Broken safety nets: unaccompanied asylum-seeking children and the inherent jurisdiction of the family court

[2024] CFLQ 171

June 2024

Child and Family Law Quarterly > 2024 > June > Case Commentary

Child and Family Law Quarterly

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Inherent jurisdiction–unaccompanied asylum seekers–Children Act 1989–protection–society–vulnerability

This article considers the unwillingness of the family court in Article 39 v Secretary of State for the Home Department *to endorse the use of the inherent jurisdiction for a group of unaccompanied asylum-seeking children who arrived in small boats on the south of England and were placed in Home Office run unregulated hotel accommodation. Shortly thereafter they fled and were reported missing. In addition to confirming the Secretary of State for Education's overall responsibility for the safeguarding of children, the case re-states the limits of the inherent jurisdiction, where there are pre-existing statutory remedies. It was held that, as the Children Act 1989 already imposes duties upon local authorities for the assessment and subsequent decision-making for children in need, no gap in law exists to justify the invocation of the inherent jurisdiction of the family court for the protection of the missing children.*

The article asserts that the decision is problematic for two reasons. First, it is at odds with the long-held use by the family court of the court's responsibility to use the inherent jurisdiction to recognise and protect the most vulnerable in society. Second, there is a misalignment with previous decisions where the inherent jurisdiction's use was sanctioned and used pragmatically in order to meet the pressing safeguarding needs of vulnerable children with settled status in the UK, despite there being no gap or lacuna in the law.

Finally, the article concludes that the inadequacy of resources provided to local authorities to meet their statutory duties and protect vulnerable children has directly led to different, discriminatory treatment and the exclusion of asylum-seeking unaccompanied children in need from statutory care and protection.

Introduction

Asylum seekers arriving by small boats on UK shores are rarely out of the news, inciting debate over policies and resources. The question of who should bear the responsibility for unaccompanied children seeking asylum (UASC)[1] was the focus of a recent decision by Lieven J in *Article 39 v Secretary of State for the Home Department*.[2] The case summarises the fractured organisation of different branches of the executive that exists for such children. It examines the intersection between these branches and the local authority duties which are contained in the Children Act 1989, revealing gaps in the provision to assist vulnerable UASC. The court stated that no gap or lacuna in the law itself exists and, therefore, that use of the inherent jurisdiction was inappropriate. This was so as the Children Act 1989 places obligations upon the local authorities in respect of children in need[3] and as such there was already a statutory remedy for these children.

The inherent jurisdiction and relationship with the Children Act 1989

The inherent jurisdiction in children cases stems from the sovereign's duty to care for vulnerable subjects and has its roots in feudal times.[4] Since the Children Act 1989 it is used most commonly in cases of medical treatment or international child abduction where the country involved is not a Hague Convention contracting state.[5]

Essentially, it provides for the inherent authority of the higher courts to make decisions that concern protection. Wide-ranging in its potential, it is to be used only where no statutory remedy is available. The court invokes the inherent jurisdiction in children cases where there is a need to make a decision on a particular aspect of the child's welfare. Applications for wardship differ from those under the inherent jurisdiction. If a child is made a ward of court (which is very rare) this allows the court to step in and make all the decisions that would ordinarily be made by a parent.[6]

The facts of the case

In early 2023, a group of UASC arrived on the south coast of England in small boats and were placed by the Home Office in temporary, unregulated accommodation with few safeguards.[7] Shortly afterwards they went missing. The applicant was a registered charity that takes its name from Article 39 of the United Nations Convention on the Rights of the Child 1989 (UNCRC).[8] Their stated aim is to fight for children's rights in institutional settings, whether that be state or privately run accommodation.[9] It asked the court to consider the use of the family court's inherent jurisdiction for this cohort of children. This could lead to a wardship application, but this was not sought. In fact, they did not ask for any specific order for the missing children. Instead, the court was asked to consider whether sufficient relevant information was available for the inherent jurisdiction's use and whether it should consider making any further orders to ward the children.[10]

Both parties in the case made reference to the Scrutiny Report commissioned by Brighton and Hove Safeguarding Children Partnership published on 28 February 2023.[11] This report considered the issue of the Partnership's response to this group of missing migrant children that had received extensive media coverage.[12]

The judgment in *Article 39* quotes the report to describe how these children were in effect in limbo.

> 'I have been informed that both the Local Authority and the Home Office are currently seeking legal advice on this incredibly important issue. At the time of writing this report the status of UASC children remains “in limbo”. They do not have looked after children or child in need status with the Local Authority and the Home Office has no statutory responsibility for their care. This creates a significant statutory gap in provision and leaves the child with no corporate parent.'[13]

Article 39's case was initiated to gain vital clarity for these children regarding their status.

Prior to this substantive hearing Lieven J, at an earlier urgent hearing, directed that details about the 76 children described as missing be provided.[14] By the time of the substantive hearing on 18 April 2023, 53 had 'aged out' of the protection of the Children Act 1989 and the subsequent provisions that would have applied had care orders been made once they reached 18 as care leavers. Only 23 children therefore came within the ambit of the Children Act 1989 by the time of the reported hearing, 22 of the children had turned 17 and one of the group was 16.[15]

The application was unsuccessful. The court found that as there was already a statutory scheme across the provisions of the Children Act giving local authorities full powers to protect children, this was 'not an appropriate case where the Court should or could exercise its wardship jurisdiction'.[16]

Background and discussion

The children went missing very soon after placement in asylum accommodation and before they were referred to the local authority under the National Transfer Scheme (NTS).[17] This scheme, allowing the transfer of UASC between local authorities, was created by the UK Government due to widely publicised problems faced by the receiving local authorities at major entry points on the south coast. In particular, they were under significant pressure to fulfil their responsibilities to UASC. The scheme was an attempt to relieve this pressure and 'level up' the position so that

receiving authorities such as Kent and Brighton and Hove would not have to solely bear the financial burden. The aim of the scheme was to ensure the safe passage from the coastal local authorities to other local authorities across the UK, including those with few UASC. The efficacy of this voluntary scheme was widely criticised[18] and in response it was amended, making it mandatory, in 2021. The impact of this was however limited and in June 2021, Kent declared that it was simply unable to look after a proportion of UASC. The Home Office stepped in and stated it would accommodate the children in local unregulated hotels pending another local authority accepting them through the transfer scheme.[19]

Throughout *Article 39*, the Home Office made clear that it had in fact no responsibilities towards the UASC, which in law remained firmly at the door of the local authority.

The case details provide cause for concern. The applicant submitted that this group of children, having crossed the Channel in small boats, were profoundly vulnerable and their placement in these hotels with little, or no safeguarding checks put them at risk of trafficking and/or exploitation. However, little attention is given to this issue in the reported judgment. Reference is merely made in the Scrutiny Report[20] that there is general evidence of missing children being criminally exploited. The judgment notes that this was a small number and distinguishes the circumstances in this case, stating that: 'There is no known organised network which is trafficking or exploiting these children'.[21] It fails to acknowledge that such a risk can still exist even if an organised network is unknown.

Identifying precisely where the responsibilities lie for keeping children safe is complex. The judgment makes clear that the responsibility for safeguarding children ultimately lies with the executive through the Secretary of State for Education, supporting the Home Office's stance and providing an apparently clear line of responsibility. Actual implementation of these safeguarding duties is delegated to the local authority by virtue of section 11 of the Children Act 2004[22] and dispersed across a variety of agencies, which blurs the line of responsibility and accountability.

The judgment acknowledges that it was 'deeply troubling' that although a number of state agencies including Sussex police were involved, no one knew where the children were.[23] However, the judge refrains from attributing any failure to safeguard the children to the authorities, noting instead that the evidence suggests that all agencies are 'fully engaged' in the task of trying to find the children.[24]

The Home Office has a statutory obligation under section 55 of the Borders, Citizenship and Immigration Act 2009 to ensure its immigration and asylum functions are discharged having regard to the safeguarding and welfare of children. The judgment is silent on this point but restates that the Home Office has no 'function' in relation to the care of UASC and no infrastructure to provide it.[25] Instead there is an emphasis upon the actions of the Home Office being driven by expediency in accommodating the children in the hotels.

Providing such accommodation does not diminish the responsibility for their safeguarding which ultimately rests with the Secretary of State for Education (the second respondent and interested party in the case). The judgment makes clear that it is the Children Act 1989 which provides the solution and that the UASC would, in all likelihood, be 'children in need' for the purposes of section 17. However, the statutory framework for local authorities to safeguard and protect UASC can only be a reality if adequately resourced by central government, by, for example, sufficient numbers of experienced social workers to carry out safeguarding duties effectively.

The decision – alignment with previous decisions?

It is long established that the inherent jurisdiction should not be used to 'cut across' or undermine a statutory scheme, nor to question discretionary decision making.[26] Lieven J in *Article 39* found that there was such an existing framework already, contained in the Children Act 1989 and the provisions would in effect do the same job as the inherent jurisdiction to protect the UASC.[27] They would be children in need for the purposes of section 17 which would then trigger the local authority's s 20 duty to accommodate them. The local authority would be obliged by s 47 to investigate if the child is suffering or likely to suffer significant harm and the making of a care/supervision order could ensue. If a

care order had been made for these children, then they would have been protected by the oversight of an Independent Reviewing Officer.[28] Such a framework was noted to be comprehensive and designed to protect children, including this particular group of children.

The problem in the case, the judge noted, was not the lack of statutory provisions but rather where the responsibilities giving rise to these obligations lay. No one knew where the missing children were and, therefore, which local authority was obliged to assess and meet the subsequent needs until the children were found. In short, the difficulties lay in the arrangements for the performance of statutory duties, not the fact that such a duty did not exist.

Prior to reaching this conclusion, the judgment cited[29] the progressive nature of the use of the inherent jurisdiction in the past, based upon concerns over care and welfare and the need to ensure that children were protected by the court acting in *parens patriae* to ensure that children were not harmed. It was noted that the family court over time in its use of the inherent jurisdiction, had shown a 'striking versatility throughout its long history in adapting its powers to the protective needs of children encompassing all kinds of different situations'.[30]

The courts have in the past found creative ways to ensure the protection of vulnerable children even where there is a statutory remedy. In *Article 39*, the court had full knowledge of the issues facing the local authorities and their inability to meet the UASC's needs. It was undisputed that, although in theory UASC could have received services through section 17, the reality was that those duties were not being met, or not in a way which provided sufficient protection. A more pragmatic approach could have been taken, aligning with the assertion made by Hayden J in *London Borough of Tower Hamlets*, where the use of the inherent jurisdiction was adopted and it was highlighted that: 'The family court system, particularly the Family Division, is, and always has been, in my view, in the vanguard of change in life and society'.[31]

This case confirmed that the inherent jurisdiction could be used where the political and social reality is that, without its invocation, these children will be left without protection.

However, with the origins in the protection of the sovereign's state subject, how would this apply to the cohort of children in this case, with an as yet undetermined immigration status? Until such time as that decision was taken, would they be outside of the potential for the protection through the inherent jurisdiction?

The applicant addressed this point by citing Munby P in *Re M (Wardship: Jurisdiction and Powers)*[32] who, when considering these issues resolutely dealt with the question:[33]

> 'This is not the occasion, and there is no need for me to explore the range of circumstances in which it may be appropriate to make a child who is outside the jurisdiction a ward of court. I merely observe that cases such as this demonstrate the continuing need for a remedy which despite its antiquity, has shown, is showing and must continue to show a remarkable adaptability to meet the ever emerging needs of an ever-changing world.'[34]

The interplay between the Children Act 1989 and international human rights standards

In *Re M* Munby also emphasised the importance of human rights, in particular Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR). As he explained 'the use of the [inherent] jurisdiction – where there is a risk to life or risk of degrading or inhuman treatment – is surely unproblematic'.

As noted in *Article 39*, the risks to the children of exploitation, in particular trafficking, were acknowledged, yet not dwelt upon. Having survived a crossing by sea, unaccompanied and undoubtedly traumatised, these children are vulnerable individuals who may place their trust in others who could exploit them. As such, they would be at risk of degrading or inhuman treatment which would breach their rights under the ECHR as identified by Munby J. We also have obligations to children from an international children's rights perspective, notably the United Nations Convention on the Rights of the Child 1989 (UNCRC).[35] The decision does not take into account the human rights of children and

young people. What it does instead is unhelpfully state that the court's hands are tied because Parliament lay responsibility for UASC at the door of the local authority, without giving them sufficient resources to meet that responsibility. In stating as such, the court implies that this is a policy matter for the executive, not the judiciary.

Understanding this issue depends upon an appreciation of how tenuously held an acceptance of children's human rights is in law and practice in the UK.[36] Article 3(1) of the UNCRC provides that the best interests of the children shall be a primary consideration 'in all actions concerning children, whether public or private social welfare institutions, courts of law, administrative authorities or legislative bodies'. Despite the UNCRC not being binding upon courts in English law, the Supreme Court made clear that welfare decisions about children should be interpreted consistently with international human rights standards, including Article 3 UNCRC.[37]

Whilst acknowledging that the provisions of the UNCRC should be brought to bear on this case, it should be noted that the best interests principle is arguably less powerful than the paramountcy principle enshrined in section 1 of the Children Act 1989. The former states that the best interest of children are *a* primary and not *the paramount* consideration, meaning that a best interests argument applied to the children in *Article 39* case could be outweighed by countervailing arguments.

The contingency of safeguarding children on the availability of resources

The decision in *Article 39* implies that theoretically children do have the stronger protection of the paramountcy principle of the Children Act 1989. Yet without adequate resourcing to fulfil statutory requirements, the protection is limited. States parties are obliged to treat the best interests of all children in the terms of the Convention without discrimination, but decisions that ultimately prioritise one group of children over another will be made.

The decision in *Article 39* does not align with previous decisions made to use the inherent jurisdiction pragmatically to ensure children are protected where resources are scarce. Although not involving UASC, two earlier decisions have drawn attention to the shortage of regulated approved accommodation. In *Re T (A Child)* and *Derby City Council v BA* placements were urgently sought and deprivation of liberty matters arose. In these cases we see a more generous interpretation on the use of the inherent jurisdiction to secure the protection and attempt to meet safeguarding responsibilities.[38]

In *Re T (A Child)*[39] the court's inherent jurisdiction was used to authorise the local authority to place a child in an unregulated care home. This was so despite the fact that this authorisation could expose the local authority to a breach of criminal law.[40] Convoluted mechanisms were used to justify the decision. This included a fudged reasoning that the decision for the placement was purely authorising the local authority to make the decision themselves, rather than the court. It was justified on the basis of meeting the overriding need of the child to be safely accommodated where no other practical alternative to meet the safeguarding needs existed.[41]

Subsequently Parliament passed the Care Planning, Placement and Case Review (England) (Amendment) Regulations 2021 as well as the Explanatory Memorandum to them. Here it was unequivocally stated that only regulated accommodation should be used for vulnerable children under the age of 16.[42]

Despite this statutory clarity, the court returned again to the point in *Derby City Council v BA*,[43] where the question was:

> 'Whether it remains open to the High Court to authorise, under its inherent jurisdiction, the deprivation of liberty of a child under the age of 16 where the placement in which the restrictions that are the subject of that authorisation will be applied is prohibited by the terms of the amended statutory scheme'[44]

In other words, the court was asking itself, can we still use the inherent jurisdiction even though Parliament has told us we cannot because in this case there are insufficient resources in place? Once again it was found that in order to meet the critical needs of vulnerable children and young people, the Regulations could be overridden using the inherent jurisdiction.

In doing so, McFarlane LJ cited the Supreme Court in *Re T (A Child)*[45] to justify the decision:

> 'All of the Justices agreed with Lady Black that, where it is necessary to do so to meet the overarching needs of the child (or to protect the safety of others), the inherent jurisdiction of the High Court must be available, notwithstanding that the underlying placement is prohibited by statute'[46]

Discrimination

In both of these cases, unregulated accommodation was considered as a last resort to meet a vulnerable child's needs. Of course, such placements are of real concern from a safeguarding perspective. They highlight the limited options that are available and the strain on resources. Equally in *Article 39*, the failure to effectively safeguard was indicative of wider resourcing issues, prompting the Home Office to place the children in the hotels. Here the children had already been placed in such accommodation unilaterally by the Home Office and so the issue that the court was deciding over the use of the inherent jurisdiction differed from the earlier cases. While *Article 39* took a strict approach to the recognition of statutory provisions that, in theory, protected the children, the two earlier cases demonstrated a willingness to use the inherent jurisdiction to meet the protection/safeguarding needs of the children and took a more relaxed approach to circumventing existing statutory obligations to protect the vulnerable.

The social and political context for the missing children in *Article 39* is ignored in the reasoning of the decision. In cases involving other vulnerable children the courts have ensured that the 'ultimate safety net'[47] of the inherent jurisdiction ensures that children are not left without protection for the most vulnerable in our society. The fact that this safety net was not available for UASC could be seen to be discriminatory.

The ancient origins of the *parens patriae* jurisdiction to protect was described over a hundred years ago, in very different circumstances in that case, but is of no less significance today.

> 'it belongs to the King, as parens patriae, having the care of those who are not able to take care of themselves, and is founded on the obvious necessity that the law should place somewhere the care of the individuals who cannot take care of themselves, particularly in cases where it is clear that some care should be thrown round them'[48]

This protection should be as much available to children seeking asylum as any other children. Ultimately, whether through the family court's inherent jurisdiction and possible wardship or by care orders made under the Children Act 1989, the care and accommodation of UASC, whether in residential or foster care, would need to be funded.

The Scrutiny Report[49] produced by Brighton and Hove Safeguarding Children Partnership referred to in *Article 39* noted how impossible it would have been if their s 20 duty to accommodate had been triggered. This would have resulted in the accommodation of 1700 children between July 2021 and February 2023 prior to any transfer to other placements if these could in fact be found.

The failure of the NTS system meant that subsequently Kent declared it would be unable to meet its statutory responsibilities and the operation of the scheme was questioned by judicial review.[50] Although Kent would accept other children into its care, in order to keep its care system open for children, it could not accept UASC, who were treated differently. The court found this to be discriminatory and although not referred to directly, at odds with Article 2 of the UNCRC.

> 'For these reasons, I have concluded as follows:
>
> (a) Kent CC was and is acting unlawfully, in breach of its duties under the CA 1989, by failing to accommodate, and then look after, all UAS children when notified of their arrival by the Home Office. In ceasing to accept responsibility for some newly arriving UAS children, while continuing to accept other children into its care, Kent CC chose to treat some UAS children differently from and less favourably than other children, because of their status as asylum seekers. This violates a fundamental aspect of the statutory scheme: that a local authority's duties under the CA 1989 apply to all children, irrespective of immigration status, on the basis of need alone.'[51]

Conclusion

The applicant, Article 39, sought clarity on the status of this group of children. It was found that UASC would be children in need within the scope of s 17 and that their protection should be via that route rather than the inherent jurisdiction. The cases show a different interpretation of the use of the inherent jurisdiction, more flexibly and pragmatically than the judgment in *Article 39*. In the application of the law, the decision does not uphold the inherent jurisdiction's tradition to provide for protection of the most vulnerable, whether asylum seeking or not, and presents a missed opportunity for the family court to once again remain in the 'vanguard of change in life and society'.[52] The lack of adequate resourcing for these children has given rise to discriminatory treatment that runs counter to our international obligation to preserve and protect all children appropriately whether with settled status or not.

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1 An unaccompanied asylum seeking child (UASC) is defined by s 352ZD of the Immigration Rules, Part 11 as one who is under the age of 18 when the claim is submitted, separated from parents and not being cared for by an adult who in law or by custom has responsibility to do so: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum.

2 [2023] EWHC 1398 (Fam), [2023] 4 WLR 58.

3 Children Act 1989, s 17.

4 J Seymour, 'Parens, Patriae and Wardship Powers: Their Nature and Origins' (1994) 14 *Oxford Journal of Legal Studies* 159.

5 The Hague Convention on the Civil Aspects of International Child Abduction 1980.

6 *T v S (Wardship)* [2011] EWHC 1608 (Fam), [2012] 1 FLR 230.

7 Paragraph [4] of the judgment notes an earlier directions hearing of 24 March 2024. The exact date when the children went missing is unknown.

8 Article 39 of the United Nations Convention on the Rights of the Child 1989: 'States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child'.

9 Including children's homes, immigration detention centres, hospital inpatient units and prisons. 'Article 39: Fighting for children's rights in institutional settings': https://article39.org.uk/who-we-are/, accessed 11 December 2023.

10 Paragraph [1] of the judgment indicates that the applicant seeks to trigger the court's inherent jurisdiction to make wardship orders, yet continues at para [12] to state that the applicant's aim is not for any specific order, but that the court may have the relevant information to make a decision.

11 C Robson, 'Unaccompanied Asylum Seeking Children (UASC) Scrutiny Paper', Brighton and Hove Safeguarding Children Partnership: UASC-Scrutiny-Report-FINAL-23-02-2023.pdf (bhscp.org.uk, February 2023).

12 Above n 2, para [14].

13 Above n 2, para [16].

14 Above n 2, para [4].

15 Above n 2, para [9]. It is recorded that of these 23, 21 are Albanian males, this appears to be the only identifying feature in the judgment. The others were too old to claim the protection of the Children Act. For more on ageing out and delay in the asylum system itself and the effect upon children and young people's mental health see H Stalford et al, *Project Findings – Lives on Hold – Our Stories Told* (LOHST Project, 2023).

16 Above n 2, para [38].

[17] National Transfer Scheme (NTS) introduced by Immigration Act 2016, s 72(3).

[18] See, for example, 'Statement UIN HCWS326 Lewis, Brandon', 7 December 2017: https://questions-statements.parliament.uk/written-statements/detail/2017-12-07/HCWS326. 'However, it is clear that there is more to do to ensure that no local authority is asked to look after more children than its local services can cope with and that the children receive the right level of care. There are approximately 4,500 unaccompanied asylum-seeking and refugee children in local authority care in England and a small number of local authorities continue to look after a disproportionately high number of unaccompanied asylum-seeking children'.

[19] See also the Divisional Court in *R (Medway Council) v Secretary of State for the Home Department and Secretary of State for Education* [2023] EWHC 377 (Admin).

[20] Above n 11, para 6.

[21] Above n 2, para 19.

[22] Children Act 2004, s 11 provides for the duty over a wide range of people and services to ensure safeguarding and child welfare, the duty and how it is applied will vary depending upon body/service/function.

[23] Above n 2, para [11].

[24] Above n 2, para [36].

[25] Above n 2, para [6] that repeats para [10] of The Divisional Court in *R (Medway Council) v Secretary of State for the Home Department and Secretary of State for Education* [2023] EWHC 377 (Admin) on this point.

[26] Above n 2, para [28]; *A v Liverpool City Council* [1982] AC 363, but see also *Attorney-General v de Keyser's Royal Hotel Ltd* [1920] AC 508.

[27] Above n 2, para [33].

[28] Above n 2, para [13].

[29] Above n 2, para [25]; Waite LJ in *Re M and N (Minors)* [1990] 1 All ER 205, at 537.

[30] Above n 2, para [25].

[31] Hayden J in *London Borough of Tower Hamlets v M* [2015] EWHC 869 (Fam), [2016] 1 All ER 182, paras [57]-–[58] cited in n 2, para [27].

[32] [2015] EWHC 1433 (Fam), [2016] 1 FLR 1055.

[33] Ibid, para [27].

[34] Ibid, para [32].

[35] UNCRC, Art 22 in particular and General Comment No 6.

[36] Until 2008 the UK held a reservation that the UNCRC should not apply to immigration control. Children seeking asylum in the UK did not have the benefit of these rights and the best interests provision of Art 3(1) only applied therefore to British citizens and those with settled status.

[37] *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166.

[38] Despite widespread concern over the use of the unregulated accommodation, see also *Re K and R (Unregulated Placement: Authorisation Pursuant to the Court's Inherent Jurisdiction: Prohibition)* [2022] EWHC 1890 (Fam).

[39] [2021] UKSC 35, [2022] AC 723.

[40] Ibid, para [166], s 11. Whether the High Court's inherent jurisdiction can be used to deprive liberty in circumstances in which a criminal offence may be committed by those carrying on or managing a children's home (in contravention of s 11 of the Care Standards Act 2000).

[41] For fuller discussion of this case and others on unregulated care homes, see R George, 'Vulnerable children in unregulated care: the unstoppable inherent jurisdiction' (2022) 44 *Journal of Social Welfare and Family Law* 1254.

[42] The Explanatory Memorandum to the Regulations (SI 2021/161) states that the purpose of the Regulations is 'to ensure that looked after children under the age of 16 are only placed in children's homes or foster care'. The 2021

Regulations amend the Care Planning, Placement and Case Review (England) Regulations 2010 by adding a new r 27A, entitled 'Prohibition on placing a child under 16 in other arrangements'.

[43] [2021] EWCA Civ 1867, [2022] Fam 351.

[44] MacDonald J's summary of issues to be addressed in: *Tameside Metropolitan Borough Council v AM* [2021] EWHC 2472 (Fam), para [1].

[45] [2021] UKSC 35, [2022] AC 723.

[46] Ibid, para [33].

[47] *Wellesley v Duke of Beaufort* (1827) 2 Russ 1, at 20.

[48] Ibid.

[49] Above n 11.

[50] *R (ECPAT) v Kent County Council; R (Brighton and Hove City Council) v Secretary of State for the Home Department* [2023] EWHC 1953 (Admin), [2024] PTSR 243.

[51] Ibid, para [213].

[52] Above n 31.