M v LAMBETH BOROUGH COUNCIL (NO. 2)

Family Division

Sheldon J

17 December 1984

Child – In care of local authority – Secure accommodation – Authorization by juvenile court – Procedure

Procedure – Ward of court – Court directing that ward be placed in secure accommodation – Requirement that such placement be reviewed – Review suggesting that ward should no longer remain in secure accommodation – Duty of local authority to refer the matter to High Court before taking any steps to alter the position

Wardship – Child placed in care of local authority in wardship proceedings – Court directing that child be placed in secure accommodation – Statutory provisions requiring authority of juvenile court that child be kept in secure accommodation – Juvenile court to have regard to order or directions of High Court

The child, a boy, was born in August 1969. His mother left home in 1970, leaving the boy and three sisters with the father. The father placed all four children in the care of the Liverpool City Council and subsequently disappeared from the scene. The child had a very unsettled life and had become highly disturbed. In 1972 the mother reappeared. She removed all four children from care and took them to Northern Ireland. She was then, and remained, living with a Mr G. The family life in Northern Ireland was very unstable and the boy's behaviour gave cause for concern. In 1977 the family returned to England. The boy's disturbed state led to his reference to various children's clinics and assessment centres. In May 1979 a care order was made. He was placed in several establishments but they were all unable to control him.

In July 1983 he was moved to a community home near Liverpool where his mother, Mr G, and their daughter, S, were living. Home visits were arranged. The child absconded frequently, consorted with undesirable characters and committed a number of offences. In September 1983 the child's half-sister, S, was placed on the child abuse register following incidents of sexual misbehaviour with the boy.

In November 1983 wardship proceedings were commenced and in December 1983 Booth J committed the boy to the interim care of the Lambeth Borough Council under s. 7(2) of the Family Law Reform Act 1969 and directed that he be placed in specified secure accommodation. Following the bringing into force of new statutory provisions an application was made to the High Court for directions: see *M v Lambeth Borough Council* [1985] FLR 187. As a result of the decision of Balcombe J, applications were made to the Lambeth juvenile court which authorized the boy's placement in secure accommodation for 3 months, then, on a second application, for 6 months to 18 December 1984. It was proposed to apply for further authorization from the juvenile court, but the review panel set up under reg. 16 of the Secure Accommodation (No. 2) Regulations 1983 were of opinion that the child should no longer remain in secure accommodation. As a result the matter was referred to the court for directions.

Held –

(1) It was a well-established principle that where the care of a ward had been entrusted to a local authority, the local authority's powers were subject to the supervision and directions of the court. All major decisions relating to the ward were for the court to take. Placing or removing a ward in or from secure accommodation was clearly such a major decision, and no such step should be taken without the leave of the court. The provisions of s. 21A of the Child Care Act 1980 and the Secure

Accommodation (No. 2) Regulations 1983 did not affect those principles. Those provisions (*a*) prevented a child, even a ward, being placed in secure accommodation without an order from a juvenile court authorizing such a step, and (*b*) obliged the local authority to keep the care of any child in secure accommodation under review. If that review suggested that a ward should no longer be kept in secure accommodation it remained the duty of the local authority, before taking any step to alter the position, to refer the matter to the court for directions. The directions of the High Court would be binding on the local authority whatever the view of the panel.

(2) In this case it was clear that it was in the child's best interests to remain in secure accommodation. The evidence was overwhelming. The criteria in s. 21A(1) of the 1980 Act existed. An application should therefore be made to the juvenile court to authorize that the child be kept in secure accommodation.

Per curiam: (1) In order to avoid potential conflict between the High Court and a juvenile court, the High Court should never make an order or give directions as to the placement or retention of a ward in secure accommodation unless it was satisfied that the criteria specified in s. 21A(1) of the 1980 Act had been established. Further, it should recite that fact in any order it made or directions it gave in connection with any such placement. The juvenile court should take into account the fact that the decision of the High Court was likely to have been reached after a longer and more investigative examination of the facts than the juvenile court's procedure and circumstances allowed.

(2) Where the review panel appointed under reg. 16 of the 1983 (No. 2) Regulations were of opinion that a ward's placement in secure accommodation should cease, the local authority should not indicate to the child or his parents more than a statement that the matter was to be referred to the court for a decision.

Statutory provisions considered
Child Care Act 1980, s. 21A
Family Law Reform Act 1969, s. 7
Secure Accommodation (No. 2) Regulations 1983, regs. 8, 10, 12, 13, 16 and 17

Cases referred to in judgment
K (Ward: Secure Accommodation), Re p. 357 ante
M v Lambeth Borough Council [1985] FLR 187
Y (A Minor) (Child in Care: Access), Re [1976] Fam. 125

Cherie Booth for the local authority;
Barbara Slomnicka for the mother;
Andrew Kirkwood for the Official Solicitor.

Cur. adv. vult.

SHELDON J:
I have adjourned this case into open court because the issues that it raises or the potential issues that came to light during the course of the hearing are such that it provides a useful platform upon which to base some observations which I hope will be of help and guidance to local authorities who have to deal with some of the complications that may arise under s. 21(A) of the Child Care Act 1980 as amended, and of the Secure Accommodation (No. 2) Regulations 1983.

My observations are complementary to the judgments of Balcombe J in this same case *M v Lambeth Borough Council* [1985] FLR 187 (a decision with which, as reported in *The Times* of 2 November 1984, Hollings J agreed) and of Heilbron J on 14 December in *Re K* p. 357 *ante*.

The particular problems with which I intend to deal arise where it is proposed that a ward of court, who has been committed to the care of a local authority under s. 7(2) of the Family Law Reform Act 1969, should be placed or kept in what is described by s. 21A of the Child Care Act 1980 as amended as 'accommodation' provided for the purpose of restricting liberty' – or 'secure accommodation' as I intend, for present purposes, to refer to it.

The problems relate to the overlapping – or apparently overlapping – powers and responsibilities, in regard to such as ward, of the High Court, the local authority, the juvenile court and, it may be, of the Crown Court.

Of the law as it was before 1 January 1984, when the now amended s. 21(A) and the Secure Accommodation (No. 2) Regulations 1983 came into force, I need say little. It is dealt with, in any event, in the judgments to which I have referred of Balcombe J and Heibron J. Nevertheless, it would be useful to bear in mind some other earlier and still operative provisions of the Family Law Reform Act 1969, the Matrimonial Causes Act 1973 and the Child Care Act 1980.

The Family Law Reform Act 1969 provides:

> (*a*) by s. 7(2) that:
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> > . . .where it appears to the court that there are exceptional circumstances making it impracticable or undesirable for a ward of court to be, or to continue to be, under the care of either of his parents or of any other individual, the court may, if it thinks fit, make an order committing the care of the ward to a local authority; and thereupon Part III of the Child Care Act 1980 (which relates to the treatment of children in the care of a local authority) shall, subject to the next following subsection, apply as if the child had been received by the local authority into their care under s. 2 of that Act;
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> (*b*) by s. 7(3), in effect, that the jurisdiction of a local authority over a child committed to its care under s. 7(2) is subject to the restrictions provided by s. 43(2) to (6) of the Matrimonial Causes Act 1973.

Part III of the Child Care Act 1980 includes:

> (*a*) s. 18 which contains general provisions as to the considerations which should govern the exercise by the local authority of their powers over children in their care; and
> (*b*) s. 21 which also deals generally with their powers as to the provision of accommodation and maintenance, including, for example, that of 'maintaining him in a community home' or in a home [*per* s. 80] 'for the accommodation of children who . . . are in need of particular facilities and services'.

By s. 43(5) of the Matrimonial Causes Act 1973:

> '. . . the exercise by the local authority of their powers under ss. [18 and] 21 . . . of [the Child Care Act 1980] . . . shall be subject to any directions given by the court.'

These provisions 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 the 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. The power to place a ward in or to remove him from secure accommodation is clearly within the local authority's powers; but it is no less clearly a major decision in this context, so that no such steps can be taken by the local authority unless so directed by or without the leave of the court (save, maybe, in an emergency when, if such a step is taken, the matter must as soon as possible be referred to the court).

In my judgment, as between the court and the local authority, these principles are unaffected by the provisions either of s. 21A of the Child Care Act 1980 as amended, or of the Secure Accommodation (No.2) Regulations 1983. In general terms, all that that section and those Regulations do in this context is (*a*) to prevent a child (even a ward) from being placed or kept in secure accommodation without an order from a juvenile court 'authorizing' such a step; and (*b*) to oblige the local authority to keep the case of any child in secure accommodation under regular review. As regards a ward in their care, if that review suggests that he should no longer be kept in secure accommodation or that some other major change should be made in regard to his upbringing, it remains the duty of the local authority, before taking any step to alter the position, to refer the matter to the court for directions – directions which may agree with or depart from the views of the local authority but which, in either event, they are obliged to follow.

I refer, therefore, to the relevant provisions of s. 21(A) and of the 1983 Regulations.

The current s. 21(A) of the Child Care Act 1980, so far as is material for present purposes, is in these terms:

> '(1) Subject to the following provisions of this section, 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 –
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> (*a*) that –
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> (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.
> (2) The Secretary of State may by regulations –
> (*a*) specify –
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> (i) a maximum period beyond which a child may not be kept in such accommodation without the authority of a juvenile court; and
> (ii) a maximum period for which a juvenile court may authorize a child to be kept in such accommodation;
> (*b*) empower a juvenile court from time to time to authorize a child to be kept in such accommodation for such further period as the

regulations may specify; and

(*c*) provide that applications to a juvenile court under this section shall be made by local authorities.

(3) It shall be the duty of a juvenile court before which a child is brought by virtue of this section to determine whether any relevant criteria for keeping a child in accommodation provided for the purpose of restricting liberty are satisfied in his case; and if a court determines that any such criteria are satisfied, 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.

(4) On any adjournment of a hearing under subs. (3) above a juvenile court may make an interim order permitting the child to be kept during the period of the adjournment in accommodation provided for the purpose of restricting liberty.

(5) An appeal shall lie to the Crown Court from a decision of a juvenile court under this section.

(8) The giving of an authorization 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 authorization relates.'

The Secure Accommodation (No.2) Regulations 1983 are regulations made under that section. So far as is presently material, they provide:

(*a*) by reg.8 that '. . . applications to a juvenile court under s. 21(A). . . shall be made . . . (*b*) . . . by the responsible authority';

(*b*) by reg.10 that the maximum period beyond which a child may not be kept in secure accommodation without the authority of a juvenile court is 72 hours;

(*c*) by regs. 12 and 13 that the maximum periods for which a juvenile court may authorize a child to be kept in such accommodation are (i) on a first application, 3 months and (ii) on any subsequent application, 6 months;

(*d*) by reg.16 that each local authority must appoint at least two persons 'who shall review at intervals not exceeding 3 months' the case of each child in secure accommodation;

(*e*) by reg. 17(1) that the persons appointed under the previous regulation '. . . in addition to satisfying themselves 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';

(*f*) by reg.17(2) that in undertaking their review the persons thus appointed 'shall ascertain and take into account the views' of various interested parties, including 'the child';

(*g*) by reg.17(3) that 'the local authority shall, if practicable, inform all those whose views are required to be taken into account under para.(2) of the outcome of the review.'

As Balcombe J suggested in his earlier judgment in this case, while

accepting the principle that no child in the care of a local authority should have its liberty restricted by being placed in secure accommodation until after a judicial determination of the issue, it cannot be necessary (as it has now become in the cases of wards of court committed to the care of local authorities) for two courts (or, if the appellate jurisdiction of the Crown Court is to be included, three courts) to become involved in such judicial process. That, however, as Balcombe J decided, and as I agree, is clearly the inevitable result whenever the High Court in wardship directs that a ward is to be placed in secure accommodation; he cannot be received into such accommodation (save for a period not exceeding 72 hours) unless the placement is 'authorized' by a juvenile court.

Nor, in theory, does it follow necessarily in any particular case that the juvenile court (or, on appeal, the Crown Court) will agree with the High Court that the requisite criteria exist to enable it to 'authorize' the placement of a ward in secure accommodation; in which case, unfortunate though this would be, the matter would doubtless have to be referred back to the High Court for some other solution to be devised of the problems of the child concerned.

In the present instance, moreover, when the case was opened, an even more embarrassing and unsatisfactory picture was painted of the chaos that might result from conflict between the views not only of the High Court and the juvenile court but also of the High Court and the members of the statutory committee, subcommittee or reviewing panel appointed by the local authority under reg.16 – the suggestion (if I understand it correctly) being that before any steps could be taken by the local authority to apply to the juvenile court for the reception (or, in this case, the retention) of the ward in secure accommodation, the reviewing panel themselves would have to be satisfied that such placement continued to be appropriate, whatever the judgment of the High Court.

In fact, I have no doubt that this last proposition is untenable. In my judgment, and as I indicated earlier, the relationship in law between the High Court and the local authority as regards wards of court in the local authority's care remains as it was before s. 21A of the Child Care Act 1980 and any Regulations made thereunder came into existence. The ultimate responsibility for the ward's welfare and for all major decisions affecting him remains that of the High Court; and the local authority in the exercise of their powers in this connection still do so under the supervision and subject to the directions of the High Court. The function of the reviewing panel prescribed by reg.16 is to keep the case of any such child in secure accommodation under regular review and on such occasions to satisfy itself that the placement continues to be appropriate. If it is not so satisfied, its duty is to notify that fact to the local authority – whose obligation in turn is to report such doubts to the High Court. The High Court must then decide on the validity of the doubts so expressed and give such directions as may be appropriate to deal with the situation, including a decision as to whether the ward is to remain where he is. Whatever its decision and whatever its directions, however, they are binding on the local authority, whatever the opinion of its reviewing panel. That panel, indeed, is for the immediate future *functus officio* until the time arrives for its next review.

The possibility remains, however, that even if the High Court directs the local authority to apply to the juvenile court for its authorization for

the child to be kept in secure accommodation (directions which the local authority must obey), the juvenile court itself will not accept that the 'relevant criteria' for this purpose have been satisfied. If the matter were then to be taken to appeal (as would be the case if it were so directed by the High Court) the Crown Court too might reach the conclusion that the necessary criteria had not been established. Undoubtedly, in my opinion, any such result would be most unfortunate and embarrassing. In fact, in my view, it is most unlikely to come to pass.

In the first place, I have no doubt that the same degree of co-operation and understanding will be found in the interrelation in this context of the powers of the High Court and those of the juvenile court as have for so long existed between the High Court and local authorities. As to that co-operation and understanding, moreover, I would refer to a passage in the judgment of Ormrod LJ in *Re Y (A Minor)* [1976] Fam. 125 at p.137, which reads as follows:

> 'In such circumstances there is a potential conflict of jurisdiction between the statutory powers of local authorities and the ancient prerogative powers of the court exercising, in theory, the powers of the Queen as *parens patriae*. It is a conflict which both sides recognize, have always recognized, and as far as I am aware have always done their utmost to avoid. There is no necessity whatever in my judgment for these two parallel powers over children to lead to difficulties if both sides act with reasonable discretion and understanding of the other party's powers and interests in the matter. No court wants to embarrass a local authority, and I am quite certain that no local authority wants to oust the court, even if it does not always agree with the court's view in a particular case.'

Such observations, in my view, apply *a fortiori* to the relationships between the High Court and a juvenile court.

Accordingly, applying these precepts to practice, the High Court should never make an order or give directions in the placement or retention of a ward in secure accommodation unless it is satisfied that the criteria specified in s. 21A(1) have been established; and, in my opinion, it should recite that fact in terms in any order it makes or directions that it gives in connection with any such placement. On the other hand, particularly in what may be described as a borderline case, I have no doubt that the juvenile court will remember and take account of the fact that the decision of the High Court is likely to have been reached after hearing expert and other oral and affidavit evidence which may not have been available to the juvenile court itself, and after a longer and more investigative examination of the facts that its own procedure and circumstances allow. The wider breadth and scope of the High Court's analysis of the case, indeed, is inevitable from the facts that its conclusions must be based on all relevant factors, the welfare of the child being the first and paramount consideration – whereas the function of the juvenile court in this context is limited strictly to satisfying itself as to the existence of specific criteria. Either:

(*a*) (i) that the child has a history of absconding; and
(ii) is likely to abscond from any non-secure accommodation; and

(iii) that it is likely that if he absconds his physical, mental and moral welfare will be at risk;

or

(*b*) that if he is kept in any non-secure accommodation he is likely to injure himself or other persons.

It will be remembered also, that if these criteria are satisfied, the juvenile court *must* make the order for his admission or retention in secure accommodation; it has no discretion in the matter.

To conclude these comments as to the general law as I believe it to be, I would refer to reg.17(3) of the 1983 Regulations to the effect that, after any review carried out by the local authority panel, 'the local authority shall; *if practicable*, inform all those whose views are required to be taken into account under para. (2) of the outcome of the review'. By para. (2) those persons include '(*a*) the child and (*b*) the parent or guardian of the child, if practicable'. If the conclusion of the review body is that the status quo should be preserved, I have no comment to make. On the other hand, if, in the case of a ward of court in care, their conclusion is that his residence in secure accommodation should cease or that some major or significant change should be made in regard to his upbringing, I doubt if it is often likely to be 'practicable' or proper to inform him in terms of these conclusions – certainly not without making it abundantly clear that whether the particular proposals will be implemented is an open question yet to be decided by the High Court. In the present instance the ward (a very disturbed boy of (15) was sent by the local authority a letter beginning in these terms:

> 'Following the meeting of the secure accommodation cases reviewing subcommittee, the following decisions were made:
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> 1. That the secure accommodation order should not be renewed in December.
> 2. Lambeth social work staff to positively investigate the possibility of Christmas leave with your family.'

However those statements might have been qualified by reference to the proposals still being subject to the decision of the High Court, I have little doubt that the boy on reading that letter would take in, to the exclusion of anything else, the idea that he would be 'out' in December and that he would be having Christmas at home. One of the review panel, indeed, recorded that he was 'excited' at both prospects. His disappointment and the possible effect on him, therefore, when he is told that he will not be leaving the secure accommodation for some while yet needs no emphasis. Christmas leave, too, was very much a matter in issue – although it is now to be allowed to a limited extent. Perhaps in such a case, if a letter has to be written to the boy to comply with the Regulations, it would be better to say no more than, for example, that:

> 'The committee has decided that all questions as to whether or how long you are to stay where you are and generally as to your future, including the question of Christmas leave, are to be referred at once to the court for decision.'

So much for the law: I now turn to the facts of this case.

The ward to whom the proceedings relate is a boy who was born on 15 August 1969 and is now 15 years of age. The plaintiff, Mrs M, is his mother. The first defendants are the Lambeth Borough Council. The second defendants, whose present role is entirely passive but whose presence reflects to some extent the complexities of the child's family and upbringing, are the Liverpool City Council. The child himself, acting by the Official Solicitor as his guardian ad litem is the third defendant. His father has not been seen since 1970, after Mrs M had left home, leaving him with the charge of their three daughters and the child (then aged 1), when he placed all four children in the care of the first defendants and disappeared from the scene.

Since then and until December 1983 the child has had a disastrously unsettled life which, I have no doubt, has contributed significantly to his present highly disturbed state. I do not propose, however, to recapitulate the history in any great detail.

The child remained in care until November 1972, when he and his sisters were removed from care by Mrs M and, accompanied by a Mr G (with whom she is still living), were taken to Northern Ireland. There, in 1973, Mrs M gave birth to a fourth daughter, S, of whom Mr G is the father.

The family's way of life in Northern Ireland appears, for whatever reason, to have been very unstable with repeated moves from one address to another. In addition, by 1974, the child's destructive behaviour had led to his being referred to a child guidance clinic; in 1975 he became the victim of a lodger in their house who was convicted of buggery; in 1976 place of safety orders were made in respect of all the children, and Mrs M herself was placed on probation for shoplifting. In 1977, moreover, the child was again referred to a child psychological unit in County Antrim; and, in that same year, he, with the rest of the family, returned to England.

At that time the symptoms of the child's disturbed state were manifested by temper tantrums, excessive nail-biting, enuresis, over-eating, petty thefts and nightmares. In addition, Mrs M was complaining that he was showing aggressive behaviour towards herself and the other children. In the result, from November 1977 and during 1978 he was referred successively to the Belgrave Children's Hospital, to a special clinic at Norwood and to the South Vale Assessment Centre. On 25 May 1979, moreover, a care order was made in regard to him, and in July of that year he was admitted to Lancaster House, part of the Richmond Fellowship Group. As, however, he then proved to be beyond the control of that establishment, he was sent in October 1980 to the regional assessment centre at Redhill where, save for an interval for observation at the Maudsley Psychiatric Hospital, he remained until June 1981 when he was sent to the Cotswold Community. There, too, he proved impossible to manage; with the result that in October 1981 he was sent to Cornwall for fostering by a Mr Mitchell, one of the teaching staff at Lancaster House when he had been there. Mr Mitchell, however, also found himself unable to control the boy –with the further result that, after admissions to assessment centres in Cornwall and London, the child was placed in November 1982 in St. Benedict's Community Home in Berkshire.

In the meantime, particularly during the 2 years preceding his admission

to St. Benedict's, virtually all contact between the child and Mrs M and family had come to an end. Contact between the boy and his mother, however, was resumed on his admission to St. Benedict's, with the result that, in order to further their association, the child was moved on 3 July 1983 to St. George's Community Home in Freshfield, near Liverpool – in which city Mrs M, Mr G and their daughter S had been living for some 2 years.

It was a move which, by general agreement, was disastrous in its results. By August the child's behaviour was such that home visits were stopped. In 4 months, moreover, he had absconded some twenty-four times for varying periods, sometimes to his mother's house, but on other occasions to places as far away as Birmingham, Staines and London. He also consorted with undesirable characters including a notorious homosexual who had convictions for buggery and indecent assault on children, for one of which he had been sentenced to a term of 3 years imprisonment and for another of which he had been detained for 8 years in a mental hospital. The child himself also committed a number of offences. No less importantly in the context of this case (as I am satisfied occurred in spite of Mrs M's current denials), complaints were made by her and statements in confirmation were obtained from the daughter, S (aged 10), and the child himself of incidents of sexual misbehaviour between them which, in September 1983, led to the inclusion by the second defendants (the Liverpool City Council) of the girl's name on their child abuse register.

It was in these circumstances that, on 30 November 1983, with the acquiescence of the first defendants, the originating summons in wardship was issued: with the result that on 7 December 1983 Booth J committed the child to the interim care of the first defendants, pursuant to s. 7(2) of the Family Law Reform Act 1969 and directed that he be placed at the Special Unit, Kingswood Schools, Counterpool Road, Kingswood, Bristol. Nor has anyone doubted that that placement was entirely in the child's best interests. There, moreover, save for a period of 6 days from 20 to 26 November 1984, when he absconded and stayed at his mother's house, he has remained.

Following upon the coming into force of the provisions of the current s. 21A of the Child Care Act 1980 and the Secure Accommodation (No.2) Regulations 1983, application was made to the court for directions as to whether, having regard to Booth J's directions as to the placement of the boy at the Kingswood Special Unit, it was necessary for them to apply to the juvenile court for such a placement to be renewed. In his judgment of 21 March 1984 to which I have referred and with which I am in full agreement, Balcombe J held that it was necessary and directed them to make the application in question. In the event, on 27 March 1984, application was duly made to the Lambeth juvenile court who, treating it as a first application (as it was in fact), authorized the placement for a period of 3 months. On 18 June 1984, moreover, at the expiry of that period, a further application was made to the same court and further authority was given for the boy's continued stay there for a further period of 6 months. That period expires on 18 December 1984 when, if the child is to stay at Kingswood, a further application has to be made. It is as a prelude to this further application that the proceedings have come before me.

On this occasion, however, there was not the same unanimity of

approach as there had been on previous considerations of the problem. On this occasion, indeed, the first defendants were in the somewhat invidious position that, although all their social workers concerned with the case, supported by the Kingswood staff, were of the opinion that he should remain there, their statutory review panel of four members had decided that the child should no longer remain in secure accommodation and that other (albeit unspecified) arrangements should be made for his future. Mrs M also, for understandable reasons, supported any proposals of which the effect would be to accelerate her son's return home.

Unfortunately in one sense, Dr Michael Heller, the well-known consultant psychiatrist, in his report to the Official Solicitor by whom he had been consulted, in expressing his puzzlement that the review panel (the Lambeth Borough Council's secure accommodation cases reviewing sub-committee), although relatively fresh to the problem, had seen fit to over-rule the more or less unanimous views of their professional staff and the staff of the Kingswood Unit, had referred to the possibility that the panel were motivated by 'considerations of principle which extended beyond [the child's] case as such'. The result was to put the panel (or Mrs Janet Boating and Mr Stephen Bubb, the two of its four members who were present, more or less, throughout the hearing before me) somewhat on the defensive. In fact, however, although I doubt if I would have agreed with them, even on the evidence that they heard on 19 November 1984, I see no reason for criticizing them adversely on that account, nor for disagreeing with the views of their social workers; nor am I aware of any 'considerations of principle' alien to the child's case by which it may be said that they were influenced. As they will know, in carrying out their duties as provided by reg. 17(1) of 'satisfying themselves that the criteria for keeping the child in secure accommodation continue to apply' and 'that the placement in such accommodation continues to be appropriate', they are subject, as representatives of the local authority, to the fundamental principle stated in s. 18(1) of the Child Care Act 1980 that 'first consideration' must be given to 'the need to safeguard and promote the welfare of the child throughout his childhood'. Other considerations of principle (if any), therefore, may have little or no place in their review; in most cases, moreover, they are likely to accept the guidance of those social workers and others who are and have been for some time in regular contact with the case, particularly if their guidance is unanimous; but that is not to say that they must follow that guidance without challenge or that they are necessarily to be criticized for departing from it. As I have said, moreover, I see no reason whatever for criticizing them in the present instance. Children's cases are never easy; and often there is room for divergent views as to what should be done for the best.

However that may be, I have no doubt whatever in this case that it would be in the child's interests for him to continue to live at the Kingswood Special Unit. The evidence that I heard in favour of such a course, moreover, was so overwhelming that I do not consider it necessary to do more than give a very short summary of what it contained. Thus, although it is generally accepted that the child has made noticeable progress during the year that he has been at Kingswood, Dr Michael Heller was of the opinion that even now he 'shows a serious disorder of developing personality' of which the principal features still 'include a superficiality of

emotional response, severe incapacity to form satisfactory inter-personal relationships, lack of power to make sound reasoned judgments in respect of his needs which leads to impulsive and self-damaging conduct, and a liability to episodic aggressiveness'. He supported 'without equivocation' the recommendations that he should remain in secure accommodation, and that he was not yet ready for a move to the open wing of that unit. He concluded his report by saying that 'should steps be taken to destabilize him at this time then such prospects for normal, future personality development that exist will be seriously jeopardized if not totally lost'.

These comments, indeed, were reflected in varying degrees by Mr J.R. Hart, the residential social worker at the unit, who was emphatic that the child was not yet ready to leave the secure unit – and that he was not 'capable as yet of surviving in an open situation'; by Mr Andrew Small, the first defendant's social worker, who has been concerned with this case for the past 5 years, who added that there was a 'grave risk of his absconding if he were now to leave the secure unit' (as, indeed, he did when he was taken to Lambeth to attend the November 1984 review); and by Mr C.V. Butcher, the area co-ordinator of one of the first defendant's social service departments, who also commented that although the child had been making progress at Kingswood, there was an appreciable risk of regression and of his absconding if he were now to be removed from secure accommodation.

As the hearing developed, moreover, an increasing unanimity of approach became apparent – to the effect that while the child should remain at the Kingswood Special Unit for the indefinite future, the aim of all concerned should be to rehabilitate him with his mother and his mother's home, but that the rate at which this could be achieved would be dependant not only upon his general progress in other directions, but also upon the extent to which he is able to reintegrate himself in his mother's household. It is also clear, in my opinion, that upon such assessment must depend the decision when it will be to his benefit and a risk worth taking to move him from the secure to the open wing of the Kingswood Special Unit (both of them parts of the one wing of accommodation 'provided for the purpose of restricting liberty' within the meaning of the 1980 Act and the 1983 Regulations). Nor, having regard to the fact, *inter alia*, that it is hoped that the child will make sufficient progress to be able to take some CSE examinations in July 1985, is it likely, in my view, that it will be sensible to discharge him from Kingswood before that date. The juvenile court, therefore, should be asked to authorize his continued placement there for a further 6 months.

As to the prospects of a satisfactory and lasting reunion between the child on the one hand and his mother and her household on the other, I propose to say very little beyond the warning that it must not be assumed that the reintroduction will be an unqualified success. Nor can it be overlooked that the child's return home may well give rise to anxieties on the part of the second defendants (the Liverpool City Council) in regard to the daughter, S, who was removed from their child abuse register when the child left home, but whose name could be restored to it when contact between her and her step-brother is resumed. The latest evidence, however, is to the effect that the child's sexual behaviour during the time that he has been at Kingswood has given rise to no anxieties; so I hope that the

third defendants will not act prematurely or in any way that might endanger unnecessarily what I regard as the 'tender flower' of rehabilitation.

Such observations as I have made as to the facts of this case have been recorded not merely to help the first defendants and the Kingswood staff in their future care of the child, but also to give the juvenile court some idea of the background to and the reasons for my decision that it would be in the child's best interests to remain for the indefinite future at Kingswood Special Unit. For my part, moreover, I have no doubt that the particular criteria necessary for the boy's continued placement in a secure unit exists – namely (*a*) that he has a history of absconding, (*b*) that he is likely to abscond from any non-secure accommodation and (*c*) that if he were to abscond it is likely that his physical, mental and moral welfare would be at risk. Those conclusions, moreover, have been recited in my order and directions.

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B.C.