

# CENTRE FOR CHILD AND FAMILY LAW REFORM

Meeting of Thursday 26<sup>th</sup> January 2012

***SECURE ACCOMMODATION***  
District Judge Christopher Simmonds  
Principal Registry of the Family Division

## **INTRODUCTION**

The purpose of this note is to provide :

- a) an overview of the law and issues
- b) to allow for discussion of the future steps/research the Centre could undertake
- c) what external agencies could assist the Centre
- d) the timetable for preparing a report and recommendations

We have Mark Burrows Team Manager, Placement Unit, Children in Care and Adoption and Sandra Walker Legal Team from the Department of Education joining the meeting

## **THE LAW**

25 Use of accommodation for restricting liberty

(1) Subject to the following provisions of this section, a child who is being looked after by a local authority may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty (“secure accommodation”) unless it appears –

- (a) that –
  - (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
  - (ii) if he absconds, he is likely to suffer significant harm, or
- (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

(2) The appropriate national authority may by regulations –

- (a) specify a maximum period –

- (i) beyond which a child may not be kept in secure accommodation without the authority of the court; and
    - (ii) for which the court may authorise a child to be kept in secure accommodation;
  - (b) empower the court from time to time to authorise a child to be kept in secure accommodation for such further period as the regulations may specify; and
  - (c) provide that applications to the court under this section shall be made only by local authorities.
- (3) It shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.
- (4) If a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which he may be so kept.
- (5) On any adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.
- (6) No court shall exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his right to apply for representation funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service and having had the opportunity to do so, he refused or failed to apply.
- (7) The appropriate national authority may by regulations provide that –
- (a) this section shall or shall not apply to any description of children specified in the regulations;
  - (b) this section shall have effect in relation to children of a description specified in the regulations subject to such modifications as may be so specified;
  - (c) such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation.
- (8) The giving of an authorisation under this section shall not prejudice any power of any court in England and Wales or Scotland to give directions relating to the child to whom the authorisation relates.
- (9) This section is subject to section 20(8).

The two limbs of s.25(1) (a) and (b) should be read disjunctively and therefore the finding of 1 is sufficient to make an Order

If the criteria is satisfied the Court must then make an Order

Children (Secure Accommodation) Regulations 1991

- for a child under 13 years of age the prior approval of the Secretary of State is required
- Maximum periods
  - a) without an order 72 hours
  - b) for the first period a maximum of 3 months (Reg 11)
  - c) any further period not exceeding 6 months at any one time (Reg 12)

## **THE VOICE OF THE CHILD**

### Family Procedure Rules 2010

12.14(2) Unless the court directs otherwise and subject to para (3), the persons who must attend a hearing are

- (a) any party to the proceedings
- (3) Proceedings or any part of them will take place in the absence of a child who is a party to the proceedings if ;
  - (a) the Court considers it in the interests of the child, having regard to the matters to be discussed or the evidence likely to be given; and
  - (b) the child is represented by a children's guardian or solicitor.
- (4) When considering the interests of the child under para (3) the court will give
  - (a) the children's guardian
  - (b) the solicitor for the child; and
  - (c) the child, if of sufficient understanding

an opportunity to make representations

Practice Direction 16A then needs to be read with the Rule in that it obliges the children's guardian to advise the court of the child's wishes to attend

Peter Jackson J in *A City Council v T, J and K* [2011] 2 FLR 803 considered this point on the 16<sup>th</sup> May 2011;

- there is no inbuilt presumption on attendance of the child; it was a question of what was in the interests of the child
- the starting point is always an open evaluation of the consequences of attendance or non-attendance with the relevant factors generally including (1) the age and level of understanding of the child (2) the nature and strength of the child's wishes (3) the child's emotional and psychological

state (4) the effect of influence from others (5) the matters to be discussed (6) the evidence to be given (7) the child's behaviour (8) practical and logistical considerations and (9) the integrity of the proceedings

The principle of hearing the child should also be read with the Hershman Levy Memorial Lecture by Rt Hon Lady Hale given on 27<sup>th</sup> July 2011 when in an overview of the participation of children in proceedings she concludes

*"I suspect that the reason why we are so reluctant to bring children to court is not a concern for the children but a concern for ourselves. Should not the right answer to the child's question "can you hear me Your Honour?" be "loud and clear?""*

#### United Nations Convention on the Rights of the Child 1989 – Article 12

State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body"

### **THE STATISTICS**

#### CHILDREN ACCOMMODATED IN SECURE CHILDREN'S HOMES AT 31 MARCH 2011: ENGLAND AND WALES

- a) The number of secure children's homes open at 31 March 2011 in England and Wales is 17; unchanged from last year.
- b) 221 children were accommodated in secure children's homes in England and Wales at 31 March 2011 – 202 in England and 19 in Wales. This represents a fall of 15% from the 2010 total of 260. (For England only, there was a 16% fall on the 2010 total of 240.)
- c) Of the total number of children accommodated in England and Wales, 69% were male and 31% female, compared with 64% and 36% in 2010.
- d) There was a decrease of 9 percentage points in children placed by the local authority on welfare grounds, from 37% of children accommodated in 2010, to 28% of children in 2011.

### **RESEARCH**

Surprisingly there is very little current data available. I can find no research or data of systematic follow-up or tracking of young people who have been in Secure Accommodation. Save anecdotal evidence therefore there is little evidence available

to consider outcomes and from this to extrapolate improvements. This must, it is suggested, have a directed impact on Secure Units and their ability to improve.

The most recent I could find relates to Scotland with research commissioned by the Scottish Executive and published in 2006 – “Secure Accommodation in Scotland; Its Role and Relationship with “alternative Services”” The work was carried out between November 2002 and 2005 by researchers at the universities of Stirling, Strathclyde and Glasgow.

The study was to review the use and effectiveness of Secure Accommodation in Scotland and they concluded (relating to the Scottish system)

- a) decision making to admission was quite sophisticated especially amongst managers although there was no nationally agreed system – decisions were based on personal views/experience
- b) managing a high level of risk requires skill and experience
- c) the development of “alternatives” developed as the study developed but again was area and person specific
- d) they identified the difficulty of identifying a placement – they found evidence to support the view that some secure admissions could be avoided by developing the capacity of open residential care – they noted that the main alternative to secure was maintaining young people in their existing residential unit
- e) they accepted that secure units are used as a last resort
- f) secure accommodation and alternative services need to be seen as complementary rather than separation options. There were clear indications that in order to avoid the need for secure placement altogether, appropriately skilled residential care and community support services had to be introduced when difficulties were developing and well before the young person was in crisis
- g) questions remained as to how difficulties were best addressed and what needs to be in place to sustain any changes. Relationships with reliable adults were key. The study concluded that a period in secure could start to address the problems but the intense support had to continue after the placement
- h) “irrespective of the nature of after-care service, the key was that the young person had someone on whom they could rely for help and guidance when the inevitable difficulties arose. For young people who had begun to establish close relationships with staff in the secure setting, it was especially important that they were helped to transfer the trust and confidence

they had built up in relationships there to new support staff’

They set out in their Concluding Remarks :

*10.6.1 This study has highlighted that secure accommodation continues to have an important role in keeping some very vulnerable young people safe. For some it also provides an opportunity to see themselves in a different light and learn to tackle their difficulties in less destructive ways. Developments which have taken place since the study fieldwork was carried out indicate that the capacity to assess and help young people with complex difficulties is increasing.*

*10.6.2 However taking away a young person's liberty is not to be done lightly and there are aspects of the secure experience which are potentially unhelpful, notably the young person's removal from their family and community. Developments in managing risk in an open setting are therefore also to be welcomed. This study's findings lent support to the view that, with appropriately intensive support, some young people admitted to a secure setting could be sustained in an open residential unit or community-based setting.*

*10.6.3 The study also shows that thresholds for admission to secure accommodation cannot be objectively determined, but rather reflect what alternative resources are available. At the moment there is considerable variation across authorities in how secure and accommodation and 'alternatives' are used. Developing more strategic links between them is likely to increase the chance of young people spending as short a time as is necessary in secure accommodation and being helped to make sustainable changes in behaviours which harm themselves and others.*

## **WAY FORWARD ?**

2. a protocol – Ian Goldrein QC put forward suggestions in his articles published in Family Law in 2010 – attached
3. the Court, if lacking information to make a final order how the power to make an interim Order; why not then a suspended order ? The benefits of a suspended order would allow
  - a) applications to be made at an earlier date so earlier intervention
  - b) the child to have a clear understanding from the Court of the issues and consequences
  - c) better long-term planning as to the available options
4. A Secure Accommodation welfare report to be provided 7 days after the child is accommodated. This would detail :
  - a) services to be provided to include education, social, psychological/therapeutic, behaviour. Contact arrangements and long term plan to include preliminary exit strategy
  - b) the ability for the plan, like a Care Plan, to be scrutinised by the Court

5. Transitional plan arrangements – the reason for an Order have elapsed BUT time is required between the time the current Order expires and the full implementation of the plan – to make an Order would be questionable but what does the Court do ?

Secure Accommodation is a last resort but when provided it is essential that the care received by the child is of the highest quality and that services are in place immediately to address issues and then provide for the quickest possible return to their community.

At present there is a gaps – the Order is made and the child leaves but what happens in the middle, the crucial time, is neither sufficiently planned, monitored or tailored to the overall care plan for the child