Neutral Citation Number: [2023] EWFC 168 (B)

Case No. NG20C00248

IN THE FAMILY COURT

The Family Court
60 Canal Street
Nottingham NG1 7EL

Date: 9 October 2023

Before:

MR RECORDER O'GRADY

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G (A CHILD: CARE ORDER) (COMPLEX DEVELOPMENTAL NEEDS) (NO.1)

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Claire Howell (instructed by **Stephensons**) appeared on behalf of the Applicant Local Authority Nottinghamshire County Council
Vickie Hodges (instructed by **Jones Solicitors**) appeared on behalf of the Respondent Mother
Anita Thind (instructed by **Jackson Quinn**) appeared on behalf of the Respondent Father
John Lea (Solicitor) (of **Elliot Mather**) appeared on behalf of the Child, through his Children's Guardian

Hearing dates: 2, 3, 4, 11 and 12 May 2023

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APPROVED JUDGMENT

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published 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..

Mr Recorder O'Grady:

Introduction

1. This case is about G. He was born in April 2012. He is 11 years at the time I give this judgment. Nottinghamshire County Council (**"the local authority"**) applies for a care

order. The first respondent is BE. She is G's mother (**"the mother"**). The second respondent is LE. He is G's father (**"the father"**). I will refer to the mother and father collectively as **"the parents"**. The third respondent is G himself. His interests are represented by the children's guardian (**"the children's guardian"**).

2. The Court has been greatly assisted by an assembly of very experienced family law advocates. The local authority is represented by Ms Howell of counsel; the mother is represented by Ms Hodges of counsel; the father is represented by Ms Thind of counsel; and G is represented by Mr Lea, his solicitor.

3. The parents listened to the hearing with the *ad hoc* assistance of interpreters. Their evidence was given through interpreters.

Preliminary Matters

Trial Management

4. On 23 March 2023 the Designated Family Judge directed a Pre-Trial Review take place on 14 April 2023 and listed the proceedings before me commencing 2 May 2023. These proceedings were heard by HHJ Watkins at the pre-trial review on 14 April 2023.

5. All advocates presently before me appeared before HHJ Watkins at the pre-trial review. Two relevant decisions were made. First, the learned judge confined the times for examination of witnesses. Secondly, the learned judge confirmed the Designated Family Judge's listing of this matter for trial notwithstanding the unavailability of the guardian on 11 and 12 May, resulting in it being likely, if not inevitable, that her evidence would be taken out of turn before the parents would give their evidence, and potentially resulting in her not hearing the parents' evidence at all.

6. None of those case management decisions by HHJ Watkins, nor those of the Designated Family Judge listing the proceedings in this way, were subject to an appeal. Helpfully, the parties narrowed the scope of the issues before me which allowed flexibility in the times available, although they may not consider there was a great degree of flexibility offered. Each of the parties has had more time to challenge the witnesses than were confined by the trial management directions. Where necessary, I have stopped examination in order to fairly and efficiently manage the hearing.

7. During the hearing, the father took issue with the children's guardian giving evidence prior to the parents. It was submitted that would be inconsistent with a fundamental right to a fair hearing. If that was thought to be so fatal, and I am not required to express a judgment here as to whether or not it would be, the failure to appeal the Designated Family Judge's ruling, and subsequent confirmation of it by HHJ Watkins, is quite surprising.

8. Parties are under a duty to help the Court further the overriding objective: see rule 1.3 of the Family Procedure Rules 2010. It is inconsistent with that duty for parties to leave a point challenging the procedural fairness of a pre-trial review case management ruling until the final hearing several weeks later because, when challenges to case and trial management rulings are delayed until the event themselves,

there is an inevitable risk that the final hearing fixture and valuable Court time will be lost, which would result in an inefficient and disproportionate use of limited resources.

9. I agree with the general proposition that where it can be accommodated, regular order should be adopted. Fortuitously, and thanks in part to the advocates and their management of the witnesses, and the children's guardian's commitments being less firm than was initially understood (on 11 May she was in fact in a private law matter that had not been allocated a judge and therefore the hearing was at risk) – it was possible to accommodate regular order. I issued a witness summons under Part 24 of the Family Procedure Rules 2010 for the children's guardian to appear before me on 11 May, so that she would give evidence.

10. There has been no complaint taken by any of the parties to the procedural fairness of the conduct of this hearing now the case has been submitted to me.

Ruling on Evidence

11. Midway through the cross-examination of the father, the local authority sought leave to cross-examine him on a document purporting to rebut the father's oral evidence in chief that there was no financial assessment of his means undertaken by the local authority. It was not a document exhibited to a witness statement nor introduced into evidence as part of the local authority's case. I refused permission for the document to be admitted and these are my reasons for so refusing.

12. I accept that evidence would be relevant because it would tend to render more probable a fact in issue, namely whether there was in fact a financial assessment. That was not, however, the end of the matter. I necessarily had regard to the overriding objective to deal fairly in my conduct of the proceedings. I refused to admit the document for two principal reasons.

13. First, it was not necessary to admit the document to prove there was a financial assessment. The father cross-examined witnesses on the premise that there was a financial assessment. At no point was it put to any witness that there was in fact no financial assessment. He did not challenge oral evidence that there was one, and nor did he challenge the written evidence that there was one. Thus, the evidence was unchallenged in that respect. I do not consider that every point need be challenged in a hearing where counsel have had limited time to cross-examine. However, I do expect that, when the issue is in fact being cross-examined on, that had the father given instructions that there was in fact no financial assessment, he would put that through his experienced counsel, especially so given the father was on notice to the case against him that there *was* a financial assessment. It is set out in the written evidence at PDF page 663 that a financial assessment was undertaken on 22 February 2022 and explained in the oral evidence given to me that there was a financial assessment.

14. My second reason deals with the fairness of the proceedings. In my judgment, it would not be fair to admit the document and it would be disproportionate given my evaluation, above. The father was in the middle of his cross-examination. The document had not previously been disclosed in the local authority's case. Counsel had not seen it before the application was made. The local authority heard the father's oral evidence before cross-examination began and there was, in my judgment, an

opportunity for this matter to be raised before cross-examination began. It would overall, in my judgment, have been unfair to have permitted such a document to be admitted into evidence in those circumstances.

15. Separately, I am also alive to the circumstances that arose in *Re P (A Child: Fair Hearing*) [2023] EWCA Civ 215 and the possibility for what might appear to be an innocuous decision to admit previously undisclosed evidence to create severe, unforeseen and potentially unfair difficulties for litigant parents. I was affirmed in my judgment, not to admit the document by the *de minimis* relevance of the fact in issue once the case was finally submitted to me.

The Issues

16. The issues are as follows:

    (1) Is an adjournment of this final hearing required?

    (2) Is assessment of G by placement in his parents' care necessary and in his best interests?

    (3) Are the threshold conditions under section 31(2) of the Children Act 1989 satisfied and, if so, in what respects.

    (4) What are the realistic welfare options for G's future?

17. If there are realistic welfare options for the Court to assess, then I must go on to consider:

    (1) Evaluating the whole of the evidence by reference to the checklists under section 1(3) of the Children Act 1989, what are the advantages and disadvantages of each realistic option.

    (2) Treating G's welfare as paramount and comparing each option against the other, is the Court driven to conclude that a care order is the only order that can meet G's best interests?

18. I set those issues out in that particular order merely for convenience of following my judgment.

Positions of the Parties

19. The local authority applies for a care order with a plan that G be accommodated in Spring Home (*a pseudonym*) residential accommodation. It opposes an adjournment of the proceedings for placement of G with his parents for assessment under section 38(6) of the Children Act 1989.

20. In their final evidence the parents sought G's return to them under (any) final order. In the opening to their case, a different position was advanced. The father and mother seek further assessment of themselves with a placement of G in their care under an interim care order, with the father as the primary care giver to G. They wish to do so

with all the support that might be provided to them. The parents expressly concede that:

(1) The Court cannot, today, return G to their care under any order on a final basis, let alone no order.

(2) Thus, the making of a care order, supervision order or no order with G in their care at home is not a realistic welfare option at this hearing.

21. If the Court is not satisfied that G could be placed in their care on an interim basis to assess him, they submit to me that the local authority has not proved a care order is necessary because of deficits in the evidence and its care plan. The parents criticise the local authority's plan as failing to provide a coherent picture of G's care and what is presented would fall short of meeting his needs.

22. The children's guardian supports the making of a care order on a final basis and opposes an adjournment of these proceedings. It is submitted to me on the child's behalf that the care plan is acceptable in those areas that the Court is required to consider.

Background

23. The mother was born in Pakistan in 1976. She is 47 years of age. The father was born in Pakistan in 1978. He is 45 years of age.

24. The parents' relationship began around 2002. In 2006 the father came to the United Kingdom from Pakistan. He travelled forwards and backwards after that. In 2011, whilst pregnant with G, the mother came to the United Kingdom.

25. G was diagnosed with Global Developmental Delay in 2014. In 2015 he was diagnosed with Autistic Spectrum Condition. In 2017 G was diagnosed with symptomatic epilepsy secondary to structural brain abnormality.

26. G was made subject to a Child in Need plan in June 2017. An Initial Child Protection Conference was convened on 7 December 2017. G was categorised under the category of Neglect. There were said to be issues concerning domestic abuse and drugs consumption.

27. In July 2018 section 47 enquires were undertaken following bruises being identified on G. Review Child Protection Conferences were convened in February and July 2019.

28. In September 2019 G moved from mainstream education provision at Landsview Academy (*a pseudonym*) to specialist provision at Rainbow Primary School (*a pseudonym*).

29. A further Review Child Protection Conference was convened in April 2020. At that time a service described as "Early Support Services" was put in place. That service involved occasional in-home support for G and the parents.

30. An Initial PLO meeting was held on 4 September 2020. These proceedings were issued by C110A on 25 September 2020. G was made the subject of an interim supervision order on 29 September 2020.

31. On 7 July 2021 G was placed in the local authority's care under an interim care order. He was placed in a residential placement, Spring Home, which is a couple of hours drive from his home on 8 July 2021. I heard during the evidence that the removal of G from his parents' care was an extremely distressing experience. It lasted several hours and involved the attendance of the police. G was naked. I was told by the children's guardian that the local authority should not have pressed G's removal in the distressing circumstances that existed that day and should have stepped back and re-thought they plan.

32. G began attendance at Runwood School (*a pseudonym*), a specialist provision on 10 January 2022. He remains in attendance there to today.

33. The proceedings were listed for final hearing on 1 November 2022. The hearing was ineffective. No interpreter attended for the father on the first day. It was said that disclosure from Spring Home was incomplete and so the hearing could not proceed. The learned judge who conducted that ineffective hearing agreed to the parties' joint position that the hearing be adjourned.

34. On 23 March 2023 the Designated Family Judge directed a Pre-Trial Review take place on 14 April 2023 and listed the proceedings before me commencing 2 May 2023.

Key Features of the Written and Oral Evidence

35. The core bundle is an unnecessary 929 pages long. I can say 'unnecessary' because I read it all and only a *very* small proportion of the documents bear on the final decision or were referred to by the advocates.

36. I read all the written evidence carefully. I similarly listened carefully to the oral evidence over four days. This judgment is not intended to be a repetition of everything I considered and my failure to recite a particular part of the evidence does not reflect a failure on my part to consider it. I have deliberately not included all the oral evidence heard given the scope of this judgment. What follows is only intended to be a summary.

<u>HJ (Community Paediatrician)</u>

37. Dr HJ is a Consultant Community Paediatrician. She is the Head of Service for Community Paediatrics and Lead for Neurodevelopmental Disorders. Dr HJ is G's treating community paediatrician. Dr HJ described G as a boy with significant disability relating to his diagnosis of Autism and learning disability, with underlying structural brain abnormality. G requires additional care compared to a typically developing child of the same age and is more vulnerable due to his inability to speak and wider needs.

38. G has speech and language delay and is essentially pre-verbal. G has difficulties eating and drinking. Dr HJ described G's social and learning skills to be significantly delayed

relative to his peers. I noted the diagnoses recorded by Dr HJ in her report of 23 October 2020. Dr HJ noted historical concern that the parents did not understand or accept G's needs, whilst at the same time noting that another doctor recorded their understanding of Autism as being "good".

39. Dr HJ accepted that children with Autistic Spectrum Condition experience differences in development, but considered the differences seen in G are significant and "there are concerns that there may be an environmental cause for these related to the care he received within the home environment." Dr HJ told me that G's growth measurements, including, weight are within normal parameters.

RW (Independent Social Worker)

40. RW (**"the ISW"**) was jointly instructed as an independent social worker to assess the parents and report in this case. The ISW prepared four reports; one dated 3 January 2022 (**"the first report"**), one dated 29 January 2022 (**"the second report"**), one dated 29 August 2022 (**"the third report"**) and one dated 3 April 2023 (**"the fourth report"**).

41. In his first report the ISW was concerned that G would face a childhood in institutional care and that efforts should be directed to support the father care for G. The ISW identified the father and G to have rapport. He thought, at that time, that with professional support and strict guidance, the father could be G's primary carer. The ISW considered that G's behaviour is largely determined by his environment. He identified the mother had fixed views that G had to change, rather than his environment. He saw the mother act impulsively, invade G space and force him to drink.

42. The ISW's third report followed an assessment by the local authority of the father's ability to care for G as a primary carer (as opposed to a re-assessment by the ISW). G remained placed in Spring Home during the assessment. The ISW accepted the local authority's conclusion that G could not live in the father's primary care and should instead reside in residential care. In the ISW's opinion G's welfare and development would be impaired in his parents' care and he would be at high risk of neglect in all aspects of his physical and emotional needs.

43. The ISW did not consider the parents to have a well-functioning relationship and believed that G would be exposed to constant conflict in how his needs should be met. I read that the risk of neglect, emotional and physical harm could only be ameliorated by the constant care and presence of professional staff. In the ISW's opinion the staff member would have to deal with conflict that would exist in the parents' different views of how G's needs should be met. The ISW identified that whilst in Spring Home G had shown continued developmental improvement.

44. The ISW's review of the evidence confirmed that for the first eight years of G's life his parents (principally the mother) ensured G attended nursery and school every day. He had good attendance, was well dressed, clean and thrived in his physical development. However, the ISW told me there would be "constant conflict" between the parents, which G would sense and which the father had not acknowledged. In the ISW's opinion the father would need to demonstrate he can do all G's care all the time, which

would be unlikely to happen. The ISW did not think G would be "terribly safe at home". The father was not thought to be equipped to meet all G's needs. If G's needs are not met then he can be violent, matters would escalate and neither of the parents alone or together are capable of deescalating that.

45. I was told that G remains unsettled at times on most school days and can be dysregulated despite multi-disciplinary professional care. The ISW maintained that G should see his parents twice per week if a care order is made. I was told that greater harm would be suffered by G being in his parents' care than remaining in residential care.

PK (Registered Manager of Spring Home)

46. PK is the Registered Manager of Spring Home, which is a residential care facility. Spring Home is a facility that can accommodate two children. There are fourteen members of staff, who work in rotation. I was told the staff are extensively training in Therapeutic Language, Therapeutic Play, Attachment, Trauma, Epilepsy Awareness, Buccal Midazolam and Autism Awareness. G arrived at Spring Home on 8 July 2021. PK described G's presentation on arrival in vivid terms. G was naked with nothing but a blanket wrapped around him. He refused food and drink. In his first week at Spring Home, G would only eat off the floor without a plate.

47. PK says that G is thriving in his new school, where he is meeting his expectations. G is now able to dress himself and now sits at the table to eat. When G arrived at Spring Home he was doubly incontinent. He now uses the toilet. G cleans his own plate. He puts his washing in the laundry basket and washing machine. He can wash his hands and brush his teeth. In sum, PK has seen considerable development in G's independence skills and functioning relative against himself. PK described G as a pleasure to have at Spring Home. He is lovely, smiley and very settled.

48. I was told the parents have had discussions with staff about how to manage G's behaviour. The parents have observed and shadowed the strategies used by the staff at Spring Home on the many occasions G has been dysregulated there.

49. Spring Home provides an outreach service to support children's reintegration to their home in which a member of staff is present in the home to support a transition. I was told this could take place over several weeks and otherwise "for as long as is required", subject to funding being in place.

TN (Advanced Social Work Practitioner)

50. TN is an advanced social work practitioner employed by the local authority. TN undertook an assessment of the father following the ISW's first and second reports. TN observed some positive parenting, including a softness of voice, some awareness of distress and joy in interactions with G. TN identified that the parents do not have a united approach to supporting G. She saw the father roll his eyes at suggestions made by the mother and the mother become upset. I was told the father was twice offered or supported with access to an Understanding Autism course and he had not, as at this hearing, enrolled. Criticism was directed at TN for conducting an assessment programme that included: 1) intensity because of the travel commitments and the short

time-frame for assessment; 2) that the mother's own mother passed away and she had to return to Pakistan; and 3) the financial pressure the father was under was not understood. TN conceded the assessment was quite "exceptional".

51. I was told that the parents are obsessive about food and it overrides the father's ability to understand G's needs. The father believes G's seizures occur because he is not fed properly. TN did not accept the parents' desire to ensure G was well fed is "culturally, quite normal". TN accepted criticism that the local authority's care plan did not fully engage with G's cultural and identity needs.

MD (Social Worker)

52. MD (**"the social worker"**) is a social worker employed by the local authority. In the social worker's opinion G would be at risk of significant harm by neglect of his needs if he lives with his parents. She considered that the father has not evidenced he could make necessary changes in his parenting skills to provide G with the consistent level of high care that he requires. The social worker relied on the improvements in G's independence (use of toilet, eating well, sleeping well and improved communication skills) as evidence of the deficit in his needs being met when he lived with his parents. The social worker contended that the parents could not meet G's needs, even with intensive support. The acute stressor is the parental dynamic in which the father would be required to be the primary carer, but he is unable to challenge the mother's dominant parenting style and her desire to resume her role as primary carer.

53. The social worker said, "There has been a substantial and continual level of support offered by the local authority over the last six and a half years." I was told the support that could be put in place were G in the parents' care would consist of short breaks during the day and night. As is apparent from the other evidence, this did not in fact reflect the support that was available.

54. The social worker's belief there had been "substantial and continual" support prior to G's removal evidenced that the social worker had not meaningfully engaged with (or if she had engaged with, then not understood) the details of the support that had and *had not* been provided to the family. The social worker's evasive responses when challenged about her understanding of the support provided to the family were unsatisfactory. This was even more stark given the social worker accepted that in November 2019 there were *no* concerns about parenting capacity. She eventually conceded, when asked by the Court, that the suggestion the support was "substantial" was "a bit generous". It was difficult to discern whether the social worker's persistent defensiveness was because she was attempting to hide embarrassment at her lack of attention to detail or in fact revealed an unwillingness to be reflective on deficits in her analysis. Along with the lack of analysis of the past and future support available to the family, the social worker was compelled to concede that the care plan did not satisfactorily engage with G's religious and cultural needs.

The Father

55. The father is a taxi driver. He works varying shifts of 15-20 hours per week. The father acknowledged that G receives a good level of care at Spring Home. It was expressly put to witnesses on his behalf that criticism was not directed at Spring Home.

The father believes the mother has found it difficult to "come to terms" with G's diagnosis of Autism and she expressed to him that it is something G would "grow out of". The father perceived the mother "buried her head in the sand in the hope G's disabilities would disappear as he got older". Given the mother was G's primary carer, and she held these views which were wholly inconsistent with even a modest understanding of G's needs, the father conceded that he "failed to prioritise G's needs". In his witness statement of 3 August 2022, the father told the Court that he would "100%" be able to meet G's needs and pressed for G's return home. He likewise pressed G's immediate return home (under any order and with support) in his witness statement signed as recently as 27 March 2023. I must inevitably conclude, given the position he now adopts in this hearing that G cannot safety return to him now, that there was a measure of unreality to the father's assessment of his own capacity to care for G when he settled those documents.

56. I was troubled to hear the father minimise the contribution the parents' care of G had to G's dysregulation whilst he simultaneously told me that he understands all G's cues "completely" and also "completely understands G's autism". He believes G's development whilst at Spring Home has only been "slight". His evidence betrayed a deficit in understanding and an overconfidence in his own abilities, which is not supported by the evidence.

57. The father struck me as a man who is trying hard in a difficult situation. I have no doubt the balance he is trying to strike in promoting himself as the primary carer of G, very much as the expense of the mother resuming any significant caring role, and maintaining a cordial relationship with her, is challenging. He perceives the mother *still*, despite their joint position to the Court, wishes to do G's care by herself. I credit the father for his candour, arguably against his interests, in shining light into the challenges that will exist in this parenting dynamic.

<u>The Mother</u>

58. The mother's evidence brought into bright light the deficits in parenting capacity identified by the professionals, which have led to the parents' joint position that she cannot be a primary carer. The mother told me that there was no reason why G could not come home next week or "as soon as possible". I got no sense she understood the challenges G would face if I embraced that course. The mother told me that G had strong routines at home. She accepted that she would find it "very difficult' to take a back seat in G's care. I asked the mother if she believes there is anything the father must work on. She told me that the father already knows a lot and that, if he does need assistance, then she will be supporting him, "showing him and telling him."

59. Much can be lost in the giving of evidence through an interpreter. However, the mother's strong personality was clear. Having listened to both the mother and the father, I have no doubt that the mother is the dominant force in the relationship and managing her and the difficulties the deficits in her parenting capacity present to G is likely to be a fundamental part in G's future care, whether he is at Spring Home or in the care of his parents.

<u>The Children's Guardian</u>

60. The children's guardian recommends I make a care order. G, I was told, is "an exceptional child with exceptional needs". The children's guardian does not consider either parent has the necessary insight into G's needs nor do they possess the skills to care for him. The children's guardian considers the father has an honestly held belief that he "truly knows everything about G". She accepted that the father has worked cooperatively with Spring Home and that he is prioritising his son.

61. The children's guardian told me that the level of professional support required to assist the father as a carer would be considerable and that the parents have an unrealistic understanding of the extent of the support they will need. She has seen G to now thrive in Spring Home in contrast to his circumstances with his parents.

62. Notwithstanding the deficits in the evidence that emerged during the hearing, the children's guardian considers the local authority has undertaken a fair and thorough assessment of G's best interests. The children's guardian was unable to identify any support services for the family, other than those identified obliquely in the local authority's written evidence. It was accepted that the children's guardian did not pick up on the services Spring Home could offer to support G's rehabilitation. This was in the context of the children's guardian telling me when it came to the father that, in the entirety of her career, she had not met a person who has so devoted his life to his son as the father has.

The Law

Factual Determinations

63. When a fact is in dispute, the burden is on the party alleging the fact to be true to prove it is true. The standard of proof is the simple balance of probabilities. Whether an assertion of fact is true is binary. If the standard of proof is met, then the assertion is fact and treated so for my decision-making. Any findings I make must be based on evidence, including inferences reasonably drawn from the evidence and not speculation. That evidence can be written or oral and I can rely on hearsay evidence from witnesses who have not given oral evidence. However, I must consider carefully what weight to give to hearsay evidence as I have not had the opportunity to consider how it would have stood up to challenge by cross-examination.

64. The Court must take into account all the evidence considering, each piece of evidence in the context of the other evidence, surveying a wide landscape and must avoid compartmentalising.

Welfare

65. G's welfare has been my paramount consideration. I assess G's best interests within the context of the considerations in section 1(4) of the Children Act 1989.

66. Section 31(2) of the Children Act states:

> "31
>
> …

> (2) A Court may only make a care order or supervision order if it is satisfied—
>
> > (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
> >
> > (b) that the harm, or likelihood of harm, is attributable to—
> >
> > > (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> > >
> > > (ii) the child's being beyond parental control.".

67. The fact the threshold criteria are met is not a mandate to make a care order. If I am satisfied the conditions in section 31(2) are established, I must then consider what order, if any, is in G's best interests. Anchoring this is the requirement that I should not make an order for G unless doing so would be better for him than making no order, or indeed, no less draconian order.

68. A care order is a draconian order of the highest order of magnitude. I must only approve a care plan, permanently separating G from his parents where it is demanded by G's overriding best interests. A final care order can only be made if I am satisfied that the care plan is right for G, and that the order deals proportionately with the impact of any harm that he has suffered or is likely to suffer, his current and future needs, including those arising out of that harm, and the way in which the long-term plan would meet his current and future needs.

69. At the heart of my thinking has been Hedley J's comments in *Re L (Care: threshold criteria)* [2007] 1 FLR 2050 at [49]:

> "… society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done."

70. These are not mere words to be cited as part of a judgment. They are an injunction, enjoining this Court from permitting State intervention other than when it is proved by the local authority that such draconian intervention is demanded by the child's interests.

They are also a command to judge humanely, with the Court's own fallibility and the imperfection of State intervention in mind. I have endeavoured to do so.

Assessment

71. In addition to those considerations I have already recited, I remind myself of the contents of section 38(6), (7A) and 7(B) (a) through to (g) of the Children Act 1989:

> "(6) Where the Court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.
>
> …
>
> (7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the Court is of the opinion that the examination or other assessment is necessary to assist the Court to resolve the proceedings justly.
>
> (7B) When deciding whether to give a direction under subsection (6) to that effect the Court is to have regard in particular to—
>
> (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
>
> (b) the issues with which the examination or other assessment would assist the Court,
>
> (c) the questions which the examination or other assessment would enable the Court to answer,
>
> (d) the evidence otherwise available,
>
> (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
>
> (f) the cost of the examination or other assessment, and
>
> (g) any matters prescribed by Family Procedure Rules."

72. I remind myself that delay in determining a question with respect to G's upbringing is likely to be prejudicial to his welfare. I have considered the requirements in Part 25 of

the Family Procedure Rules 2020, so far as they are necessary, were I to permit expert evidence.

Adjournment

73. Peter Jackson LJ surveyed the authorities dealing with adjournments in different contexts in *Re P (A Child: Fair Hearing)* [2023] EWCA Civ 215. He said at paragraph 45:

> "1) The Court must strike a fair balance, having regard to all the interests at stake, and not merely the interests of one party. In a case involving children, their interests (though not paramount) must be considered, as must the effects of delay.
>
> *Re B and T* at [21]; *Re L* at [9]; *Re G-B* at [52] and [54]
>
> 2) There can be more than one right answer to this evaluative exercise; the question is whether the decision was a fair one, not whether it was "the" fair one.
>
> *Terluk* at [19]
>
> 3) These are classic case management decisions, and as such an appeal Court will be slow to interfere.
>
> *Re TG (A Child)* [2013] EWCA Civ 5, [2013] 1 FLR 1250 at [24-38]
>
> 4) However, the question on appeal is not whether the decision lay within the broad band of judicial discretion but whether, in the judgement of the appeal Court, it was unfair in the circumstances identified by the judge.
>
> *Terluk* [18]; *Solanki* at [32-34]; *Re A* at [43]
>
> 5) The assessment of what is fair is a fact-sensitive one, and not one to be judged by the mechanistic application of any particular checklist.
>
> *Re G-B* at [49]; *Bilta* at [30]
>
> 6) The starting point is the common law principle of natural justice, reflected in the overriding objective, which ensures compliance with the requirements of Article 6 ECHR. In this area, domestic and Convention requirements march hand in hand.
>
> *Re B and T* at [28]; *Re A* at [26-28]

7) The question is whether the proceedings as a whole are fair. It is not appropriate to extract a part of the process and view it in isolation.

Re B and T at [21]; *Re G-B* at [50]

8) The right of access to a Court is not absolute and any limitation will only be incompatible with Article 6 where it impairs the very essence of the right and where it does not pursue a legitimate aim in a proportionate manner.

P, C and S at [90]

9) However, Article 6 contains certain minimum requirements. An obvious example is the right and ability of those concerned in the proceedings to put their case effectively. The appearance of fairness is also important and the seriousness of what is at stake will be relevant.

Re B and T at [22]; *P, C and S* at [91]; *Re A* at [30-31]

10) The principle of equality of arms under Article 6 and the overriding objective do not require all parties to be legally represented.

Re B and T at [23]; *P, C and S* at [90]; *Re G-B* at [53]

11) When considering whether to adjourn, the Court will be cautious before taking account of the strength or weakness of a party's case, mindful that forensic fortunes may change at trial, but the realistic consequences of any lack of representation may be considered.

Re A at [29]; *Re G-B* at [51] …"

74. From these authorities I conclude that fairness must be the touchstone of my decision to make or refuse an adjournment or any other case management decision.

Discussion

75. At the heart of this case is whether G's parents, who love him dearly and who know him as a person better than anyone else, can meet his needs in an adequate way, accounting for all the support that can be provided to the family to preserve that unit throughout G's minority.

Threshold

76. The father admits the following facts are true:

"6. Dr XB, Clinical Psychologist, undertook comprehensive assessment of G's needs and her report is dated 15 March 2021. She highlighted G's needs as a child with diagnoses of cerebella vermis hypoplasia, Learning Disability, Epilepsy and Autism and the high level of support which he requires. His parents have been struggling to care for him without the usual robust care package which one would expect for a child with G's needs. Dr XB identifies that 'The mother is often caring for G alone and he presents with a high level of need, which many parents would find challenging, in my clinical experience. My impression is that the mother is fatigued by the level of support G requires at home...' [B128].

7. G does not have the clear structure and routines which he requires at home and that is resulting in distress, emotional dysregulation and self-injurious behaviour [B128].

8. The mother has struggled to manage the behaviour of G when the father was at work in the evenings. The father worked long hours, 6 days a week, despite local authority concerns and involvement to try and ensure G's needs are being met. The father therefore failed to prioritise G's needs by working such hours [C305]."

77. The father admits these facts are sufficient to meet the requirements of section 31(2) of the Children Act 1989. The mother expressly conceded at the IRH that these facts are true and that they met the requirements of section 31(2). She has since resiled from paragraph 7 at this hearing, but admits the truth of paragraphs 6 and 8 and that they meet the requirements of section 31(2) of the Children Act 1989.

78. I am satisfied that the facts asserted at paragraph 7 are proved to be true for two reasons. First, I accept the father's oral evidence to me that they occurred and they are true. That evidence was unchallenged by the mother when she had the opportunity to cross-examine him. Secondly, they were previously admitted by the mother. I am satisfied the contents of paragraph 7 meet the requirements of section 31(2) and I so find.

Welfare Findings

The ascertainable wishes and feelings of G considered in light of his age and understanding

79. No part of me doubts that G adores his parents. They show mutual warmth and closeness. He previously sung in the bath with his father when home. I reject the submission that I should not or cannot infer his feelings from this body of evidence. I consider I can ascertain that he wants to be in their presence and that he would want to live with them.

80. I accept G wants an environment to meet his needs. I infer that from the distress he exhibits when he is in a situation that does not meet his needs.

81. If G could not live with his parents, I have no doubt he would want to spend time with them.

Physical emotional and educational needs

82. G is a significantly complex child. The nature of his needs render his circumstances quite exceptional and different to the other children this Court often must deal with.

83. G was assessed by clinical psychologist Dr XB. I accept Dr XB's evidence. I accept Dr XB's evidence (written and oral) of G's needs.

84. G has severe autistic spectrum condition, with intellectual disability and global developmental delay. He has sensory difficulties associated with his autism. He has cerebellar vermis hypoplasia and symptomatic epilepsy. He experiences epileptic convulsive seizure events. He has had difficulties with sleeping, constipation, abdominal pain and night wetting. G relies heavily on his environment and the support from others to ensure all his needs are met. He requires a high level of support from others to ensure his basic needs are met, to ensure his social and emotional needs are met and that he maintains an adequate quality of life.

85. G's daily living skills and adaptive functioning are significantly below that which would be typically expected of a child of his age. It is likely his cognitive functioning is significantly below that which would be typically expected and G cannot be expected to engage in an educational curriculum or attain educationally as may be typically expected of a child of his age. G's speech and language development is significantly delayed and he presents with communication differences and needs.

86. G shows significant differences in his social interaction with others and interpersonal relationships. G's behaviours are not indicative of a psychological disorder or of mental health issues, but instead reflect differences in how G understands, interacts with and copes with the world and others around him and, the interaction with this with his environment and how others support and respond to his needs.

87. Whilst G's behaviours could be understood when thinking about G as a child with a learning disability and autism, it is likely those behaviours are moderated by his environment and how he is supported and how his needs are met by others. If G's needs are not appropriately met, his prognosis across all areas of development and wellbeing would be considerably poorer. G requires care which supports his social, emotional and behavioural needs He requires care that promotes his basic care needs and which supports development of his independence skills and learning, both at school and at home. He requires care by those with understanding of and skilled in meeting his needs and development, and who can adapt their approach to meet his needs.

88. Without appropriate care and support in place, G is at risk of physical and emotional neglect. He requires routines and access to activities he enjoys. He requires care which can consistently implement strategies to teach G new skills at his pace.

89. G requires a specialist educational provision, one which is tailored to support children with a learning disability and autism.

90. He requires a meaningful relationship with his parents to support his strong connection to them and, through them, his own unique sense of identity, informed by his culture, language, ethnic and national origin.

Age, sex, background and any characteristic which the Court considers relevant

91. G is an 11 year old male. He is the only child of his parents. He has Pakistani heritage. His parents are practising Muslims and G recognises English and Urdu. The primary language used in the home with G was English, and his mother sometimes spoke Urdu to him. Urdu is occasionally used during contact.

How capable each of the parents is of meeting G's needs

92. G lived happily and healthily in his parents' care for a considerable period of time, at least 8 of his 11 years. His needs were primarily met by his mother. She did that without local authority intervention in the family's life. Given G's needs, I do not underestimate that challenge. I have no doubt that to describe that as exhausting is insufficient to reflect the task the mother faced. It was likely a mission only sustained by a deep love for G.

93. The evidence before me supports the conclusion that intervention should have been explored in more detail prior than occurred. I have read and heard how in review child protection meetings, support for the family was discussed and expected to be put in place, including a personal assistant and waking night provision. That this family sustained G in their care without this support for as many years as they did is quite remarkable. I regret that these features of the history have been insufficiently grasped by the local authority. Indeed, on the evidence I have heard, the social worker appears to have fallen into error in her understanding of this history.

94. There went on to be a serious deterioration in G's care. The threshold findings go some way to accounting for that deterioration. There was soiling at home. G was left walking around naked. He did not have necessary routines and the understanding of his developing needs fell short of what was required. He was not prioritised by his father.

95. Whilst there is no bright line in defining what of G's presentation is medical and what is environmental, I accept the parents' failure to meet his needs, by understanding him fully and providing routines, contributed to the severity of his dysregulation.

96. There are a number of strengths in the father's capacity to care for G. There is clear attachment, connection and warmth between them. I accept the father is devoted to G. The father has demonstrated a considerable commitment to G. He is travelling a great distance to see his son for relatively brief periods of time. On a human level, that must be exhausting. It must be tiring. I accept there is evidence that G accepts food and has accepted drink from his father. In his first assessment the ISW saw the father was attuned to G's needs. He has shown understanding of seizures, although that has not

been consistent. He speaks gently and in a calm tone. He has responded appropriately at some times of distress. There is joy and happiness in their interactions. The father has the capacity and does, in my judgment, make G feel valued for who he is. G has demonstrated he can respond positively to the father's care, brushing of teeth, laying on the bed.

97. There are deficits in the parents' capacity to care. There has been an inconsistent appreciation of G's emotional needs, cues and triggers for dysregulated behaviour. I accept that there is a risk of tension between the advice of professionals and the parents' own perspectives of G's needs (indeed between each of the parents themselves too). There have been times when there have been difficulties supporting G with his developing independence and understanding the importance of that to G's development, for example, not allowing G to dress himself before school.

98. I am conscious the mother has an important contribution to make to G's life. The necessary focus I have at this time is on what his father can contribute. The deficits in the mother's understanding of G's needs presents an undeniable challenge to the parents' desire to care for G at home. I am unconvinced she could step back without intervention to support the father fulfil the primary caring role. It may be whatever that intervention would be, would be insufficient.

99. The mere fact that these weaknesses exist, however, does not render a placement outside the family necessary because I must be mindful of the long-term harm, of a significant nature, that will be suffered and will risk being suffered by approving a final care order. My task is to evaluate the parents' capacity to care holistically, humbly accepting there will not be perfection and tolerating that harm may well be suffered in their care which it is not the provenance of this Court to protect G from. Merely identifying strengths and weaknesses of parenting capacity in isolation to the intervention capable of enhancing the strengths and ameliorating the weaknesses, is to fail to evaluate holistically.

100. The core of the local authority's case is that essential routines would not be followed by the parents because they do not appreciate G's needs and the father, for his part, doubts the family's capacity to coherently implement them. That may well be an ultimate finding I am required to make but I must first evaluate whether there are interventions that will:

    (1) ameliorate that deficit in parenting capacity; and

    (2) ameliorate the harm that G would suffer were such a deficit to manifest with G in the parents' care.

101. I am driven to conclude that the parents could not care for G without a high level of State intervention in their lives. They accept this. The mother cannot care as a primary or sole carer. She accepts this. The father cannot care as a sole carer. He accepts this and seeks supports.

102. But this is not the end of the matter. I must then look to the local authority to evaluate the mother's and father's parenting capacity alongside the intervention that could rehabilitate G. That is an especially significant obligation in the context of the State's

duties to support disabled children. I note the intervention that was in place immediately prior to G's removal. There is no suggestion *that* intervention was the limit of the support that could be provided to this family. Therefore, to look at the care provided to G by the parents with the support that was in place immediately prior to his removal and extrapolate from that situation that no other kind or degree of support would be adequate, would, in my judgment, be an error.

103. I must evaluate their capacity to meet G's needs in light of the support that can in fact be provided. The local authority's contribution to this exercise, I regret, has been most unsatisfactory. It has been superficial in two respects. First, there has been only the most cursory consideration of what support could in fact be provided to this family. Very major services that can be provided to this family have been omitted from the evidence before the Court. Secondly, there has been no meaningful analysis in the evidence of the degree to which a form of intervention, taken in isolation or in conjunction with the other intervention, would be effective.

104. The ISW and the children's guardian have relied on the local authority to identify intervention and analyse its impact of the mother's and father's parenting capacity. Quite inevitably, in my judgment, they have reached the conclusion that the support identified could not ameliorate the deficits in parenting capacity or enhance the strengths. However, they were not given any adequate insight into how in fact this family could be supported. During this hearing, I learned of many other services and provision, several of which are significant in nature. They were elicited in the confines of this hearing during cross-examination in which counsel were stuck to strict time limits. The principal expert instructed by the parties, the ISW, did not hear any of the support that could in fact be provided to this family.

105. I have to judge whether I can divine from what I have heard in this limited exercise (1) whether I have been informed of all the services that can be provided to the family - I am not confident I have been because of the way in which this information has emerged; and (2) whether it is sufficient to say that those services render the parents incapable of adequately caring for G.

106. If I could, I would not hesitate for one moment to reach a conclusion that would enable me to resolve these proceedings. The responsibility to avoid delay and to conclude a case at 135 weeks is significant, but I must do right, and that can matter nothing when confronted with G's best interests. I must recognise the frailty of this process and I judge I am not capable of evaluating this family unit's capability to meet G's needs because I have no adequate picture of the support capable of intervening in this family to preserve them as a unit.

107. Mr Lea, on behalf of G, submitted to me, quite nonchalantly, that there is

> "Very little detail [of the support to be provided to this family], but there is evidence to suggest the parents are not willing to engage [with support] so it doesn't really matter [that there is very little detail in the evidence]."

108. I have sat back and thought very carefully about that submission. I have reflected on what it says of this process and the local authority's case. It is a striking submission.

More so, it is an indictment of the deficits in the evidence before the Court and a failure in robust analysis. It would be a striking submission in the context of G being a severely disabled child, if nothing else. It is all the more striking when one considers that this is a family that was not given the support that *should* have been given to them to assist their care of G over the many years G lived with them.

109. That this family would be deprived of that support *then* and also deprived *now* of the evidence of the support that could be put in place to promote their son's rehabilitation is quite the injustice. Mr Lea is right to observe there is very little detail in the local authority's case. However, the latter part of Mr Lea's submission is not an analysis of this case that this Court associates itself with to any degree. In my judgment, that perspective of the case does not do justice to the Court's obligation to give paramount consideration to G's welfare.

110. If the first element of the submission is right (that there is very little detail of the support to be provided to this family by the local authority before the Court) it must follow that the Court does not have the evidence it requires in a difficult case, faced with one of the most draconian orders available to the Court, to make a decision whether the support required is sufficient or not to care for a disabled child.

111. Furthermore, the skills and motivations of these parents are far more nuanced than to write them off in such a casual way. The evidence is not as clearcut as the submission suggests. There are many areas where the father, in particular, works collaboratively and well with professionals. There are areas where both parents, the mother in particular, have struggled to collaborate.

112. In this case I have a child with profound needs where it is expected, even if he were at home, he would receive a high-level of intervention. The starting point, in my judgment, must be that the parents' abilities must be tested against what it is proposed to provide to them, which would be very different to what has been provided to date.

113. The father is critical of the local authority's most recent assessment of him. He says the assessment was intense and exceptional. He says the assessment was undertaken during a time of bereavement and under financial stress. I am sympathetic to those situations, it would be hard not to be, but I reject the submission. They are the pressures of life. There are many other foreseeable stresses of a considerable nature which may well confront this family in the future and I do not consider it to have been illegitimate or inappropriate to have assessed this family in the circumstances in which they were assessed.

114. It is submitted to me by the father that the assessment of him has been flawed to a fundamental degree because there has been no evidence of the father's ability to manage G's behaviour when he is distressed. I reject this as a flaw let alone one that is fundamental. Taken to its inevitable conclusion, on the father's argument, an assessment of him would be flawed up until he had an opportunity to manage distress. It would be wholly unethical to trigger distress merely to see if the father can effectively manage the situation. What is more, I am satisfied there are times when he has had G with him when he has had opportunities to manage dysregulation.

The likely effect of any change in circumstances

115. To move G home without support or a plan, or at least one I could have confidence in, would be very significantly disruptive. His needs would not be met. He would suffer very serious harm in the form of dysregulation which may well include self-harm. Similarly, to place him at home, for it not to succeed and G be removed *again*, would occasion serious harm. His routines would be disrupted. He would have a change of school only to change again, and it would be highly distressing. If G is not provided with consistent care and a high level of care that he needs from carers, as set out above, the impact on G is likely to be significant and enduring. There is a real risk if his needs are not met by his father, that this will impact on whether he seeks to interact with him in the future.

116. G is very unlikely to understand and be impacted by the making of a final decision. He has the most limited sense of permanence and time. Similarly, it is very unlikely he will understand and be impacted by a delay in a final decision. The children's guardian tells me expressly that he will not be impacted by delay.

Any harm which G has suffered or is at risk of suffering

117. G has suffered significant harm which is contained in the threshold. There are risks if G's needs are not met:

    (1) He is caused high levels of distress which he struggles to regulate and manage himself.

    (2) His environment risks becoming more restrictive.

    (3) He begins to follow his own routine because there is not sufficient structure and routine in place at home, which increases his risk of self-injury and makes his behaviours more difficult to manage.

    (4) He is left to manage his distress alone, increasing the risk of self-injurious behaviour.

    (5) His prognosis across all areas of his development and wellbeing would be considerably poorer.

118. There is a risk, in my judgment, that the mother would be unable to step back. That she might intervene to care for G. She might direct the father. The reason I fear that risk is for the same reason she cannot be a primary care giver. Her insight into G's needs is compromised. It is not as attuned as the father's. She is not as effectively well-placed to ameliorate G's dysregulation. Effectively managing the mother is likely to be an important part of intervention in this family's life.

119. The local authority has not presently persuaded me on this evidence that the risks are incapable of amelioration because of its failure to identify the necessary interventions and analyse why they would be insufficient.

<u>Section 38(6) Placement</u>

120. I turn to evaluate the application that I place G with his parents under section 38(6) of the Children Act.

Any impact which any examination or other assessment would be likely to have on G's welfare and any other impact which giving the direction would be likely to have on his welfare: a placement with the parents at this moment presents a significant risk of significant harm

121. For the reasons I have set out, I am not presently satisfied the parents are capable of meeting G's needs, which is not to discount that with the right intervention they may be able to.

122. It is likely he would suffer all the harm identified by Dr XB. There is a very real risk, if I ordered G's placement with his parents now, the situation would be quickly reversed because of the significant harm that would be suffered by G. His routines would be subject to a high level of disruption that would endanger his emotional and physical safety.

The issues with which the examination or other assessment would assist the Court

123. It would not be of assistance. The likelihood of placing G there now would very quickly result in the placement failing. The Court would not be assisted by that very likely situation materialising, other than for it to confirm that the Court's assessment of the parents is in fact correct.

The question which the examination or other assessment would enable the Court to answer

124. The parents consider it would assess whether they can care at home.

The evidence otherwise available

125. The evidence available is that of the local authority, the independent social worker and the children's guardian. For reasons I have identified, there are deficits in this evidence. There may be scope for the Court to order other independent expert evidence.

The impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings

126. The timetable would be delayed even more significantly. The case is already at week 135.

The cost of the examination or other assessment

127. No costs have been particularised. As the father has not made an application for expert assessment, I infer the further assessment of him is to be conducted by the local authority.

Any matters prescribed by the Family Procedure Rules

128. Though not directly relevant, I have had regard that an expert assessment can only be ordered when it is necessary, which has the connotation of being something that is demanded rather than helpful.

129. I turn to evaluate G's welfare interests on this application.

130. I could place G with his family under an interim care order on an interim basis. The advantages would be that G would be with people he loves. He would have a sense of connection, belonging and peace that comes with being around family, language, community and seeing familiar, religious and cultural routines. He would experience the tastes, smells and sounds of the people he is familiar with and, of course, the Court would in fact see how the parents would perform under such an assessment.

131. There are, in my judgment, considerable disadvantages of such an interim placement at this time. I do not judge the parents could meet all G's needs at this moment without intervention, which has thus far not been identified in any satisfactory detail. G will be very likely to suffer a high level of harm. He would suffer a very high level of disruption. He would change schools, change homes, his routine would be fractured. If the placement did not succeed, he would have to return to Spring Home, which would be a profound disruption to all aspects of his life. His carers would have changed, his environment would have changed. His world would be inverted.

132. There are advantages to G remaining where he is at this moment in the interim. His carers can meet his needs. He receives emotional warmth and care. He has established routines and a school which he attends. He can maintain an ongoing relationship with his parents to quite a high level.

133. It is not lost on me that there are considerable disadvantages of maintaining the current interim placement, including that the ongoing separation of child and parent on an interim basis is of itself a serious harm and an interference with this family's right to family life. There is a risk of disruption. Carers in Spring Home change. The other child in the placement can change. For a child who requires consistency of routines, those things would negatively impact his welfare. He has a limited relationship with his parents whilst in care. The effect of that is that his cultural and identity needs are accommodated in only the most limited respects.

134. I refuse to place G with his parents at this time under section 38(6) of the Children Act. I accept there is serious ongoing harm of separation. However, that is outweighed by the much greater harm that would be suffered if I were to place him with his parents at this time. The advantages of such a placement with the family are outweighed by the disadvantages.

Evaluation of Welfare Options

135. An evaluation of the welfare options on a final basis at this stage is premature for the reasons I have described. The Court does not have the evidence required to evaluate holistically. Neither option presented to the Court is presently realistic.

Conclusions

136. At the end of this case, I judge the local authority has not discharged its burden of satisfying me that the order it seeks is demanded in G's best interests because it has not adequately identified and then evaluated the means by which a placement at home may succeed and why particular interventions would not be effective.

137. To say these proceedings must be adjourned is one I make with a heavy heart given how long they have been on foot. This failure is one owned by more than just the local authority. It is owned by the Court, the lawyers who have a duty to support the Court in promoting the overriding objective, the parents and the children's guardian. Overall, I consider all participants can look and with hindsight reflect that more rigorous scrutiny was possible at a much earlier date. These observations, however, must give way to fairness and G's best interests.

138. I recognise I have disagreed with the conclusions of the children's guardian. I do so cautiously and respectful of her considerable experience. But it is my task to evaluate all the evidence by drawing it together. I do not consider the children's guardian herself identified the deficits in the local authority's analysis. I am not satisfied, even today, that the children's guardian understands the interventions that could be provided to this family because I myself do not and I have sat listening to the evidence.

139. Whilst some interventions have been identified and explained in oral evidence, it has been done in the most superficial way and I accept there is no analysis of the impact on G's welfare of the support that could be provided. This deficit means there is no evidential basis on which the parents' capacity to care has been evaluated against the potential interventions. I accept this is not a consideration the children's guardian has thoroughly considered. If the capacity has not been evaluated against the interventions available, I do not accept the local authority can be said to have proved there is a lack of capacity.

140. The children's guardian has relied, in my judgment, on the local authority's evidence and in so relying the foundation to her analysis is flawed. I accept as a consequence that the prospect of rehabilitation has not been sufficiently considered or analysed. I am further cognisant of anchoring bias wherein there is a tendency to rely too heavily on preliminary conclusions and information first received at the expense of new information and a fresh analysis. To expect a great shift in the children's guardian's position when she was given such piecemeal information over a tightly-managed hearing is to ask a lot. This hearing has not provided the environment to enable the children's guardian to scrutinise in any detail the new information received or given her the time required to reflect on her conclusions in light of that information. Ending these proceedings after 135 weeks, with the profound delay that has occurred, has great attractions, but it would be wrong and the Court cannot sanction that course today.

141. I am urged to make findings about the social worker and the local authority. I emphatically reject that at this stage. It will not help the parents or their situation. I remind myself of what Hedley J said in *Re K & Ors (Children)* [2011] EWHC 4031 Fam at [30]:

> "Cases of severely disabled children do not, as I have indicated, sit easily or conveniently within the scope of Part IV of the Children Act 1989. In this case proceedings were issued

> primarily to address the breaking of a deadlock between Local Authority and parents. The proceedings may well have achieved that aim, though not before they had first further embittered and embattled that key relationship between the parents and the Local Authority. It seems to me that legal proceedings will often, at best, have a very limited contribution to make in cases like this. Whatever its deficits may be perceived to be, the family unit, if functional, is of central importance to the permanently disabled for it is the one fixed point in the constantly moving waters of state care provision. The welfare of such children over a lifetime is closely bound up with the ability of the family to remain a functioning and effective unit. By the same token, it must be emphasised that resort to litigation to advance one family's interests at the inevitable expense of others is to be deeply deprecated. As a general rule, as I have said, litigation rarely contributes to the resolution of these issues."

142. It is not necessary I make the findings the father seeks, so I judge it is necessary I should not make them. The lawyers may feel vindicated at extracting criticisms against professionals, but nothing has persuaded me that criticism will help these people work together, which they will have to do whether G is at home or in Spring Home. On mature reflection, I hope the father will come to agree with that analysis.

143. I have deliberately limited my findings about the parents' capacity to care, the care plan and the evaluation of the welfare options because this is not an ultimate decision on the question before the Court. This judgment is a determination of threshold, findings of G's needs, findings on certain aspects of the parents' abilities and an explanation for my case management decisions. Everyone will have cause to reflect on my conclusions today.

144. My greatest caution goes to the parents. Although I have not concluded today that a care order is a necessary outcome, it may well be in the fullness of time. My decision today reflects no judgment on that ultimate question once the Court has the evidence it requires.

145. The failure in the local authority's case today is not a criticism of Ms Howell. Ms Howell has presented the local authority's case fairly and conscientiously doing her duty to her client and the Court and the expertise of her advocacy has greatly assisted the Court.

Direction of the Case

146. I have in mind the following directions upon which I will gratefully receive submissions. I consider it would be important to have an experts' meeting as soon as possible involving the social worker team, the children's guardian, a representative from Spring Home, the father, the mother if possible, G's solicitor and the ISW if possible. It would require input from G's medical team. The participants would need to come prepared with all the interventions they consider might be possible in mind. The meeting should be minuted. A plan for rehabilitation should be prepared by the

local authority that incorporates those interventions identified by the professionals in their meeting.

147. The parents should then be further assessed with those specific interventions in mind, analysing the likely degree of effectiveness of the interventions and of the plan being implemented.

148. I am not ordering G's interim or permanent rehabilitation. I will be directing further assessment of G whilst he is in Spring Home so that the available interventions are incorporated into an analysis of the parents' capacity to care for G. If, during the course of that assessment, it is thought to be in G's best interests to implement the plan, then that can of course be considered. I am open to the person who should conduct that assessment being the ISW, if he is available.

149. I will be sitting again at the end of August and beginning of September. I propose to adjourn the proceedings to me part-heard when I anticipate a much shorter, discrete hearing because the issues will have considerably narrowed to focus on an evaluation of the parents' capacity alongside the available intervention. In simple terms I will, at that hearing, conclude either that the rehabilitation plan that has been identified is one that can be implemented, or it cannot be, in which case I will have to consider other options.

150. That is the judgment of the Court.