

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sessions House
Lancaster Road
Preston PR1 2PD

Date: 26 October 2023

HIS HONOUR JUDGE BURROWS
(Sitting as a High Court Judge pursuant to s. 9(1) SCA)

Between:

LANCASHIRE COUNTY COUNCIL
- and -
CLAIRE X
(by her Children's Guardian)

Applicant

Respondent

JUDGMENT

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.

HIS HONOUR JUDGE BURROWS:

INTRODUCTION

1. This case is about a young girl who only recently turned 15. This judgment is a culmination of a number of hearings. However, these hearings have taken place over a relatively short period of time. One on 21 September, at Preston in which the local authority was represented by Mr. Buchan and the guardian by Ms Bowcock, K.C. Then, on 26 September, when the Local Authority was represented by Ms. Woods, and the guardian by Ms Butterfield. Then on 3 October at Blackpool where the Local Authority was represented by Ms Gane and the guardian by Ms Bowcock, K.C. The last of these hearings was on 19 October 2023, and Mrs Griffin represented the LA and Mr Donnelly the Guardian. I am grateful to all those named, their instructing solicitors, the guardian, and the social workers. They have all worked very hard and I know they have all been affected by the plight of this young woman.
2. This case is extremely disturbing. At an earlier hearing, two very experienced counsel, an equally experienced guardian and two experienced social workers said that the level of restrictions that had been placed upon this child were the most intense they had seen in their cumulatively long careers, but that they were entirely at a loss to think that any lesser restrictions could safely be imposed upon her.
3. She was then, and still is subject to 4-to-1 supervision. Initially, that was in a placement which had been found after a long period of searching, but by 26 September that placement had broken down somewhat dramatically with another act of extreme self-harm on her part. At that stage I thought it was time for the court to give a judgment. I delivered an ex tempore judgment and I ordered a transcript be obtained. Whilst I was waiting for that transcript the hearing on 3 October took place.

I need to update my earlier judgment, so what follows is a combined original and updated judgment. I hope this places the case in its proper perspective.

4. In order to protect her privacy, I will call the child Claire (CX). I will also not identify the Hospital in which she presently resides. It will be referred to as the Midlands Hospital. The other public authorities need not have their identities anonymised. However, where individual social workers and clinicians are referred to individually, I will use their initials.

BACKGROUND

5. Claire has had a turbulent childhood. Her mother had mental health difficulties, engaged in substance abuse and was a victim of domestic violence. Claire has had little contact with her father, and he has played no part either in the care proceedings or this separate inherent jurisdiction application. That disturbed upbringing came to a terrible climax in January 2022 when Claire's mother died and she then had to be cared for by her older sister, JX. Despite JX's best efforts, it proved impossible for her keep her sister safe. Care proceedings were issued in relation to Claire, and I made a final care order on 7 August 2023. Claire is now in the care of the local authority, Lancashire County Council (LCC).
6. Claire is vulnerable to sexual exploitation. She was involved in a sexual relationship with an older boy, over 17, and there have been real concerns about her activities on social media platforms where she has provided sexual content to clients in return for money.
7. She has a diagnosis of what I remind myself, and sometimes have to remind professional psychiatrists, is a mental disorder, namely ADHD. She has been

involved with mental health services in the past and it is said that she received support from them. However, partly due to the death of her mother and the instability within her family, by the end of 2022 Claire's condition had deteriorated in terms of self-harm and suicidal ideation.

CLAIRE'S RECENT HISTORY

8. I have a long list of events in front of me. They were outlined in Ms Wood's Case Summary/Skeleton Argument for 26 September, and I draw heavily on that document in the following chronology.
9. On 25th November 2022, Claire informed those caring for her that she had taken 24 tablets that had been prescribed for her late mother. She took another two whilst services were with her. She took unknown tablets and vodka in December 2022. In January 2023 she rang 111 and reported that she wanted to end her life. Later that month, after being arrested for assaulting her older sister, she said that she intended to end her life. At that stage, on 31st January of this year, she was detained under section 2 of the Mental Health Act 1983 (MHA). That was a limited admission.
10. There were further expressions of a wish and a plan to commit suicide in February 2023 and she left home on 1st February with a piece of broken glass in her pocket. Glass features consistently in her attempts to harm herself. She absconded on a number of occasions and took overdoses of tablets. On 8th February she took an overdose and self-harmed to her face and she was taken to hospital, presumably by the police, under section 136 of the MHA. Once at hospital she was treated for her physical injuries but then discharged to her sister's home.

11. She absconded from that home and was found by the police, having taken an unknown quantity of ibuprofen. She was carrying a knife. On 12th February she was arrested for assault, criminal damage, and arson. She was again taken to a psychiatric facility under section 136 of the MHA. Four days later she was once again discharged to her sister's care, albeit with 24-hour support from a social care organisation. The same day she locked herself in the toilet at a cinema and began taking tablets. That resulted in her being taken to the Royal Preston Hospital. Four days later she left the hospital and was found unconscious by a member of the public, on a park bench. She said that she had drunk a litre of vodka and had taken up to 35 paracetamol or ibuprofen tablets. She was treated at hospital for that.
12. Two days later, and "medically fit for discharge", she tried to leave hospital. By "medically fit" I mean physically fit. Clearly, she was not mentally fit, and she was detained under s. 5(2) of the MHA, a holding power, but she absconded to get drugs. Those drugs, in combination with the medication she had taken, triggered a toxic overdose. She was treated in hospital for that.
13. On 26th February a mental health assessment was carried out and that concluded Claire did not meet the criteria for detention under the MHA, which in the context of a child meant she did not require their Tier 4 CAMHS services.
14. The local authority's assessment of her has always been and remains an accurate one. She is troubled, traumatised and, I would add, completely unable to cope with her feelings. She could not return to her sister's care, because her sister simply would not be able to cope with her. So started the search for a placement to get her out of hospital and in to somewhere safe. That is a search that has been renewed on numerous occasions by the local authority, who have tried their best to help.

15. I first became involved in this case when it was hoped she could leave Royal Preston Hospital to go to a facility nearer to her home. That facility was initially identified as The Lighthouse in Darwen, although there was a delay in her being able to take up a place there because one of the residents at that time was hoping to move to another placement, but that other placement had difficulties obtaining the requisite certification.
16. When eventually she did move, in April 2023, the placement rapidly broke down due to her risk-taking and behaviour, her absconding, going on to railway tracks, causing damage to property and ligaturing herself. She was moved to a place called Buchie Care at Liverpool in May where her behaviour was described by the local authority as becoming slightly “less extreme”. I pause there to emphasise that the behaviour was still “extreme”, just a little less so. However, she absconded from there in July and was found by the police on a bridge from which she was threatening to throw herself.
17. She was then taken to Alder Hey Hospital and while she was there she swallowed some glass. At that point she was assessed by Dr. A, who is a psychiatrist, in order to determine whether she was eligible for Tier 4 in-patient assessment. She was assessed as not eligible for Tier 4 and a quote from the assessment is that her presentation was: “Emotional dysregulation secondary to historic trauma and adverse social history with attachment difficulties, loss and grief”. The doctor identified that Claire had a diagnosis of ADHD, that she was impulsive and had little sense of danger and that this fell within the category of “Neurodiversity” rather than mental illness. Although the criteria for admission under the MHA is the somewhat general category “mental disorder” rather than the more specific “mental illness”.

18. In other words, once again in this case as in other cases, there appears to be an opinion, particularly when considering unwell young people, that what in older people would be described as the manifestations of a mental disorder are taken to be “behavioural” and, therefore, it seems, not appropriate for treatment under section in a psychiatric hospital.

19. Buchie Care, not surprisingly, and probably rightly, concluded that they were not able to keep Claire safe. As a result, she ended up remaining at Alder Hey in a cubicle off a ward. Of course, being in a cubicle off a ward at Alder Hey poses enormous difficulties for a hospital that deals with the most seriously chronically sick children and whose parents want to be with them. Having someone like Claire with behavioural problems living in a cubicle just off the ward is troubling both for those visiting and for the hospital staff and administration. However, most importantly, Claire did not benefit from living in a cubicle off a ward because all she had there was “containment and safety”. There was no real opportunity for her to be treated for her underlying psychological problems, to be educated or to have anything like the normal life that a 14 or 15-year-old girl would want.

20. In July 2023, Claire was placed at Red Brick House in Salford, which is an Ofsted-registered placement. Initially, there were some positive signs that there her needs could be met in the longer term and she, initially anyway, appeared to take to the place in a way that she had not done before. It is worth remembering that Claire wants to be normal. She wants to have a normal life, to be educated in a school, and to have positive relationships with her peer group. In any event, she had something of a normal life for a short period of time in July 2023 when she was living at Red Brick House, including meeting her family to celebrate her sister’s birthday. However,

there were also events involving self-harm, cutting herself with glass, and swallowing pieces of glass. She absconded. She was seen taking Stanley knife blades from a shop and there was obviously great concern that she was going to use those to harm herself. She did, when challenged, hand over shards of glass and screws, but the blades were not found. She repeatedly said that she just wanted to die.

21. Later, on 23rd July, she harmed herself by causing a deep slash down her left arm with one of the blades. Her cut was treated at hospital, and she was referred to CAMHS. Following the CAMHS appointment she was unsettled, and she put a shard of glass in her mouth and cut herself with a blade. She absconded whilst continuing to cut herself. The police found her, but she continued the self-harm. She was taken to hospital and was admitted overnight. She was assessed by CAMHS, a multiagency meeting took place and then she was discharged. After that she handed over more blades that she had concealed in her bra.
22. Just pausing there again, it is manifestly clear that this is a young woman intent on causing herself very serious harm.
23. On 8 August 2023, Claire was admitted to Hospital in Salford in the early hours of the morning having swallowed pieces of ceramic after a difficult family time with her sister. It seems from what she said that she had secreted a cup some time earlier. She swallowed the broken cup in order to hurt herself. At the same time, she showed staff at the Hospital that her self-inflicted wounds were healing, and she was sad that they were healing because missed the sensation of being able to pick at the scabs. Later that day, she absconded from the Hospital and swallowed glass. She was returned to her placement the next day and was promptly readmitted to Hospital having broken

glass at her placement and swallowed it. This followed an attempt to abscond during which she was restrained by staff.

24. Immediate notice was given by Red Brick House on 9 August 2023, and it was necessary to find somewhere else for her to go. In the meantime, she remained at Royal Salford Hospital. There was a hearing on 16 August 2023 at which the Court was told that a new placement may have been found for Claire in the West Midlands. The next day, she absconded from the Hospital, and she was found sleeping on the street somewhere in Lancashire. She was placed at an education centre in Lancashire but went to her sister's house and refused to return.
25. She was eventually sent to a placement in the West Midlands, Carolann House and it is there that she was at the time of the hearing on 21 September. At that stage, due to an escalation in her self-harm from the period in August and early September, she was under 4-to-1 security. It was hoped that the placement in the West Midlands, which had already given notice because of her actions, would at least be able to look after her for a period of time during which a more appropriate facility could be identified.
26. At that hearing, in agreement with Ms Bowcock, K.C., I said that this was clearly a case for a secure accommodation order. In fact, a secure accommodation placement might well be better for Claire because the relational security might be less intense. It must be difficult for somebody who is in good mental health to have four people with them all the time, but for somebody with the terrible difficulties that Claire has it must be awful. However, what else can be done when a person is trying to harm themselves as determinedly and seriously as Claire is? The most recent example I was given at that hearing was that she smashed a door down at the placement in the

West Midlands, not so she could escape but so she could get access to the screws which she could then ingest.

27. Before the hearing on 26 September there was another event where over the weekend Claire climbed on to a conservatory roof, smashed some glass and ingested it. As a result, she was taken to the A & E department at a Midlands Hospital, and as a result of that Carolann House gave immediate notice and they have refused to allow her to return, although they have continued to provide support for her in the Hospital. She remained in hospital in a cubicle off the ward, medically fit for discharge, where “medically” once again refers to physically fit, but there must be severe doubts as to whether she is mentally fit for discharge from a hospital.
28. However, once again she was assessed for MHA admission and the assessment proved negative. She is not in need of in-patient psychiatric care at Tier 4, it is said. So, LCC once again was left holding Claire in circumstances where, and this is not a criticism of the Council, they have no idea what to do with her. The only thing they can do is to look for a placement that may be able to provide her with support and care and then, once she is there surround her with what is assessed as being a necessary level of support in the circumstances.
29. If it is the wrong sort of place, a place that is not secure enough, then that level of security is going to have to be intense. It is probably going to be 4-to-1. That is likely to make things worse because Claire will see herself as being heavily restricted, and not having a normal life. Her ability to regulate the emotions that will follow from that are well-documented and non-existent. So, we can anticipate further self-harm, further destruction, further attempts to escape and further admissions to hospital if she is lucky enough not to kill herself in the process.

30. On 26 September 2023, the application before me was a modest one. Keep the restrictions in place but just change the address from the placement in the West Midlands to the cubicle off the Accident & Emergency Department at the Midlands Hospital where there will be four people constantly with her, constantly restricting her, occasionally restraining her, and always making sure that she does not harm herself.
31. I found myself in a position where I had to authorise that level of detention because the alternative was too horrible to contemplate. However, I wanted to know why it is that CAMHS and Tier 4 psychiatric services consistently and persistently regard Claire as not being detainable under the MHA. She has a mental disorder. It appears it is of a nature and a degree that needs treatment of some sort and in a place of security. It means that she is an enormous risk to her own health and safety but also, potentially anyway, to others. In the absence of any other suitable placement, it seems necessary for her to receive at very least assessment and probably further treatment in a psychiatric facility to address that disorder. I am only a judge, I am not a psychiatrist or an AMHP, but Claire seemed to me to be detainable.
32. I wanted the person who most recently assessed her to provide the assessment and an explanation as to why, in their view, she is not detainable. The alternative to her being in a psychiatric facility is that she is in a non-psychiatric secure facility, potentially, or worse, in a wholly inadequate facility in which people are doing their best but are doomed to fail because of her behaviour. That is an explanation I wanted by the time of the next hearing.

THE CAMHS POSITION IN SANDWELL

33. I heard from a very senior and specialist nurse, HZ, who provided me with a statement and attended remotely to assist the Court. I am grateful to HZ for her expertise and candour. HZ explained to me why Claire was not detainable within a Tier 4 CAMHS facility under the MHA. That conclusion was reached after a lengthy period of assessment during which Claire engaged with those assessing her. The assessors were aware of the detailed history I have summarised above. They were also aware of the CAMHS assessment carried out whilst Claire was placed in Salford. Claire's presentation in Salford was summarised in a letter from Greater Manchester NHS Foundation Trust dated 18 August 2023. During the assessment at Salford "there was no evidence of an acute mental disorder that would likely respond to treatment in an acute mental health inpatient setting. There was no objective evidence of mood disorder, acute anxiety or psychotic features". The self-harm Claire had inflicted "was in the context of emotional dysregulation linked to social stressors, namely..... attachment difficulties and feelings of destabilisation due to multiple placement moves, and removal from family and usual social support networks".
34. That assessment appears to focus heavily on the degree of disorder at the time of assessment and not on its nature over time. In relation to her family and usual support networks, it will also be noted that Claire's removal from her family and those networks came about because of the crisis I have described in which her family and those networks were incapable of keeping her safe. In short, I did not find the Salford assessment very compelling. HZ and her colleagues concluded that there were no obvious signs of a diagnosable mental health condition that would warrant Tier 4 admission. Her behaviour appeared to be "due to her traumatic and adverse childhood experiences" and (emphasis added) "she would warrant **longer term therapeutic work** in collaboration **with a contained and varying environment**".

35. In her oral evidence, HZ explained what her employer, Black Country Health Care NHS Foundation Trust could provide for Claire whilst in Hospital. This was mainly support for her but also for her carers. If she were to be discharged from Hospital to a placement within the Trust's area, they would provide CAMHS services. If not, however, their role would not arise. The longer-term therapeutic work in a contained environment was not their function whilst Claire is in the general hospital.
36. Pausing there, I was extremely concerned about HZ's evidence and the position of her Trust. The apparent consensus amongst the mental health professionals who have treated Claire is that she needs treatment for her underlying disorder, but that is best achieved in a social setting which is stable, safe and secure. Until that is available the treatment will not be offered. This position appears to ignore what is almost universally recognised elsewhere, namely that there is a chronic lack of secure accommodation for our young people with serious mental health and behavioural problems. I need only refer to the recent judgment of the President, Sir Andrew McFarlane in Re X (Secure Accommodation: Lack of Provision) [2022] EWHC 129, along with his predecessor six years ago, in Re X (A Child) (No. 3) [2017] EWHC 2036 (per Sir James Munby, P) to provide support for this Court's concerns. Furthermore, in the Court of Protection recently, Theis, J, VP, made the same point in an appeal from one of my decisions concerning the lack of appropriate accommodation for challenged young people: see Manchester University Hospitals NHS Foundation Trust v JS (Schedule 1A Mental Capacity Act 2005) [2023] EWCOP 33.
37. I was concerned that with all the urgent identification of placements, followed by their almost inevitable breakdown, Hospital admission followed by another hasty search

for a placement, that any sense of an overview of Claire's treatment and care planning was being lost. There appeared to be no one in overall charge of Claire's care planning. LCC was constantly and urgently "firefighting". The various NHS Trusts who had responsibility for her physical and mental health were no longer involved once she had moved on. I therefore directed that the Consultant Psychiatrist in charge of Claire's present care, Dr K., should provide a statement answering certain questions and he must attend the hearing on 19 October 2023 (albeit remotely).

THE HEARING OF 19 OCTOBER 2023

38. Dr K is the Consultant within the Sandwell CAMHS Crisis team. He is involved in offering advice in relation to patients in Hospital as well as making decisions on Tier 4 admission (under the MHA) and the working out of discharge pathways. When he assessed Claire, she displayed no signs of any primary psychiatric or neurodevelopmental disorders. She even seemed "insightful" about her condition. Fortunately, she was no longer in a side room and has been admitted to a paediatric unit. There she seems to have settled to a degree, and is receiving some education remotely, and daily meetings with play therapists. All that being said, she had an unsettled week leading up to the hearing and had tried to leave the Hospital by climbing on the toilet seat and through the false ceiling. Also, she had just passed a blade she had earlier removed from a pencil sharpener and swallowed.
39. Her needs, however, continue to be "social" according to the professionals.
40. Dr K told me that he and his team would continue to provide support and some input. He told me that what Claire needs is to receive treatment initially in the form of DBT. In order for treatment to take place it would be preferable for there to be a stable and safe placement in which Claire will reside for some time. At present, the Hospital

setting is sub-optimal. She is medically (i.e. physically) fit for discharge, and will leave as soon as a suitable place can be found. The continuing involvement of the Sandwell CAMHS Crisis Team, and the other longer term CAMHS teams will depend on where she is discharged. Since the preferred place for her longer-term care is Lancashire, it seems unlikely the Sandwell team will have involvement once she is discharged.

41. The issue of discharge is, however, extremely problematic. It seems probable that the best option, perhaps the only entirely suitable option is for Claire to be placed in secure accommodation. However, as of 11 October 2023 there were only 7 beds available nationally, one of those is male only, with 48 live referrals pending (including Claire's). I was told that it is within the knowledge of one of the social workers for one child referred for secure accommodation to be waiting for 12 months for a secure bed. I say this not to re-emphasise yet again the lack of secure places nationally; that is accepted as being a national crisis, and many Courts have "shouted" about that. Rather, it seems to me to be directly relevant to what is in Claire's best interests at this stage. Even if it is accepted that she is not detainable in a Tier 4 provision, there is no doubt she requires therapeutic input in order to address whatever it is that causes her dysregulated behaviour. She is a young person who is still developing both mentally and physically. Time is of the essence because any delay in that input could have longer term effects on how she develops.
42. Dr K. accepted all this. He also accepted my concern that it was important for the input to begin now, probably with the DBT. Fortunately, unlike some other forms of psychotherapy, DBT can be administered and can benefit a patient even where that patient is not stable and settled.

43. Dr K stated that he would ensure that the DBT treatment was able to commence whilst Claire is at the Midlands Hospital, provided by his team. This recognises two aspects of this case that seem clear. First, that Claire needs therapeutic input to address the underlying mental health condition, whatever that may be. Although she ideally needs that in a place where she is secure and stable, the fact is that level of security and stability simply is not available at the moment. Finding an alternative placement is likely to prove difficult and may involve a protracted search period, and that is the second aspect. Certainly, if the experience of previous searches is an indicator, finding a satisfactory placement rather than one that is barely adequate will take a while. In the meantime, Claire needs the treatment and other input.
44. Secure accommodation seems to be the only way forward for Claire. She is an extreme example of a child who is dysregulated and whose behaviour is out of control. The risks she poses to herself are quite simply catastrophic. I appreciate that the local authority social worker has made that case and it has been accepted at the highest level. The Local Authority find themselves once again at the brick wall against which they have been banging their heads consistently for some months, because of the lack of adequate provision of secure accommodation. All they can do is try to create security in an inadequate provision. However, that is proving to be disastrous, because even if Claire does not succeed in killing herself and does reach maturity, the events of the last seven or eight months and the events that will no doubt follow will have caused such a disruption to her childhood that the damage may be long-lasting and probably permanent.
45. So far as the Tier 4 issue is concerned, I remain troubled that this young woman who has been dysregulated for so long and has been so determined to cause herself serious

harm, is not detainable under the MHA. However, there is nothing this Court can do to require the use of the MHA. The guardian is pondering whether judicial review of the sectioning decision is a feasible option. I consider in the meantime that it is necessary for an expert to be instructed to consider Claire's overall mental health care and the direction of that care. This appears not to be taking place in a coordinated way as it is. What I cannot do is compel anyone to detain Claire under the MHA. This was made clear, albeit under slightly different circumstances by Mr Justice McDonald in Blackpool BC v HT (etc) [2022] EWHC 1480. What His Lordship said at [51] is also highly relevant to this case:

This matter represents another example, amongst many examples, of a case in which the acute lack of appropriate resources, for children assessed as not meeting the relevant criteria for detention under ss 2 or 3 of the Mental Health Act 1983 (the 1983 Act) but requiring therapeutic care within a restrictive environment for acute behavioural and emotional issues arising from past trauma, creates tension between a local authorities and the NHS. As a result, the matter comes before the court with the local authority asserting that the NHS should be making provision for the child and the NHS arguing that the child does not meet the criteria for such provision.

46. I am troubled however, that those involved in CAMHS provision and Tier 4 decision making have to recognise this resource crisis and have to take the lack of adequate social provision into account when making decisions under the MHA. Of course, a 14- or 15-year-old child should not be detained in a secure psychiatric facility if there is a less restrictive option that can achieve appropriate care for her. Or, put another way, treatment in Hospital is not necessary if (but only if) there is suitable care available outside Hospital. If that placement is not available within a reasonable timescale, then treatment in Hospital is surely necessary. I have dealt with this

elsewhere, in a similar context, in Manchester University Hospitals v JS [2023] EWCOP 12.

CONCLUSION

47. Since Claire is slightly better settled at the Hospital, and treatment is to start, I am willing to make another order authorising Claire's deprivation of liberty where she is. I have also taken the step of accepting the offer of treatment by Dr K by declaring that it is in Claire's best interests to receive such treatment.
48. That completes this judgment.
