

**MISS RECORDER HENLEY**

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**Before:**

**MISS RECORDER HENLEY**

**IN THE FAMILY COURT  
SITTING AT NEWCASTLE UPON TYNE  
In the matter of the Children Act 1989**

**Case No. NE17C00739**

**In the matter of**

**J (born in the month of October 2017)**

**BETWEEN:**

**LA**

**Applicant**

**-and-**

**(1) M**

**(2) F**

**(3) J**

**(A Minor acting through her Children’s Guardian, Michelle Thompson)**

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**JUDGMENT**

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## Representation

Applicant – Mr O’Neill (Counsel)

Respondent Mother – Miss Sutherland (Solicitor)

Respondent Father – Miss Shields (Counsel)

Respondent Children – Miss Hartridge (Counsel)

## Introduction

1. The Court is concerned with J (born in the month of October 2017) now aged almost 10 months old.
2. The Mother is M. The Mother has a full scale IQ of 66, she does not formally meet the criteria for learning disability but does have learning difficulties with deficits in her cognitive and intellectual functioning. She has been assessed as having litigation capacity by Dr Julie Thorpe, Consultant Psychiatrist in Forensic Learning Disability Services and has undergone a cognitive assessment carried out by Dr Stephanie Hill, Consultant in Clinical and Forensic Psychology during these proceedings.
3. The Father is F. The Father has been assessed as having a full scale IQ of 85, placing him in the low average range. He has been diagnosed as suffering from a personality disorder which can present difficulties for him in taking on board information due to anxiety and confusion, and in Dr Hill’s opinion also as a consequence of frustration and paranoia. Dr Hill considers that the main barrier to him understanding information is his psychological state. The Father does have capacity to litigate. Both parents share Parental Responsibility for J.
4. Neither parent requires an Intermediary in order to understand and participate in these proceedings although each require regular breaks to assist them to process information which I have accommodated. During this hearing the Mother has been

supported by an advocate, her social worker and an additional support worker as well as being legally represented. The Father has had a support worker for the second day and half of the third day. It would have been of assistance for him to be supported in this way throughout the hearing and it is highly regrettable that he has not been.

5. The children are represented by their Children's Guardian, Michelle Thomas.
6. These proceedings were issued on 13<sup>th</sup> October 2017, the 26 week timetable for this case expired on 13<sup>th</sup> April 2018. This case was originally listed before HHJ Hardy on 11<sup>th</sup> June 2018 for a final hearing with a time estimate of half a day on the basis that the parents did not seek to challenge any of the evidence and simply sought for the Mother to give evidence and for the case to then proceed to submissions. That hearing was adjourned as counsel acting for the Mother at that hearing advised that the Mother did wish to challenge the evidence, did not accept that the threshold criteria was crossed and because she questioned the Mother's litigation capacity. The Mother's capacity was therefore assessed for a third time in these proceedings by Dr Thorpe who concluded that she had litigation capacity and filed a certificate accordingly dated 19<sup>th</sup> July 2018. The matter was timetabled through to a final hearing on 8<sup>th</sup> October 2018 with a time estimate of 3.5 days. This matter then went before the Designated Family Judge for review on 18<sup>th</sup>, 23<sup>rd</sup> and 30<sup>th</sup> July 2018 who listed the matter for final hearing commencing on 1<sup>st</sup> August 2018 with a time estimate of 3 days. This final hearing took place on 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> August 2018 and I give judgment today, 8<sup>th</sup> August 2018.
7. J was made the subject of an Interim Care Order on 13<sup>th</sup> October 2017 sanctioning her removal to local authority foster care, upon discharge from hospital following her birth.
8. J remains in foster care to date, pursuant to an Interim Care Order.

9. The Father attended this hearing and fully participated in it on Wednesday 1<sup>st</sup> August and Thursday 2<sup>nd</sup> August 2018. On 2<sup>nd</sup> August 2018 he had the additional benefit of a support worker to assist him. He consistently expressed a wish to give evidence in these proceedings. At the end of the Court day on Thursday it was anticipated that he would be returning to give evidence the following morning. The Father unexpectedly failed to attend Court. The Mother indicated that she had seen him at 8.30am that morning but not since that time when he had left to collect his Subutex prescription, she added that he is unable to function without it. Since that time she had been unable to contact him. His support worker stated that the Father's phone appeared to be switched off when he had attempted to contact him. I had made clear to the parents at the outset of the hearing that the hearing was listed for 3 days, that we would sit between 10.30am and 4.30pm each day and that unless there was a good reason why the matter could not proceed, I would continue with the case whether they chose to attend or not. The Father was very clear in his response to me that he understood that.
  
10. In the Father's absence on Friday 3<sup>rd</sup> August 2018, I was invited to continue to hear the evidence of the Children's Guardian by his counsel on the basis that she was content to proceed. I heard her evidence and then stood the matter down to allow further attempts to be made to contact the Father. The Father then attended Court and I heard his evidence. I had the Guardian recalled to comment upon the Father's evidence, which had represented a change in position. I then proceeded to hear submissions. I warned the parents that I would not permit any further interruptions and that if they could not sit and listen to the submissions quietly then they would need to wait outside. They said that they would listen quietly.
  
11. During the course of submissions the Mother reacted in a verbally abusive and aggressive way towards counsel for the local authority during the local authority's submissions. I asked her to leave the Courtroom and on the way out of the room she made a threat of physical harm to the social worker. I took the view that it was necessary to exclude her from the remainder of the submissions and that she was

not prejudiced by that decision as her advocate remained in Court in her absence. The Mother's behaviour posed a safety risk to the professionals in the room and was disrupting my ability to conclude the hearing.

12. It has been necessary for me to hand down this judgment in the absence of the parents, following my announcement of my decision due to their behaviour and in particular the Mother's threats of physical harm made towards me. I have done so in the presence of the legal representatives for each party and on the basis that a copy of this written judgment would be provided to them today.

### Background

13. J is the parents' second child. Their first child, S (born in the month of April 2011) was the subject of care proceedings which concluded on 20<sup>th</sup> July 2012 with the making of a Special Guardianship Order in favour of his paternal grandmother, PGM, the placement was supported with the making of a 12 month Supervision Order. The parents have supervised contact with S. S was placed in a mother and baby unit with the Mother shortly after his birth but unfortunately the Mother was unable to provide him with good enough care within this supported environment and he was removed from her care when he was around 4 months old.
14. The parents were assessed using the PAMS model of assessment pre birth by Mrs Deborah Gaskin, Independent Social Worker. That assessment concluded that J could not be safely cared for by the parents from birth but that the assessment would need to be updated once she was born and that this should be conducted through supervised contact sessions to ensure that J was safe during the assessment period. She specifically considered whether a placement in a mother and baby unit was appropriate from birth and concluded that it was not.
15. J was accordingly removed from the care of the parents at birth, pursuant to an Interim Care Order and has been placed in local authority foster care since that time.

16. The background concerns which prompted the LA's intervention with the family include risk of neglect; perceived volatility in the parents' relationship which presents a risk of significant physical and emotional harm to a child and doubts as to whether the parents would be able to consistently meet the basic care needs of a child in circumstances in which they each require support to manage day to day living. The Father has a history of alcohol and substance misuse, including use of heroin. Both parents are vulnerable adults.

### Threshold Criteria

17. The Mother does not accept that the threshold criteria for the making of public law orders pursuant to s.31 Children Act 1989 is crossed.

18. The Mother does accept that she suffers from a mild learning difficulty and that the parents have an older child who was the subject of previous care proceedings and who resides in a family placement. She accepts that that child was removed from the parents' care as an infant due to serious concerns regarding neglect.

19. The Father makes some concessions in respect of the findings sought in his parental response document dated 7<sup>th</sup> December 2017. In particular, he accepts:

(a) That he suffers from a dependent-avoidant personality disorder and suffers from anxiety. He struggles with most aspects of independent living;

(b) That he presents as vulnerable and has recently been observed with unexplained injuries

(c) That the parents have an older child who was the subject of previous care proceedings who resides in a family placement. That child was removed from the parents' care as an infant due to serious concerns regarding neglect

(d) That the parents have a volatile relationship. The Mother has been observed being verbally abusive towards the father and exerting control over him

- (e) The Father also agrees that in the past the Mother has lacked insight into the concerns around her parenting abilities and failed to understand the reasons for the removal of their eldest child in 2011.
- (f) The Father admits to being an alcoholic but states that has not drunk alcohol for ten years. He acknowledges that he has been on Subutex for ten years and engages well with Plummer Court.

20. It is therefore necessary for the Court to make factual determinations in respect of the findings sought. Those findings are:

- (a) That the Mother is not able to manage the changing needs of a growing and developing child
- (b) That the parents possess poor budgeting skills and the mother has an appointee in relation to her money
- (c) That the Mother was observed by hospital staff struggling to meet the baby's needs following her birth. The Mother required prompts to meet the child's needs.
- (d) That the parents have a volatile relationship, which is intense, and co-dependent. The Mother has been observed being verbally abusive towards the Father and exerting control over him. A child in their care would be exposed to the volatility in the parents' relationship.
- (e) That the Mother's behaviour is unpredictable and she is prone to outbursts of screaming and shouting which would be frightening for a child. She is unable to consistently regulate her emotions and loss of control would present a risk of physical and emotional harm to the child.
- (f) That the Mother lacks insight into the concerns around her parenting abilities and fails to understand the reasons for the removal of her eldest child from her care in 2011.
- (g) The Mother struggles, at times to accept advice from professionals in respect of parenting matters.
- (h) That the parents are vulnerable and both experienced disrupted childhoods, which impacts on their ability to provide safe and secure parenting to a child.

- (i) That the Mother's engagement with support can be inconsistent.

### The Law in respect of Factual Determinations

- 21. The law to be applied when considering the issues before the court is well settled. When considering the findings sought by the local authority the court applies the following well established principles:
  - 22. The burden of proving the facts pleaded rests with the local authority.
  - 23. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred (*Re B* [2008] UKHL 35 at [15]). Within this context, there is no room for a finding by the court that something *might* have happened. The court may decide that it did or that it did not (*Re B* [2008] UKHL 35 at [2]).
  - 24. Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on *all* of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors (*A County Council v A Mother, A Father and X, Y and Z* [2005] EWHC 31 (Fam)).
  - 25. In determining whether the local authority has discharged the burden upon it the court looks at what has been described as 'the broad canvass' of the evidence before it. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence (*Re T* [2004] 2 FLR 838 at [33]).



26. The evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them.
27. I also however, must bear in mind the observations of Macur LJ in *Re M (Children)* [2013] EWCA Civ 1147 “It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so”.
28. The court must always bear in mind that a witnesses may tell lies in the course of an investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied above everything (*R v Lucas* [1982] QB 720). I make clear that in reaching my conclusions in these matters, I have given myself this direction in respect of the evidence of each parent.
29. It is also important when considering its decision as to the findings sought that the Court take into account of the presence or absence of any risk factors and any protective factors which are apparent on the evidence. In *Re BR* [2015] EWFC 41 Peter Jackson J (as he then was) sets out a useful summary of those factors drawn from information from the NSPCC, the Common Assessment Framework and the Patient UK Guidance for Health Professionals.

### Evidence

30. During this hearing, I have heard from the legal representatives on behalf of each party. I have read the bundle of documents filed for this hearing. I heard evidence over the course of three days from the following witnesses: LS, social worker,

Deborah Gaskin, Independent Social Worker, the Mother, the Father and the Children's Guardian

31. LS has been J's social worker since before J was born. She confirmed her written evidence and the care plan before the Court. She confirmed that she relied upon the expert assessment work of the Independent Social Worker who carried out specialist assessments of the parents in light of their vulnerabilities and complex needs. She stated that the purpose of that work was not only to assess the parents but through that assessment process they were being provided with one to one support and the opportunities to learn and develop new skills. One to one support was also provided to them during contact sessions and offered through their own individual support workers. The opinion of United Response was that the parents would not benefit from group work and that this was the best way for them to learn. Specifically, when the Freedom Programme was considered, United Response stated that it would deliver one to one work about relationships instead as the parents' support worker considered that the Freedom Programme would not be suitable for them. She stated that everything that could usefully have been offered to the parents has been offered and that if Mrs Gaskin had recommended that any other work could have been of benefit that would have been provided. She also stated that on 13<sup>th</sup> March 2018 in a care team meeting, an anger management course was discussed and recommended for the Mother and that a referral was offered but that the Mother refused to attend. She was able to acknowledge the positive changes that the Mother had made, with better support being provided from United Response in terms of the structure and quantity of the work, around her personal independent living skills. She was able to make appropriate concessions and was balanced and fair in her evidence. She gave clear and measured evidence, which I have no doubt was truthful. Her evidence did not change under cross-examination. Her evidence supported the disputed threshold findings sought against the parents. She gave an example of the Mother failing to follow professional advice and reacting to a contact worker in a hostile, aggressive and stubborn way. She highlighted that during evidence frequent prompts have to be given to the parents

to ensure that J's needs are met and that in recent times, the quality of the Mother's contact has not been as good which she attributes to J's changing developmental needs and the Mother's inability to keep up with them. Her opinion was that without constant supervision, J would be placed at risk in the Mother's care as a consequence of her inability to manage basic parenting tasks in a safe way, for example in respect of feeding and supporting J to sit up safely. She expressed considerable concerns about the parents' relationship describing that they repeatedly argued in front of J and other parents at a baby group that they attended up until June 2018, and those arguments occurred by telephone even when the Father was not present. She described the parents' relationship as domestically abusive. She stated that their arguments were severe and yet the Mother failed to recognise the severity of them and the impact that they would have on a child. In her opinion the Mother's negative childhood experiences have had a detrimental impact upon the Mother's ability to parent and her ability to manage her emotions. She was clear that any support that United Response could offer would be for the Mother and not to assist her to parent J or ensure that J was safe. She did not consider that there was any work or support that could be offered to assist the parents, whether together or apart, to safely manage J's needs. I accept her evidence.

32. Mrs Gaskin is a very experienced Independent Social Worker who was instructed to carry out a PAMS pre birth assessment of the parents by the LA and then was instructed in these proceedings to conduct a full PAMS assessment of both parents once J was born. Mrs Gaskin has considerable experience of assessing parents with enhanced needs using the PAMS model. She said that this is one of the saddest cases that she has encountered as the parents desperately want to care for J but there are simply no courses or supports that could be put in place to allow them to do so safely. She said that quite apart from the parents' difficulties with learning, the volatility within their relationship precludes the safe return of the child and due to the parents' co dependence there can be no confidence that they would be able to effect and maintain a separation. She described "toxic features" in the case such as

the abusive nature of the parents' relationship, the Mother's volatility and inability to regulate her emotions and the Father's history of drug and alcohol abuse as presenting reasons why there was little prospect of them being able to safely parent, even with enduring support. Their lack of insight in terms of the risks to J particularly with regards to the impact of the volatility on her and their lack of inhibitions even in front of professionals in expressing what they feel they need to at any given time, would expose J to volatility which would cause her significant emotional harm. She described their behaviour as domestic abuse and gave an example of coercive control when the Mother tried to cancel a session she had planned with the Father without him knowing; she said this was also the experience of his support workers. She highlighted an episode in which the Mother's United Response worker was present during a physical altercation between the parents which rendered her at fear for her own safety and that of the parents, highlighting that the presence of a professional had done nothing to prevent the incident taking place. She could not foresee a situation in a timescale for J that would see her change her recommendation for adoption, irrespective of any support or work offered as the parents' limited insight into J's emotional needs and what she described as the more nebulous areas of parenting precluded effective change within a reasonable timescale for the child. She described how the Mother had been previously let down by her support worker and now had a very good level of support and engagement with United Response but that the Father had very poor engagement with his support worker. She stated that any of the support offered from United Response or any other agency to assist the parents as individuals or to assist them, as parents would not lower the risk to J from their volatility. Their co dependence is also a barrier to change in her opinion. Again her evidence did not alter under cross-examination, and it was balanced, fair and truthful. Her evidence supported the threshold findings sought against the parents from her observations and opinion of their functioning. She explained that her work with the parents involved them being given one to one support to enhance their parenting skills and that there was no other useful work or support that they could be offered to meaningfully assist them. If there had been she would have recommended it. In

her opinion the years of trauma and abuse that the Mother suffered as a child would take years to resolve and any phased return of the child would still present risks as the parents are volatile whether professionals are there or not. She maintained that a mother and baby unit was not appropriate in this case. She described the Mother as unpredictable and volatile and that she presents an unmanageable risk whether parenting with the Father or alone. She did not support the Father and his family parenting J, as she did not accept that the parents could maintain a separation and described that PGM is unwilling to support him due to his relationship with the Mother. I accept her evidence.

### The Mother

33. Sadly my observations of the Mother mirror those of the professionals in the case.

I do not underestimate how very stressful these proceedings are for parents and particularly for parents with the vulnerabilities and difficulties of these parents but the Mother's behaviour throughout these proceedings has been deeply troubling. I have not assessed her solely as a result of her behaviour in the witness box or in Court but her behaviour even within this setting and in front of me has done nothing but confirm the extensive evidence that I have read and heard that she is a very volatile, unpredictable and disinhibited young woman who is unable to regulate her emotions. Enhanced security had to be provided for this case to ensure the safety of professionals both inside the Courtroom and around the Court building. On two occasions during the hearing she made direct threats to the social worker that she would physically harm her in my presence. Her outbursts were, at times, explosive. Throughout the hearing she found it almost impossible to control herself. She spoke during the evidence, calling the social worker and ISW liars repeatedly; she bickered and argued with the Father such that they had to be seated separately at his request. She was verbally abusive towards him, exhibiting controlling behaviour. I warned her repeatedly about her conduct to little effect. I gave her repeated and regular breaks to allow her to calm down. These breaks were largely prompted by her outbursts and loss of temper as opposed to a need for her to have

time to consider and process information. She swore audibly at one stage during her evidence prompting me to offer her a further break. I warned her that during that break she could not speak to her solicitor or the Father and stated that he should remain in the building to speak to his barrister in preparation for giving evidence whilst she left to have a cigarette outside. She erupted at the suggestion, displaying very unpleasant behaviour. She sought to dictate loudly what he would be doing and was verbally threatening towards him across the Courtroom. She displayed a startling lack of self-control and insight into her behaviour and the impression that she was giving to me.

34. During her oral evidence she called all the professionals who had written negative reports and assessments liars and refuted all concerns save that she accepted that at times she argued with the Father. At one stage she said that these arguments were only because of the stress of these proceedings. Later in her evidence she said that they had argued before the proceedings commenced and before J was born. She repeatedly stated that she had had no support and yet could not explain what she felt she needed support for since she did not accept the threshold criteria or professional concerns. She thought that she could parent perfectly well. She suggested that J could live with her and the Father or that she could live with just her in a mother and baby unit if people were concerned about their arguments. She suggested that over the course of 6-18 months they could live in a mother and baby unit. Ultimately she wanted to be with the Father and did not suggest that they should separate. She requested a phased return of J over time, effectively asking for more time to prove herself.

### The Father

35. Again, my observations of the Father during this hearing have only served to confirm the unanimous professional evidence about him. I make clear that I have not assessed him solely on the basis of his performance in the witness box or as a result of his behaviour in court. The Father presented as highly anxious during the

hearing and despite multiple warnings talked almost incessantly during the evidence. His behaviour was not threatening or abusive but was disrespectful at times to those giving evidence and was highly distracting. During the Mother's evidence he attempted to answer questions for her and during his evidence attempted to ask her for help in answering some of the questions. Although he asked the Mother to be quiet many times during the hearing, this did nothing to prevent or change her behaviour and only served to spark arguments between them, during which she appeared to be more dominant and aggressive than him. He has demonstrated far greater insight into the issues in this case than the Mother and plainly understands the risks to J and why she cannot be safely placed in the care of the Mother or the parents as a couple at this time. He struggled to be able to explain what those concerns were in the witness box, and I am satisfied that the reason for that was the Mother's presence which he found intimidating. In oral evidence he changed his position in the case to accept that realistically the best chance for J to remain in the family would be to live with him and his family, without the Mother. When this had been raised as a secondary position on his behalf during cross-examination of Mrs Gaskin the Mother had become extremely distressed and had left the Courtroom. During the Father's oral evidence she became even more distressed, again leaving the Courtroom and absenting herself from the rest of his evidence. It was quite apparent that this position was not an agreed one as far as the parents were concerned. Twice during his oral evidence the Father alluded to the effect of the Mother's behaviour upon him, at one stage stating, he "never used to be nervous like this" and stating that if J lived with them she would become "jumpy" like him. He changed his position again after completing his oral evidence from seeking a gradual rehabilitation and a request for more time, to seeking immediate return of J to his sole care through counsel's submissions on his behalf. The clear impression I gained was that he is simply desperate not to lose his daughter and will say anything and put forward any position to avoid that happening.

36. I heard oral evidence from the Children's Guardian who confirmed her reports and that her position remained the same. She was recalled after hearing from the Father and confirmed that nothing that he said had changed her opinion. She stated that she had carried out her own independent enquiries and yet had come to the same conclusion for the same reasons as the local authority and Mrs Gaskin, namely that nothing but adoption would do for J. She emphasised that her overall concern was J and that it was simply not in her interests to have any further delay in the determination of her future care arrangements.

Factual determinations in respect of the threshold criteria

37. The final hearing in the care proceedings concerning S was heard by Mrs Justice Macur (as she then was). On the 20<sup>th</sup> July 2012 she found the following facts in satisfaction of the threshold criteria:

**(a) The Mother fails to understand the concerns of professionals**

I am satisfied on the basis that the evidence I have heard from the professionals in this case and from the Mother that there has been no change in this regard between those findings being made and the time that protective measures were taken in respect of J. I make this finding as a threshold finding in this case.

**(b) The Father has a history of substance and alcohol abuse**

The Father accepts this and this remains a valid threshold finding in respect of these proceedings. I find it as a fact.

**(c) The Mother had a difficult childhood and was herself made subject to a Care Order in April 2004, remaining in a local authority foster placement until she was 18.**



The Mother accepts that she had a difficult childhood and was in the care system, experiencing physical, emotional and sexual abuse during her minority but denies that this is relevant to the threshold criteria as she cannot accept that this has any impact upon her functioning as a parent. For the same reasons as this was relevant as a finding then, it is relevant as a finding now. All of the professionals in this case are clear that the Mother's history has had an impact upon her functioning, her ability to regulate her emotions, the way that she presents within her relationship with the Father and the disadvantages it brings her in terms of being able to parent a child. I am satisfied that this remains a relevant threshold finding for the purposes of this case and I find it as a fact.

**(d) The Mother has limited family support**

This remains the position and is a relevant threshold finding in this case. I find it as a fact.

**(e) The Mother failed to sustain any meaningful change in her parenting capacity notwithstanding a large level of support from the local authority**

The Mother's deficits in her parenting skills when she parented S remain relevant to the time that protective measures were taken for J. The Mother had been in a mother and baby unit with S with a high level of intensive support and yet his needs were not met and he had to be removed from her care. Her lack of ability to sustain meaningful change, even in that setting, is relevant to whether J was at risk of significant harm when she was born. The Mother's parenting capacity was assessed in theory by Mrs Gaskin as part of the PAMS pre birth assessment. This confirmed that there were significant deficits in the Mother's parenting capacity which could not be safely tested in a mother and baby unit. I am therefore satisfied that this remains a relevant threshold finding for these proceedings.

- (f) The Mother struggled to meet even basic care needs of the child such as ensuring bottles and dummies are properly sterilised, made correctly and refrigerated, or ensuring that the child’s environment was hygienic and safe and ensuring sufficient nappy changes.**

After S was removed the Mother had no opportunity to improve these skills before J was born. This therefore remained a valid risk to J at the time of her birth. For this reason, Mrs Gaskin both recommended and was commissioned to undertake a full PAMS assessment of the parents following J’s birth during which the parents would not only be tested but also supported to learn these skills. I am satisfied that this finding remained a valid finding at the time that protective measures were taken in respect of J and this is confirmed by information from the hospital that during the two days that J was in hospital following her birth, the Mother needed to be prompted to undertake basic care tasks. The Mother disputes this in her oral evidence but this evidence was not challenged on her behalf. I am satisfied that given the Mother’s inability to perform basic care tasks for S it is likely that she did require prompts to meet J’s basic needs in the hospital. There is no reason why hospital staff would lie about this as the Mother suggests.

- (g) The parents’ behaviour towards each other in front of the child was sometimes inappropriate, with parents becoming frustrated and arguing with one another during contact.**

This remained a valid threshold finding at the outset of these proceedings. The parent’s relationship was a volatile one at the time of J’s birth, something that they each accepted in evidence and so their past behaviour as set out in this finding remained relevant for the purposes of these proceedings.

**(h) The Mother failed to work with professionals in an open and honest manner, at times, misleading professionals with regard to advice given.**

Again this is a relevant finding for the purposes of these proceedings. The Mother's ability to work honestly and co-operatively with professionals given her vulnerabilities and need for professional support is a relevant risk factor.

**(i) The Mother, at times, failed to co-operate with the plan put in place for the child**

Once again this is a relevant threshold finding for the purposes of these proceedings, which creates a risk of significant harm for J.

**(j) Home conditions were unhygienic and unsuitable for a child**

At the time that protective measures were taken in respect of J the parents' independent living skills were limited and their ability to maintain a suitable safe and hygienic home was in question and posed a risk to the child. This remained a relevant threshold finding.

38. I have set out these matters, as they remain disputed by the Mother notwithstanding that they have already been found as a fact. The Mother remains unable to accept the reasons why S was removed from her care and it is this lack of insight, which poses such a significant difficulty for her in terms of being able to implement change. I am satisfied and I find as a fact, based upon the Mother's evidence and the professional evidence in this case, that the Mother fails to accept these findings and lacks insight into the risks that both she and the Father pose to J. In terms of the disputed findings sought by the LA I make finding 6 for the reasons stated.

39. I consider that the other findings sought, which are in dispute, as set out at paragraph 19 above, are very well evidenced within both the written and oral

evidence. I have already commented upon the parents' behaviour and my observations of each of them. I am satisfied on the balance of probabilities that each and every one of the findings sought is properly evidenced and is proven on the balance of probabilities. Save for denying these findings, the Mother has not effectively challenged them during this hearing. I do not consider that any of these disputed findings are irrelevant, unnecessary or disproportionate to the issues in the case.

40. I am satisfied that there is overwhelming evidence that the threshold criteria is crossed in this case and that the disputed findings sought against the Mother are made out based upon the local authority's evidence and the evidence of Mrs Gaskin and based upon the Court's earlier threshold findings in respect of S.

#### Care Plan

41. The final care plan in respect of J is dated 31<sup>th</sup> July 2018. It provides for J to be placed for adoption. The local authority seeks Care and Placement Orders in respect of J. Should final orders be granted, the parents' contact would reduce over an eight week period from the current level of four times per week to three times the following week, twice the week after, once the week after that, then fortnightly until 8 weeks' post final orders it would reduce to take place once per month until an adoptive placement was found. Once a placement is found for J the parents are to be offered a goodbye contact and thereafter annual indirect contact via the post box service.

#### Legal Framework in respect of welfare decisions

42. I remind myself that J's welfare is my paramount consideration. That is section 1(1) of the Children Act 1989. In considering what orders to make I have regard to the Welfare Check List found in section 1(3) of the 1989 Act.

43. In relation to the threshold criteria of section 31(2) Children Act 1989 I have regard to whether I am satisfied that J has suffered or is at risk of suffering significant harm.
44. When considering which orders if any are in the best interests of J I start very clearly from the position that, wherever possible, children should be brought up by their natural parents and if not by other members of their family. The state should not interfere in family life so as to separate children from their families unless it has been demonstrated to be both necessary and proportionate and that no other less radical form of order would achieve the essential aim of promoting their welfare. In Re B [\[2013\] UKSC 33](#) the Supreme Court emphasised this, reminding us such orders are "very extreme", and should only be made when "necessary" for the protection of the child's interests, "when nothing else will do". The court "must never lose sight of the fact that (the child's) interests include being brought up by her natural family, ideally her parents, or at least one of them".
45. I have looked again at the words of the then President in Re B-S (Children) [\[2013\] EWCA Civ 1146](#) as well as the judgments in Re B (supra) and reminded myself of the importance of addressing my mind to all the realistic options for the child, taking into account the assistance and support which the authorities or others would offer.
46. In considering making a Care Order I have had close regard to the Article 6 ECHR and Article 8 ECHR rights of each parent and of the child, but I remind myself that where there is tension between the Article 8 rights of the parent, on the one hand, and of the child, on the other, the rights of the child prevail; *Yousef v The Netherlands* [\[2003\] 1 FLR 210](#).
47. When considering whether to make a placement order, it is trite law that I must be satisfied that any orders I make are a lawful, necessary, proportionate and a

reasonable response to the child's predicament. The granting of a placement order represents the most drastic curtailment of the right of these parents and of the child under Article 8 of the European Convention on Human Rights and Fundamental Freedoms, which can only be justified by pressing concerns for her welfare. However, in construing both the Convention and domestic law, I have the assistance of the decision of the Supreme Court in *Re B (A Child)* [2013] UKSC 33 followed by the decisions of the Court of Appeal in *Re P* [2013] EWCA 963 and *Re G* [2013] EWCA 965. Those cases firmly re emphasise that a placement for adoption is a "very extreme thing" and "a last resort to be approved only when nothing else will do". Both domestic and Convention law do require a high degree of justification before adoption can be endorsed as "necessary", the term in the Convention or "required", the term in the Adoption and Children Act.

48. I must apply the welfare checklist found in section 1(4) of the Adoption and Children Act 2002, and I must be satisfied that the making of a placement order accords with the child's welfare throughout her life.
  
49. If I conclude that the child's welfare throughout her life demands that such an order is made then the law requires me to dispense with the consent of the parents to the making of a placement order in circumstances in which they oppose the applications.

#### Positions of the parties

50. The local authority seeks Care and Placement Orders in respect of J inviting the Court to approve her being placed for adoption.
  
51. The Mother seeks to care for J with the Father, and if not on her own. She opposes adoption and the making of Care and Placement Orders.

52. The Father's position changed throughout this hearing. Originally he sought to care for J with the Mother, if not he would have supported the Mother caring for her or would seek to care for her alone with the support of his family. During oral evidence he argued that there should be a phased return to his sole care without limit of time. During submissions on his behalf his position evolved to one whereby he sought the immediate return of J to his sole care. At no stage did he say that he had separated from the Mother. He opposes adoption and the making of Care and Placement Orders.

53. The Children's Guardian fully supports the LA's care plan for J and the making of Care and Placement Orders in respect of her.

#### Welfare analysis

54. In so far as realistic placement options are concerned, the Mother proposed two paternal aunts as possible kinship carers for J; EB and WF – those assessments did not take place as each of those family members indicated that due to their own family commitments they were unable to care for J.

55. On 25<sup>th</sup> April 2018 the Mother put forward LN and JN as prospective carers for J. They are not blood relatives. Their connection with the family is that LN's parents fostered the Maternal Grandmother. The social worker met Mr and Mrs N on 1<sup>st</sup> May 2018, they declined the opportunity to be assessed as prospective carers on the basis that they were unable to offer a home to J.

56. On 4<sup>th</sup> May 2018, the Mother put forward DH (again not a blood relative) to be assessed as a potential carer for J. The social worker visited DH on 11<sup>th</sup> May 2018 and DH cancelled the appointment. She has since informed the LA that she does not wish to be assessed as a carer for J.

57. PGM has indicated that she is not able to care for J.

58. No other potential family or kinship carers are available to care for J.
59. There are therefore four realistic placement options for J: with the parents together, with the Mother alone, with the Father alone or adoption.

#### The Mother and Father

60. A placement with the parents offers J an opportunity to be placed with her natural parents, retaining her sense of identity.
61. It is always better for children to be raised within the birth family and ideally by their parents, but only if that option is safe and the care that would be provided would be good enough.
62. There is no doubt that both parents love J very much and would ideally wish to care for her.
63. The Mother has engaged well with her one to one support from United Response
64. The Mother has attended all contact sessions with J
65. The Mother has made considerable progress in relation to independent living skills and learning new skills
66. The Mother's knowledge of J's basic care needs has developed and appears to be greater than when she had S
67. The Father has demonstrated insight into the reasons why protective measures were taken in respect of J and the risks that are presented to her, he has however only felt able to volunteer this information in the absence of the Mother



68. The parents have a volatile relationship, which involves them shouting, and swearing at each other, their behaviour towards each other is domestically abusive. J would be at risk of significant emotional harm if exposed to this behaviour.
69. Whilst the Mother states that she will engage in anger management she has not done so to date.
70. Each of the parents is vulnerable and has complex needs, which require individual support on an enduring basis. Whilst the Mother has engaged well with such support, the Father has not. They each require support and teaching in respect of many areas of day to day living in addition to meeting J's basic care needs.
71. The parents would need enduring support and advice to be able to meet J's developing needs. The Mother has not always accepted advice or been able to consistently implement it. The Father has not engaged with the support offered to him.
72. The Mother has threatened the social worker with physical harm and United Response have made a series of safeguarding referrals about each parent and the risks that they respectively pose to each other.
73. The Father has failed to attend contact since 5<sup>th</sup> July 2018 with no explanation provided to the local authority. In evidence he stated that he found attending contact too difficult due to the "inevitability" of not being able to see J in the future.
74. The Father has expressed ambivalence with regards to whether he wishes to continue his relationship with the Mother
75. The Father is not a protective factor for J as although he is able to recognise the risks posed to J he is unable to assert himself and have sufficient influence over the

- Mother to be able to discuss these issues in front of her and allow them to be addressed
76. The Father has failed to actively engage with one to one support from his housing provider leaving him in breach of his tenancy with a risk of eviction.
  77. The Father disclosed to Mrs Gaskin that he did not want to live with the Mother but was unable to separate from her.
  78. The Father has not consistently attended contact with J throughout the assessment process
  79. The parents engaged well with assessments of them and express a wish to engage in courses and with support
  80. The parents have engaged well with these proceedings and have attended Court hearings
  81. During contact sessions the parents have generally been very attentive with J and the contact sessions are positive with good interaction between each parent and J. The parents have been attuned to J's needs. The Mother behaves in a warm and loving way towards J and has demonstrated considerable patience with her at times when she has been fractious.
  82. The parents have been the subjects of two PAMS assessments, one pre birth and the other after J was born. Those assessments each conclude that J cannot be safely placed in their care. All professionals involved in this case are unanimous in their view that J would not be safe if rehabilitated to them.

The Mother alone

83. All of the positives described about the Mother apply equally if she was to parent alone.
84. The Mother has indicated that she would be willing to go into a mother and baby unit with J and would have continued support from United Response, which could be increased
85. The Mother has managed to maintain a tenancy and keeps it in very good order
86. The Mother has remained clear that she wishes to parent with the Father and that they remain in a relationship
87. The Mother has not been able to live alone and is dependent upon the Father
88. The Mother was permitted to parent S in a mother and baby unit but that placement was not deemed safe for him
89. When the Mother is not with the Father they still have arguments by telephone which can be aggressive and abusive and which J would be exposed to
90. When the Mother is not with the Father she has been noted to be distracted and to allow her feelings about his absence to avert her attention away from J
91. The Mother struggles to regulate her emotions and behaves in a disinhibited fashion whether professionals are present or not, her behaviour is unpredictable and volatile.
92. When the parents separated last year the Mother entered into a violent relationship, misused alcohol and slept rough. The Mother is very vulnerable to exploitation and abuse.

93. The Mother suffered an abusive and traumatic childhood and has a lack of effective familial support.
94. The Mother has very limited insight into the risks posed to J and the areas in which she would need support to be able to care for J. Her response to professional criticism is to call the professionals “liars” and to behave in a hostile and aggressive way towards them. The Mother is dismissive of professional concerns and is unable to recognise the basis for why these proceedings were brought.

#### The Father alone

95. All of the positives that apply to the Father apply to him as a carer alone.
96. The Father has a history of heroin addiction and alcohol misuse.
97. The Father has engaged well with Plummer Court to address his substance misuse. He stated in oral evidence that he will need to undergo a residential detoxification programme at some stage in the future, which could be for a number of weeks. He accepts that he would be unable to care for J at that time.
98. The Father has family members in the local area who could potentially provide him with support however, none of them have come forward to offer to do so and PGM has expressly said that she has not felt able to on the basis of his on-going dependence upon the Mother
99. The Father is dependent on the Mother
100. The Father has not engaged well with the support that has been offered to him and his attendance at contact with J has been sporadic
101. The Father has far greater insight into concerns than the Mother and has

made a number of realistic and appropriate concessions in respect of the threshold criteria.

102. The Father has been noted to function much better when not with the Mother. His personal presentation and that of his accommodation improves, he takes a greater pride in his appearance and engages much better with professionals however, the Father has not been able to maintain a separation from the Mother due to their co dependence.

### Adoption

103. Adoption provides the greatest sense of legal stability and permanence for a child who cannot be placed within the birth family. It is a placement of last resort because it results in the total severance of a child's ties with their family of origin, save for, usually, limited indirect contact via the post box system. The child is given a new family, and as a result there is a loss of previous identity and usually a loss of all direct contact with the birth family, as is proposed here.

104. Adoption offers J the opportunity of a secure placement not only during her minority but also for the rest of her life, if the Court concludes that she cannot be safely cared for in her family of origin. Adoption allows her to live her life free from the state intervention that long-term foster care would bring for her and would allow her to be permanently and securely claimed by a family.

105. There is a risk that an adoptive placement can break down however this is more likely with an older child than with a baby. It is not anticipated that there would be any difficulties in finding an adoptive placement for J given her age, gender and life experience to date.

### Discussion and conclusion

106. In determining the right placement option for the child, I must consider her needs now and in the future.
107. J is a ten-month-old baby who has been in foster care with the same carers since her discharge from hospital following her birth. She has remained in the same placement since that time. Her primary attachment is to her foster carer. J was born with some additional needs in terms of her development. J attended physiotherapy with her foster carer to address these issues, which included poor head control and an inability to reach and grasp. She has made good, albeit slow and steady, progress in this regard. J is now meeting her developmental milestones and is a calm and sensitive baby. She requires a stable, nurturing permanent home with carers who can meet her needs and keep her safe.
108. Having considered all of the evidence in this case I am satisfied that very sadly J cannot be cared for by her parents, either together or separately.
109. Although it is right to acknowledge the positive changes that the Mother has made in terms of her independent living skills and her tenancy, the risks that presented to J at the outset of these proceedings remain ever present.
110. As recently as 13<sup>th</sup> July 2018, the police were called to an incident of domestic abuse between the parents by the Mother. The Mother complains that he “tapped” her on the head. The Father, when interviewed, was seen to have unexplained injuries. The Mother told me in evidence that he had fallen down. The police considered that it was in fact the Father who was the victim of an assault. The parents do not accept that their relationship is a domestically abusive one and therefore I agree with Mrs Gaskin that there is no support or work that could be offered to address this issue. The parents are not open and honest about the full extent of the difficulties in their relationship, which precludes them from being assisted to improve it. They have been together for 9 years. I am satisfied that their relationship is likely to have always featured volatility and emotional abuse. That

is not to say that it is always like that but it is a pattern of abusive behaviour that has not changed. Having witnessed the Mother's behaviour towards the Father and professionals and read Mrs Gaskin's report I am concerned for the Father's safety within this relationship. At times during the Father's evidence he significantly minimised this issue, seeking to persuade me that "all couple's argue". These are not just arguments. I am satisfied that this is an abusive and toxic relationship which presents a risk of significant physical and emotional harm to J. I am also satisfied that it is unlikely that the parents would be able to sustain a separation due to their co dependence and I agree with Mrs Gaskin that this is a barrier to change.

111. The Mother's lack of insight and failure to accept professional concerns in this case are a barrier to her accessing support. She may express a desire to have support and to go on courses but is unable to explain why or accept what changes she needs to make. Without an understanding and acceptance of her shortcomings she is unlikely to be able to accept and act on advice, which has been demonstrated during these proceedings, both in contact and during her assessments. This precludes any meaningful change. The Mother thinks that she is able to parent and the only issue she can identify as a possible cause for concern is the arguments that she has with the Father. She now states that she wants to do an anger management course but accepted when I asked her that she has taken no steps to attend such a course. I am satisfied that the Mother was offered such a course in March 2018 but refused to attend.

112. The Mother does not accept that the threshold criteria is crossed in this case. All that this position serves to highlight is her lack of insight and inability to be honest about her own shortcomings. She asks for support and courses and yet cannot explain why she needs them or what she would gain from them. Her position is that she does not need to change. At the same time she states she has already changed but cannot or will not accept any of the difficulties that she had that required her to do so. I am satisfied that since the findings were made in the

proceedings concerning S there is very little evidence of positive change as far as the parents' relationship and their parenting skills are concerned.

113. These proceedings have been going on for a protracted period of time. The parents have had an extended opportunity of ten months to undergo any work they wished to. I do not accept the criticisms levelled at the local authority and Mrs Gaskin for failing to signpost them to courses. The LA's position was clear and very well evidenced – no support or courses offered to these parents would enable them to parent J successfully in a timescale that would meet her needs. I accept Mrs Gaskin's evidence in this regard. I agree with the Guardian that any further delay is not in this child's best interests. Any adjournment to allow the parents' further time, either to separate, to access courses, to undergo therapy, to undertake a detoxification programme or to go into a mother and baby unit would be for an unknown duration with little prospect of success in terms of securing a position whereby J could be safely cared for on a permanent basis. The parents' cases are speculative and there is no sound evidential basis for what they seek.

114. The Father has good insight into his alcohol and substance issues in that he accepts that he "will always be an alcoholic" and engages well with Plummer Court. However, he is not abstinent of alcohol. He told me that he "has the occasional pint" and during Mrs Gaskin's assessment he accepted having taken alcohol when he turned up late for an assessment session. He accepts that he will need to undergo a detoxification programme at some stage to come off Subutex. He could do that through a daytime programme but does not wish to, as he does not think it is a successful way to do it. He has undergone a detoxification programme before which he described as "hell". He therefore prefers to wait to be able to afford a residential rehabilitation programme which would be of unknown duration, unknown success and is without a timescale in so far as when it would start. There are concerns about whether he continues to top up his Subutex with diazepam and whether that diazepam is prescribed or not. It is not necessary for me to make a finding about that but it is acknowledged by the Father that he continues to be



affected and will be affected by his previous substance and alcohol misuse into the future and I am satisfied that this continues to be another vulnerability as far as he is concerned. I agree with Mrs Gaskin that this is properly described as an additional “toxic factor” which, when considered alongside his personality disorder, his co dependence upon the Mother, the on going domestic abuse in their relationship and his lack of consistent engagement with support services precludes him from being able to care for J as a sole carer.

115. I consider that these parents have been fully and fairly assessed and that there is no reasonable prospect of them either as a couple or separately being able to provide good enough safe care to J. Sadly I am driven to the conclusion that nothing but adoption will do for her. I approve the local authority’s care plan and make a care order in respect of her.

116. I must now turn to consider the local authority’s application for a Placement Order.

117. In considering whether to make a Placement Order I must consider not only what is in J’s best interests during her minority but also what is in her best interests throughout her life. Having already concluded that nothing but adoption will do for her, a Placement Order is the order which provides the local authority with the legal permission required to put the care plan that I have already approved into effect. I am clear that it is in J’s best interests throughout her life to be adopted and thereby claimed not only throughout her childhood but also into adulthood.

118. There is a pressing need for plans to be implemented for J without delay – she has already been in foster care for the first ten months of her life. I have come to the firm conclusion that the only plan, which meets J’s needs, is one of adoption and that that plan needs to be implemented without delay. Consequently, I have no hesitation in concluding that J’s welfare requires me to dispense with the parents’ consent and I make a placement order in respect of her.

