

**This judgment was delivered in private. If the judge gives leave for this or any version of the judgment to be published it is on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

Case No: LV18C01617

**IN THE FAMILY COURT AT LIVERPOOL**

35 Vernon Street,  
Liverpool, L2 2BX

Date: 1 February 2019

**Before:**

**HIS HONOUR JUDGE GREENSMITH**

-----  
**L (A Child)**  
-----  
-----

Miss Freeman appeared for the **Applicant**  
Miss Hughes appeared for the **First Respondent**  
Mr Chukwuemeka appeared for the **Second Respondent**  
Miss Edmunds appeared for the **Third Respondent**  
-----

## **JUDGMENT**

**HIS HONOUR JUDGE GREENSMITH :**

1. The court is concerned with the welfare of L, a boy who is 8 months old. L's mother is M. L's father is F; he has parental responsibility for L.
2. The local authority has applied for a care order in respect of L and a placement order to enable L's adoption. The parents do not consent to a placement order being made. The local authority seeks that their consent be dispensed with. The timetable for the care proceedings has been extended from 26 weeks the application is currently in week 36. This judgment follows a final hearing which has taken place over four days.
3. L is the subject of an interim care order which was granted at the commencement of these proceedings. L remained in the care of his parents whilst they resided at an assessment unit, The assessment centre. Following the parents' discharge from the assessment centre the court

authorised a care plan of removal of L and he has remained in foster care until now. The parents have continued to exercise regular supervised contact with L during his period in foster care.

4. The applicant local authority is represented by Miss Freeman, the mother by Miss Hughes, the father by Mr Chukwuemeka and the child and his Guardian by Miss Edmunds. Both parents were present during the hearing and each has given evidence.
5. The court has considered an extensive bundle of evidence which includes evidence from proceedings relating to previous children of the parents and has heard oral evidence. During the proceedings both parents have been the subject of psychological assessments and have had the benefit of being assessed in a residential assessment unit where they lived with L for 22 weeks.
6. The parents have four older children who were the subjects of proceedings before this court which concluded in September 2017. The result of the earlier proceedings was that each of the children was permanently removed from the care of parents under care orders and placed in long term foster care. The facts and issues which arose during the earlier proceedings are directly relevant to the applications which are presently before the court.
7. The context of this case is that the other four children of the parents were removed from their care because it was proved that two of them had been sexually abused by their paternal grandfather and that the parents failed to protect the children from that abuse. Briefly, the parents had been given extensive and explicit warnings that the grandfather who is described in the agreed findings schedule as:

*“The paternal grandfather poses a significant risk of sexual harm to the children by virtue of his conviction ... for gross indecency with a 9 year old boy, and his further two convictions for acts of gross indecency with males under 21. Additionally, during care proceedings in 2008 he was found by HHJ De Haas QC to be a “dangerous sexual predator”. In 2017 he was convicted of four offences of causing sexual harm to the children D and E.”*

The parents were told on many occasions that they should not under any circumstances allow their children to have contact with the paternal grandfather. Despite these assurances not only did the parents allow contact but the mother encouraged contact between the grandfather and the children. The mother regarded the grandfather as support for her to manage the behaviour of the oldest child A. As a result of the parents allowing the paternal grandfather unsupervised contact with all four children the grandfather sexually abused two of them to the extent that he was convicted and sentenced to 13 years in prison. The crux of this case is whether the parents are likely to expose L to harm either from the grandfather or others.

8. While the history relating to the paternal grandfather is an overriding feature of these proceedings, this is not a single-issue case. There are other serious concerns regarding the parents' ability to provide care for L now and in the future.

#### The Relevant Law

9. In order for the court to grant the application for a care order the court must be satisfied that the threshold is met and that making such an order serves L's welfare; placing his welfare as the court's paramount consideration; having regard to the welfare checklist in section 1(3) of the Children Act 1989. Before making a placement order the court must be satisfied that such an order serves L's welfare for the whole of his life after having regard to the welfare checklist in section 1(4) of the Adoption and Children Act 2002. The court must only make such an order if it is satisfied that nothing else will do having carried out an holistic analysis of all viable long-term care options available. If the parents refuse to consent to a placement order being made the court may dispense with the parents' consent if the court concludes that to do so is required to serve L's welfare.
10. When considering any disputed allegations, it is for the local authority to prove on the balance of probabilities the facts upon which it seeks to rely. Having established facts the court must then be satisfied that there is a link between the facts relied upon and the conclusion that the child has suffered or is at risk of suffering significant harm.
11. When considering the level of care that the parents can provide for L I must recognise the inevitable diverse and unequal standards of parenting which are prevalent in society.
12. If I conclude that either of the parents has lied at any stage I must put that finding into context and not assume that because a person lies on one occasion they will necessarily lie on another. People lie for all sorts of reasons at different times.
13. The mother has admitted that she has masturbated in the presence of L on numerous occasions and on some occasions whilst he was in her arms during her stay at the assessment centre. The local authority is not seeking a finding of "sexual abuse". The local authority is seeking a finding that the act itself took place. In my judgment what the mother has done fits an appropriate definition of sexual abuse, describing it as such will impress upon the parents the significance of what they have done. It will serve L's welfare as it will help him make sense, later in life, why he has suffered the consequences of his parent's behaviour. Labelling a sexual act as "sex abuse" does not add to or detract from the factual matrix the court is asked to find; it simply serves accurately to define the fact the court finds. To conduct this process, I need first to decide what definition of sexual abuse should be used where the allegation is of a non-contact nature.
14. As far as I am aware there is not a definition of sexual abuse of children which is universally acknowledged as being appropriate to apply in all cases before the Family Court. This presents

the court with a difficulty when faced with a situation requiring sexual abuse to be identified and labelled as such either as part of a fact find process or during a welfare analysis.

15. The definition applied in The Cleveland Report in 1987 was that put forward by Schechter and Roberge (Sexual Exploitation, 1976) which refers to the sexual exploitation of children. This is referred to as a current definition by the authors of Children Law and Practice: Hershman and McFarlane pC-93 [950]. It is:

*“The involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend, are unable to give informed consent to, and that violate the social taboos of family roles.”*

The authors go on to state that,

*“... these definitions are not intended to be legal definitions, and it is always open to the court to find that ill-treatment has occurred in a way which does not exactly accord with the form of words quoted above.”* [950]

16. The world is a very different place than it was in 1976. The advent of social media and the internet means there is more scope for non-contact sexual abuse than could have been imagined by Messrs Schechter and Roberge. Sexuality and sexual acts are everyday parlance. It must, therefore be right to look for a definition that reflects current culture. Understandably, therefore, the definition has been expanded, recently. The publication, Decision Making Within A Child’s Time Frame (HM Gov 2010 Safeguarding Children DofE) describes sexual abuse of children as:

*“Forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include **non-contact activities**, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children”.p53*

17. A more recent definition of child sexual exploitation is found in Working Together to Safeguard Children (DfE 2017):

“Child exploitation is a form of child sexual abuse. It occurs where an individual or group takes advantage of an imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator.”

18. The NSPCC defines child sexual abuse in their website as:

*“Non-contact [sexual] abuse involves non-touching activities, such as grooming, exploitation, persuading children to perform sexual acts over the internet and flashing. It includes:*

- *encouraging a child to watch or hear sexual acts*
- *not taking proper measures to prevent a child being exposed to sexual activities by others”*

19. Whilst acknowledging that the criminal definition of sexual abuse is not to be applied in family proceedings, for the sake of completeness, I refer to the criminal offence of Engaging in Sexual Activity in the Presence of a Child. By virtue of The Sexual Offences Act 2003, Section 11 it is an offence to engage in sexual activity in the presence of a child. The ability of the child to observe the activity constitutes the offence, provided the child is aware and the perpetrator either knows or believes that the child is aware.

20. I am grateful to counsel, particularly Miss Hughes for the mother, who has considered these definitions, upon my promulgation of a draft judgment for counsel’s comments. There is agreement between counsel, and I concur with this, that if I am minded to ascribe a label to the mother’s act of masturbating in the presence of L, while he is in the room and on occasions while being held by the mother, this would amount to *non-contact sexual abuse*. The definition contained in the second limb of the NSPCC definition is that which I should (and do) apply, that is, *“Not taking proper measures to prevent a child being exposed to sexual activities by others.”*

#### Schedule of Findings

21. At the court’s direction, the local authority has prepared a schedule of findings which it seeks. This schedule has been refined during the course of the proceedings; the final version of the schedule set out in the schedule to this judgment.

#### Evidence considered

22. At the making of an interim care order at the commencement of these proceedings the parents were given various options to implement the interim care plan of the local authority. The parents indicated that they wished very much to be considered as a couple for the purpose of future planning and therefore wish to be assessed together. With regard to a parenting assessment the court approved placement of the parents and L in a child assessment unit. This facility was chosen because it had the resources to provide 24 hours a day CCTV monitoring. The facility also has the benefit of being able to assess the parents using the PAMs method of assessment. It was a condition of the assessment that the parents would be monitored by CCTV and that a full PAMs assessment would be deployed. The parents remained residents of the assessment unit for a period of approximately 22 weeks. During the assessment two reports were prepared the first at a halfway stage as a preliminary report and the second at the conclusion of the assessment.
23. In addition to the residential assessment both parents have been psychologically assessed by Mr Jon Coldwell. Mr Coldwell was the psychologist for the previous proceedings relating to the older children and has therefore the benefit of being able to assess how the parents have developed psychologically over a number of years. In addition to the original commissioned reports Dr Coldwell has provided detailed answers to extensive questions asked by the parties, particularly the local authority, which were put to Mr Coldwell with the approval of the court.
24. The local authority has provided its assessment of the parents which has drawn together the PAMs assessment and the psychological assessments.
25. The psychological evidence was agreed by the parties. The PAMs assessor gave oral evidence and was cross-examined as did the social worker. Both parents remained in court for the duration of the final hearing and gave oral evidence. The Guardian provided a final analysis and was cross-examined.

#### Parents' history

26. Following the separation of the father's parents the father lived with his mother until moving to live with his father at the age of 11. With limited academic achievements the father had a mixed employment history. To the father's credit the father's employment included volunteer work. He achieved security accreditation in 2013 resulting in him working at local football clubs. The mother secured some academic achievement obtaining an NVQ in sociology, current affairs and psychology; she worked for women's and children's welfare charities for two years until starting employment with a company where she met the father. The parents' relationship developed quickly in 2005 and their first child was born in 2006. The parents lived with the father's father until the child was born when they moved into a hostel before moving on to council accommodation. The second child was born in 2008 and the third in 2010. The fourth child was born in 2013. All four children were removed from the parents' care in 2016

following the allegations against the paternal grandfather referred to above. The parents continue to live together and are committed to providing joint care for L in the hope that they will be in position to apply for the care orders in respect of the other children to be discharged in due course and for them to return to her parents' care.

#### Psychological Evidence

27. Mr Coldwell is of the opinion that whilst the mother demonstrates a number of personality traits these are insufficient to diagnose a personality disorder. The social worker through her questions pressed the psychologist to reconsider his conclusion. Mr Coldwell remained firmly of the view that the mother does have traits to her personality which contribute towards the mother's propensity to be economical with the truth but nevertheless did not amount to a diagnosis of a formally recognised personality disorder. The psychologist was asked specifically whether the parents could safely care for L with appropriate monitoring of their mental health and social network. Mr Coldwell's response was that he believed, "*The honourable court should answer that question having heard all the evidence tested before it.*" Most significantly the psychologist said that in his opinion, "*Monitoring would be a necessity and that this would ideally cover the parent's mental health and any social contacts that they might have; especially individuals who might have contact with the child.*"
28. Turning to the father, Mr Coldwell described him as a man of average intellectual ability with indications of prominent avoidant, paranoid and schizoid traits in his personality. The psychologist says, "*While the scores by themselves are insufficient to diagnose a personality disorder they are however likely to reflect aspects of F's past and future behaviour. F has low self-esteem and is likely to be very sensitive to perceived criticism or other threats to his perception of self.*"
29. It is a significant element of the local authority's case that the father was warned of the grandfather's propensity to abuse children that the father failed to act on this because he did not believe that his father was capable of such. This aspect of the local authority's case is supported by the psychologist reporting, "*That it was only when the children made disclosures and his father was found guilty and sentenced to 13 years in prison that he had finally accepted that his father is a paedophile.*" (my emphasis)
30. When asked whether the parents had capacity to change Mr Coldwell emphasised that the parents have attended courses which although relevant were insufficient to ameliorate the parents' interpersonal difficulties. The psychologist confirmed that resources could help parents deal with their problems are scarce and difficult to access and are often unavailable.
31. On the subject of the father's ability to safely care for children in the future Mr Coldwell says, "*Any scenario where F and M or F or M are caring for a child it will be necessary for the*

*local authority to monitor the child's safety and welfare regularly and frequently until such time as it is satisfied that monitoring can be safely discontinued."*

Parenting assessments (PAMs): (The Assessment Centre)

32. The first joint parents report was prepared on 14 August 2018 and without the benefit of the psychological evidence of the parents. It gives a thorough history of the parents' background and records the parents' priority rating in accordance with the PAMs system.
33. Many aspects of the competence of the parents are expressed as not needing further training. It is evident from reading the report that the parents basic skills are good. The author of the report was cross-examined at length by counsel for the mother and openly gave credit where credit was due. The author also helpfully explained that some specific aspects of the report had skewed priority ratings arising from what could be insignificant actions on the part of the parents; for example, whilst the parents demonstrated an overall capability of budgeting they nevertheless fell down significantly in their priority scoring by having to borrow £20 on one occasion from the assessment centre. Similarly, whilst the parents have an overall sound ability to provide healthcare their priority rating was significantly affected by their personal choice the delay Ls immunisation based on their genuine belief that the process could cause developmental delay. The initial report therefore presented an overall positive picture of the parents' ability to parent at that time. It is the later report which was prepared on 26 October 2018 with the benefit of the psychological evidence and a substantial amount of CCTV evidence which paints a negative picture of the parents' ability to provide safe and appropriate care for L in the future. There are several aspects of the parents' ability to care which raise significant concern within the final report.
34. It is reported the parents' general healthcare for L has a priority rating of three which denotes *high priority, teaching programme required immediately*. There are reports of the parents becoming inappropriately concerned regarding Ls joints which involved several unnecessary referrals to medical practitioners including a referral a Children's Hospital. Further there is over administration of Calpol despite L not presenting with any symptoms which would justify this. The parents are unable appropriately to recognise childhood illness symptoms,
35. The parents' ability to provide home care safety is also rated three. The evidence for this rating was essentially the mother's propensity to co-sleep with L despite being told not to do so on many occasions. The report specifies approximately six examples within the months of September and October when the staff at the assessment centre had to intervene because the mother has fallen asleep with L in the same bed. The mother's response to the advice is recorded generally as being in denial as she gives ill-founded excuses or reasons for co-sleeping.



36. The report concludes with a comprehensive and balanced formulation analysis. The reporter gives due credit to the parents for their desire to look after L and for their commitment to him. It is stated that the assessment has been as close to real life as possible and that it has identified insurmountable difficulties regarding the parents' ability to care. The report highlights the parents' poor insight into the true impact of the decision to let the grandfather have contact with the older children. The author is of the view that the parents can see that this has led to them losing the children and their children losing their parents but unfortunately the parents cannot see much beyond this. As a result of the parents' unstable relationship and their poor skills in judging who is and who is not safe to be part of L's life this could result in L either becoming very isolated or being exposed to others that pose a risk. The report concludes that there is no good evidence that the parents have improved their ability to work with services and the local authority in a productive way in the future. The final recommendation is that the family should not be allowed to live together in an independent living situation.

#### CCTV Evidence

37. In addition to the reports which have been filed a significant amount of CCTV evidence has been produced by the assessment centre. This evidence has been shared with the parties and the court. On 1 November 2018 the assessment centre shared with the local authority CCTV evidence recording the mother caring for L in the bedroom allocated to the parents. The recorded footage shows the mother openly masturbating on her bed whilst L is in the room. On at least two occasions the mother pauses her masturbation, collects L from his cot and then returns to bed holding L to her chest with one arm and resumes masturbating with the other. This continues for several minutes. There is no apparent reason for the mother collecting L from his cot and during her evidence the mother confirms that he was not unsettled or crying, she simply wanted to hold him. When initially presented with this evidence the mother denied emphatically that she was masturbating: she said that she had an itch and that she was scratching it. To substantiate and perpetuate her lie the mother attended her doctor on 2 November informing her that she had been suffering from an itchy rash and vaginal discharge. The doctor in a letter dated 11 December confirmed that on examination there were signs of irritation and the mother was given some treatment for possible thrush although the swab came back normal. In a position statement filed in court two days before the final hearing the mother confirmed that all the allegations of her masturbating were true. The mother further confirmed this position in oral evidence stating that the reason for lying was to mitigate her embarrassment.

#### The Child's Guardian: Ms Fargin

38. The Guardian has filed a Final Analysis and has given evidence for the purpose of cross examination. The Guardian been present throughout the hearing and maintains her position. She supports the making of a care order and the local authority's care plan of placement for adoption.
39. The Guardian believes the most significant risk is the risk of exposure to risk generally and particularly sexual abuse. She believes that the parents lack of ability to protect has been demonstrated by the assessment. The risk of sexual harm is the greatest area of risk, but the parents fail to have a sense of how to protect L generally. The immediate risk of the grandfather has been removed from the equation but it is the general understanding of risk that matters. She accepted that the CCTV evidence changed the nature of the case. An example of the mother not understanding risk generally is the parents asking near strangers who were residents at the assessment centre to be god-parents, against the advice of the staff at The assessment centre. keeping L with her constantly at the assessment centre is a further example of the mother not understanding risk.
40. Regarding the scores in the initial PAMs assessment, in the opinion of the Guardian these would not reach the threshold for adoption. To consider whether the threshold is reached, all the evidence must be viewed together.
41. Regarding the CCTV evidence the Guardian re-iterated what she says in her analysis that she doesn't know what this was about. She says it is clearly inappropriate, but wonders why it happened. Ms Fargin emphasised the fact that the mother denied she was masturbating, emphatically. She says this is a significant example of failing to co-operate.
42. The Guardian emphasized that co-sleeping was a massive risk to L. She gives this as an example of risk posed to L which the mother continued to engage in despite having been told on many occasions not to.
43. Ms Fargin did confirm that the parents worked well with those who they deemed to be supporting them, but the parents struggled to engage with those who instruct, or direct, such as the local authority. The parents will work with people who support them but not with those who give advice such as the assessment centre staff. Despite the Guardian initially supporting L remaining in their care she says the parents have been very difficult with her which took her by surprise but now understands it is demonstrative of the parents' inability to take advice on board.
44. Ms Fargin complimented the parents by stressing how much they love L and that they have committed to contact. They have shown great commitment to the assessment process and there were many positives in the initial report.
45. The Guardian has considered L being made the subject of a care order at home, but she says this is not feasible. The parents would not work with the local authority. The amount of support would have to be 24/7. She is not sure how the point could be reached when the supervision

could be stepped down. Ms Fargin does not think this situation is sustainable and I entirely agree.

#### The older children

46. During the course of the proceedings the court directed a sibling assessment be carried out this purpose a statement has been filed by Faye Lyons who was the social worker for the children since October 2017. This statement is dated 5 July 2018. Miss Lyons because of her involvement has excellent working knowledge of the four children and a good relationship with them. Ms Lyons has excellent insight into the children's personalities.
47. The court is pleased to learn that all four children are in a long-term foster placement together. The children are settled and clearly very happy with their foster carers who are providing an excellent stable environment for them. What is of great concern however is the children's reported reaction to their learning that they have a younger brother. The children are now aged 12,10, 8 and 5. The children particularly the older ones will have an appropriate understanding of the issues which resulted in them being placed in care and the reasons why their contact with their parents is so limited. The social worker describes extreme reactions from the children of having seen their parents in an unplanned way, when the parents travelled unannounced to the close vicinity of the home of the foster carers and entered a café which they run. The reaction included the oldest child having a "meltdown" and later physically attacking his younger brother. The other two children both reacted by soiling and urinating during the night in their beds. It is reported that since the children were informed of their mother's pregnancy the children's inability to manage and regulate their emotions became a cause for concern. The two older children approached their foster carer requesting that the baby come and live with them as they do not think their mum and dad can look after it.
48. It is the local authorities case that the children's reaction is symptomatic of the abuse they received in their parents' care and a legitimate response to a fear that the baby will suffer the same abuse. Without psychological evidence to support this theory, there can only be a conclusion on the basis of informed knowledge of how sex abuse manifests itself in children's behaviour. On balance, it seems to me that the local authority's opinion is entirely logical, and I endorse it.

#### Social Work Evidence

49. The initial social worker involved in this case filed a statement dated 21 May 2018. The evidence presented provides a history of the local authority's involvement with the family which dates back 2006 due to poor home conditions and lack of appropriate supervision. There is no further recorded involvement until the local authority learn of the paternal grandfather having had a child removed from him. At the time he was 58 and married to a 20-year-old

woman. The child was removed due to the grandfather's Schedule 1 status. The local authority was informed that the paternal grandfather father had groomed the child's mother since she was 13 years of age and was warned that the grandfather was having regular contact with his grandchildren in the local authority's area. The local authority immediately informed the parents of the risks that the grandfather posed to their children. The parents signed a written agreement that they had been warned and that they should not allow any direct contact between their children and their grandfather. This agreement was signed in 2012.

50. It is reported that in 2015 the parents were allowing the children to have contact with the grandfather in breach of the written agreement. The parents reasoning behind breaching the agreement was that the mother was struggling with the behaviour of the oldest child and was relying on the grandfather for support. The local authority took appropriate steps to try to understand why the parents had acted in such blatant breach of the agreement. A cognitive functioning assessment was undertaken which confirmed the parents had appropriate learning ability: they had no excuse for failing to heed the warnings of the local authority. The parents were signposted to and attended various parenting programmes including the Triple P course and a parent to protect course, "PASA". Support was offered to the parents within a child in need plan and a CAF plan. In August 2016 a referral was made to the effect that the grandfather was still having contact with the children. The local authority was informed by the parents that this contact had resumed approximately one month after the end of the CAF in June 2016. In July 2017 the grandfather was convicted of sexual assault on the two younger children. The older children refused to give evidence.
51. The final local authority evidence is provided by a second social worker who has filed a statement dated 21 November 2018 and who gave evidence at court. It is notable that the social worker gave credit to the parents for making some progress and recognised how much they both love L and believe that they care for his welfare. Appropriately the social worker relied heavily in the formulation of her conclusions on the evidence provided by the assessment centre and the psychological evidence in respect of both parents. The social worker gave balanced and professional evidence. She recognised the difficulties of the parents living in close quarters in the residential unit. Whilst highlighting evidence of the parents' difficulties she was willing in cross examination to acknowledge the context of the parents' behaviour. For example, when questioned about the substantial evidence of the parents arguing during their stay at the assessment centre the social worker said that the issue was not so much that the parents argue but that they refuse to allow anybody from The assessment centre to intervene and refused to allow L to be removed from the situation thus exposing L to unnecessary conflict.
52. The social worker emphasised areas of concern supporting the local authorities proposed findings. It was the social worker's evidence that the relationship between the parents was

unstable causing them to argue openly in front of L. It is the social worker's view that the father has an entirely different interpretation and understanding of the grandfather of his convictions to that of the mother's understanding and that this causes inevitable friction between the parents, resulting in overt conflict.

53. The second social worker's interpretation of the CCTV evidence is that it demonstrates the mother's willingness to expose her child to a direct risk of sexual harm. I agree entirely with this.

#### The parents

54. The parent's position is as set out in their statements filed in these proceedings which have been supplemented by the parents giving evidence. Overall, I found both parents to be helpful and willing witnesses who were doing their best to present their position as being parents able to provide for L's future needs.
55. Submissions made on behalf of both parents support L being placed in their care while the parents are offered therapeutic work to assist them to understand and manage risk for L. There would have to be a particular emphasis on protection from exposure to sexual harm. No firm proposals have been put to the court. The court is therefore without an understanding of what would be available, how long it would take and how much it would cost.

#### Threshold

56. The only aspect of the threshold that I cannot find proved is the reference to the parents' mental health. There is not the evidence to sustain this. Paragraph (dd) will be removed from the threshold document.
57. Having considered the evidence I am satisfied that the local authority has proved each and every allegation of fact contained and set out within its schedule (except (dd)) on the balance of probabilities to be true. I am satisfied that the threshold for making a care order is met. I now move on to a welfare analysis.

#### Analysis for the purpose of making a care order (S1(3) CA 1989)

58. It is reasonable to assume that if L was old enough to express a view he would like to be brought up in a loving environment and that would be by his natural parents. L has the usual health and emotional needs of any baby. Despite the parents believe that L has inherited hypermobility from his father there is no evidence to support this and would not be having regard to his age and stage of development.
59. The making of a care order in respect of L would result in a change in his circumstances. L is presently in the interim care of the local authority and is seeing his parents on a regular basis. The making of a care order would invoke the local authority's care plan of placement for

adoption unless it could be considered that his interest would be best served by L remaining in the care of his parents under the terms of a care order.

60. Failure to place L in the care of the local authority would in my judgment expose L to an unacceptable risk of him suffering future harm; there are many aspects of the parents care which I consider presents such a risk. In summary these are a risk of exposure to sexual harm, a risk of exposure to unacceptable domestic conflict and a risk of inadequate parenting.
61. With regard to the risk of exposure to sexual harm it is a fact that the parents have allowed their older children to be exposed to sexual abuse despite having the support of the local authority to equip them to protect their children. I have formed the view that neither parent fully understands the effects that the trauma the older children have gone through has had upon them. The statement provided by the initial social worker the purpose of sibling attachment describes typical symptoms which manifesting children who have been the subject of sexual abuse. Despite having this evidence presented to him the father presents as denying the extent of sexual abuse the children suffered even going so far as to call one of the children, D, a liar about his account of detail contained in the criminal proceedings.
62. The mother's exposure of L to her sexual act of masturbation is in my judgement an instance where the mother failed to take proper measures to prevent L being exposed to sexual activity. Applying the NSPCC definition of sexual abuse, I find that the mother has sexually abused her child. This demonstrates, in my judgment that the mother does not have an appropriate understanding of the effects of exposure to sexual activity will have on a young child. I am satisfied that this was an act of sexual abuse on the part of the mother.
63. The father says he was unaware of the mother's acts in this regard in that when he was in the room while she masturbated holding L, he was distracted by his computer game. Having viewed the CCTV, I do not accept this. Referring specifically to the video clip relevant to 31<sup>st</sup> October 2018 I find that the father was aware of what the mother was doing and did nothing at the time to stop the mother or even to demonstrate his disapproval.
64. In my judgment neither parent has a sufficiently developed sense of boundaries to protect L against future threats of sexual abuse that he might encounter. The threat of sexual abuse for L may not come from his paternal grandfather, upon his release from prison. The world in which L will grow up will be full of opportunities to experience sexual abuse whether directly or indirectly from social media or the Internet. I am entirely satisfied that the parents do not recognise a risk when they see it and when they do see it are not prepared to take steps to avoid it. I see no hope that this tragic position has any realistic chance of change within a timetable that is appropriate for L.
65. Having considered carefully the parenting assessment of both parents it is my view that the fears of the local authority regarding the parents' general ability parent is well-founded. I accept that the first report was generally positive. I do not agree it was, "glowing" – a word

often used by Miss Hughes. The parents care for L whilst they were living in supported accommodation left a lot to be desired. The parents have demonstrated an inability to place L's needs above their own. This is best demonstrated by the parents frequently shouting and arguing with one another while L is near. The father's excuse for not allowing L to be removed from such a situation by staff demonstrates an utter failure to understand the emotional harm which will undoubtedly already have been suffered by L by his exposure to domestic conflict.

66. In summary the broad context in which I must consider L's welfare is that:

- a) *the parents do not understand the effect exposure to sexual activity has on a child;*
- b) *both parents have sexually abused (non-contact) L during their placement by exposing him to a sexual act and not protecting him from such act (being the mother masturbating) (NSPCC definition, limb 2 applied); the father being present and aware of this and not taking any measures to protect L from the mother's activity;*
- c) *the parents have a demonstrated inability to protect their children from exposure to sexual abuse from others;*
- d) *the parents frequently expose their child to domestic conflict;*
- e) *the father does not accept the full extent of his father's offences against his children;*
- f) *the father believes that at least one of his children is a liar and has misreported events involving the grandfather;*
- g) *the parents do not have appropriate understanding of a child's health needs and are prone to exaggerate to attract attention to themselves;*
- h) *the mother is capable of and willing to lie to the court and the local authorities to exonerate herself from exposing her child to sexual activity;*
- i) *both parents refuse unreasonably to co-operate with the local authority;*
- j) *the father has a demonstrated lack of respect for authority;*
- k) *both parents struggle to provide basic care in the form of a nutritious diet;*
- l) *both parents have difficulty managing a family budget in a way that ensure basic essentials are provided for L and are willing to spend money on presents for their other children while leaving themselves unable to buy L's essentials thus ingratiating themselves with their other children to the detriment of L's welfare*

67. I have formed the conclusion that neither parent is capable of meeting L's needs, either together or apart and endorse the opinion of the psychologist that for L's needs to be met if he were to

be placed in the care of his parents this would require constant monitoring and support by the local authority. It is entirely unreasonable to expect the local authority to do this in the light of the parents demonstrated failure to be honest with the local authority. Further to support L in this way would amount to full-time corporate parenting, a situation which in my view would not serve L's welfare. I endorse the Guardian's view that it is simply unsustainable.

68. I have no evidence which would support returning L to the parents while further work is undertaken with them. I endorse Miss Edmunds submission that to take this step would be to do so in a vacuum with no regard to the timetable for the child.
69. Having regard to L's welfare as being the court's paramount consideration, I am entirely satisfied that it is appropriate to place L in the care of the local authority.

#### Placement

70. The future care options for L are quite limited. Unfortunately, neither parent has been able to identify a suitable family member or close friend who could assume the care of L and offer him the permanence that he needs. For the reasons stated above placement of L in his parents' care is not one which would serve his welfare. The only realistic option is therefore for L are for him to remain in foster care or for him to be placed for adoption. There is no evidence to support, on the balance of probabilities the parents being capable of further change, and such that there is certainly would not support change being effective within the L's timetable.
71. L is eight months old. Any option of care has to be considered in the context of viewing what would best serve L's welfare for the whole of his life. If L were to remain in the care of the local authority which would entail him being placed in long term foster care, this would mean that he would have the benefit of continuing to have a relationship with his birth parents. There is a level of uncertainty as to how that relationship might develop, though, in the future when L learns that his parents were responsible for exposing his older siblings to being sexually abused by their grandfather and that his mother exposed him to sexual abuse at a very early age and his father took no steps to protect him. When L attains majority, he may have the option of returning to the fold of his natural family, however there is a real possibility that by that time the family will have become more dysfunctional. There is no certainty that his parents will remain together. The signs of weakness in the relationship between the parents is already showing. The father has indicated to a social worker that he is only with the mother was long as there is the prospect of L being returned, something he now denies. A key weakness in the relationship of the parents is that they each have different understandings of the culpability of the grandfather and their role in their children being abused. Setting this against the prospect of L growing up in a functional family and forming lifelong relationships with extended family members it seems to me that the latter alternative is the only one which will serve L's welfare needs for the whole of his life.



Parental consent

72. As I am satisfied that the care plan of placement for adoption is the only one which will meet L's welfare needs, in other words that, "nothing else will do", in so far as the parents failed to provide their consent to adoption I am satisfied that the welfare of L requires that his parents' consent be dispensed with.

**END**

---

**Schedule of Findings Sought by the Local Authority**

1. At the time the local authority took protective measures the children were at risk of suffering significant harm attributable to the care likely to be given to the children by their parents which would not be reasonable to expect a parent to give. Such harm arose by virtue of the following:-

Risk of Sexual Harm

- a. The paternal grandfather poses a significant risk of sexual harm to the children by virtue of his conviction in 1972 for gross indecency with a 9 year old boy, and his further two convictions for acts of gross indecency with males under 21. Additionally, during care proceedings in 2008 he was found by HHJ De Haas QC to be a "dangerous sexual predator". On 26<sup>th</sup> July 2017, he was convicted of four offences of causing sexual harm to the children D and E.
- b. The mother and father were made aware in 2012 of the paternal grandfather's findings made against him and convictions and they agreed to stop all contact between the paternal grandfather and the children however they continued to permit contact between the paternal grandfather and the children.
- c. Fromm 2014, it was apparent that the parents continued to permit contact between the paternal grandfather and the children, and the parents then signed a written agreement on 09.07.15, with the assistance of legal advice and the parents ignored the advice of professionals and breached that agreement. The parents signed a second written agreement on 26.08.16 for no contact between the paternal grandfather and the children
- d. On one or more occasions the paternal grandfather had contact with the children in the family home when the parents were present.
- e. The parents have allowed contact between the children and the paternal grandfather at his own home on at least one occasion.

- f. Through their vulnerability, the parents have been manipulated and are emotionally and physically dependent on the paternal grandfather, resulting on a fear of him which has caused the mother and father to prioritise their own need for a relationship with the paternal grandfather above all needs, the safety and welfare of the children.
- g. In these proceedings, the family has been accommodated an assessment centre until whilst a residential assessment has been carried out. During the residential assessment, the mother masturbated in her room on a number of occasions, namely on
- |    |          |       |
|----|----------|-------|
| 1. | 15/10/18 | 01:00 |
| 2. | 16/10/18 | 02:35 |
| 3. | 22/10/18 | 06:15 |
| 4. | 23/10/18 | 00:55 |
| 5. | 28/10/18 | 00:15 |
| 6. | 31/10/18 | 22:40 |
- l. On each of the occasions above, the child was present;
- m. On 28.10.18, the mother stopped the act and then picked the child from his cot thereafter returned to lie on the bed and resumed the act, held the child in her other arm and looked at him frequently for the remainder of the time she spent masturbating.
- n. The entire act / acts were recorded on CCTV and the mother was aware that she was the subject of 24/7 CCTV recording in placement.
- o. The father was present in the room at various intervals during the time that the mother was masturbating and holding the child, at times lying on the floor next to the bed and walking past the bed.
- p. The father was aware or should have been aware of the mother's actions.
- q. The father did not make any comment to the mother.
- r. The child was placed or alternatively allowed / permitted to lie face down on the bed asleep after the mother had finished masturbating.
- s. The mother exposed the child to a risk of sexual harm by masturbating in the child's presence and holding the child whilst continuing to masturbate.
- t. The mother knew or ought to have known that the said act of masturbating whilst having care of and holding a child was inappropriate; alternatively, the mother did know that the same was inappropriate but prioritised her own need for sexual gratification over the child's interests.
- u. The mother has failed to protect the child from exposure to sexual activity.

- v. The father has failed to protect the child from risk of sexual harm by reason of failing to prevent his exposure to sexual activity of the mother.

#### Parents' relationship

- w. The parents' relationship is volatile and characterized by conflicts which quickly escalate and are on occasion physical. The parents use raised voices and foul language in the presence of L. There are repeated incidents of aggression and hostility recorded during the parents' residential assessment. The parents refused to allow staff to intervene to remove L during such incidents. The parents show no insight into their behavior towards each other and the effect upon L of exposure to the same. In doing so have failed to prioritise the children's needs for safety and emotional security above their own needs. The parents spent the majority of the last 6-8 weeks at the assessment centre alone with L within their own bedroom.

#### Ability to meet basic needs

- x. The parents have failed to respond to the advice of professionals with regard to weaning and feeding L, and have continued to give him solid foods after agreeing that they would not do so. The parents did not accept that this would be harmful to L.
- y. The parents have received repeated advice as to safe sleeping. On multiple occasions at the assessment centre, the mother has been observed to be co-sleeping with L in her bed, leading to intervention from staff (as in (r) above) placing him at imminent risk of suffocation and death.
- z. The parents are unable to recognise when the child is unwell as opposed to unsettled. Further, the parents have administered medication (namely paracetamol in the form of Calpol) quite frequently when the child was not unwell.

#### Ability to meet developmental needs

- aa. ~~L is delayed in his development. On 09.10.18, upon examination by a pediatrician at a Children's Hospital, L has yet to reach the developmental milestones expected of a 6-month-old baby. At this time, L struggled to support his own head fully when sat up, and could not sit up even when propped from behind. He made only limited attempts to grab/hold objects. His vocalisations were described as 'unusual' for a child of his age.~~
- bb. The parents do not provide L with adequate or age-appropriate stimulation. L has very little play-time and is not used to tummy-time. Neither parent has demonstrated a commitment to attending baby classes to encourage L in his development. The mother refused to allow the child to engage with other parents and children during the family's residential assessment at the assessment centre.
- cc. The mother has been noted to hold L almost continually throughout the day. This has resulted in L becoming a 'clingy' baby, and has been observed to be inconsolable when put down by either parent. L has appeared to present as an insecure child.

#### Mental health

- dd. ~~Each of the parents experiences respective mental health difficulties. The personality traits of each of the parents highlight significant concerns in respect of their ability to raise a child. In particular the impact of the mother's personality is described as likely to be 'negative, intruding on the child's social adjustment and possibly the development of a secure attachment'. The stability of each of the parents' mental health fluctuates. The father suffers from anxiety. Neither has taken steps to address their respective mental health difficulties.~~

Ability to work with professionals

ee. The parents have struggled to forge and maintain a working relationship with the local authority and other professionals. The parents cannot maintain a reasonable level of meaningful engagement as they both struggle to accept advice / guidance / intervention which does not match their own beliefs.