

## Public Law Case Law Update

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### [In the matter of Jake \(A Child\) \[2025\] EWHC 2230 \(Fam\)](#)

#### **Introduction**

This was a case concerning an application from Staffordshire County Council for an extension of a Deprivation of liberty (DOLs) Order. Specifically, it concerned the Courts ability to invoke section 100 Children Act 1989 (CA) to make a DOLS order for a sixteen-year-old boy, who was also under a licensing regime created by the youth offending team.

This judgment highlights the relationship between the court's inherent jurisdiction and a licensing regime. The Recorder declined to extend a DOLs order, when he determined the safeguarding of the relevant child was being satisfactorily completed by the youth offending team.

#### **Background [4] – [10]**

This applicant concerned Jake, who was a sixteen-year-old boy, convicted in July 2024 for three serious sexual offences. The background of Jakes life is outlined at paragraph [4] of the judgment. Without repeating the background, the most salient details are as follows:

Jake was placed into foster care at the age of 6 due to the neglect of his mother. In foster care Jake was sexually assaulted by another child in the foster placement, which led to him being placed with his paternal grandmother by way of a Special Guardianship Order. This placement broke down when his grandmother struggled with his behaviour. Due to this, he was placed in a residential home in 2023. During this time, Jake became well known to the police when he began using drugs and alcohol and absconded multiple times. This lifestyle led to Jake being remanded for three serious sexual offences in July 2024.

The Local Authority was granted a final care order on 18th December 2024. At his trial for the three sexual offences, Jake was sentenced in the crown court to two and a half years in custody. As he was due to be released from custody on 30th July 2025, the Local authority sought a DOLs order. This was made by the court on 29th July 2025 and at a hearing on 21st August 2025 the Court was to decide whether this order should continue.

The bail conditions of Jake being released are outlined at paragraph [9]. Recorder Jack outlined four particular bail conditions in full given he claimed they were controversial. These four conditions included Jake having to confine himself to an address between the house of 21:00 and 07:00 daily, to comply with any requirements specified by his supervising officer for the purpose of ensuring he addressed his sexual offending, comply with any requirements specified by his supervising officer to register and engage with his education provider and to comply with any requirements specified by his supervising officer to register and engage with housing/support networks.

## **The local authority's case [11]- [12]**

Recorder Jack outlined the local authority's case, beginning with that of the social workers evidence. The Social Worker evidence highlighted that, as part of a risk assessment, Jake scored in the red category for sexual behaviours, developmental influences, and self-regulation, which indicated a need for urgent intervention. Due to this, Jake had been assessed as posing a high risk of re-offending, serious harm to others and risk to his own safety and well-being. The Social worker explained that the level of supervision required by Jake was necessary to mitigate the risk of his potential reoffending.

The Social Worker explained that although he had served a significant amount of time on remand, he had not yet engaged in the therapeutic work to address his offending behaviour or underlying trauma from his childhood. Due to this, the social worker considered it essential that Jake *'continued to receive on-to-one support post-release alongside environmental safeguards, to manage the identified risks effectively'*.

In outlining the facilities Jake was staying at as of 7th August 2025, she explained that he had his own bathroom, kitchen, living area and bathroom and although there were no locks on the door, there were door alarms and restrictions on how the window could be open. Jake continued to be supervised 1:1 by his care team. The Local Authority therefore requested the DOLs order to be in place for a period of three months to be regularly reviewed.

## **The Guardian's position [13]-[14]**

Recorder Jack outlined the Guardians position, specifically that the Guardian did not consider a DOLs order was appropriate. The Guardian noted that although the local authority believed Jake's risks could not be managed without a DOLs order, his license stipulated a curfew, as well as stating he must reside at the current placement. The Guardian was concerned and confused that there was little preparation work completed with Jake between Children's services and the Youth Offending Services. Most importantly the Guardian argued that the Local Authority was using the DOLs order and the current placement to implement therapy which should have been addressed whilst he was at the detention centre.

The Guardian criticised the services for a lack of planning and the fact that they had not actually asked Jake whether he would live there without a DOLs order in place. The Guardian suggested that the agencies were not being transparent with Jake about why a DOLs order was necessary. The Guardian's representative focused on the case of *Re T (A Child) [2021] UKSC 35* which stated that DOLs should not be used to fill gaps with the childcare system caused by inadequate resources. Overall, the Guardian did not support the DOLs application as there was no evidence Jake would not engage in support work and therapy without it, if given the opportunity. The Guardian concluded that as the risks could be managed by the Local Authority and the Youth Offending Team, it would not be proportionate, on balance, for the DOLs order to remain in place.

## **The Local Authorities Position [15]- [16]**

Recorder Jack also outlined the Local Authority's response to the Guardians position. In response, the local authority argued that Jack's rehabilitation in the community was currently within the transitional process and whilst they agreed with the Guardian that the agencies could work together to create a safety plan, if Jake did not engage with this there would be no legal mechanism to prevent Jake from absconding or placing himself at risk.

The local authority refuted the Guardian's suggestion that they had overlooked the fact that Jake was a victim of sexual assault. They stated that the DOLs order sought was necessary as the conditions of Jake's license would not prevent him from leaving the placement or placing himself at harm. Therefore, they argued that the DOLs order would allow for a phased step-down approach which would only be implemented where necessary to keep Jake safe. The Local Authority stated it would have a further review after six weeks to consider a further step down in restrictions and then a further six weeks to establish whether the order remained necessary.

### The law [17]- [21]

Recorder Jack outlined the laws and guidelines relevant to this determination. He started by outlining section 58 Sentencing Act 2020 for the purpose of sentencing children and young persons, in order to establish the difference between the purpose of sentencing adults and children. For children, the purpose was to prevent reoffending and to have regard to welfare. Outlined at paragraph 18 of the judgment is an extract from the *Sentencing Guideline Council's guideline Sentencing Children and Young People* (in force from 1st June 2017).

Recorder Jack also explained how, when exercising the High Courts inherent jurisdiction, the test was from s1(1) CA that the 'child's welfare shall be the court's paramount consideration'. Recorder Jack highlighted the substantial overlap between the two tests but explained that one of the differences between the two was that *'this Court will obviously seek to reduce the risk of the child reoffending, but this will merely be one consideration under the paramountcy test, whereas for the Youth Offenders Team this will be a predominant factor'*.

The Recorder declined to explain how the differences between the two may affect the courts approach to making a DOLs order or whether the statutory powers for juvenile offenders could completely oust the High Court's power to exercise the inherent jurisdiction. However, the Recorder did explain that the ouster of the jurisdiction could be done on the basis that *'the criminal sentencing provisions comprise an exhaustive code for dealing with young offenders or that the Youth Offending Team (and the Secretary of State on granting or revoking an offender's licence) have the ultimate decision-making power'*. The Recorder explained that if it were true that the youth offending team did have the ultimate power, the only remedy that could be gained by the young person or his guardian would be through judicial review.

### Discussion and Conclusion [22]-[33]

Recorder Jack explained that the key concern for the Local Authority was that under the licensing conditions, Jake was free from restraint between 7am and 9pm, whereas if the DOLs were ordered he would be subject to 1:1 supervision during that period. The Recorder disagreed with the local authority's contention that without the DOLs order there would be no legal mechanism to prevent Jake from absconding or placing himself at risk. Relying on the licensing conditions, Jake could be brought back to a detention centre and incarcerated if he failed during those hours to be of good behaviour.

As well as this, taking a holistic view, the Recorder established that a step-down period would not be at odds with what was contemplated by the licensing conditions, as the conditions provided for Jake to comply with requirements set by the Youth Justice Service. However, the Court had received no evidence as to what plan the Youth Offending Team had for ensuring Jake's development. The lack of evidence is what Recorder Jack considers an *'evidential lacuna'*.

Analysing the specific wording of section 100 CA, Recorder Jack held that the Local Authority had not satisfied the statutory test, in that they had not established that Jake would be likely to suffer significant harm if the inherent jurisdiction was not exercised (s100(4)(b) CA). This is because the Youth Offenders Team would be able to manage any risk of significant harm that may be suffered by Jake.

Recorder Jack therefore held that the Court could not invoke its inherent jurisdiction due to three reasons:

- 1) The local authority were wrong in supposing there would be no sanction if Jake absconded from his placement – he would likely have his license revoked. Therefore the *'local authority's view that there is no alternative to a DOLs order is severely undermined'*.
- 2) The license conditions permit the form of 'step-down' which the local authority were contemplating doing and there is no reason to assume the youth offending team would not have regard to Jake's needs. Therefore, the Recorder concluded that there was *'no reason to suppose that Jake will not receive appropriate support for addressing his sexual offending'*.
- 3) The social work team of the local authority only had a secondary responsibility for Jake's rehabilitation; the primary responsibility fell with Staffordshire Youth Justice Services and the Youth Offenders Team responsible for Jake. Therefore, it was not for the High Court to use its inherent jurisdiction to *'micro-manage what a body such as the YOT, which operates in a specialist area of the criminal justice system for young offenders, might consider the best course for managing a particular young offender released into the community on licence'*.

Therefore, Recorder Jack refused to extend the DOLs order. However, he stated that he would be willing to give a short extension of the DOLs order to allow the local authority the time to apply for permission to appeal if they so wished. It is not known at the time of writing, whether the local authority chose to apply for permission to appeal.

### Conclusion

This Judgment appears to restate the known principle that the Court should not invoke its inherent jurisdiction to fill gaps in the childcare system or oust the jurisdiction of other services which take primary responsibility for children.

Although the Judge declined to make legal observations about the relationship between the high court's inherent jurisdiction and the youth offending team, this judgment appears to make it clear that when two teams are concerned about safeguarding a child, the inherent jurisdiction will not be used when safeguarding is being satisfactorily completed by another service.



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