or final public law order would, on my analysis of section 38(4), be available in respect of a seventeen year old child (or sixteen if married), I am not persuaded that these welfare-driven proceedings themselves would necessarily lack purpose and must fall away once the jurisdiction to make either interim or final public law orders is lost. In some cases, it may be crucial to establish whether the threshold criteria have been met because this might determine the basis for future decision making by a local authority, for example, as to the type of support available to the child or family concerned. Whether that exercise is necessary and proportionate will be a matter for the good sense of the judge managing/determining the proceedings. For example, it might not be where a child of seventeen wishes to be accommodated against the wishes of those with parental responsibility. Additionally, although final public law orders would not be available to the court, the court might conclude the proceedings before the child is eighteen by making other orders available to it such as a section 8 order (assuming exceptional circumstances applied) or by making orders under the inherent jurisdiction. Whilst the latter could not operate to require a child to be placed in either the care or supervision of a local authority or to require a child to be accommodated by a local authority, other orders under the inherent jurisdiction may be entirely suitable in the circumstances of the individual case. I conclude that, when the jurisdiction to make interim and final public law orders is no longer available, careful scrutiny of the circumstances of each case is required by the court in order to discern whether the proceedings themselves lack merit and whether it is proportionate and in the child's welfare interests for them to continue. Discontinuance of the proceedings is likely to be the proportionate, welfare-driven outcome in many such cases and, if that is so, the local authority should be permitted to withdraw its application. There will, however, be some cases where a useful forensic and welfare-driven purpose might be served by the continuation of public law proceedings albeit without the structure provided by interim public law orders.

32. My conclusions as to jurisdiction mean that the interim care order will cease to have effect on the day Q turns seventeen. It is thus not necessary for me to address the arguments against the making of a further interim care order.

CONCLUSION

33. The matter is listed for a further case management hearing towards the end of March 2019. On that date I will hear submissions from the parties as to whether there is merit in the public law proceedings continuing in respect of Q. Until then, she remains a party to the proceedings and will continue to be represented.

34. That is my decision.

Signed: Date: