

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**  
**PRINCIPAL REGISTRY**  
**(In Private)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16 November 2007

**Before :**

**MR JUSTICE MUNBY**

-----  
**In the matter of MM (an adult)**

**Between :**

**LOCAL AUTHORITY X**  
**- and -**  
**(1) MM (by her litigation friend, the Official**  
**Solicitor)**  
**(2) KM**

**Claimant**

**Defendants**

-----  
**Ms Roshi Amirftabi** (instructed by the Acting Head of Legal and Democratic Services) for the claimant

**Mr Vikram Sachdeva** (instructed by Irwin Mitchell) for MM

**Mr Joseph O'Brien** (instructed by Goodyears) for KM

Hearing date: 9 November 2007  
-----

**Judgment**

**Mr Justice Munby :**

1. This is the coda to a judgment which I gave on 21 August 2007: *Re MM, Local Authority X v MM and anor* [2007] EWHC 2003 (Fam). I need not repeat what I said on that occasion.
2. Although in other respects I was content to approve the local authority's care plan for MM, in one major, indeed fundamental, respect I was not. The fact was, as Mr Sachdeva on her behalf pointed out, that the local authority was seeking to interfere in – indeed, control – MM's life by saying where she must live, by placing her on her own somewhere where KM was not even allowed to visit her, and by controlling KM's access to her.
3. In these circumstances, and accepting Mr Sachdeva's submission, I held that the local authority was by its own acts creating a situation where, if a breach of Article 8 was to be avoided, the local authority had to take certain positive steps – specifically, steps to

enable MM to continue, in an appropriate and dignified way, her sexual relationship with KM.

4. I said (para [163]):

“If the local authority seeks to impose on MM a regime which in fact involves a breach of her Article 8 rights – and that ... is the consequence of imposing on MM a regime which in practical terms prevents her continuing her sexual relationship with KM – then the local authority in principle has a choice. It must modify the arrangements so that there is no breach of Article 8. And in the circumstances of the present case it can do this either by abandoning its attempt to prescribe where and with whom MM lives or, if it wishes to exercise that control, by taking appropriate positive steps to enable MM to continue her sexual relationship with KM. If it seeks to do the one without shouldering the burden of doing the other, then its intervention in MM’s life is ... disproportionate. And in my judgment it involves a breach of her rights under Article 8.”

5. It was left that the local authority would prepare a suitable care plan. As I said (para [166]):

“In the first instance it is for the local authority to prepare a care plan spelling out in appropriate detail and precision what it proposes to do in order to modify the current arrangements in such a way as to avoid a breach of Article 8; specifically, if it wishes to pursue its plan for MM to remain at her current placement, what it proposes to do in order to facilitate her sexual relationship with KM. The care plan can then be considered by the court.”

I added:

“The court cannot be compelled to accept the local authority’s plan, any more than it is obliged to accept the plan propounded by a local authority bringing care proceedings under Part IV of the Children Act 1989. On the contrary, the court is required to act in the best interests of the vulnerable adult and must not – is forbidden by section 6 of the Human Rights Act 1998 to – endorse a plan which in its view involves a breach of Article 8.”

6. The local authority has produced a revised care plan dated 1 November 2007. I need not rehearse all its details. It provides for reviews of contact. More immediately important, and addressing my concerns, it includes the following:

“The judgement has stated that the local authority is obliged to facilitate contact for [MM] and [KM] to continue their sexual relationship. In order to meet this requirement [KM] is to be allowed to visit [MM] at [the independent supported living

placement], during contact periods. [KM] is to be able to access the entrance, corridor, stairs, passage, toilet and [MM]'s room. This will be subject to condition that he is not under the influence of alcohol, aggressive or abusive to any staff or resident at [the placement]. If these conditions are not met then contact is to be cancelled immediately. If [KM] does not comply with this then the police are to be called.”

That part of the care plan has to be read in conjunction with a risk assessment and risk management plan dated 2 November 2007 which there is no need for me to discuss further.

7. The local authority's care plan is supported by a statement from JS, of the local authority's community learning disabilities team, dated 1 November 2007. The care plan is endorsed by a further report from Mr Fowler in the form of a letter dated 7 November 2007. It is accepted by the Official Solicitor on MM's behalf as meeting his previously expressed concerns. KM is content also to accept it. The care plan meets my concerns and I am happy to endorse and approve it.
8. Accordingly, at the end of the final hearing on 9 November 2007 I made an order in the following terms In large measure it follows the agreed draft presented to me for my approval by Ms Amirafabi, Mr Sachdeva and Mr O'Brien but it incorporates various amendments and additions which had emerged during the course of the hearing:

“Judgment having been handed down on 21<sup>st</sup> August 2007

AND UPON consideration of the care plan dated 1st November 2007 subsequently filed by the [local authority]

AND UPON HEARING on 9<sup>th</sup> November 2007 Counsel for the [local authority], and for the Official Solicitor, and for [KM]

AND UPON [KM] undertaking to the Court:

(1) not to use or threaten violence, or to intimidate or be abusive towards [MM], the staff or the residents of the supported accommodation at which [MM] is residing; and

(2) not to remove, instruct, or encourage or assist any other party, including [MM], to remove [MM] from the accommodation provided to her by the [local authority]

AND UPON the [local authority] undertaking until 9<sup>th</sup> May 2008 to inform the Official Solicitor if three consecutive unsupervised contact sessions do not take place

AND UPON the basis that the contact ordered below shall be reviewed every four to six weeks by the parties, the minimum contact being four hours per week, and the [local authority] undertaking to invite [MM]'s advocate to attend each meeting

AND THE JUDGE (1) approving the care plan but (2) indicating in accordance with paragraph [155] of the judgment that the contact hereinafter provided for is the minimum that is acceptable

IT IS HEREBY DECLARED that:

- (1) [MM] lacks capacity:
  1. to conduct litigation on her own behalf;
  2. to make decisions as to where and with whom she should reside;
  3. to determine with whom she can have contact or associate with;
  4. to manage her own income or financial arrangements;
  5. to enter into a contract of marriage;
- (2) [MM] has capacity to consent to sexual relations;
- (3) it is the best interests of [MM] that:
  1. she resides in supported or other accommodation provided or approved by the [local authority], and that she is not removed from such accommodation without the prior consent of the [local authority];
  2. she does not have contact with [KM], other than as provided for by this order or by the direction of the [local authority] taking into account the wishes and feelings of [MM];

AND IT IS ORDERED THAT:

- 1 [MM] shall reside in supported or other accommodation provided or approved by the [local authority].
- 2 (1) [MM] shall have unsupervised contact with [KM] once per week for a period of not less than four hours. Such contact shall take place once each week between 9am and 9pm unless otherwise arranged between [MM], [KM], and the [local authority].
  - (2) Such contact may take place at the supported accommodation at which [MM] is residing or elsewhere as provided by the [local authority].
  - (3) The [local authority] and/or authorised staff at [MM]'s supported accommodation shall be at liberty to terminate such contact if [KM] uses aggressive or threatening behaviour

towards the [local authority]’s staff, the staff at the supported accommodation where [MM] is residing or to [MM] during contact.

(4) There be such other contact as may be directed by the [local authority] taking into account the wishes and feelings of [MM].

3 There be such telephone contact as may be arranged between [MM] and [KM].

4 There be liberty to the parties to apply, reserved to Mr Justice Munby if available.

5 No order as to costs.”

9. Mr O’Brien on behalf of KM indicated that KM was content to give those undertakings.
10. The order will be largely self-explanatory to anyone who has read my earlier judgment. There are just a few points that I should add by way of clarification or emphasis.
11. In the first place the local authority is entitled to the protection of a recital expressly recording that I have approved the care plan.
12. That recital, however, reflects the fact, which I emphasised at paragraph [155] and which I still regard as crucial, that the direct contact provided for in paragraph 2 of the order, namely once per week for a period of four hours, is the *minimum* that is acceptable. The order appropriately provides that the contact arrangements are to be reviewed every four to six weeks. I regard this as important, just as I believe that the reviews should be very much with a view to seeing whether either the frequency and/or the duration of the contact can be increased. It is important that MM is able to participate in this process appropriately, for her wishes and feelings are very important (see below), just as it is also important that her advocate is able to attend the review meetings.
13. The language of paragraphs 2 and 3 of the order reflects the fact that MM lacks capacity to decide these matters and therefore cannot herself “agree” to them. Accordingly any direct contact additional to that provided for by the order will be as “directed” by the local authority, though – and this, I emphasise, is very important – always having regard to MM’s wishes and feelings: see paragraphs [121]-[124]. In contrast, the indirect telephone contact, which as I made clear (see paragraphs [54], [156], [167]) does not require to be limited or supervised, is to take place as “arranged” by MM and KM.
14. It will be noted that the Official Solicitor is to remain involved for a further period of six months. I regard this as an important safeguard for MM until it has become clear that the arrangements I have authorised have settled down and are working smoothly. The period of six months is inevitably arbitrary, but bearing in mind all that has happened, and not least that MM has been in her present placement since March 2007

and that the placement seems to be working reasonably well, I think that any problems of the kind which are likely to need the Official Solicitor's assistance within the foreseeable future are likely to have manifested themselves well before May 2008.

15. It is always possible – indeed, looking to a longer future, probable – that problems may emerge which will require the court again to become involved. For that purpose I have included a liberty to apply in the order. In a case of this kind judicial continuity is, I think, very important, so I have reserved any future applications to myself, if available.