

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,  
Gloucester House, 4 Dukes Gren Avenue  
Feltham, TW14 0LR

Date: 14/06/2019

**Before :**

**HIS HONOUR JUDGE WILLANS**

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**Between :**

**THE LONDON BOROUGH OF HILLINGDON**

**Applicant**

**- and -**

**(1) The Mother**

**Respondents**

**(2) The Father**

**(3) K (by his Children's Guardian William  
Taylor)**

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**Nylah Abbasi** (instructed by **Legal Department, the London Borough of Hillingdon**)  
for the **Applicant**

**Anarkali Musgrave** (instructed by **Duncan Lewis Solicitors**) for the **First respondent**

**Martin Blount** (instructed by **Veja & Co. Solicitors**) for the **Second Respondent**

**Kate Claxton** (instructed by **McMillan William Solicitors**) for the **Third Respondent**

Hearing dates: 10-11, 14 June 2019

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**JUDGMENT**

## **His Honour Judge Willans:**

### **Introduction**

1. This judgment is given in public law care proceedings under Part IV Children Act 1989. I am asked to make a final care and placement order in respect of the child subject to the proceedings.
2. Within this judgment I will preserve anonymity for the child by using the following references:
  - i) The first respondent mother: “the mother”
  - ii) The second respondent father: “the father”
  - iii) The third respondent child: “the child” or “K”

I intend no discourtesy by using these labels. I do not otherwise anonymise the key actors to this judgment as I consider this is not required nor appropriate. I will though in the judgment avoid identification of family members and other related individuals were to do so likely to identify the child subject to these proceedings. Any reporting of this judgment must ensure the report does not in any way identify K or details which would permit K to be identified.

3. In reaching my decision I have had regard to the documents contained within the final hearing bundle; to the live evidence of Precious Mavangira (“the social worker”), the mother, the father, and William Taylor (“the guardian”), and; to the submissions made on behalf of each party by their representatives as identified on the cover page.

### **Legal principles**

4. I am required to treat K’s welfare as my paramount consideration. I approach this welfare assessment with section 1(4) of the Adoption and Children Act 2002 in mind. Given the application includes a plan for placement (adoption) I have regard to the K’s welfare throughout his life.
5. To the extent there are factual disputes to resolve then I must approach the proof of such matters having regard to the following principles. First, it will be for the party making the allegation (here the applicant) to prove the allegation. They will do so by establishing the allegation as more likely than not (‘the ordinary civil standard’). It will not be for the party subject to the allegation (here the parents) to disprove the allegation. In assessing the truth or otherwise of a matter in dispute it will be important to bear in mind all the available evidence with particular focus on the evidence given by the parents. In considering the credibility of the witnesses I caution myself as to the relatively limited light that can be shed on the question by witness demeanour. I will also bear in mind that a witness who has been shown to be untruthful on one matter can be wholly truthful on other matters. I also bear in mind the discipline that should be applied as to establishing a causative linkage between matters alleged and significant harm (see below) as explained in the authority of *Re A*.

6. The applicant seeks a care order. It is a condition to the making of such an order that the legal threshold has been crossed. This is found at section 31(2) Children Act 1989 and amounts to a finding that K has suffered significant harm arising out of the care given to him not being that which the Court would expect a reasonable parent to give or that he is at risk of suffering significant harm as a result of the care likely to be given to him if an order is not made not being that which a Court would expect to be given.
7. The orders sought in this case amount to significant interventions in the family life of these parties. The parties are entitled to respect for their private family life (Article 8). Any intervention must be assessed and justified by reference to the tests of proportionality, necessity, reasonableness and lawfulness. It is a consequence of such principle that intervention should be set at the lowest level consistent with meeting K's welfare whilst respecting family life. Any greater intervention would be disproportionate.
8. I am duty bound to consider the realistic options placed before the Court. I must ensure I examine each of those options in a fair and balanced manner. The best way to achieve this duty is to carry out a holistic analysis in which I weigh the positives and negatives of each option prior to rejecting or preferring any particular option.
9. Whilst a care order amounts to a significant intervention in family life it is much less so than a placement order which opens the door to adoption and the permanent severance of legal relationships. Such order is recognised as being an extreme intervention, is draconian in character and requires particular justification. The Court has adopted the language of 'nothing else will do' to signify the level of justification required to make such an order. Were I to conclude this was the right answer for K then I would be required to dispense with the parents' consent to such an approach (section 52 Children and Adoption Act 2002) and would only do so if K's welfare required me to so dispense.

### **The Realistic Options**

10. The applicant seeks a care order/placement order with a plan for adoption. The guardian supports these applications. This is a realistic option which demands consideration.
11. The mother and father argue for the following outcomes in the alternative:
  - i) For K to be returned to the mother if necessary under a supervision order;
  - ii) For the mother and K to be placed in a mother and baby (or other residential placement) under a care order;
  - iii) For K to be subject to a care order but not a placement order whilst the mother has time to evidence change. In the alternative the father proposed long term foster care in any event.

I intend to consider each of these options. The parents do not suggest the father should be involved in K's care. Finally, no party suggests an alternative appropriate kinship or family carer.

### **The Proceedings**

12. These proceedings commenced by an application dated 10 October 2018 and should have concluded no later than 10 April 2019 and are now in week 35. The delay largely arises from cancelled expert assessments of the parents which led to the IRH being vacated on 4 February 2019 and was relisted first to 26 February and then 23 April 2019. At the outset of the proceedings K was placed with the mother in a mother and baby placement. Sadly, that came to an end with the making of an emergency protection order on 29 October 2018 since which date K has been separated from the parents under an interim care order. In the course of the proceedings the Court has obtained a psychological assessment of both parents from Dr Branston; a parenting assessment from the social worker, and; risk assessment evidence from the Metropolitan Police. Neither Dr Branston or the risk assessing detective constable were required to attend the final hearing. The final hearing comprised live evidence and submission over the first two days following which I reserved judgment to the third day.

### **Relevant Background**

13. I note the case chronology found at C8-14 and C47-50. I also note the limited personal history provided in Dr Branston's report. The clearest understanding of background circumstances can be found in the parenting assessment at E150-159 read together with the core group and child protection minutes [section F]. I have read and keep in mind this history which I will summarise below.
14. The mother had a difficult and damaging childhood. She is aged 24 and was removed from family care and placed in care when aged 11. She remained estranged from her family for the rest of her childhood resuming contact when independent. The mother was removed due to issues of neglect but on removal significant allegations of sexual abuse were made against both her step-father and older brother. My understanding of the evidence is that these allegations have not been withdrawn. Notwithstanding this the mother resumed contact with her family, although there have been a series of volatile disagreements in the subsequent period. She is currently estranged from her parents albeit she attended Court with them for the IRH at the start of May 2019 and has been seen in public shopping with her parents. I bear in mind E150: 5.11 which details the family home environment experienced by the mother. It makes for troubling reading with a persistently high level of parental violence. The papers suggest the mother took two children to term in her teenage years (one died when very young from illness and the other was stillborn) [E24]. I note this record does not accord with account to the social worker and so I approach the record with a degree of caution. The mother's relationship history has also been problematic involving alleged domestic and sexual violence against previous partners [E157]. In the case of one partner it is accepted the partner was involved in child related sexual offending.

15. The father's history is equally troubling with removal from his family in 2006 when aged 8. There are allegations made against his father relating to sexual abuse together with allegations of his father bringing third party adults into sexual contact with him. He is now estranged from his father although in recent times he has expressed a strong emotional link to him. His home life was chaotic and his father's abuse of alcohol appears to have played a part in the difficulties. Following removal, he was subject to a serious sexual assault. The papers suggest behavioural issues as a child. He proceeded through a series of foster placements before settling into a placement when aged around 13/14. In July 2015 he was convicted in respect of a significant sexual assault on a 12-year-old child (when he was aged 17). His placement ended and he entered a therapeutic unit. Whilst in that setting he breached the rules of the unit by engaging in sexual contact with three other male residents. Subsequently he was found to have been in possession of indecent child imagery. The father left the unit in July 2017 (after 2 years). He formed his relationship with the mother in December of that year. He accepts he has retained some links with former residents at the unit.
16. The evidence suggests the parents met (via the mother's younger brother) in late 2017 with the child being conceived shortly afterwards. Their relationship has experienced turbulence with volatile separation and incidents involving third parties. The mother is reported to have been involved in respect of a high number of police all-outs in 2018. In the period following the formation of their relationship there have been a number of troubling issues:
- i) There has been volatility with separation and resumption of the parental relationship. In April 2018 there was an incident following separation when the mother was seen to be in the street shouting at the father and raising his sexual offending. This led to the father having to be rehoused.
  - ii) The mother is said to have formed a short relationship with a third party causing concerns.
  - iii) There are allegations against the parents of serious misconduct towards the father's sister.
  - iv) There have been volatile incidents involving both wider families.
17. Following birth, the mother was placed with K in a mother and baby placement. This ended on 1 November 2018 when the mother removed K from the placement and was located at the father's property. Following this K was removed into police protection. I have considered the statement of a previous social worker at C30 which details the events of that day and further details increasing concerns as to the welfare of the child in the care of the mother. The mother is currently pregnant and due to give birth at the end of this year.

### **The Evidence**

18. I bear in mind the unchallenged evidence of Dr Branston in which the following conclusions are drawn:

- i) The father has no significant deficits in his cognitive functioning. At the time of the report he was not looking to care for the child which in principle reduced risk. The expert considered his damaging and difficult childhood and the parenting he experienced would not have prepared him in any positive way to undertake a parenting role.
  - ii) The mother did not suffer from restricted cognitive functioning. She was reporting symptoms of mild to moderate depression. She finds it difficult to be alone. He suggested she might benefit from CBT and suggested a time frame of 3-12 months.
19. I have regard to the risk assessment evidence obtained from JIGSAW (DC Barrett (November 2018) The officer was of the view that at this time the father would pose a risk to individuals of similar age to his previous offending. It was difficult to quantify risk in relation to younger children albeit elsewhere the officer felt there were too many additional incidents to say the father does not hold a sexual interest in children. He considered the father was at high risk of reoffending.
20. In her written assessment the social worker expressed significant concerns as to whether the mother would keep K safe from sexual harm, emotional harm and neglect. Of the two parents she was the more able. The social worker was concerned as to the impact of the parenting relationship on the mother's ability to parent the child and was concerned as to the mother's ability to apply her parenting knowledge without a conducive support system and environment. She was concerned as to K's needs not being prioritised whilst the mother was prioritising her own needs. Further there were concerns as to K being brought into contact with risky adults having regard to the mother's difficulty in managing on her own and the problems associated with those who might fill her social network. When examined she did not accept she had failed to offer the mother an appropriate level of support or make appropriate referrals. She was asked about housing and indicated the position had not been assisted by the mother giving up her own accommodation. She acknowledged the mother had justified failures to attend contact due to poor health but pointed out these had been regular but there had been no independent evidence of ill health. She agreed the parents had a good relationship but noted this was in the context of many previous problems. She was asked about a failure to refer the mother to a resource to assist with understanding of partner sexual risk and responded that this was the mother's second partner with a sexual offending profile; the mother continues to be in denial as to risk and is showing limited insight. She felt by April 2019 (when the report was completed) the changes required were outside of the child's timescales. She questioned the suggestion that the parents had now separated and questioned whether separation was sustainable in any event. She did not agree it would not be harmful for a further period of foster care for 4 months whilst the mother sought to make changes. She agreed actual parental separation would reduce risk if maintained and commented on the protective measures that would be additionally required. She felt the parents lacked insight as to the distress suffered by K when contact was cancelled. She noted the mother was lacking insight in her failure to accept the police risk assessment. She noted the evidence that mother struggled to be on her own and felt the

evidence suggested the mother gravitated to the father more than him to her. The concerns were not just about the father but the mother's own experiences and other relationships and her ability to meet the child's emotional needs. This had been the case in the placement.

21. In her written evidence the mother accepted a need for therapy. She disagreed with the risk assessment findings based on her own experience of living with the father. An updated risk assessment would demonstrate change. The parents are engaged and they have a strong relationship however they have decided to split up for the sake of the children. Pursuant to this she is seeking to obtain replacement housing. She accepted the criticisms of her social network and confirmed that she had terminated links with both friends and family. She dealt with the concerns expressed by the social worker as to failing to attend contact and difficulties in caring for K. She did not agree she had prioritised her own needs over those of K when leaving the unit. She felt isolated in the placement and intended to go to her own property but had lost her keys and so went to the father. When examined she said she had wanted to go back to the placement but this was refused. She had expected to be referred to the Circles resource but nothing came of it. She understood the concerns about the father but knew he would not harm the children. They had decided to split on the Sunday before the hearing. She confirmed she had missed contact due to illness. She accepted the placement was an opportunity to show she could meet the child's needs and that she had left to go to the father's although it was not her intention to remain there. She disagreed she had left the child in the placement inappropriately and was distracted whilst there. She has heard the facts differently about the child pornography. She could not comment on the fathers' actions whilst in the unit as this was his past and she could only go on what she has seen in the last 18 months. She had pursued therapy but was on a long waiting list. She accepted the father had retained contact with previous residents at the unit but this was his business and they would not be allowed around the children. She was no longer in contact with her family and the parents have agreed there will be no contact with the paternal grandfather. She agreed she did leave the placement knowing the child could be removed as a result. She denied forming a relationship shortly after separating from the father in April 2018. She agreed her parents had accompanied her to Court in May 2019 but there had been an incident with her father recently. She accepted she needed to engage in therapy and agreed her own solicitor had not progressed the suggested Circle's work.
22. In his written evidence the father commented that he has reduced the level of risk he poses through the work he has undertaken and is willing to engage in further work. He felt a further reassessment of risk was required given the increased stability in his relationship with the mother and the improving picture. He noted the concerns as to cancelled contact but put this down to competing commitments and illness. He felt both he and the mother had changed. Their relationship had been volatile but they have now established a more stable relationship. He wished to care jointly with the mother but were this not possible he would agree to separating for the sake of the children. When examined he confirmed the parties have separated to put the children first. They continue to live together but the mother is looking for housing. He spoke of his employment aspirations which might take him away from home reducing risk. He would do

whatever was required including supervised contact and complying with a written agreement. He was '50/50' as to whether he was a risk after the work he has done and he did not accept the risk assessment which does not chime with what the officer is telling him. He was not minimising his offending although he thought the victim was older and felt the sexual activity was consensual. Sexual interaction in the unit was not unlawful although it broke the rules of the unit. He accepted he was a risk to young children to an extent. He thought the child pornography was adult pornography and destroyed it when he discovered the truth. He is not interested in children as he used to be. The decision to separate was mutual. He felt no consideration had been given to the fact he was also a victim of a serious sexual assault. He is happy to have therapy but needs assistance to pursue this. Although he had previously commented as to his reliance on his father, who was dominating and controlling, he was now fully separated from him and wanted nothing further to do with him. He was not concerned about the mother forming further problematic relationships as she is now focused on the children. He commented the parents would 'probably not stay in a relationship if the child did not come home'. He had disowned his sister who was harassing them in February 2019. He had not read Dr Branston's report as it makes him angry and impacts on his mental health.

23. The Guardian has provided a detailed analysis which I have considered. I have given particular consideration to his summary of the evidence base found at paragraphs 1 to 9 of the report which is too long to recite in detail. When examined he made clear his recommendation had not changed. He questioned the sustainability of the parent's separation in the light of its timing, their previous mutual commitment, the previous status of their relationship, the fact of the pregnancy and previous separations and reconciliations. He did not support a return to a placement as this would be a return to 'square one'. The mother has significant emotional needs that require addressing via therapy, this is related to her childhood and all the evidence is that the separation will not be sustained. He set out in detail the necessary changes to ensure the currently unborn child does not follow this same route. He agreed the issue of separation was not helped by the mother relinquishing her tenancy. He was unwilling to be critical of the social worker given workloads and given the difficulties in establishing a collaborative relationship following a negative assessment with a plan for adoption. The mother had created difficulties in leaving the placement. Intellectually she understood the likely consequence but her emotions overrode this and she could not help herself. Whilst the Circles resource could be used the issues here are emotional with the mother having a lack of discernment in decision making which makes her vulnerable. She needs to address these issues as per Dr Branston's recommendation for therapy. These are childhood issues suggestive of poor attachment. There are issues as to managing on her own which leave her distracted with one foot in the placement and one foot elsewhere. One can speculate on the prospects but all the evidence suggests it will make no difference. The first step must be a sustained separation. The father is motivated and there are positives but there are significant emotional issues with the mother in remaining separate and his sense is they would return to 'square one' and repeat the same experience. It would have been helpful if separation had happened earlier as all we have to go on is the parents word as to separation.



## Threshold

24. The parties agree the threshold for the making of public law orders is crossed. I was though addressed on residual disputes.

- i) There is partial acceptance of the allegation that in not keeping medical ante-natal / health appointments (3a) and peri-natal mental health appointments the mother has neglected the child's health needs and presented a risk of neglect by neglecting her own mental health needs (3b). I find these related allegations proven. In the former case there are 14 documented instances of failed/missed appointment. Given the history and surrounding circumstances it was important for such appointments to be kept. Sadly, these failures fit a broader pattern of problematic engagement. Whilst I accept there may have been limited difficulties with post going to the wrong address I cannot see on what basis this would have been an enduring problem once the mother kept an appointment and alerted the relevant medical agency to the change of address. I also find the second factor proven. The arguments for failed appointments is as dealt with above. Given the mother's history of mental health difficulties and self-harm it was important for her to remain engaged with such services particularly in circumstances in which she had stopped her medication due to the pregnancy.
- ii) I do not find the allegation as to stopping medication proven as the allegation is insufficiently supported by medical evidence.
- iii) The balance of allegation 3 (neglect) is admitted.
- iv) The factual matters relating to the father's offending profile are plainly established on the evidence. I was not persuaded by the father's evidence relating to the USB stick having considered all the evidence. My conclusion is the father took steps to destroy the item in an effort to remove evidence he had been in possession of the same. In any event it is troubling he would have been in the process of accepting unknown pornography from other residents in the setting of a unit in which the reduction of risk of future sexual harm is in question. I note the father did not act to bring the information to the knowledge of the unit. I find the overview given by DC Barrett more persuasive. As such allegations 4 (a) to (d) are established. Turning to the mother I find the allegations 4(e) and (f) proven. Sadly, the mother has demonstrated the merit of this allegation in respect of her contact with her family members despite the historical claims. The suggestion of the mother being seen shopping with her parents was not challenged. The mother accepted her parents were at Court with her for the IRH. On the facts the father is a plain risk and the mother's approach in this regard betrays a level of emotional difficulty in safeguarding herself let alone any child in her care. I appreciate she gives a different perspective as to the future and I will comment on this below however at the date of initiation of proceedings this point was clearly established. I am equally persuaded as to the allegation as to a pattern of relationships. I have considered the chronology with care and it clearly demonstrates a series of problematic relationships. I have not

been able to identify a relationship which can be viewed as being wholly positive. The mother has alleged sexual violence against at least two of her partners and a further two have a profile of sexual offending. I have no doubt the underlying cause for this can be found in the mother's emotional make up and a need for a relationship flowing from her poor childhood experiences. However this has unfortunately left her lacking in judgment and discernment (I agree with the Guardian) and this plays out through poor relationship choices on a persistent basis.

- v) The father agrees a volatile relationship but says things have improved. The mother does not agree and suggests one must apply care when considering the papers to the father with previous partners. I bear this point in mind and agree there is such a risk. However the father's concession is significant and shows some insight on his part. On my assessment of the chronology with regard to points not in issue there is supporting evidence of such volatility. The best example is the circumstances surrounding the mother's attendance at the father's property on an occasion when she was shouting in the street as to him being a 'child abuser'. This is not the only instance of volatility. I consider this allegation is made out at the relevant date although I accept there is evidence of increased stability (in terms of volatility) in more recent times. Allegation 5(b) is factually correct. There is a worrying network of concerning individuals on both sides of the family. Associated with this is equivocation as to the continuation of such relationships. In addition there have been far too many incidents in which the parents are either said to be involved or on the periphery to be simply ignored. This has been particularly so in respect of the mother in regards to who there have been multiple police records in the course of 2018. The allegation is proven.

### **Welfare Analysis (1): Section 1(4) Checklist**

#### *Ascertainable wishes*

25. The child is aged 8 months of age and has no ascertainable wishes to take into account.

#### *The child's needs*

26. K shares the needs of all children. This is for stable and predictable care and for a secure and consistent level of care. Predictable care includes both physical and emotional availability so that K can obtain the response he expects to his own emotional demands. A lack of predictability has the tendency to impact on the attachment style of the child with potential long term and highly damaging consequences.
27. The expert evidence tells me that both the mother and father have the intellectual capacity to understand the needs of a child and in principle meet such needs. The assessment evidence confirms there are of thoughtful and warm care during contact although there are some reservations. There is evidence of the father and mother being playful and attentive to the child. The picture is not entirely

negative. On the evidence I am satisfied both the mother and father love K very much. I am satisfied they do want the best for him and genuinely believe they can provide this (in the manner in which they put their case). My sense was not of being actively misled by either parent.

28. The real difficulty is as to whether the parents have the ability to apply their ability to meeting K's needs on a consistent and reliable basis. The case put before me is based on the mother caring alone. The father does not put himself forward. I am therefore particularly focused on the mother's ability in this regard.
29. Unfortunately there is a range of evidence which provides a consistent picture of her being unable to prioritise K's needs / an inability to prioritise appropriate decision making over her emotional needs. This evidence includes:
  - i) Her difficulties in maintaining medical appointments and maintaining her own medication during her pregnancy. See the threshold above. The point on medication was not established on threshold but I note the evidence of the father that the mother was told she could take the medication and he was urging her to do so.
  - ii) Her consistent difficulties leading to the involvement of the police throughout 2018. This suggests an inability to hold her own interests in mind at times of emotional turmoil and plainly questions her capacity to do so into the future.
  - iii) Her difficulties in attending contact. Whilst I have regard to the account of illness I am simply not satisfied this properly explains the level of cancellation. Of course certain ill health will prevent contact but the regularity of cancellation together with the absence of any evidence together with the history of poor engagement suggests there is an alternative explanation.
  - iv) Her conscious decision to leave the mother and baby placement despite knowing this might lead to the removal of K from her care.

Frankly I am quizzical as to the explanation for these behaviours. Given my view as to the mother's love for K I struggle (without a proper account) to fully understand this failure. However, my judgment is that the mother is easily distracted / waylaid when her emotions struggle and on such occasions she exercises poor judgment. I found the guardian's evidence spot on when he spoke of the mother finding herself in the placement with a foot both in the placement and one outside. In respect of her own position this has tragic consequences (see the impact on these proceedings) but for K the consequences are likely to be continuing significant emotional harm.

30. Ultimately I remain deeply concerned on the evidence that the mother will, despite her best intentions, struggle to keep K's needs in mind and that he will likely continue to suffer significant harm as a result. Very unfortunately facts are now conspiring against the mother in the sense that she has a very poor response to feeling isolated such that she reaches out to individuals who pose a risk to her but given her lack of positive support network she is very likely to

feel isolated with consequent impact on her emotional availability and likely reaching out. Sadly, the mother does not have a positive role model or alternative to turn to in times of crisis.

***The likely impact on the child (throughout his life) of having ceased to be a member of his family and being an adopted child***

31. The impact is likely to be significant. Such a process will very likely sever the family links entirely. Legally the relationship will be terminated. This is the draconian implication noted above. For K there will be an immediate impact in that contact will be reduced and then terminated. The evidence is that K has been distressed when contact has been cancelled and it is highly likely the process of reduction will also be distressing/damaging. However, given his age and on the basis of consistent foster care it is likely K will be resilient to this change. There are though longer term issues which cannot be ignored. In time it is likely K will come to understand his adopted status. There is a likelihood that this developing realisation will bring with it a level of emotional upset and a challenge to his sense of identity. The form and extent of this upset cannot be quantified but it is likely to arise. K will require a secure attachment with his primary care givers if he is to travel through this period and exit the other end in an emotionally stable state. There is a danger he will struggle with the knowledge and may question whether he was responsible for the fact he has not been able to remain within his birth family. He is likely to hold some level of concern as to the wellbeing of his parents. Once again this can be managed successfully if K has a solid and mutually attached relationship with his caregivers. Given his age and the likely early placement with such carers and given the expectation that such carers will have been robustly assessed the prospects for the same are good.
32. I do bear in mind the point made on behalf of the father as to the future relationship K might/might not have with his sibling to be. This is a valid point. If the children are to end up separated and particularly if the sibling was to remain at home with the mother (or parents), then this would exacerbate the potential emotional issues K would have to deal with. The difficulty with this argument is that it is impossible to evaluate what the future holds for this unborn child. It would be unfair to speculate as to the future options at this time but it must be recognised that there are a variety of potential outcomes which varying degrees of implication for K.

***The child's personal characteristics***

33. K is a young child not yet 1 year of age. He is ethnically white British. There are no other particular characteristics to bear in mind save that there has been some concern over whether he might be suffering some developmental delay. I approach this with a degree of caution given his young age; likelihood of differential development and the lack of any clinical conclusion. I bear in mind the guardian raises the issue of a potential need for higher quality care ('more than good enough care'). I am of course mindful of the observations of the last President of the Family Division that this is a misnomer and that all children require good enough care for that child. I consider the only fair way to approach

this case is on the basis that K needs a level of care required by any other child of his age.

***Any harm the child has suffered or is at risk of suffering***

34. I refer to the threshold matters above. There is a real concern as to future risk as set out within this judgment. I have commented elsewhere as to the problematic family network; the isolation of the mother and her historic and recent poor decision making in such circumstances.
35. I have regard to the evidence of parental separation and I accept this does in principle act to reduce part of the risk in the case. However, I am very cautious as to the purported separation. I have reached this view having regard to the following:
- i) The timing of the separation: The separation is said to have been decided the day before the final hearing. It has the sense of being an emotional response to the situation faced by the parents rather than a substantive and measured decision.
  - ii) There is no event which has led to the separation other than the proceedings. On the evidence I have heard the mother does not accept the father is a risk. I consider this important as there really hasn't been something which has crystallised in the parents minds which is likely to cause them to reflect when the of reconciliation arises. This is magnified given the mother will not factor in any real concern touching upon the father. In the absence of continuing proceedings I am doubtful the mother will have the resolve to maintain separation.
  - iii) This is further magnified by her character and her need for a relationship. To succeed the mother will be highly isolated. Her only remaining family link is her younger brother and he is the father's best friend.
  - iv) Post-hearing the parents will be bound to continue to live together given the mother gave up her accommodation. successful or unsuccessful this will be surrounded by strong emotions. I consider in such an emotional environment there will be a real challenge in retaining separation.

I do not suggest the parents are actively misleading the Court. I am however not persuaded the evidence of separation is at this time sufficient to draw the conclusion suggested by the parents.

36. In any event the point is well made, and within this judgment, that the issues for K do not start and end with the risk posed by his father. Left in the sole care of his mother there remain at least equivalent concerns for K's welfare.

***The relationship the child has with any relative or other relevant person and (a) the likelihood of that relationship continuing and the value of the relationship to the child; (b) the willingness and ability of such person to provide the child with a secure environment and to meet the child's needs; (c) the wishes of that person***

37. In considering this point I bear in mind that there are no alternative kinship options. Indeed each of the parents are clear that their own family should be constrained in the time they spend with K. On the evidence it seems there would need to be a robust risk assessment prior to contact being established. As such this factor is relevant in my judgment in respect of the parents alone.
38. It is clear each of the parents wish for K to remain in the family care of his mother. On their cases they are willing to separate to permit this outcome. Were this to be possible then I am confident each parent would retain a relationship with the child. I make this point conscious of the difficulties in contact. However, I am confident the father would wish to continue contact albeit its regularity is difficult to predict with accuracy. I am of the view this relationship would be of value to K. He would come to understand the father and mother as his parents and this would have meaning for him and emotional benefit if it positively sustained.
39. At the heart of this judgment must lay the ability of the mother to provide the child with good enough care. This is not intended to be a high hurdle. There are positive features which deserve to be noted. This is not a case with drink/drugs concerns. The mother does not suffer from a cognitive deficit and has the intellectual capacity to know what is required. She loves K and is expressing a commitment to him as seen in her expressed willingness to separate from the father. However, the concerns are significant. I have pointed to her inability to prioritise K and her tendency to be distracted by her emotional needs. I bear in mind the lack of a positive support network and the impact on the mother of social isolation. Despite her protestations the evidence does suggest she responds to isolation by forming relationships which are damaging and would be risky for K in particular. As noted above I remain doubtful as to the sustainability of the separation but in truth I judge were it sustained then it is likely it would be replaced by a different relationship and based on her relationship history this must itself be viewed with concern.
40. I agree with the guardian in his assessment of a need for the mother to address her underlying difficulties which are deep seated and derive from her own experience of childhood as a precursor to real progress. The timetable for this is measured in months (at least 3 and more likely closer to 12 months). In summary I am left with very real concerns as to the ability of the mother to provide a secure environment in which to raise the child.

### **Welfare Analysis (2): Holistic Assessment**

41. The option of placement with the mother has clear positives in permitting the continuation of biological family care. It permits K the opportunity to grow up within his birth family and other things being equal this is likely to be the most secure environment in which to meet the challenges of life. Beyond this such a placement offers the opportunity for K to retain a relationship with his father. It avoids the future emotional risks noted above. It fully respects the family's right to respect for their family life. However, on the evidence it would be a plan surrounded with continuing concern for K's welfare. The risks identified could only be ameliorated by the mother being placed into a supervisory setting. To place K with her unsupervised would leave him at unacceptable risk. The

consequence is as the guardian observed to place K back to 'square one' and there is clear evidence as to the struggle this posed for the mother. The concern is that any failure would be one in which K was placed at real risk of significant harm. Further, pending the mother engaging with therapeutic support it is likely she will remain emotionally unavailable from time to time. The timescales for work are long within the context of K's timescales and the prognosis must be guarded given the mother's evident difficulties in engaging with professionals within these proceedings. I am also troubled by the mother's lack of insight as to risk surrounding the father. Ultimately she values her own judgment over professional assessment notwithstanding her own assessment has in the past been seen to be poor and clouded by emotional need.

42. Adoption has the positives of providing an opportunity for permanence for K in a family in which he has a legal and emotional place. It is fair to assume the likely carers would be committed to caring and would have been appropriately assessed as to security of care they could provide. Such a placement would have the benefits found in a natural family setting albeit this would not be a biological placement. However, adoption can fail although given his age I consider the risk is lower than it might be in the case of an older child who has a real sense of identity and family. The most obvious negative is as to the termination of family life and the severance of K from his birth family. This stark outcome has been acknowledged within this judgment and I bear this in mind.
43. The option of separation under a care order but not placement (long term foster care) has the attraction of permitting ongoing contact between K and his family. Ultimately it is permitting of a future application to discharge the care order and leaves open the hope of rehabilitation. The current placement demonstrates that a good foster carer can bring many positives to the life of a child. However, such a placement would not be a permanent home. It would have an inherent instability and in the case of a child of K's age this would be an unusual outcome. The problem is that K would not have an emotional home equivalent to that with his parents or in adoption and he would quickly come to understand this. A lack of emotional permanence is likely to be damaging for K and any disturbance in placement is likely to be highly problematic. In reality contact would likely be restricted and this would be a further complication when addressing K's emotional needs. K would be subject to regular reviews and medicals and this will highlight his different status when compared to other children at school. This will tend to set him aside from his peers and stigmatise him when compared to them. This is a further significant concern. In considering this option I bear in mind the authority of *Re V per Black LJ*. (as was).
44. In considering this option I bear in mind I am being asked to think about this as a long term option or a holding position. My comments are particularly pertinent to the longterm option. In respect of the holding position option I reflect on K's timescales and the concerns I have as to engagement and prognosis. I bear in mind K is entering a period when his attachments will start to be laid down. In my assessment the Court should be looking to assess final outcomes now rather than acting on the basis of temporary and uncertain plans.

## Conclusions

45. I do not consider long term foster care is the right answer for K. It amounts to a half-way house which fails to meet K's need for a permanent home. On the facts I am not it would be merely a holding position. I do not consider it is consistent with K's welfare needs. I have considered the other options with care. I bear in mind my welfare analysis and remind myself I am considering K's welfare throughout his life. I bear in mind the evidence and the draconian nature of the proposed order. Sadly, I have concluded the only option that will meet K's needs on the evidence is for K to be placed for adoption. Anything short of this will leave him subject to the significant harm identified within this judgment. Pending dealing with her difficulties the mother does not offer a stable and secure placement for K. The timelines for her to make the necessary changes are at this point uncertain and not within K's timescales. He requires an answer now and the mother is not placed to provide the care he needs.
46. I approve the care plan and make a care order. I also make a placement order. In doing so I consider that nothing short of this will meet his welfare needs. I dispense with the parents consent as K's welfare requires me to do so. I consider the question of proportionality and conclude that this outcome is measured and is an interference set at the lowest level consistent with respect for family life. The alternative options will not safeguard K. The risks are real and significant. K is likely to suffer life long harm if they prevail. In such circumstances the interference despite being profound is required. It is a necessary and reasonable response in the light of my welfare assessment. It is plainly lawful.
47. This is a tragic outcome for the parents. In saying this I do not discriminate between them. What is more troubling is that the mother is pregnant and due to give birth at the end of this year. Change is required if it is not to be repeated. Having regard to the period of 6 months until likely birth and the potential timeline for any proceedings there is at least 12 months available to demonstrate a change in attitude and commitment. I endorse the guardian's summary of those steps that are now required. Each can be started if not completed within the next year. As the guardian indicated sustained separation can be evidenced. I agree therapy is the key piece of work to be done but also agree the Circles referral has likely benefit. This can be pursued and possibly completed within the next period. Even were this not possible evidence of commencement and commitment would be invaluable. I would encourage the mother and father to reflect on the advice and do their utmost to put it into effect.

His Honour Judge Willans