



New Park Court

Family Briefing

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Natalia Escoriza specialises in family law and undertakes all aspects of family work.

Following her MSc in Social and Political Theory at Edinburgh University and a period of postgraduate tutoring and research, Natalia turned to law and was called to the Bar in 2002.

In 2012 Natalia was appointed as a member of the Calderdale Education Appeals Panel, and is a qualified civil and commercial mediator.

Natalia is frequently listed in the Legal 500 as a leading individual for Family Law.



Family Briefing

by Natalia Escoriza

A Minor Tale of Woe: Deprivation of Liberty Orders and Children Over 16

In autumn last year I was instructed by a local authority in respect of a Deprivation of Liberty Order application. The young person in question was an older teenager (15 years at the start of proceeding, 16.5 years at the date of the final order) who had been the subject of a care order for two years at the date of the application; there was a history of criminal activity linked to county lines gang involvement, and subsequent family placement breakdown. The DOL order was initially made at the start of 2022 and the court had no difficulty in accepting that there was a need to restrict the liberty of the child in the way sought by the local authority, which included:

- Removing access to mobile phones, social media and internet gaming unless supervised by staff;
- Permitting placement staff to lock the front door and windows;
- Permitting placement staff to remove items of risk; and
- Permitting placement staff to use physical restraint if necessary.

There were specific difficulties in respect of the young person's mobile phone use, and these difficulties escalated during the case; one particular problem was that of the young person putting the mobile phone inside their underwear to prevent staff accessing the phone. The judgment in *Manchester City Council v P (Refusal of Restrictions on Mobile Phone) (Rev1) [2023] EWHC 133 (Fam)*, coincided with the mobile phone issue being resolved, but had this not been so and the matter had not resolved, a separate order would then have been required to deal with the difficulties, as MacDonald J stated as follows:

“In my judgment, it is not appropriate for the court to authorise the removal of, or the restriction of the use of P’s mobile phone, tablet and laptop and her access to social media in an order authorising the deprivation of her liberty for the purposes of Art 5(1) of the ECHR. I am further satisfied that the appropriate legal framework in this case for mediating the removal of, or the restriction of the use of, P’s mobile phone, tablet and laptop and use of social media is that provided to the local authority by s.33(3)(b) of the Children Act 1989. Finally, whilst I am satisfied that, were the evidence to justify it, it would be open to the local authority to apply for an order under the inherent jurisdiction authorising the use of restraint or other force in order remove P’s mobile phone, tablet and laptop from her if she refused to surrender them to confiscation, I am satisfied that such an order is not at present justified on the evidence in this case.”

At the time I took over the case the young person had been through a number of placements, none of which had proven to be successful – by the end of proceedings the money spent on one placement alone was upwards of £250,000 for a five month period yet even this placement, with all of its professional input and support, was unsuccessful. The young person did not want to be in any placement where their liberty was restricted in any way, they did not recognise the risks to themselves or that they were in any way vulnerable, they employed every technique possible to reconnect with their former associates, and they frequently placed themselves (and often their carers too) in harmful situations. The eventual outcome was one where the DOL was no longer extended, with the social work team having balanced all of the many risks and decided upon what was, frankly, the least worst option, this being the young person moving to a semi-independent placement in the local area. Even though there continued to be significant risks to the young person, and also that the placement was not supported by all of the agencies involved in the decision-making process, this was ultimately the only realistic option. At the end of the case the judge expressed their gratitude to the social worker for their tireless work in the cause of the young person, and it must be said that the social worker – and indeed the entire social work team – had done all that could possibly be done, something which was acknowledged by all parties in the matter.

This case highlighted the difficulties of placing older teenagers with troubled backgrounds; they can be immense. The fact that the local authority is making the application in the first place is an indication of how challenging the situation has become, but unfortunately the resources appear to be very few and far between. In addition, there is the age-old problem of placements initially seeming to be an appropriate fit, but upon further enquiries being made, the placement providers withdrawing on the basis of the behaviours of the young person being too difficult. Sometimes, as was the case here, a stage is reached where in spite

of everything being done that can be done, and in spite of there still continuing to be significant risks, and in spite of the social worker, guardian and parents all feeling an overwhelming sense of dread at the future, a line has to be drawn, and even if the facts justify the making of the order, the practicalities of the situation do not.

As a final note, ultimately the decision as to what placement to propose and the order accompanying it will be that of the social work team, but your view as the advocate having to argue for the order and placement being sought, will be valuable. If you need to be pragmatic and say no, we really have come to the end of the line with this, then have the courage of your convictions and say so, and I suspect that if matters have reached this stage you will be singing from the same hymn sheet as those instructing you in any event.