



Neutral Citation Number: [2021] EWHC 2345 (Fam)

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 20/08/2021

**Before:**

**MRS JUSTICE KNOWLES**

**Re W (Young Person: Unavailability of Suitable Placement)**

**Miss Kelly** for the hospital  
**Miss Dixon** for W (by her Children's Guardian)  
**Miss Willstead** for the mother  
**Mr Kenny** for the father  
**Mr Sampson QC** for the local authority

Hearing date: 18 August 2021

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**Approved Judgment**

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ARBUTHNOT

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:**

### *Introduction*

1. This case concerns W, a 15-year-old girl, presently detained in a side room of an adult surgical ward in a general hospital, pursuant to an order granted by me out of hours on 30 July 2021, and subsequently extended on 5 August 2021 and 12 August 2021. That order permitted the relevant hospital trust to deprive W of her liberty in circumstances where she was actively suicidal and putting others at risk from her behaviour. Put simply, W was detained in hospital because there was no suitable community placement available to accommodate her even though she was medically fit for discharge. Though arrangements for her care in the community have been made which I am persuaded to authorise, those arrangements are likely to be short lived because of changes to the regulations concerning the placement of children in unregistered and/or unregulated settings which are due to come into force on 9 September 2021. Thus, this court will, once more, need to consider the arrangements for W's care in mid-September.
2. W is represented by Miss Dixon of counsel through her children's Guardian. W attended all the previous hearings save for that on 30 July 2021, but did not attend this hearing. W's mother is the second respondent represented by Miss Willstead of counsel, and W's father is the third respondent represented by Mr Kenny of counsel.
3. The applications in respect of W with which the court is seised are made by the local authority, represented by Mr Jonathan Sampson of Queen's Counsel, (a) for an interim care order, (b) for permission to invoke the inherent jurisdiction, (c) for an order under the inherent jurisdiction authorising the deprivation of W's liberty, and (d) case management directions for a further hearing in mid-September 2021.
4. The hospital trust which originally brought this matter before the court is represented by Miss Kelly of counsel. It is responsible for the hospital in which W is presently detained. All the parties are agreed that, once W leaves the hospital for her new placement, the trust should be discharged as a party to the proceedings.

### *Background*

5. W's parents are separated, and W lives with her mother and her 18-year-old brother. Her older sister aged 19 lives independently. W came to the attention of the local authority as a result of admissions to hospital and police involvement this summer. The local authority had previous involvement with W and her family in 2009, 2018 and 2019 arising from alleged domestic abuse between the mother and the father.
6. W was initially seen by psychiatric services on 24 June 2021 after having a panic attack at school. She did not engage with the assessment conducted by the Child and Adolescent Mental Health ["CAMHS"] clinician on the paediatric ward in the hospital. There was some low-level evidence of self-harm that constituted an insufficient risk to justify her remaining on the ward. However, W's behaviour deteriorated, and she refused to go home with her mother or be in her mother's presence. Therefore, W was kept in hospital pursuant to s.5(2) of the Mental Health Act 1983 ["the MHA"] and was given lorazepam for rapid tranquilisation on 27 June 2021. During her stay in hospital W was the subject of a MHA assessment which concluded that she was not suffering from an acute mental illness requiring admission to a psychiatric unit or detention under

the MHA. Instead, she appeared to be reacting to a variety of social stressors, for example, being bullied at school. W was discharged into the care of her mother on 28 June 2021 with a plan for her to return home. Support was to be provided by the local authority's Family Intervention Service and there would be liaison with the school to discuss the bullying W said she was experiencing.

7. On 29 June 2021, W absconded from school and was located by the police. She refused to return home despite the intervention of a social worker. In due course, she was placed on s. 136 of the MHA and taken to hospital. Once more, W was assessed and found not to be suffering from any acute mental illness although she was described as being "*mentally distressed*". She was not expressing any suicidal intent and denied that she had wanted to kill herself when she absconded. The following morning, W was discharged into her mother's care. W's mental distress was said to be linked to her allegations of rape by several males. On discharge, it was reported that there were subsequent "*multiple interventions involving the CAMHS outreach team to support parents and with social services to support the family*". On 1 July 2021, the police were called to reports of W attempting to set fire to the family home. She reportedly assaulted her mother and her behaviour escalated. W attempted to abscond and was detained by police and taken to the accident and emergency department at the hospital. In line with the plan to try and manage her behaviour, W was discharged home following consultation with the CAMHS liaison staff and the on-call psychiatrist.
8. On 10 July 2021, W absconded from her mother's home and was located by police in the early hours of the morning. She was brought to hospital pursuant to s.136 MHA and further assessed. She was found not to be detainable under the MHA and did not present with acute mental illness but with psychological distress due to trauma. She was again discharged, and her mother was asked to pick her up from the hospital. On her return home, W immediately absconded again and self-harmed. She was found by the police and was reported to be highly agitated, requiring restraint and handcuffs, and, accordingly, the police returned her to hospital. The paediatric summary noted that W's self-harm was intentional and comprised a mixed overdose of paracetamol, codeine, citalopram, triprolidine, and flurazepam. During the admission process, W had periods of headbanging and attempted to self-ligature with the bed cord. The bed was removed with a mattress remaining in situ and a police officer remained overnight together with two support workers. On 12 July 2021, W was assessed again by consultant psychiatrist who, once more, concluded that she presented with mental distress in the context of a traumatic history rather than having a mental disorder. The psychiatrist concluded that it was not appropriate for W to be in hospital and that her discharge plan required significant input from children social care. On 14 July 2021, W was discharged to her mother's care following which she took a small paracetamol overdose. She attended accident and emergency, but no treatment was required.
9. On 15 July 2021, W was readmitted to hospital following the intentional ingestion of a glass of wine, a smashed perfume bottle and deodorant. She was deemed to be medically fit and not in need of acute medical treatment or observation. However, an admission was requested to the paediatric unit as a place of safety because there was only one support worker available to support W at home and it was thought she needed two support workers given her level of distress. It was further reported that W experienced extreme emotional distress particularly at night. She was once more assessed by psychiatric services who concluded that she did not have an acute mental

illness. The plan was that W would remain in hospital until she was moved to a placement sourced by social services other than at home as her mother was unable and unwilling to have her home. The hospital trust was clear then and is clear now that W would not benefit from entering a mental health pathway because she did not have a mental illness of a nature or degree that was treatable or manageable in a mental health ward. Additionally, if admitted to a mental health ward, W would most likely learn further negative self-harming behaviour from other inpatients.

10. W was detained in a private room on the adult surgical ward. Throughout her admission, she presented with significant psychological and emotional distress and almost daily self-harming behaviour (including headbanging, cutting, overdose, attempted self-strangulation and asphyxiation, and trying to run in front of moving vehicles). She required physical restraint and sedation to prevent her harming herself and others (her behaviours including kicking and hitting care staff and pulling out electric cables). Two members of staff were required to be with W at all times and sometimes three or four staff members were necessary, primarily to prevent her absconding (which she frequently attempted to do). In the meantime, the local authority began looking for residential accommodation nationwide which might meet W's needs. It had no success in identifying a suitable placement.

### *Legal Proceedings*

11. On 30 July 2021, the hospital trust applied under the inherent jurisdiction for permission to detain W and deprive her of her liberty, pending the local authority identifying an appropriate discharge placement for her. Based on her admission history, W required physical restraint and, as a last resort, medication including intramuscular medication to sedate her. On 29 July 2021, W attempted to leave the hospital and tried to pull herself and the staff member following her in front of a moving lorry. Though the trust's application was made during the working day, such was the pressure of work in the urgent applications list that this matter came before me sitting as out of hours judge in the evening of 30 July 2021.
12. I made an order under the inherent jurisdiction permitting the trust to detain W and to restrict her liberty and directed a further hearing on 5 August 2021, in the hope that a suitable care placement could be identified by the local authority. Regrettably, W's injurious behaviour escalated on 31 July 2021 with increased aggression and violence towards staff, running at walls in a bid to self-harm and headbanging. W attempted to abscond on several occasions and was restrained for significant periods of time. Such was the concern around W's potential for further acts of self-harm and her actions towards others when distressed that all hospital furniture including her bed had been removed from the side room where she was detained.
13. When the matter returned before me on 5 August 2021, the local authority's proposal was that W should be placed with her mother in rented accommodation with 2:1 support from a care/nursing agency ["the care agency"] to manage W's problematic behaviour. Additionally, there was to be support from the CAMHS outreach team. W's mother expressed concern as to whether 2:1 support would be sufficient and effective in managing W's behaviour in the community given that W had required restraint and intervention by upwards of four members of staff when particularly distressed. W's mother also queried whether sedation would be available in the placement if needed. During the hearing, the local authority told me that the legal framework for its proposed

placement would be pursuant to s.17 of the Children Act 1989 [“the CA1989”], buttressed by an order under the inherent jurisdiction permitting the deprivation of W’s liberty. I had the gravest doubts as to the lawfulness of such a regime and described the local authority’s proposals as “*embryonic*”. I made it plain that I regarded the legal framework proposed as dubious such that I refused to sanction the local authority’s plan for W, and I continued the order depriving W of her liberty within the hospital. I fixed the matter for a further hearing on 12 August 2021 to allow the local authority to refine its proposals.

14. Following the hearing and after a planning meeting, it was the local authority’s understanding that the mother was willing and able to reside in rented accommodation with W, with the support and input of care agency staff. That plan was felt to be in W’s best interests and had the added benefit that the mother would be able to learn and be supported in parenting W. The local authority proposal was that W could be placed with her mother pursuant to s.20 of the CA 1989 in a manner which did not require the accommodation provided to them to be registered as a children’s home with Ofsted. The local authority was concerned that, were the proposed placement to require registration, the care agency would immediately withdraw and, as matters stood, no suitable or even potential placement would be available for W. It invited me to approve the provision of accommodation funded by the local authority for W and her mother pursuant to s.20 of the CA 1989, within which the mother would exercise her parental responsibility for W, supported by and in consultation with the care agency. It is submitted that this arrangement fell within an exemption set out in regulation 3(1)(d) of The Children’s Homes (England) Regulations 2015 (SI 2015/541), as supplemented by regulation 3(3) of those regulations.
15. However, in a position statement filed on the mother’s behalf early on 12 August 2021, the mother complained that she had not been consulted about the proposals and stated that, sadly, W was beyond parental control. Despite her best efforts, the mother acknowledged that she had been unable to protect W or exercise effective parental responsibility for her. The local authority’s plan relied upon the mother exercising parental responsibility and was patently inadequate in these changed circumstances. The mother submitted that parental responsibility for W should be shared with the local authority pursuant to an interim care order. The children’s Guardian also shared concerns about the local authority’s proposal which relied upon the mother attempting to enforce boundaries for W. She noted that, without parental responsibility being shared with the local authority, it was difficult to see how the deprivation of liberty authorisation could be enforced if the mother did not agree.
16. At the hearing on 12 August 2021, it was plain that the local authority needed to revisit its plan since, without the mother’s physical presence in the accommodation, there were likely to be regulatory difficulties. The care agency had informed the local authority that it was registered with the Care Quality Commission [“CQC”] and, accordingly, did not - in its view - require to seek registration with or approval by Ofsted to provide care for W, even without the mother present. I permitted a short adjournment to a hearing on 18 August 2021 to enable the local authority and the care agency to contact Ofsted and the CQC to seek clarification. I also invited the local authority to consider the issue of care proceedings pursuant to s.31 of the CA 1989 in order that it might share parental responsibility with W’s parents as she was plainly beyond their care and control.

17. The local authority's plan aims to replicate a "*therapeutic placement in the community that is local to [W's] family*". It is firmly of the view that an individual placement, with a high staff to child ratio, is in W's interests. This view is informed and supported by the hospital clinicians charged with W's care. The local authority has contracted in the services of the care agency to provide the care and, where necessary, the restraint to ensure W's safety. The six core team members allocated have been visiting W in hospital since early August to build relationships with her and to enable them better to understand and respond to her needs. The proposal is for W to be cared for in temporary rental accommodation, equipped to meet her needs and vetted in advance to ensure that potentially dangerous objects/furniture have been removed. That accommodation is only available for a few weeks after which time alternative accommodation would need to be found should W require it. It is the local authority's view, shared by the hospital and mental health professionals, that a secure accommodation unit would be detrimental to W at this time. Both a return to her mother's care and placement in a foster home would also be presently unsafe for W. Her ongoing placement in hospital is, as argued by the trust and agreed by all other parties, harmful to W.
18. The local authority has issued care proceedings on the basis that W is beyond parental control and no party opposes the making of an interim care order with respect to her. No party opposes the local authority having permission to invoke the inherent jurisdiction which is required by section 100(3) of the CA 1989.
19. The local authority – unopposed by any of the other parties – invites me to authorise several restrictions on W's liberty. These include (a) the use of physical restraint by care agency staff where this is necessary to prevent her leaving her placement and to keep her safe; (b) the administration of medication prescribed by the medical team; (c) supervision within her placement by staff and for her to remain in the accommodation provided unless she leaves it under staff supervision; and (d) restricted access to phones and electronic devices. In addition to the care provided by the care agency, CAMHS will provide a high level of support to the proposed placement.
20. The local authority has not to date received a response from either the CQC or Ofsted as to whether registration of W's placement (comprising the staff and the accommodation itself) or the provision of care by the care agency (including the accommodation) falls under the auspices of the CQC. In the meantime, the local authority with significant misgivings, but having no other option and certainly no other option that meets W's needs and which can contain her behaviour, seeks an order for the deprivation of her liberty. It is highly likely that a) Ofsted regulation (as opposed to CQC approval of the care providers) of the home (meaning the care provided and the premises) is required and b) it will not be possible to obtain approval for the home given its temporary nature. However, a second and potentially insurmountable difficulty for the proposed placement are the changes to the Care Planning, Placement and Case Review (England) Regulations 2010 (SI 2010/959) made by The Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI2021/161).

### *The Legal Framework*

21. On the making of an interim care order, W will become a looked after child pursuant to s.22(1)(a) of the CA 1989. Section 22(3)(a) places a general duty on a local authority looking after any child to safeguard and promote that child's welfare. In furtherance of that general duty, section 22A states that it is a local authority's duty to provide

accommodation to a child in its care and section 22C sets out the basis on which such accommodation is to be provided by a local authority. Section 22C reads – where relevant - as follows:

***Ways in which looked after children are to be accommodated and maintained***

*(1) This section applies where a local authority are looking after a child (“C”).*

*(2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).*

*(3) A person (“P”) falls within this subsection if –*

*a) P is a parent of C;*

*b) P is not a parent of C but has parental responsibility for C; or*

*c) in a case where C is in the care of the local authority and there was a child arrangements order in force with respect to C immediately before the care order was made, P was a person named in the child arrangements order as a person with whom C was to live.*

*(4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if so doing –*

*a) would not be consistent with C’s welfare; or*

*b) would not be reasonably practicable.*

*(5) If the local authority are unable to make arrangements under subsection (2), they must place C and the placement which is, in their opinion, the most appropriate placement available.*

*(6) In subsection (5) “placement” means –*

*a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;*

*b) placement with a local authority foster parent who does not fall within paragraph (a);*

*c) placement in a children’s home in respect of which a person is registered under Part 2 of the Care Standards Act 2000 or Part one of the Regulation and Inspection of Social Care (Wales) Act 2016; or*

*d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.*

*(7) In determining the most appropriate placement for C, the local authority must, subject to subsection (9B) and the other provisions of this Part (in particular, to their duties under section 22) –*

*a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;*

*b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and*

*c) comply with subsection (9) unless that is not reasonably practicable.*

*(8) The local authority must ensure that the placement is such that –*

*a) it allows C to live near C's home;*

*b) it does not disrupt C's educational training;*

*c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together*

*d) if C is disabled, the accommodation provided is suitable to C's particular needs.*

*(9) The placement must be such that C is provided with accommodation within the local authority's area.*

*[The remainder of s. 22C is omitted]*

22. Where the need for secure accommodation for a looked after child is identified, a local authority may seek an order under s. 25 CA1989 (a) if the child 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) if the child is kept in any other description of accommodation, he is likely to injure himself or other persons. The regulatory framework for such accommodation is provided pursuant to s.25(2) and found in the Children (Secure Accommodation) Regulations 1991, of which regulation 3 provides for the approval by the Secretary of State of children's homes run as secure accommodation.

23. A children's home in England is in turn defined in s.105(1) of the CA 1989 as having the same meaning as in the Care Standards Act 2000. Section 1(2) of the Care Standards Act 2000 defines such a home as an establishment providing care and accommodation wholly or mainly for children. The remaining subsections set out exclusions to or define what a children's home is not, as follows relevantly:

*(3) An establishment is not a children's home merely because a child is cared for and accommodated there by a parent or relative of his or by a foster parent.*

*(4) (repealed)*

*(4)A An establishment is not a children's home if it is –*

*a) a hospital (within the meaning of the National Health Service Act 2006); or*

*b) a residential family centre,*

*or if it is of a description accepted by regulations.*



(5) Subject to subsection (6), an establishment is not a children's home if it is a school.

(6) [omitted]

(7) For the purposes of this section a person is a foster parent in relation to a child if –

a) he is a local authority foster parent in relation to the child;

b) is a foster parent with whom a child has been placed by voluntary organisation under section 59(1)(a) of the 1989 Act; or

c) he fosters the child privately.

The regulatory exceptions as to what is a children's home are addressed further in reg 3(1) of the Children's Homes (England) Regulations 2015.

24. Such homes are the subject of registration and regulation, summarised by Lady Black in Re T (A Child) (Appellant) [2021] UKSC 35 at paragraph 55 as follows:

*“As stated earlier, the Care Standards Act 2000 makes provision for registration and regulation of children's homes, with the registration authority for children's homes in England being the Chief Inspector for Education, Children's Services and Skills. The Chief Inspector is supported by the Office of Standards in Education (“Ofsted”) and, thereafter, I will refer simply to “Ofsted”. The registration process is dealt with in detail in sections 12 to 21 of the Act, and the Care Standards Act 2000 (Registration) (England) Regulations 2010. Any person who carries on or manages a children's home without being registered is guilty of an offence (section 11). Sections 31 and 32 provide for inspections to be carried out by Ofsted.”*

25. As Lady Black noted in paragraph 58, homes which have not been registered must not only be so as required in law, but not by virtue of the lack of registration to be described as “unregulated”. They are regulated. The fact that they have not been registered means that they cannot be regulated as required: *“Where an establishment is a children's home, it is undoubtedly “regulated”, even if it is not registered”*.
26. I have not set out the law with respect to applications for orders authorising the deprivation of a young person's liberty made pursuant to the inherent jurisdiction. The relevant jurisprudence is set out in the decision of the Supreme Court in Re T (see above).

#### *Discussion: The Proposed Placement*

27. This is, sadly, yet another case in which a young person is exhibiting emotional and behavioural difficulties consequent on past trauma where they are assessed as not meeting the criteria for detention under the MHA and the therapeutic treatment which they urgently require within a restrictive environment is not available. This is a depressingly familiar scenario to the judges of the Family Division.
28. On 12 August 2021, the issue before the court was whether the care agency's CQC registration was sufficient or whether, given the nature of their task in caring for W, they would also require Ofsted Registration as the providers of a “children's home” as defined above. Guidance is provided in a document entitled *“Children's homes and*

*health care: registration with Ofsted or CQC*". That guidance draws the distinction, based on the above definition of a children's home and, by reference to the Health and Social Care Act 2008 ["HSCA 2008"] and the associated regulations, between providers which conduct "*regulated activities*" as health professionals, in which case they must register with the CQC on the one hand and children's social care provision, including but not limited to children's homes, on the other. It notes specifically that these are not mutually exclusive, such that:

*"If an activity involves the carrying on of an establishment or agency within the meaning of the Care Standards Act 2000, for which Her Majesty's Chief Inspector of Ofsted is the registration authority under that act, then this is not a 'regulated activity' under HSCA 2008 and does not require the provider to register this with CQC. For example, a home registered with Ofsted as a children's home is exempt from registering with CQC as a care home, even if some of the residents are adults. However, the provider may need to register with CQC in respect of any 'regulated activities' under HSCA 2008 being carried out there, for example, personal care (see Annex 4 for definition of personal care), nursing and/or medical treatment."*

29. The hospital accommodated W pursuant to its registration with the CQC in accommodation which is specifically excluded by the Care Standards Act 2000 as set out above. It appears highly unlikely that the care agency would be exempt from Ofsted registration, where the activity contemplated in this particular case is the provision of a home in which W is to live and be cared for by its staff, albeit with ongoing oversight of her medical care as part of the plan. The local authority made enquiries of both the CQC and Ofsted on 13 August 2021, but neither organisation has formally responded. However, the Deputy Director for Children's Services within the local authority managed to contact Ofsted in accordance with the President's Practice Guidance 2019 and she confirmed, via Mr Sampson QC, that Ofsted was now aware of this case; that it could not condone any placement that would require registration but was encouraged that the case was before the court; and that this case was one of a number of cases known to Ofsted in which the same issues in relation to registration arose.
30. Whatever the difficulties with registration are, the local authority has no other option for W. There is no secure accommodation provision available and, even if such accommodation were available, the professional consensus is that it is not in W's best interests to be so placed. The hospital evidence is that W is being harmed by remaining in hospital notwithstanding the difficulty the hospital experience by reason of her occupancy of an adult surgical bed. I accept the urgent need for W to move from the hospital to a placement created with her particular needs in mind. It is unfortunate that the temporary accommodation in which she will live is only available until 6 September 2021 and that W will have to move from that date to other accommodation which the local authority accept it needs to find as a matter of considerable urgency. I am also satisfied that the restrictions on W's liberty are both necessary and proportionate to meet her welfare needs.
31. That is, regrettably, not the end of the matter. This placement will not only be potentially illegal but will be unlawful with effect from 9 September 2021 because of the amendments contained within the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 (SI 2021/161). The original terms of the 2010 Regulations at regulation 27 (referring in turn to accommodation of a looked after child under s.22C(6)(d)) were as follows:

***General duties of the responsible authority when placing a child in other arrangements***

*Before placing C in accommodation in an unregulated setting under section 22C(6)(d), the responsible authority must –*

- a) be satisfied that the accommodation is suitable for C, having regard to the matters set out in Schedule 6,*
- b) unless it is not reasonably practicable, arrange for C to visit the accommodation, and*
- c) inform the IRO.*

32. As of 9 September 2021, regulation 27 has been amended to replace the reference to ‘*unregulated setting*’ with the term used in s.22C(6)(d), namely ‘*other arrangements*’. The 2021 Amendment Regulations introduce an additional regulation 27A which prohibits the placement of a child under 16 in any such ‘*other arrangement*’, save for a limited number of accommodations. Regulation 27A reads as follows:

*“A responsible authority may only place a child under 16 in accommodation in accordance with other arrangements under section 22C(6)(d) where the accommodation is –*

*a) in relation to placements in England, in –*

*i) a care home;*

*ii) a hospital as defined in section 275(1) of the National Health Service Act 2006;*

*iii) a residential family centre as defined in section 4(2) of the Care Standards Act;*

*iv) a school within the meaning of section 4 of the Education Act 1996 providing accommodation that is not registered as a children’s home;*

*v) an establishment that provides care and accommodation for children is a holiday scheme for disabled children as defined in regulation 2(1) of the Residential Holiday Schemes for Disabled Children (England) Regulations 2013;*

*...”*

The aim of the amendment is to ensure that looked after children under the age of 16 are only placed in children’s homes or foster care. Whilst there are obvious concerns about placing children in unregistered accommodation, it will be immediately apparent that finding or creating a bespoke placement for a young person who urgently needs care will be considerably harder following 9 September 2021.

33. The local authority entirely accepts the aims and appropriateness of the new regulatory framework, given the widely publicised difficulties caused by the use of unregistered children’s homes. However, whilst the government has increased national funding for the expansion of the network of children’s homes, there is a paucity of provision at this

time. W is a young person who will not benefit from such an institutional setting and who cannot be placed in the alternative of foster care given the extent of her difficulties. She falls between two stools.

34. The local authority has considered whether there is any way that the situation proposed can lawfully continue beyond 9 September 2021. It doubts that this is possible and will consider the following options to protect W and to meet her needs, namely:
- a) search the already inundated system for a bed in secure accommodation; and
  - b) consider whether there is a means by which the current placement can instead be a foster placement. It may be possible to place W with a local authority or agency foster carer with the care agency providing assistance, support and court authorised physical containment pursuant to a deprivation of liberty order. In the alternative, one or more of the staff employed by the care agency might be approved as a temporary foster carer under the relevant regulations.
35. I express no view as to whether the option identified at (b) above would be either practical or in accordance with the relevant regulations. What is the local authority to do if there is no secure accommodation available and no other appropriately regulated type of placement which might meet W's needs? In Re T (see above), Lady Black - giving the lead judgment - stated that "*if the local authority cannot apply for an order under section 25 because there is no section 25 compliant secure accommodation available, I would accept that the inherent jurisdiction can, and will have to be, used to fill that gap, without clashing impermissibly with the statutory scheme*" (paragraph 141). Whether the inherent jurisdiction can fill the placement gap in W's case once the 2021 Amendment Regulations come into force will be a matter for more detailed argument and consideration at the next hearing before me.

### *Conclusion*

36. I have directed that this matter should be relisted before me in mid-September to review the arrangements for W's placement. That hearing will provide an opportunity, if necessary, to consider whether, notwithstanding the 2021 Amendment Regulations, the present arrangements are capable of being authorised by this court in the exercise of its inherent jurisdiction. At that hearing, I have invited the attendance of the Secretary of State for Education, the Children's Commissioner, Ofsted and the CQC and directed that, should they wish to attend to make representations, each should have access to the papers.
37. In the meantime, I hope that W's transition to her new placement occurs without incident and that the local authority makes progress in identifying accommodation to which she might move in early September.
38. That is my decision.