M v LAMBETH BOROUGH COUNCIL (NO. 3)

Family Division

Sheldon J

8 May; 5 June 1985

Child – Ward of court – Committed to care of local authority – Direction that child be placed in secure accommodation – Function of 'review panel' – Overriding powers of High Court – Power of High Court to direct that its conclusions be made available to juvenile court

Procedure – Juvenile court – Statements tendered otherwise than by way of oral evidence – Power to receive medical reports and views expressed in and results of case conferences

Procedure – Ward of court – High Court committing ward to care of local authority and directing that he be placed in secure accommodation – Requirement that such placement be reviewed by 'review panel' – 'Review panel' merely an agent of local authority – Function of 'review panel' – Whether local authority bound by findings or recommendations of 'review panel

Wardship – Child committed to care of local authority – Court directing that child be placed in secure accommodation – Statutory requirements that authority of juvenile court required – Power of High Court to direct that its conclusions be made available to juvenile court – Power of juvenile court to have regard to those conclusions

Section 21A of the Child Care Act 1980 and the Secure Accommodation (No. 2) Regulations 1983 provide that a child in the care of a local authority shall not be placed in accommodation provided for the purpose of restricting liberty ('secure accommodation') unless, on application to a juvenile court, the court is satisfied that specified criteria are satisfied. Those statutory provisions (as amended with effect from 1 January 1984) apply, *inter alia*, to wards of court committed to the care of a local authority under s. 7(2) of the Family Law Reform Act 1969. By regs. 16 and 17 of the Regulations each local authority is required to appoint persons (the 'review panel') to review at intervals not exceeding 3 months the case of each child in secure accommodation. The 'review panel' is required to satisfy themselves that the criteria for keeping the child in secure accommodation continue to apply and that the placement of the child in such accommodation continues to be appropriate.

The child, a boy, was born in 1969. He had a disastrously unsettled history and, since the age of 5, had been a highly disturbed child. In December 1983, in wardship proceedings, he was committed to the care of a local authority under s. 7(2) of the Family Law Reform Act 1969 and the judge directed that he be kept in secure accommodation. Following the implementation of the amended s. 21A of the 1980 Act and the No. 2 Regulations, an application was made to the High Court for directions: see *M v Lambeth Borough Council* [1985] FLR 187. As a result of those directions applications were made to Lambeth juvenile court which authorized that the child be kept in secure accommodation until 18 December 1984. It was proposed to apply for a further authorization from the juvenile court but the 'review panel' were of opinion that the child should no longer remain in secure accommodation. As a result the matter was referred to the High Court for directions. Sheldon J held that the directions of the High Court were binding on the local authority whatever the view of the 'review panel': see *M v Lambeth Borough Council (No. 2)* [1985] FLR 371. As a result of the findings and directions of Sheldon J the Balham juvenile court authorized that the child be kept in secure accommodation until 17 June 1985. At a case conference involving all those responsible for the day-to-day care of the child it was unanimously agreed that the child remain in secure

accommodation until his 16th birthday on 15 August 1985. The 'review panel', however, were of opinion that the child should be released immediately. The matter was again referred to the High Court for directions, the local authority advancing the view of the 'review panel' and submitting that the effect of s. 21A and the Regulations was that, apart from the juvenile court, the only body entitled to decide whether the necessary criteria continued to exist to justify the retention of a ward in secure accommodation was the 'review panel'. The local authority further submitted that, even if the High Court were entitled to consider such matters it could not reveal its conclusions or direct that they be made known to the juvenile court to whom the matter would then have to be referred.

Held –

(1) It was a misconception to argue that the persons appointed under reg. 16 of the Secure Accommodation (No. 2) Regulations 1983 to review a child's placement in secure accommodation (the 'review panel') was the only body (apart from the juvenile court) entitled to decide whether the necessary criteria existed to justify the retention of a ward in secure accommodation. The 'review panel' was no more than an agency of the local authority. It had no statutory function or duty in regard to the first placement of a child in secure accommodation. The local authority was not obliged to follow the 'review panel's' advice or accept any findings or recommendations it might make. Section 21A of the 1980 Act and the Regulations did not affect the overriding jurisdiction of the High Court in respect of wards committed to the care of a local authority. The statutory powers of a local authority over a ward of court committed to their care, including the power of placing the ward in secure accommodation, were to be exercised subject to any directions given by the court.

M v Lambeth Borough Council (No. 2) [1985] FLR 371 followed.

Re W (A Minor) (Care Proceedings: Wardship) [1985] FLR 879 distinguished.

(2) In the exercise of its overriding jurisdiction in respect of wards committed to the care of a local authority, the High Court had power to direct that its conclusions as to the placement of a ward in secure accommodation be disclosed to the juvenile court to which, under s. 21A of the 1980 Act and the Regulations, the matter would have to be referred. The juvenile court would be entitled to have regard to those conclusions even if not presented by way of oral evidence.

Per curiam: The procedure of a juvenile court did not appear to be so limited as to prevent it from considering, for example, a relevant medical report without the attendance in person of the maker and, where matters of history were relevant, a juvenile court could be informed of the views expressed in and the result of a case conference held by a local authority and of past events other than by the direct evidence of eye-witnesses.

(3) In this case, there was overwhelming evidence that it was in the child's best interests to remain in secure accommodation for a further 2 months until his 16th birthday; also that the necessary criteria existed to authorize such a course.

Therefore an order would be made to that effect.

Statutory provisions considered

Child Care Act 1980, ss. 18, 21 and 21A
Family Law Reform Act 1969, s. 7(2)
Matrimonial Causes Act 1973 s. 43
Secure Accommodation (No. 2) Regulations 1983, regs. 8, 10, 12, 13, 16 and 17

Cases referred to in judgment

A v Liverpool City Council (1981) 2 FLR 222; [1982] AC 363; [1981] 2 WLR 948; [1981] 2 All ER 385
M v Lambeth Borough Council [1985] FLR 187
M v Lambeth Borough Council (No. 2) [1985] FLR 371
Re W (A Minor) (Care Proceedings: Wardship) [1985] FLR 879; [1985] 2 WLR 892

Cherie Booth for the plaintiff;
Barbara Calvert QC and *Barbara Slomnicka* for the first and second defendants;
Jonathan Cohen for the Official Solicitor.

Cur. adv. vult.

SHELDON J:

This is yet another example of the problems that can arise out of the provisions of s. 21A of the Child Care Act 1980, as amended, and of the Secure Accommodation (No. 2) Regulations 1983. In fact, it represents the third occasion upon which in the same context and in regard to the same ward the same local authority has sought a decision from the court. On each occasion the problem has arisen out of the highly unsatisfactory state of affairs that can result from the overlapping, and even, it may be, competing jurisdiction of the High Court, the juvenile court and the local authority or their reviewing panel in regard to the placement of wards of court in secure accommodation. It is an embarrassment to which specific attention was drawn by Balcombe J (as he then was) on the first of such occasions, now reported as *M v Lambeth Borough Council* [1985] FLR 187. Those were opinions, moreover, which, faced with a potential conflict between the view of the High Court and the reviewing panel, I endorsed in *M v Lambeth Borough Council (No. 2)* [1985] FLR 371 – the second of the occasions to which I have referred. The problem, however, has now arisen again, formulated in slightly different terms but in essence the same as before. Once again, therefore, I have decided to deliver my judgment in open court. I have done so, however, not only to restate what I consider to be the position and to meet the further submissions made by Mrs Calvert on behalf of the local authority but also because I have been led to believe that amended regulations are already in draft which will resolve the problem by providing in effect (as would seem to be possible by subs. (7)(*a*) that s. 21A and any regulations made thereunder shall not apply to wards of court. If that is so, I do urge that such regulations see the light of day and are brought into effect without further delay.

The relevant provisions of s. 21A and of the Secure Accommodation (No. 2) Regulations 1983 have already received sufficient publicity for it to be unnecessary for me now to do more than summarize their terms so far as they are relevant to the present case.

Section 21A provides by subs. (1) that:

> '. . . a child in the care of a local authority may not be placed and, if placed, may not be kept, in accommodation provided for the purpose of restraining liberty 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, it is likely that his physical, mental or moral welfare will be at risk; or
>
> (*b*) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.'

By subs. (2), read in conjunction with the Regulations (particularly

regs. 8, 10, 12 and 13) made thereunder, no such child may be kept in such (secure) accommodation for more than 72 hours without the authority of a juvenile court, to which application for such authorization is to be made as necessary by a local authority. By subs. (3), however, in such an event the duty of the juvenile court is limited to satisfying itself that the relevant criteria for keeping a child in secure accommodation have been established; and if such court:

> '. . . determines that any such criteria are established, it *shall* make an order authorizing the child to be kept in such accommodation and specifying the maximum period for which he may be so kept.' (Emphasis added.)

In addition, by subs. (7):

> 'The Secretary of State may by regulations provide . . . (*c*) that 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].'

Finally subs. (8) provides:

> 'The giving [by the juvenile court] of an authorization under this section shall not prejudice any power of any court in England or Wales or Scotland to give directions relating to the child to whom the authorization relates.'

Reference must also be made to regs. 16 and 17 made under the authority of subs. (7), which provide for the establishment by local authorities in this connection of what may be described as review panels. Thus, by reg. 16:

> 'Each local authority shall appoint at least two persons who shall review at intervals not exceeding three months the care of each child to whom these regulations apply where the child continues to be kept in secure accommodation in a community home. . . .'

So also, by reg. 17(1):

> 'The persons appointed under regulation 16 in addition to satisfying themselves in relation to each case that the criteria for keeping the child in secure accommodation continue to apply, shall satisfy themselves that the placement in such accommodation . . . continues to be appropriate and in doing so shall have regard to the welfare of the child whose case is being reviewed.'

As to the correctness of one submission made by Mrs Calvert, I have no doubt that, for so long as the present provisions stand unaltered, a child in the care of a local authority (including a ward of court committed to the authority's care pursuant to s. 7(2) of the Family Law Reform Act 1969) cannot (save for a maximum period of 72 hours) be placed or kept in

secure accommodation without the authority of a juvenile court (or, on appeal, the Crown Court) on being satisfied as to the existence of the criteria specified in s. 21A(1). As to the undesirability of such a state of affairs as regards wards of court I have no more to say, other than to refer with approval to the comments made by Balcombe J at p. 192 of the report to which I have referred.

Not content with that, however, the Lambeth Borough Council have attempted to go further by submitting that s. 21A and the No. 2 Regulations are even more restrictive of the High Court's powers in that (*a*) apart from the juvenile court the only body now entitled to decide whether the necessary criteria exist to justify the retention of a child in secure accommodation is the local authority's review panel; and (*b*) that even if the High Court were entitled to consider such matters it could not reveal its conclusions or direct that they be made known to the juvenile court to whom (if the provision of secure accommodation was thought to be necessary) the matter would then have to be referred.

The first of those two submissions appears to have been encouraged by the recent decision of the House of Lords in *Re W (A Minor)* [1985] FLR 879. In my judgment, however, the argument upon which it is founded is misconceived. That case was concerned to underline the importance of the earlier case of *A v Liverpool City Council* (1981) 2 FLR 222 which, in the words of Lord Scarman at p. 881B of the latest report:

> '. . . was an application of the profoundly important rule that where Parliament has by statute entrusted to a public authority an administrative power subject to safeguards which, however, contain no provision that the High Court is to be required to review the merits of decisions taken pursuant to the power, the High Court has no right to intervene.'

Accordingly, as in that case, the High Court could not exercise its powers in wardship where the whole object of the party instituting those proceedings was:

> '. . . to secure that the High Court would be in a position to review the decisions of the local authority on the merits of the case.'

In the present instance, however, in my opinion, the initial fallacies upon which the submissions in question have been based have resulted (*a*) from a confusion of identity between the 'review panel' and the local authority and (*b*) from a misunderstanding of the powers and duties of the 'review panel' itself. The 'review panel' is not the local authority: it is no more than an agency of the local authority, consisting of 'at least two persons' who, *ex hypothesi*, may be paid officials, social workers, councillors, or anyone with those or any other or no qualifications regarded by the local authority as suitable for the task of reviewing at intervals the case of each child in secure accommodation. Nor, be it noted, does the panel have any statutory function or duty in regard to the first placement of any such child in such accommodation. Nor is the local authority obliged to follow the panel's advice or to accept any findings or recommendations that it may make – any more than the authority is obliged to accept the advice or

recommendations of, say, their planning officer or any other official. Clearly, indeed, where (as in the present instance) the panel have rejected the unanimous advice of all persons (their own social workers, the school staff and the consultant psychiatrist) directly concerned with the child in question, it is open to the local authority likewise to reject (nor would it have been surprising if they had rejected) the conclusions of its panel and to prefer the advice of those who might be thought to be in a better position to give it. Nor, in my judgment, subject to the jurisdiction given by it to the juvenile court, does s. 21A or the Regulations made thereunder affect in any way the general powers and duties of a local authority in relation to wards committed by the court to their care pursuant to s. 7(2) of the Family Law Reform Act 1969.

Paraphrasing the combined effects of that section (particularly its subss. (2) and (3), of s. 43 (particularly subs. (5) of the Matrimonial Causes Act 1973 and of ss. 18 and 21 of the Child Care Act 1980, the statutory powers of local authorities over wards of court committed to their care (including the power of placing him in secure accommodation or in a community home of whatever nature) are to be exercised only 'subject to any directions given by the court'. Thus, in my view, as I stated in my earlier judgment (at [1985] FLR 371, 373H–374B) these are provisions which:

> '. . . give effect to and implement the well-established principles that where the care of a ward has been entrusted by the court to a local authority, although that authority has powers over the child and is entitled to exercise them, they do so only subject to the court's supervision and directions; and that all major decisions relating to that child are for the court to take.'

Nor, in my judgment, as between the court and the local authority (including its reviewing agency) has that overriding jurisdiction in the court in any way been affected by s. 21A or the Regulations in question.

I also reject the local authority's final submission that the High Court (having, in my opinion, not only the right but the duty to consider whether criteria exist to justify the ward's retention in secure accommodation) cannot disclose its conclusions or direct that they be made available to the juvenile court to whom the matter may then have to be referred. I accept, of course, that what weight the juvenile court attach to the High Court's views and how they conduct their proceedings are largely matters for them; but if they take into account (as, in my view, they are entitled to do) that the High Court's findings are likely (certainly in a difficult case) to have been reached after a longer and more detailed examination of all the facts than their own procedure and circumstances may allow, they may well regard those conclusions as being helpful in deciding the only matters that they have to consider, namely whether criteria exist to justify the retention of the child for a limited period in secure accommodation. Nor was I impressed by the argument that, as the juvenile court could only act on oral evidence, it would be improper for it to take into account in the same context the views or findings of, or the evidence given to the High Court. I would be surprised, indeed, if its procedure is necessarily so limited – so as, for example, to preclude it from considering what might be a highly

relevant medical or psychiatric report without the attendance in person of its maker; nor, when matters of history are material, or unless the problem is to be approached on a somewhat superficial basis, do I find it easy to accept that the juvenile court would (or should) not be informed, so far as they are relevant, of the views expressed in and the results of case conferences held from time to time by the local authority or (other than by direct evidence of eye-witnesses) of past events.

As to the facts of this case, my order will, I hope, have made clear not only my findings as to the necessity for the continued placement of the ward, until his 16th birthday, in secure accommodation, but also my directions to the local authority as to the steps that they are to take in that connection and thereafter. Even so, I should add something to explain my reasons for those decisions.

The ward in question was born on 15 August 1969. His past and, until December 1983, disastrously unsettled history was summarized in my earlier judgment and need not now be repeated. He is still a highly disturbed boy who, from the age of 5, has been the subject of successive references to special clinics and psychiatric centres, who was found consistently to be impossible to handle or contain and who, on 7 December 1983, as a ward of court, was committed by Booth J to the care of the Lambeth Borough Council who in turn were directed to place him in the secure accommodation provided by the Kingswood Special School at Bristol. Nor did anyone connected with the case have the slightest doubt that such a placement was in his best interests.

At that time s. 21A of the 1980 Act and the No. 2 Regulations were not in force. No further authority was required, therefore, from the juvenile court to enable that directive to be implemented, as it was. Such authority, however, was required when the question was next considered of his retention in that secure accommodation. As before, however, no one directly connected with the boy had the slightest doubt that such further retention was necessary; with the result that on 27 March 1984 the authority of the juvenile court was obtained for his continued placement for 3 months (the maximum period allowed on a first such application). The situation, moreover, was the same on 18 June 1984 when further authority was obtained from the juvenile court for the continuation of such a placement for a further 6 months.

That authority lasted until 18 December 1984. It was on the preceding day, therefore, that the matter was first referred to me to decide, in this context, what steps the local authority were next to take. On that occasion, however, I was faced not with the unanimity that previously had prevailed, but by a divergence of views between, on the one hand, all the authority's social workers connected with the case, supported by all the Kingswood staff, by the Official Solicitor acting on the child's behalf and by the well-known consultant psychiatrist, Dr Michael Heller, whose advice he had sought – all of whom were emphatic as to the need for the child's continued placement in secure accommodation – and, on the other hand, two or more of the four members of the authority's 'review panel', relatively newly appointed to consider the matter, who took the opposite view. Their reasons for so doing were so unclear that Dr Heller was provoked into commenting that the panel appeared to have been motivated by 'considerations of principle which extended beyond [the child's] case as such – a

conclusion which I refrained from endorsing in spite of some perplexity as to the panel's train of thought. In the event, however, the evidence in support of the child's continued placement at Kingswood was so overwhelming that I directed the local authority to apply to the juvenile court for a further authority to that end. That they did, and on 18 December 1984 authority was duly obtained from the Balham juvenile court for his continued placement there for a further period of 6 months.

That authority expires on 17 June next when, unless further authority for his continued placement is obtained, the child will have to leave the Kingswood unit. Once again there are ranged on one side all the local authority social workers connected with the case, all the Kingswood staff with personal knowledge of the boy, the Official Solicitor acting on his behalf and Dr Michael Heller and, on the other side, the authority's 'review panel' whose views the authority have advanced. Once again the first group are most anxious that the child should remain in secure accommodation – though now only until his 16th birthday on 15 August 1985: once again the 'review panel' appear to be determined on his release at the end (indeed, if they had their way, before the end) of his presently authorized placement. Once again, having regard to the overwhelming evidence in favour of the child remaining at the Kingswood unit for the next few months, I have found the panel's reasoning difficult to understand.

Essentially the evidence consisted of the oral evidence of Dr Heller, Mr J. Hart (the child's 'house master' of Kingswood), Mr C. Butcher and Miss V. Rogers (respectively the local authority's area co-ordinator and team leader concerned with the case) supplemented by Dr Heller's latest report of 2 May 1985 and by detailed minutes of a comprehensive case conference held at the unit on 19 April 1985 attended by all social workers and others responsible for the day-to-day care of the boy. That evidence and the conclusions of that case conference were, in effect, unanimous; that the child should remain at Kingswood until his 16th birthday, when it was hoped he would have matured sufficiently to be able to rejoin his mother in Liverpool; that, although he had recently been allowed much more freedom and that further progress in that connection was intended in preparation for his return home, it was essential that the measure of such progress (including any question as to his transfer between the secure and open wings of the Kingswood unit) should be left to the discretion of those with day-to-day responsibility for him; that if they were deprived of this discretion so as to be unable, during the period in question and whatever his behaviour, to keep him in or, if circumstances warranted it, to return him to the secure wing, there would be a serious risk of his absconding; that, although, in fact, he had not absconded again since last November, that he had not done so was due largely to the sanction provided by the unit's ability to detain him in the secure wing; and that if he were to abscond, his liability to gravitate towards the more undesirable members of the community and his innate aggressiveness which led him to pick fights with anyone, however ill-matched, exposed him to serious moral and physical risks. In these circumstances, moreover, I would refer only to a few further comments made in evidence by Dr Heller and Mr Hart. As Dr Heller put it, 'when [the child] is good, he is very good – but he has no depth and is easily put out of his stride', and it is when that happens –

when there has been some row or incident that has upset him – that he would be likely to abscond if the situation could not be dealt with by even temporary confinement. He added, 'if he does abscond at all, it will be a very significant step backwards'. So, too, in the opinion of Mr Hart, they would not be able to keep him in the open wing if they did not also retain the sanction of the secure wing in reserve; and although the circumstances of his aggression and provocative behaviour could be controlled while he was within the confines of the school, that would not be so as regards the reactions of outsiders if he were to be at liberty.

In the event, I was left in no doubt whatever not only that it was in the boy's interest that his placement at the Kingswood Unit should be continued for a further 2 months until he reaches the age of 16, but also that the necessary criteria existed to authorize such a course. My order, which has already been drawn, was framed accordingly so far as possible to lead to that result, in addition to providing for his future beyond the age of 16 and during the continuance of his wardship.

Solicitors: *Hodge Jones & Allen* agents for *Urquhart Knight & Broughton* for the mother;
Chief Solicitor to Lambeth Borough Council for the local authority;
Official Solicitor.

B.C.