IN THE FAMILY COURT SITTING AT MILTON KEYNES

IN THE MATTER OF THE CHILDREN ACT 1989

MILTON KEYNES COUNCIL

Applicant

-and-

PARENT (THE MOTHER)

1st Respondent

-and-

PARENT (THE FATHER)

2nd Respondent

-and-

U, V, W, Y AND Z

(Via their Children's Guardian)

3rd -7th Respondents

Mr Daniel Sheridan instructed by the Applicant Local Authority

Miss Lianne Murphy instructed by Woodfines Solicitors for the Mother

Miss Hannah Mettam instructed by Family Law Group for the Father

Miss Samantha Reddington instructed by Hepburn Delaney Ltd

JUDGMENT HANDED DOWN ON 17 MARCH 2020

HIS HONOUR JUDGE HUGHES, THE HONORARY RECORDER OF MILTON KEYNES, SITTING AS SECTION 9 JUDGE

1. **The application:**

2. On 23rd January 2019 the court heard an application by the Local Authority for permission to withdraw care proceedings in relation to the five subject children, which was made with the approval and consent of all parties. The purpose of this judgment is to give reasons as to why the court approved the application and to shed some illumination on the genesis and progress of the application against the background of the comfortable luxury of hindsight, the undoubted effect of the proceedings on the progress of Z's treatment and care; and, crucially, in this case, the intervention of the jointly appointed expert, Dr Zeitlin.

3. The background and history of this case and the chronology of the proceedings has been extremely complex. For that reason the parties have agreed, with the approval of the court and against the picture that emerged from disclosure of all the medical records, that an agreed chronology should be prepared. This document is annexed to this judgment (Appendix 1) and renders is unnecessary for the court, in the main body of this judgment, to set out in any detail what is rehearsed at considerable length in the detailed chronology. Necessarily, however, the court inevitably draws on key elements of that document in having considered and determined the present application before the court, namely an application for permission to withdraw the public law applications.

4. Similarly, and also with the intention of abbreviating this judgment somewhat, the relevant law in relation to applications for permission is set out in Appendix 2 of this judgment.

5. **Brief background:**

6. On 4th July 2019, the Local Authority issued applications for interim and full supervision orders in respect of U, V, W, Y and an interim and full care order in respect of Z. A further application, issued on 8th July, was for a declaration under the inherent jurisdiction of the High Court to compound Z's treatment by way of in-patient admission to a Hospital.

7. Z has a diagnosis of neurofibromatosis type 1 (NF-1) a diagnosis that was confirmed about 4 years ago.

8. Notwithstanding, it would seem the serious nature of his diagnosis, confirmed by X, a consultant in clinical genetics, in 2015, it would seem that until nine months before the inception of these proceedings Z had a stable medical history and was gaining weight.

9. At the time of issue it was also clear that U, V, W, Y had medical issues, however it was concerns regarding Z's poor weight gain that led to the inception of these proceedings and the declarations sought by the Local Authority and the Health Trust . Significantly, the medical disclosure is clear, and as is apparent from the medical chronology, that Z's weight started to decline from about May 2018. It would seem that there was a previous admissions to hospital between in October 2018, a further admission between December 2018 and January 2019 and again, between January 2019 and February 2019. Small weight gains, it would seem, were registered on discharge on each and every occasion.

10. It is not in dispute that in February 2019, the father was aggressive towards hospital staff, as he was concerned about the NGT feeding proposal and the parents were further very concerned that at that particular time that Z may have cancer. Happily, this was found after testing not to be the case.

11. Certainly by 21st March 2019 it is recorded that the parents had expressed the view that The Trust had exhausted its resources and they did not feel that Z's last hospital admission benefitted him, at all. They had concerns about the nature of the feed that he was receiving and the adverse effect on Z.

12. The spring of 2019 was punctuated with recorded concerns of the parents about the nature of feeding recommended by the hospital and the adverse effect which they say they witnessed in terms of, for example, vomiting. The parents preferred a Vega feed and the hospital advised that Vega feed was not

nutritionally complete. The parents recorded no significant signs of vomiting or diarrhoea when Z was given a Vega feed.

13. By May 2019, it was confirmed by Mr Wilson, an oncologist, that Z's biopsy showed no evidence of cancer which must have brought some relief to the parents.

14. However what remained, against Z's diagnosis of NF-1, was a range of medical opinions to try and understand Z's static weight gain.

15. However the view was emerging, as a consequence of elective admissions, that Z's weight gain was likely to be linked to inadequate calorie intake. It was also clear from the hospital's standpoint that they were concerned that the Vega feed was not nutritionally competent and from the parental standpoint, that feeds recommended by the hospital produced adverse reaction in Z characterised by diarrhoea and vomiting and that was causing Z's acute weight loss.

16. By the middle of June the hospital had decided to refer the matter to the Local Authority and held a meeting with the parents in June to explain that decision.

17. The consultant paediatrician, safeguarding lead at the Hospital, provided a medical report which contained an abbreviated medical chronology and highlighted the relevant concerns from a safeguarding point of view.

18. Consequently, by the time the application was issued there was a real concern that the parents struggled to accept medical opinion to the extent that it was impacting significantly on Z's immediate medium and long-term health needs and the parents appeared to hold strong fixed views.

19. As is clear from the chronology, there came a time later in the proceedings when the jointly appointed expert, Dr Zeitlin, was able to review all the material in the case against the background of a suspicion that this was a factitious illness case and in some way the parents were exaggerating or falsifying Z's reaction to the

feeds recommended by the hospital. That was not the view of Dr Zeitlin, in her preliminary report, which, of course, was not forthcoming until the autumn of 2019, some months after the proceedings had been issued. She was clear, by then, that there did not appear to be evidence of the family falsifying symptoms. In fairness to the concerns that were raised by the Hospital Consultant, Dr Zeitlin opined, "that it did seem likely that the parents had over reported problems such as diarrhoea and vomiting and that did not comply with advice and regimes from the treating teams and their failure to not do so was likely to put Z at risk."

20. Certainly by the end of June and beginning of July 2019, when the Hospital Consultant filed her report, the concerns were sufficient to give rise to the issue of proceedings and the Hospital Consultant described Z as "chronically malnourished." She also recorded that the parents would not allow professionals to institute a plan that would offer calories that Z needs due to their own medically inaccurate beliefs.

21. I also observed that in the Hospital Consultant's initial report there was criticism of the parents for seeking further investigation of Z when they were clear that he was being fed and it was apparent that the parents were simply not believed in their reports about Z's diet with no room for any possible alternative explanation. That is a matter of concern. But, in any event, the Hospital Consultant's clear conclusion was that Z was "very likely to benefit from a period of assessment in hospital without the interference of his parents. The primary goal of this period of assessment would be to maximise Z's calorie intake orally and by his NG tube feeds in a graded approach with a view to achieving catch up growth and sustained weight gain."

22. There appeared to be consensus amongst the medical professionals, including Z's lead paediatrician, that hospital admission was essential and although a concession that children with NF-1 can be smaller in size, their condition does not prevent children from growing. It was a matter of concern that there was no caveat to this opinion that NF-1 is a condition affecting each sufferer differently and no caveat that there are a range of unknowns about NF-1 and there may be

an underlying issue resulting in Z's lack of weight gain. The court was clearly asked to draw a natural inference that there was no likely medical reason.

23. In any event, after a number of court hearings, the parents agreed to a voluntary admission to hospital against the father in particular, confirming that he had, from time to time, lost patience with the medical professionals when he felt under pressure and when concerned about the treatment his son has received and that this behaviour has, at times, been unacceptable and could well have been perceived as aggressive. The father was of the view that there had been a relationship breakdown between the parents and staff but believed that the medical staff did have Z's best interests at heart and wanted him to get better. The father's primary position was that a hospital admission was not necessary and produced a letter from Z's school confirming that he had recently started back at school and school were delighted to notice progress, noting that he had put on weight, had more energy and presented as "a completely different child." A somewhat different position as presented by the Local Authority, on hospital evidence, at that time.

24. It came to be that, as I have indicated, that Z's admission was agreed and planned to take place over a six-week period. Significantly, and crucially in relation to this analysis, Z's admission did not render anything like the response predicted by the Trust during its first proposed period and an extension was sought for admission until November, which, again, to the credit of the parents, was agreed.

25. It was not until Z had been admitted for some months; and, in fact, immediately prior to the discharge plan of 7 November that the hospital confirmed what the parents had been asking for, for some time, which was to accept that the appropriate centile to measure Z against was the 0.4th centile as opposed to the 9th to the 25th centile. When considered against this centile, Z's weight presented a very different picture for the court and the parties.

26. During the admission, the parents were concerned that Z became less and less interested in oral feeding and hospital rules curiously prevented them from

bringing on to the ward foods that Z might find more appealing for "health and safety reasons."

27. In the event, Z was discharged once again back into his parents' care in November and the Trust, who had joined in the proceedings, confirmed that it was likely to seek to withdraw from the proceedings leaving the Local Authority with the conduct of the matter.

28. I have mentioned earlier the instruction of Dr Zeitlin and also mentioned her initial observations, received after November 2019, that there appeared to be no evidence that the family falsified symptom albeit evidence of over reporting and non-compliance.

29. I turn to paragraph 70 of the agreed chronology where she records evidence of cooperation between the family and the hospital staff saying this, "it is of note that the family continue to want to make changes to the feeding regime and at times, seem confused and mistrusting of the rationale for treatment. However, they did comply with staff. Unfortunately, the child's weight gain was limited; and, he continued to vomit and gag. At times, this was in response to possible sensory stimuli but at other times the provocation to gag and vomit was less obvious and no anatomical or physiological cause was identified. In particular, these symptoms did not appear to improve despite the absence of evidence of adverse feeding practices." It is a significant observation.

30. I observe that the social worker's analysis in this case has been as pivotal and as useful as Dr Zeitlin's and this is set out at paragraph 71 of the chronology and for the sake of completeness, I rehearse that particular paragraph, "Z has been very thoroughly investigated. He has also had an extended stay in hospital. Despite very close monitoring it is apparent that his weight has changed little and his height growth is also of concern. There is little to suggest that his eating pattern has been significantly affected by adversive feeding practice. There is robust information to suggest that his parents have been confused by medical information and also information that they have sought independently. This

seems to have impacted on their ability to work collaboratively with the treating teams. Children who have NF-1 can be both educationally and behaviourally challenged. It is really encouraging to read that the child has now returned to school." The social worker brings together their conclusions and recommendations in a statement, January 2020 and brings together the evidence of the treating clinicians; and, importantly, the overview of Dr Zeitlin. This has been an extremely impressive piece of social work where the social worker has worked intelligently and collaboratively with parents who have obviously been consumed with anxiety about their child but from the social work perspective, she says this, "My own observations of Z, his parents and his siblings in the hospital and at home are that they are appropriate with Z and the other children and respond to his needs. There have been no concerns raised by hospital staff regarding the parents' recent conduct on the ward nor have I any concerns. The proceedings have focused the minds of the professionals and the parents and a working relationship has been established."

31. She has gone on to set out the extent of the parents' cooperation and, crucially, that Z was in full time school and has gained weight since he left hospital.

32. It seems that Z attended an Eating Clinic in December and there are recommendations involving the use of a gastronomy bag.

33. It is plain from any reading of the papers that there has been a substantial development of the social worker rapport with the parents and a collaborative and child focused approach has continued. It has been suggested that the parents should be commended for their efforts in this regard and I have no difficulty in commending them and perhaps providing some context in this judgment to their concern and the confusion which, from time to time, has existed in their minds in relation to Z's treatment.

34. The social worker attests to the parenting afforded by these parents to all five of their children as of a "high standard." The conclusion of Dr Zeitlin makes it plain and provides an evidential bedrock for the Local Authority to apply to withdraw

proceedings. It is crucial and fundamental that Dr Zeitlin concedes and concludes that the parents would have been confused by all differing medical advice and the proposal is that all five children remain the subject of Child in Need plans under a working agreement.

35. The parents, naturally, agree that the proceedings should be withdrawn contending that the threshold criteria under S.31 was never capable of being met.

36. The application to withdraw is supported by the children's guardian and her position statement sets out a number of extremely apposite remarks, which I replicate below:

37. "The reality for each of the children is:

    i. that they either require such medication/treatment and as a result of medical suspicion which is taken no further, the same is being withheld, which places the respective child at risk; or

    ii. they do not require such medication/treatment and its administration or request for the same places the respective child at risk; and

    iii. for whatever reasons are for the above the parents require support in understanding what is each child's medical need.

38. The importance of good and consistent communication has been a clear theme throughout these proceedings."

39. The guardian opines that it is essential that the children do not find themselves in this position again and where there are professional and/or medical disagreements, that these are dealt with in a clear, consistent and understandable manner.

40. There was, in Z's case, no invoking of the FII protocol and no management of this case by the hospital as an FII case notwithstanding that is the way in which the case was presented to the Local Authority and hence to the court and the protocol for management of such cases is in existence for a specific reason and should be utilised.

41. **Preliminary conclusions and observations:**

42. There is little doubt, in my judgment, that the effect of these proceedings has been to focus the minds of the parties and professionals, which has led to a much better working relationship. Also of great benefit to this process has been the involvement of Dr Zeitlin and her expertise has been forthcoming against her appointment as a jointly appointed court expert.

43. I decline to make any criticism, whatsoever, of the treating clinicians, all of whom I have no doubt have been committed to Z's care; and, all of whom have been committed to getting Z better. Where there are lessons to be learnt then I suggest they are best learnt by a careful scrutiny of the chronology and the areas that it has illuminated.

44. I also make no criticism of the Local Authority as the grounds certainly existed at the inception of the proceedings for the matter to be brought before the court which, as I have said, through the process led to the instruction of Dr Zeitlin.

45. The local authoring, in making this application, has conceded that the grounds do not exist for a threshold finding under s.31 of the Children Act. No findings were sought on an interim basis under s.38 of the Children Act; and, the parents therefore stand exonerated of the allegations because no findings have been made despite there being clear and cogent grounds for initiation of the proceedings in the first place for the reasons I have already articulated.

46. So far as the parents are concerned, I give credit to the father for keeping his promise to the court not to let his frustrations get the better of him. He and the

mother have shown that they can indeed work cooperatively with the professionals in this case.

47. I endorse Dr Zeitlin's observations that there is robust information to suggest that the parents have been confused by medical information and, perhaps just as importantly, information that they have sought independently. It is understandable perhaps that parents who are frustrated and frightened for their child seek further information from "Dr Google." In my judgment, it is seldom helpful and very often contributes to the muddying of the waters.

48. I thoroughly endorse the Local Authority's approach that a Child in Need plan is the right outcome. I have little doubt, sadly, that Z will face challenges in relation to his health in the years to come and have little doubt that his parents are completely committed to him. However, also committed to him are his clinicians but this case emphasises the need for clear and consistent communication between clinicians and parents which can only be in Z's best interests.

49. **Final Conclusion and recommendations:**

50. The Court has considered and endorses the Local Authority's proposed approach for management of the family's needs under a Child in Need Plan, the Local Authority having conceded, on medical evidence now available, that threshold is not met for the purpose of proceedings under section 31, Children Act 1989. Permission is granted for the proceedings to be withdrawn.

Appendices

[1] Chronology

1. The Children's health needs were considered in the context of the C & F assessment. U, V, W, Y all have school SEN support plans in place.

2. Z has a diagnosis of neurofibromatosis type 1 ('NF-1'). This diagnosis was confirmed by a Consultant in Clinical Genetics in February 2015. There is a history of this condition in the family.

3. According to the NHS website Neurofibromatosis type 1 is a genetic condition that causes tumours to grow along the nerves. The tumours are usually non-cancerous (benign) but may cause a range of symptoms. Z is under the care of a Consultant Paediatrician at the Hospital Trust, and a Community Paediatrician. He had a stable medical history and was gaining weight until about 9 months ago**.**

4. At the time of issue, Z's sibling was under a dietician and ophthalmologist. The sibling also has a Neurofibromatosis diagnosis. He has little nodules growing in his skin and these can grow inwards and outwards. During the C & F, there was a suggestion that this diagnosis can cause dyslexia and developmental delay. The Mother stated that he has food allergies and has an 'epi pen'. She also explained that he has small freckles on his pupils and that he had a MRI three years ago. This did not show any further concerns. The parents have advised he has developmental delay.

5. Another sibling has allergies to bath products, head lice lotion and Radox. He is under an ophthalmologist, as he has rugby shaped eyes. He wears glasses. Mother advised during the C & F that his last ophthalmology appointment was several months ago and he is due for a review.

6. The other sibling is said by the Mother to be a 'day dreamer' and can judder in his sleep. During the C & F, the Mother advised that they had videoed his movements and he has been taken to hospital for an EEG on his head. The Mother felt that this may have been epilepsy and that epilepsy comes in 7 year stages, she advised this ECG was several years ago. The Mother has also advised he suffers with eczema.

7. Z has issues with a glue ear and he used to wear a hearing aid. The Mother advised he has a heart murmur, developmental delay, NF1, multiple food allergies and loose stools. He is also under an ophthalmologist.

History

8. There is a history of Children's Services involvement with this family going back over 10 years. For the purpose of this document, it is not necessary to expand on that background, as the Local Authority does not assert that this provides a helpful context to the application now before the Court.

9. There were previous proceedings with a Care Order made in respect of one of Z;s siblings, and therapy was identified for the parents. 2 of the children remained in foster care whilst that work was undertaken with the parents.

10. A transition plan was effected in 2011 and the contact between the parents and the children was increased to the point of rehabilitation.

Medical disclosure

11. The Court and parties have been sent copies of the medical chronologies. The medical disclosure filed and served was extensive; in particular, in respect of Z. An abbreviated summary of the same appears below for context; and, to assist the Court.

12. Z's weight started to decline from around May 2018. At the time of his review with a Consultant Paediatrician in 2019 he weighed in at 12.4kg and was 92cm in height.

13. In June 2018, Z was weighed by a Dietician at the Hospital Trust, and his weight was 12.12kg and height was 91.9 cm. His weight dropped from 9th centile and circulated around the 0.4th centile from the age of 2.5 years of age. The records show the continued movement of Z's weight under and above this centile.

14. On 03 September 2018, allergy tests were undertaken in respect of Z, which showed no allergy to nuts, including pecan, cashew, pistachio or walnut. He had a mild reaction to soybean, wheat and gluten. Advice was given to avoid these items if Z was allergic.

15. In October 2018, Z was admitted to hospital to monitor and review his calorie intake. He was put on Maxijul but no weight gain took place. In an updating e-mail, December 2018, Z's calorie intake was said to be inadequate. Consideration was given to a referral to the Child and Family Practice.

16. From mid-December 2018 until early January 2019, Z spent a further period of time in hospital. On admission, he weighed in at 11.4KGs. Z was given Pedisure Fibre Juice which replaced Maxijul. He was sent home with Ensure Plus Juice because he was sick on Pediasure. By the end of December 2018, he gained 700g in the 36 hours since admission. He was weighed again one day later December; no weight gain or loss. A small weight gain was achieved since admission.

17. In December 2018, Z underwent two MRI scans. The first MRI suggested a diffuse medullary glioma extending into the pons. It was noted to be asymptomatic**.**

18. The MRI of Z's spine reported extension of diffuse medullary lesion with cervical medullary junction and proximal cord with possible adjacent skip lesion. This was explained to the parents by the specialist clinician responsible for that testing.

19. On a date in January 2019, Z did not attend school. The children and families officer at school advised that a tumour was found on Z's spine, cancer not been ruled out and operations and biopsies were likely to result in paralysis.

20. Z had a further admission to hospital from late January until late February 2019. His weight on admission was 12.25KG. On discharge Z weighed 13Kg.

21. The Father has advised that the Vega feeds for Z started around February 2019, but he generally deferred to the Mother for the specifics. On a date in February 2019, Father was allegedly aggressive towards hospital staff. He was concerned about the NGT feeding proposal. He wanted to speak to a consultant very quickly, although the Consultant was reviewing another patient. This history has been placed in context by Dr Zeitlin and the Court is referred to her independent report, which is the basis of the Local Authority's application to withdraw.

22. In February 2019, Z underwent an endoscopy, a proctoscopy (SALT Team) and biopsy. The tests were consistent with mild reactive gastritis but the duodenum was within normal limits. He also underwent a videofluroscopy (video swallow procedure) and the Hospital identified a degree of reduced tongue movement and swallow onset but no evidence of aspiration.

23. In mid-March 2019, Z attended a Specialist Hospital. Z had a head tilt to the left. He was also said to have dysmetria on the left. He may have a little weakness on eye closure on the left compared to right. No nystagmus. Pupils equal and reactive. Full range of movement was observed in both eyes. Nasal quality to his speech. No tongue wasting of fasciculations. Normal gag reflex. Romberg's negative.

24. In March 2019, the parents expressed the view that the Hospital Trust had exhausted its resources and they did not feel his last hospital admission benefited Z. They were both said to be extremely worried about Z. In March, when on Peptamen Junior Advance, the parents reported loose stools and

vomiting after feeds. Mother thinks it was around this time Vega feeds started. The extended period of admission and the evolved position of the hospital in these proceedings has placed the parents' feelings in context, especially when considered in the context of the open manner in which they have worked with professionals during the lifetime of these proceedings.

25. In April 2019, Z was being prescribed Neocate Junior but the parents reported vomiting and stopped this feed during the same month.

26. Days later, the Father called the Hospital; he was asking about milk for Z. He said that NHS had failed his family several times and he knows his son has cancer. He knows the tumor is cancer regardless of what the hospital think. He felt the sugar hospital was giving Z was killing him. He was allegedly passive aggressive. The Court now considers these apprehensions through the lens of the independent assessment conducted by Dr Zeitlin. On the medical evidence, it is not now possible to place these parental views even as highly as to say that they reflect overvalued ideas let alone anything more concerning.

27. A day later, Z's dietician, confirmed that Z's milk had been changed to Vega feeds . He was weighed on this date by the dietician and weighed in a 12.8kg, a 1KG gain since XX March 2019.

28. The dietician advised about the need to carefully monitor dosage and advised about micronutrients such as vitamin A. An e-mail was sent from Z's dietician highlighting concerns about Vega feed and possible high level of vitamin A.

29. Also, Z's Paediatric Consultant confirmed to his Oncologist, that Z's IGF-1 level had normalised in his blood, his thyroid function was normal, urea normal and the rest of his U and E tests were 'normal'.

30. In May 2019, one of Z's dieticians, confirmed that the parents had been told that Vega feed was not nutritionally complete. The dietician proposed Elemental EO218 Extra Feed.

31. In May 2019, Z's Oncologist, confirmed that Z's biopsy showed no evidence of cancer. Some hypercellularity with oedema and vacuolar change with no discrete miotic activation. Features may be consistent with NF1. Endocrinology generally within normal range. There was a one-off abnormal IGF-1 at 86.1, which is extremely high. That was repeated and found to be in normal range.

32. No significant signs of vomiting or diarrhoea, and the parents said they were feeding him a Vega diet at that point; and, Father thought that his weight was most probably linked to the focal abnormalities seen on MRI scan. The Oncologist was *unclear* as to whether he could link the two together. He opined that it may be Z will always be below centile. Despite recent IGF-1 level being in normal range referral made to endocrine colleagues to assess for hormone deficits.

33. As set out above, Z has a diagnosis of NF-1. A number of medical opinions have been sought from Dr Aye to understand Z's static weight. He has had elective admissions to the paediatric ward to investigate this issue. During elective hospital admissions it was opined that Z's weight was likely to be linked to inadequate calorie intake. These matters must now be looked at in the context of Dr Zeitlin's report; and in the context of his extremely limited weight gain during agreed periods of admission in the context of these proceedings, as a result of the Hospital's applications dealing with his admission under the Inherent Jurisdiction.

34. Mid May 2019, the Mother contacted professionals regarding issues with Z's pump being used in conjunction with Vega feed. During a meeting at school, Vega feed was noted to be [sic] 'not nutritionally competent' . Z's skin prick tests regarding allergies were negative for soya, milk and wheat allergies, which clinically suggests he is unlikely to react to those food groups.

35. By the end of May 2019, a Community Sister, advised the parents against the use of homemade versions of dioralyte with water and salt. This was a concern highlighted by the safeguarding lead; however, the Court is now familiar with the

ultimate stance taken by the Hospital in this matter, whose role has fallen away; and, the Court will consider any previous opinions and assessments in the context of the independent paediatric assessment.

36. By June 2019, a dietician, advised that Peptamen Junior would have lower vitamin A levels than Vega feeds and offer a more nutritionally complete profile. A MARF was submitted and concerns said to have continued to escalate. Chronic malnutrition persists with a second episode of weight loss down to 11.75kgs on XX June 2019. There were two episodes of illness reported by the parents characterised by diarrhoea and vomiting resulting in acute weight loss and in one instance and there was confirmed dehydration.

37. A professionals meeting was convened with the parents in June 2019 to explain the reasons for the referral to the Local Authority.

38. The Consultant Paediatrician, safeguarding lead at the Hospital, provided a medical report, June 2019. That contained an abbreviated medical chronology highlighting the relevant concerns from a safeguarding perspective, it is dealt with in further detail below.

Within Proceedings

39. The Local Authority issued proceedings on 4th July 2019.

40. In its application to the Court the Local Authority sought immediate admission to hospital of Z based entirely upon the information provided by those responsible for Z's care at the Hospital.

41. The application form states; "The Local Authority and medical professionals are of the view that Z needs urgent medical attention and that Z's needs are not being met by his parents causing him emotional, physical, and developmental harm." The Local Authority application further states; "The Local Authority are very concerned about Z's health and wish to place Z with a foster-care

placement/ Regulation 24 placement if family members are put forward. It is hoped that Z may be admitted into hospital at the first opportunity due to the grave concerns about his health and well-being.

42. On issue, it was alleged that the parents struggled to accept medical opinion to the extent that it was impacting, significantly, on Z's immediate, medium, and potentially long-term health needs. The Authority was concerned that the parents appeared to hold strong fixed views about Z's health needs. These views were informed by the presented medical picture on the ground, as described by the Hospital.

43. This medical picture is best encapsulated in the medical report of Z detailed within the document of the Consultant Paediatrician/ Safeguarding lead already referred to, dated June 2019. Within that letter, prepared for the purposes of being put before the Court in evidence, the Consultant Paediatrician/ Safeguarding lead set-out a chronology of Z's weights, medical appointments and interventions, and concerns of the Hospital insofar as the parents' care of Z was concerned. Those concerns included the following observations:

    a) the letter suggests that the parents' reports of symptoms "were not observed by staff" with reference to Z's medical records, suggesting that no such symptoms were seen;
    b) In relation to an admission in April 2019 - "The rapid improvement in dehydration and his weight gain of nearly a kilogram suggests that Z may not have been receiving his VEGA feeds at home either." This was the unwavering conclusion despite the parents having reported that Z had had sickness and diarrhoea for several days leading up to this admission, which was clearly not believed by the hospital;
    c) the Consultant Paediatrician/ Safeguarding lead describes, in some detail, the link between malnutrition and serious ill health or death, she describes Z as drifting away from the 0.4th centile, and describes Z as "chronically malnourished" with the clear

implication that the risks described are likely to arise for Z in one way or another;

d) "Parents do not allow professionals to institute a plan that will offer the calories he needs due to their own medically inaccurate beliefs," a comment made in relation to their preference for Z to receive the VEGA feeds with concerns about the sugars contained in more mainstream feeds;

e) "The weight measurements are done in school instead of the home due to father being aggressive and threatening." The parties have found no primary reference to this;

f) "Parents had worryingly been making up oral rehydration solutions at home, adding salt and sugar to water rather than using readymade sachets." This is another observation said in categorical terms, which had not been put to the parents, and had never been discussed with them, and the parents were clear that in-fact the discussion between the two of them had been reminiscing that the Mother's Grandmother would make such solutions when Mother was a child, with no suggestion that Z had been given the same. The parties do not suggest that the Consultant Paediatrician/ Safeguarding lead was wrong to refer to this, but it is the unwavering observation that there is no room for doubt that this happened that, with reflection, the parties believe to have been unhelpful to the Court;

g) There is criticism of the parents for seeking further investigation of Z when they were clear that he was being fed, but it is apparent they were simply not believed in their reports about Z's diet, again with no room for a possible alternative explanation being in the Safeguarding lead's letter.

44. Then, importantly, the Safeguarding lead concludes that; "Z is very likely to benefit from a period of assessment in hospital *without the interference of his parents*. The primary goal of this period of assessment would be to maximise Z's

calorie intake orally and via his nasogastric tube feeds in a graded approach with a view to achieving catch-up growth and sustained weight gain."

45. In that report, the Safeguarding lead spoke about the parents presenting as obstructive, aggressive, and un-cooperative. What that report did not detail, was a sense of balance to the information provided, and when the medical records themselves were provided it could in-fact be observed, by way of example that;

    a) In December the Safeguarding lead omitted a conversation she had with the parents that she details in Z's medical notes as follows; "Both parents are worried about Z's weight and the lack of consistent weight gain. They told me they have been worried about it for a long time. They feel Z should not be discharged home until he not only gains weight but gains this in a consistent manner. I agree with them…… I have been shown videos on Dad's phone where he (Z) gags for little reason i.e. food just beyond lips followed by vomiting into a bowl of porridge. Dad also showed me Z sticking his fingers deep into his mouth without gagging. His Father said he doesn't understand this." The record goes onto state Mother's concerns about food passing right through Z. This is despite the Safeguarding lead observing that no medical professional had seen the symptoms the parents spoke about.

    b) That statement also states; "The possibility that Z might have a brain tumour caused understandable emotional distress to both parents. However, Z has been fully investigated with scans and a biopsy and parents have been made aware in a timely fashion that Z does not have any obvious neoplasm to treat." Whilst this letter refers to "a possible brain tumour" - all parties to these proceedings agree it should have set out clearly for the Court that a diagnosis had in fact been given of such a tumour existing in very clear and distressing terms, which endured as a diagnosis for a number of weeks, only to later be retracted; and, the

hospital should have recognised the potential undermining effect this had upon the parents' faith in the team around Z.

46. These observations are made within this chronology not to simply criticise or undermine the Hospital, but to ensure that there is an understanding by the hospital of how important it is to be accurate, to present a balanced picture of information, and of the impact upon Local Authorities, Guardians, and the Court of speaking in such terms.

47. In a subsequent report of Z's lead Paediatrician, dated July, she reports; "Children with NF1 can be smaller in size but the condition doesn't prevent children from growing. For over a year Z has been 11-12 kilos when he should be 16-17 kilos." There was no caveat to this opinion that NF1 is a condition affecting each sufferer differently, there was also no caveat that there is still an awful lot that is not known about NF1, and no caveat that there might be an underlying issue resulting in Z's lack of weight gain, and as such the natural inference the Court was asked to draw was that there was no likely medical reason for Z's lack of weight gain.

48. In that same report the Consultant Paediatrician stated; "Z should be admitted to hospital as soon as possible. Z has been chronically malnourished for such a long time that he is at risk of suffering long term health problems, and complications…. Z needs to get back to at least the 9th centile on the growth chart. The only way to increase his weight at the moment is through hospital admission as this will enable us to feed him in accordance with a clinically approved feeding plan and monitor and observe his progress."

49. The Consultant Paediatrician goes on to describe the consequences of malnutrition which at their height place him at the risk of becoming very ill or; "at a high risk of death" The Consultant Paediatrician suggests that these consequences could occur if there was no admission of Z. This opinion clearly weighed heavily in the minds of the Court and all of the parties.

50. The Consultant Paediatrician goes on to state; "This treatment cannot take place at home because the parents haven't consistently followed a plan previously put in place by the Trust. *As a result*, Z is still chronically malnourished despite each hospital and feeding plan." To the Court and the professionals involved in protecting Z's welfare, therefore, the hospital was positively asserting that the reason for Z's chronic malnourishment was because of his parents. There was no qualification to this opinion or reference to the possibility that something else might be the reason Z's weight issues. This observation actively played on the minds of the Court and professionals and with the benefit of hindsight was why it was believed the parents should not be part of Z's initial hospital admission, and it concurred with the Safeguarding Lead's recommendation.

51. These extracts are rehearsed at length because the Trust withdrew its role in these proceedings asserting that it; "had never" made allegations against the parents but had wanted an admission to eliminate possibilities and see what was happening. It is with regret that the parties who have all contributed to this chronology cannot accept this suggestion, and the Court is invited by all to reflect on the evidence the Hospital presented; and, to also decline that this was an accurate summary of what had taken place in this case in a balanced way.

52. The Local Authority issued proceedings and initially sought Interim Supervision Orders in respect of Z's siblings, U, V, W, Y, and an Interim Care Order in respect of Z.

53. The Local Authority supported the application by the Trust for Z's immediate admission to hospital. The Local Authority also sought an independent paediatric overview of Z.

54. At the first hearing, the Father opposed any orders being made in relation to any of the children and his position statement for that hearing states as follows:

"§5. The Father's position is very very clear indeed. There is no basis to assert- even on the Section 38 test- that threshold is made-out in relation to U, V, W, Y. He rigorously opposes the making of any orders in relation to them and does not accept that any form of state intervention in their lives is justified."

§11. The Local Authority has, today, (XX July 19) issued an application for an order under the inherent jurisdiction but it is further unclear what order is being sought because at the current time all that could be suggested is that the child is admitted to hospital and the medical staff decide what should happen from there, presumably in light of the nature of the order sought, absent any need to consult with the parents. Clearly such an order being sought from the Court is untenable, wholly unjustified, and inchoate.

§12. The Father's very clear position is that he fully accepts that Z needs to put on weight, and that this must be a priority for everybody.

§13. He accepts that there have been times when he has lost his cool with medical professionals, when he has felt under significant pressure, and has been concerned about the treatment his son has received or his clinical state. The Father has confirmed to those representing him that his behaviour has, at times, been unacceptable could well have been perceived as aggressive (although not intended), and has been unfair to medical staff. He believes that the medical staff do have Z's best interests at heart and want him to get better, which is something he and the Mother have been striving for, for a number of years. Whilst the Father is of the view that there has been a relationship breakdown between the parents and staff, this is retrievable and he is happy, willing, and able, to work with any medical professional or medical organisation if this is likely to benefit Z.

§14. The Father has been by Z's side throughout his life and has seen his weight go up and down, his difficult experiences with different foods/ feeds, and the misery that periods of ill-health have brought to his young son's life. As referred to above, he accepts wholeheartedly that it is vitally important for Z's weight to improve but he factually disputes what the Safeguarding Lead, and now the Local Authority asserts about the parental mismanagement of Z's health and what his medical needs are, although a clear plan might well assist the Father in understanding what is now being asserted.

§15. As best the Father last understood matters, the plan of the hospital was to admit Z for a period of feeding with a milk tried twice before that Z does not tolerate for any prolonged period of time, and that this should be "without the interference of the parents." He knows no more than this. Naturally, he cannot agree to such a treatment plan for his child, in-fact the Local Authority would most likely cite immeasurable concern about his exercise of PR were he to do so.

§16. At the advocates' meeting that took place, there was a suggestion of time pressure in this case and a need for Z to be admitted imminently and in circumstances that would give the parents very little time to consider any treatment plan eventually devised- indeed the initial desire was to agree a way forward at this hearing, which would be absent any plan from the medical professionals. The author of this document and Miss Murphy on behalf of the Mother expressed significant concern about the lack of evidence currently before the Court, the lack of a proper treatment plan, and the lack of any information that confirmed that this situation was indeed so urgent and pressing as was being suggested. Once again there seemed to be a real divergence of view as to what Z actually needs and how imperative any 'treatment' is.

§17. The Father's position was made very plain and it remains as such. He is clear that Z's weight has historically gone up and down and there seems

to be a real intolerance to a multitude of feeds and ingredients, and quite possibly some organic condition affecting growth and/ or absorption of foods/ calories. As such, there is a need for evidence and an understanding about Z's medical treatment to-date and his current circumstances, which goes above and beyond a letter written by the Safeguarding Lead, who has never been the lead Paediatrician for this particular child. The pressing urgency asserted is also not accepted.

§18. The Father has also been clear with those instructed by him, that he does not want his son to be admitted, to be fed a milk that he will ultimately need to change from when gastro symptoms appear that make continuation of the feed untenable, and for him to gain weight when he is simply laid in a bed being pumped full of milk, for any progress made to be lost when his intolerances re-appear.

§19. At the current time, Z weighs 12.7kg (a weight the hospital recently deemed to be an acceptable weight to discharge him at.) He is consuming 1200kcal per day plus oral feeding and whilst there are still loose and high quantities of bowel movements he is not gagging and he is not being sick, he is not complaining of headaches and he has no bloating/ complaints about tummy pain. More importantly, Z does not have dark rings under his eyes, he is enjoying eating orally again, and is much more active, which is likely to be a reason that his weight is not climbing at the desirable rate just yet insofar as the Father is able to comment upon such matters. Z has re-started going to school, whilst this is for very limited periods, he thoroughly enjoys this and the attached letter from Z's school demonstrates that they have seen a significant improvement in this child in recent times. The Father has photographic and video evidence that also shows Z improving from a lethargic child who is grey in pallor to having rosy cheeks, looking more 'filled-out' and enjoying his food. It is this progress that the Father is extremely keen not to undo.

§20. The child's current feeding regime is something the Father clearly needs to commit to writing, and he has been asked to keep a food diary for the foreseeable future so that there is a proper understanding of Z's daily consumption. Any plan for Z should naturally take account of the progress that Z has made and also the diet that the parents are satisfied is suiting him insomuch as is possible if there is to be an agreed way forward.

§21. The Father is entirely content for there to be monitoring of the family and Z's growth, and feeding regime (indeed the Local Authority social work team has attended the family home for an hour each day since proceedings have been issued and there have been no concerns about the parenting the child have received raised with the Father) but seriously questions the need for Z to be admitted to hospital yet again, with the risks of infection that this entails and the impact upon his son's quality of life at a time when he argues that he is much improved from the child the hospital raised their concerns about (although the actual text of the referral has not been seen at the current time.)

§22. If there were to need to be a hospital admission contrary to the Father's primary position (although with an agreed treatment plan there is a reality that this would be a voluntary admission if the Court felt the same was necessary) this would need planning and would best take place at a time that enabled Z to complete this school term, although as referred to this is very much not the Father's preferred position at the current time.

55. The Mother's position statement for the first hearing concurred with this position statement of the Father.

56. The letter referred to in Father's document, produced by Z's school, confirmed that he had recently started back at school and they were delighted to note his progress; he had put on weight, he had more energy, and presented as a

completely different child. This letter produced a stark contrast to the position of the hospital that Z's need for admission was urgent but as the hospital evidence came in concurring with the Safeguarding Lead's view that Z's admission was crucial the evidence on the ground was forced to fall away.

57. At that first hearing, the parents agreed and signed-up to a working agreement with the Local Authority pending the matter coming before the Court, with a properly constituted treatment plan, dated July 2019.

58. What then took place was that Father telephoned the hospital to ask about putting a boiled diet through Z's nasogastric tube to boost his calorie intake, he was told not to do this. This was reported to the Local Authority in terms that the parents had been doing this (again with no room for doubt) and that this placed Z at risk and as a result the Local Authority issued a further C2 application, on XX July 2019, and sought an immediate hearing that same day, providing virtually no notice at all to the parents; they sought his removal to hospital again on an urgent basis, again based on what the hospital had advised. By the stage, that application was made, despite the parents not being advised that there was any such intention, statements had already been drafted by clinicians about this allegation. That application states; "The Local Authority have been informed by the Hospital that Z's parents are attempting to feed him a boiled diet through his nasogastric tube. This is despite medical advice stating this should not be done due to a number of significant risks, which place Z at risk of harm….." The Local Authority, through its agents, had no direct conversations with the parents about this alleged situation.

59. The Trust made an application to be joined as a party to proceedings on XX July 2019 and in their application stated in categorical terms; "We assisted the Local Authority with their application by providing witness statements from clinicians to evidence that the parents were acting against medical advice by feeding Z a liquidised diet through his NG tube. In doing this Z is at risk of significant harm and death due to potential complications….".

60. Ultimately Z's admission was agreed on XX July 2019, it was due to take place over a period of 6 weeks and the agreed treatment plan confirms that the aim is; "to establish Z between the 9th and 25th centile….".

61. The children's guardian, within her initial analysis, supported Z's admission to hospital, although sought further understanding of parts of the proposed admission plan. The children's guardian did not support the making of Interim Supervision Orders in respect of Z's siblings, and encouraged the parents to continue to engage with professionals under Child in Need Plans.

62. Z's admission did not render anything like the results predicted by the Trust during its first proposed period and in September 2019, an extension was sought for admission until November 2019, which was again agreed.

63. It was not until Z had been admitted for some months (and in-fact immediately prior to the discharge plan) that the hospital confirmed what the parents had been asking for some time, which was to accept that the appropriate centile to measure Z against was the 0.4th centile, as opposed to the 9th- 25th Centile. When considered against this centile, Z's weight presented a very different picture for the Court and the parties.

64. During Z's hospital admission, the parents raised concern that Z was become less and less interested in oral feeding, the hospital food they reported as being unpalatable, and there were numerous rules around what could be brought onto the ward and fed to Z, for Health and Safety Reasons. It is unfortunate but what the parents were concerned about, namely Z becoming less interested in oral feeding, materialised by the end of his hospital stay and has endured for some time according their reports.

65. Z was discharged into his parents' care in November 2019 and the Trust confirmed that it was likely to seek to bow out of the proceedings in due course.

66. In the meantime the Court had approved the instruction of Dr Zeitlin, Consultant Paediatrician, to undertake an assessment of Z.

67. Dr Zeitlin has filed two documents in these proceedings setting out the medical basis for the Local Authority's current position, i.e. seeking permission to withdraw proceedings.

68. The content of that document insofar as it deals with Z's complex medical diagnosis is not rehearsed herein; however, she opines:

> *'There does not appear to be evidence that the family falsified symptoms. However, it does seem likely that they over-reported problems such as diarrhoea and vomiting. They did not comply with advice and regimes from the treating teams and their failure to not do so is likely to have put Z at risk. Whether forceful feeding has caused gagging and lead to very significant growth failure is a concern and would be a physical abuse.'*

69. The above conclusions then have to be considered in light of Dr Zeitlin's addendum repot , in response to further questions and consideration of additional evidence filed and served in the proceedings. Therein she addresses the possibility of Z having a diagnosis of Diencephalic Syndrome and she goes on to further consider the updating material relating to Z's hospital admission.

70. She opines:

> *'My opinion in regard to these questions has not really changed. During Z's recent inpatient stay there was more evidence of cooperation between the family and the hospital staff. It is of note that the family continued to want to make changes to the feeding regime and at times, seemed confused and mis-trusting of the rationale of treatment. However they did comply with staff. Unfortunately the child's weight gain was limited and he continued to vomit and gag. At times this was in response to possible sensory stimuli but at other times the provocation to gag and vomit was less obvious and no anatomical or*

physiological cause was identified. In particular these symptoms did not appear to improve despite the absence of evidence of aversive feeding practices.'

71. Dr Zeitlin's comments about Z's assessment at the Feeding Clinic are now superseded by the further update in the social worker's statement (as below); however, in summary, her conclusions were as follows:

> *'Z has been very thoroughly investigated. He has also had an extended stay in hospital. Despite very close monitoring it is apparent that his weight has changed little and his height growth is also of concern. There is little to suggest that his eating pattern has been significantly affected by aversive feeding practice. There is robust information to suggest that his parents have been confused by medical information and also information that they have sought independently. This seems to have impacted on their ability to work collaboratively with the treating teams. Children who have NF1 can be both educationally and behaviourally challenged. It is really encouraging to read that this child has now returned to school.'*

72. The basis of the Local Authority's current position is set out in the statement provided by the social worker, dated January 2020. The social worker bases her recommendations to the Court on the evidence of the treating clinicians; and, importantly, the overview undertaken by Dr Zeitlin.

73. The Court is referred the social worker's summary of Dr Zeitlin's comments in her addendum report *'there is robust information to suggest that his parents have been confused by medical information and also information that they have sought independently. This seems to have impacted on their ability to work collaboratively with the treating teams*'.

74. Of the parents, she aptly summarises the social work perspective as follows:

> *'My own observations of Z, his parents and his siblings in the hospital and at home are that they are appropriate with Z and the other children and respond*

to his needs. There have been no concerns raised by the hospital staff regarding the parents' recent conduct on the ward nor have I had any concerns. The proceedings have focused the minds of the professionals and the parents and a working relationship has been established.'

75. Since Z's planned discharge from hospital the parents have cooperated with social work visits and have attended meetings to ensure that appropriate support can be identified and put in place for Z. Z is now in full time school and, most importantly, he has gained weight since he has left hospital. The Court is referred to the final discharge plan, which set out the basis on which the Trust was content to discharge Z home.

76. The social worker goes on to note in her evidence that:

'Z attended a Feeding Clinic in December 2019 who recommended a gastrostomy bag and parents are in agreement with this. It is the view of parents that they feel that the signs and symptoms which Z has such as feeling hot are symptomatic of Diencephalic Syndrome which Dr Zeitlin was exploring. However, in her addendum report she is not able to add anything further to whether he has this syndrome. It will be for the parents to explore this through the appropriate medical teams going forward so further investigations can be made.'

77. It was ascertained at an earlier hearing that nerve Tumours UK was a possible means of support to the family, and whilst the parents have indicated that this is not needed at this time, the organisation can provide support to Z's school.

78. The social worker rapport with the parents has developed in such a way that she does not share previously expressed concerns about the parents' mental health. Likewise, wider concerns that were raised as 'flags' earlier in these proceedings have not materialised during the course of working closely with this family at what must have been a very worrying time, during Z's admission to hospital in particular. Then, in the time since discharge, this collaborative and child focused

approach has continued. The parents should be commended for their efforts in what must have been extremely difficult circumstances.

79. The social worker has reached the conclusion that a Child in Need plan moving forward is the right outcome; and, arguably, one of the most powerful statements to be found in the volumes papers filed in these proceedings, which have been informed by expert medical opinion, reads as follows:

> *'The parenting afforded to all five children is of a high standard and with the conclusion of Dr Zeitlin's report the Local Authority respectfully requests to withdraw proceedings on the basis that Section 31 Threshold is no longer met and the Local Authority wish to work in partnership with the parents and medical professionals to ensure the children and in particular Z continue to receive any support required. Dr Zeitlin in her addendum report goes further in concluding that parents would have been confused by all the differing medical advice.*
>
> *It is my proposal that all five children remain the subject of child in need plans under a Working Agreement for a period of three months which will then be reviewed. The school are very aware of the concerns regarding Z's disabilities and the feeding regime required and once Children's Services withdraw it would be down to the school to monitor this aspect of care going forward.'*

80. The parents were, naturally, content with these proceedings being withdraw in relation to all of the children on the basis that the Local Authority accepted that threshold pursuant to Section 31 was never capable of being met. The parents confirmed that they were happy to content to work with Children's services outside of proceedings under child in need plans to benefit the children.

81. The Children's Guardian did not oppose the application by the Local Authority to withdraw the proceedings and filed a position statement in which she confirmed that:

The children's guardian does not oppose the application for permission to withdraw the proceedings and pleased to note that the Local Authority and parents are working together and that it is reported that the social worker has developed a good working relationship with the parents.

There remains before the Court the children's guardian's Part 25 application, for which, in light of the stage now reached in these proceedings is inevitably not pursued.

The children's guardian would however wish to remind all parties as to the basis upon which such application was made, having considered all the medical records. This included noting comments made by professionals about treatment/medication requested made by the parents or recorded disputes, as outlined in the position statement prepared for the hearing which took place on 4.11.19, and in particular.

'*The reality for each of the children is:*

i. that they either require such medication/treatment and as a result of medical 'suspicion' which is taken no further, the same is being withheld which places the respective child at risk, or

ii. they do not require such medication/treatment and its administration or requests for the same places the respective child at risk, and

iii. for whatever the reasons are for the above, the parents require support in understanding what is each child's actual medical need.'

The importance of good and consistent communication has been a clear theme throughout these proceedings.

It is essential that the children do not find themselves in this position again. If there are professional and/or medical professionals concerns or disagreements with or by the parents, that these are immediately dealt with in a clear, consistent and understandable manner in the hope of an appropriate swift resolution or, if required, appropriate action being taken.'

82. All parties agree with these observations of the guardian. Whilst there is an understanding that in cases where FII is raised as a concern, the guidance

confirms that approaching parents about those matters / discussing such concerns with them can be dissuaded at times, this family did not meet that scenario.

83. There was, in Z's case, no invoking of the FII protocol, and no management of this case by the hospital as an FII case should be dealt with, and yet the case was presented in such a way to the Local Authority and as a result to the Court. The protocol for management of such cases is in existence for a specific reason and the Hospital are respectfully reminded of this fact.

84. The parties have taken some time to set-out the concerns that have endured about the management of this family so that there is a proper understanding for how these proceedings have come to be withdrawn.

85. Z will continue to be cared for under the umbrella of the Hospital, and it is important for him that relationships between hospital and family are preserved as best as they possibly can be, and on the clear understanding that these parents leave these proceedings exonerated of the concerns that brought the case before the Court alleging significant harm being suffered by any of the children, or there being a risk of the same.

[2] Legal principles

1. Where a Local Authority seeks to withdraw care proceedings because it is unable to prove the s 31 threshold criteria, the court has no alternative but to dismiss the proceedings; if, however, the threshold could be established, then an application for withdrawal will be determined on a welfare basis by considering whether withdrawal is consistent with the welfare needs of the child: **Redbridge London Borough Council v B and C and A (through his children's guardian) [2011] EWHC 517 (Fam)**

2. In **A Local Authority v X, Y and Z (Permission to Withdraw) [2017] EWHC 3741 (Fam),** MacDonald J (as he then was)(summarised the correct legal approach as follows:

> *'Pursuant to FPR r 29.4(2), a Local Authority may only withdraw an application for a care order with the permission of the court. Where an application for permission to withdraw is mounted in proceedings in which the Local Authority is unable to satisfy the threshold criteria pursuant to s 31(2) of the Children Act 1989, then that application must succeed. However, where on the evidence before the court the Local Authority could satisfy the threshold criteria, then the court must consider whether withdrawal is consistent with the welfare of the child such that no order is required pursuant to s 1(5) of the Children Act 1989 (see Redbridge LBC v B and C and A (Through His Children's Guardian) [2011] 2 FLR 117). An application made pursuant to FPR r 29.4 involves the court determining a question with respect to the upbringing of a child for the purposes of s 1(1) of the Children Act 1989. In the circumstances, when considering an application for permission to withdraw an application for a care order, the child's welfare is the court's paramount concern (see London Borough of Southwark v B [1993] 2 FLR 559 at 572). However, an application for permission to withdraw proceedings falls outside the scope of s 1(4) of the Children Act 1989 and therefore there is no requirement to have regard to the welfare checklist in s 1(3) of the Children Act 1989.'*

3. In **J, A, M and X (Children) [2014] EWHC 4648 (Fam**) Cobb J expressed the view that in order for a case to fall into the category of cases where the Local Authority is unable to satisfy the threshold criteria (and hence the application for permission to withdraw must be granted), the inability on the part of the Local Authority to satisfy the threshold criteria should be 'obvious.'

4. Where this is not the case, and it is possible that the threshold might be crossed depending on the court's construction of the evidence, Cobb J concluded that the court must first determine whether or not it should proceed with a fact-finding

exercise by reference to the factors set out by McFarlane J (as he then was) in **A County Council v DP, RS, BS (By the Children's Guardian) [2005] 2 FLR 1031**. Having considered those factors, the court should then cross-check the conclusion reached, with regard to the best interests test under CA 1989, s1(1).

5. In **London Borough of Southwark v B [1993] 2 FCR 607, [1993] 2 FLR 559 at 573, followed in Re N (Leave to Withdraw Care Proceedings) [2000] 1 FCR 258** (a case where threshold could be established), Waite LJ held that the paramount consideration for a court is:

> *'the question whether the withdrawal of the care proceedings will promote or conflict with the welfare of the child concerned. It is not to be assumed, when determining that question, that every child who is made the subject of care proceedings derives an automatic advantage from having them continued. There is no advantage to any child in being maintained as the subject of proceedings that have become redundant in purpose or ineffective in result. It is a matter of looking at each case to see whether there is some solid advantage to the child to be derived from continuing the proceedings.'*

6. When considering an application to withdraw care proceedings the court should take into account the overriding objective in FPR 2010, r 1.1 and, whilst proportionality can never trump welfare, it is nevertheless a factor to which proper consideration must be given: **WSCC v M, F, W, X, Y and Z [2010] EWHC 1914 (Fam)**.

7. On applying to withdraw proceedings, the Local Authority should state whether the child is a 'child in need' under CA 1989, s 17 and if so the authority should file a document listing the needs identified and outlining the support and services that the authority proposes to make available: **Coventry City Council v X, Y and Z (Care Proceedings: Costs) [2010] EWHC B12 (Fam)**.