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Case No: ZC277/17
ZC276/17

Neutral Citation Number: [2018] EWHC 3854 (Fam)

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF P (A CHILD) (APPLICATION TO REVOKE PLACEMENT ORDER)

Royal Courts of Justice
Strand, London
WC2A 2LL

Date: 25/06/2018

Before:
MR. JUSTICE BAKER

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Between:

(1) THE MOTHER **(2) THE FATHER**	**Applicants**
- and -	
(1) LONDON BOROUGH OF TOWER HAMLETS **(2) P (by her children's guardian)**	**Respondents**

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MR. C NEWTON QC and MS MAUREEN OBI-EZEKPAZU appeared on behalf of the First Applicant.

MR. ANDREW NORTON QC and MR. NICHOLAS ELCOMBE appeared on behalf of the Second Applicant.

MR. NKUMBE EKANEY QC and MISS. VICTORIA ROBERTS appeared for the First Respondent.

MS. JOANNE BROWN appeared for the Second Respondent.

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JUDGMENT

MR. JUSTICE BAKER:

1. In this case the applicants, hereafter referred to as the mother and father, or collectively as the parents, seek the revocation of a placement order made by Her Honour Judge Atkinson on 10th November 2016, in respect of their daughter, hereafter referred to as P, who had been born on 17th July 2016 and was then aged 20 weeks, and is now aged 23 months.

2. The parents have been given leave to make this application under section 24 subsection (2) of the Adoption and Children Act 2002, by Mr Justice Holman on 29th January 2018. The application is opposed by the local authority and by the children's guardian acting on behalf of P. The contested hearing took place before me last week and on Friday I reserved judgment over the weekend until today.

The background

3. It is unnecessary to set out the full detail of the history of this family and the proceedings. That detail has already been set out in earlier judgment by Her Honour Judge Atkinson in the care proceedings which preceded the making of the care and placement orders. The relevant background can be summarised as follows: The father is now aged 46, the mother 39. The father's childhood appears to have been relatively settled. He told Mr. McKenzie, the psychologist instructed as an expert witness in these proceedings, that his father had been very generous and caring, although his mother had been a more tough and controlling figure. The mother, on the other hand, had a much more troubled childhood. She told Mr. McKenzie she had memories of her father being violent towards her mother. On one occasion, after her mother

left the property, leaving the mother and their brothers with her father, her father made her telephone her mother's sister saying that he would: "Throw the children over the balcony if she did not return" Mr. McKenzie reported that this incident had clearly had a deep effect on the mother. The mother's mother had a drink problem which clearly affected her capacity to care for the children, so that the mother herself took on a protective role towards her younger siblings. For a period during her teens the mother was in foster care.

4. The father has five older children, in addition to P, hereafter referred to as the five H children. The father's relationship with the mother of the five children, whom I shall refer to as A, was volatile and, on the local authority's case, violent.

5. In 2008, the father was cautioned for common assault of A. In 2009, the five children were made the subject of Child in Need care plans. In 2011, A alleged that she had been raped by the father, but at that stage no further action was taken by the police. Thereafter, there was some kind of reconciliation, but the relationship between them finally broke down in May 2014. At that point the five H children, including one child suffering from significant disabilities, were left in the care of the father. At a later point, A alleged that the father had raped her on two further occasions in 2014. I shall return to this allegation below.

6. The mother has three older children in addition to P- E who is now an adult, B and L. The four children have different fathers. The mother has a history of difficult relationships, in particular her relationship with B's father. The mother described to Mr. McKenzie how B's father had been violent towards

her on a number of occasions. It was during that relationship that she first developed a significant alcohol problem.

7. In 2011, another local authority started care proceedings in respect of E and B. At one stage, B was taken into interim care, but the proceedings concluded with the making of a supervision order in respect of both children, and also L, who had been born to the mother during those proceedings.

8. The current relationship between the parents started in October 2014. They had in fact met some years earlier and had a brief relationship, after which they had separated for a number of years. At the time when they resumed their relationship in 2014, the mother and her three children were living in one room in a hotel. In February 2015 the mother and the three children moved into the father's home, where he was living with his five children. It is the local authority's case that the relationship was volatile from the outset, with incidents of domestic violence. In May 2015 the mother and her children were provided with alternative accommodation for a period, but subsequently returned to live with the father. In July 2015 the mother accepted a caution for an offence of common assault on the father. In August 2015, there was an altercation in which it was said that the father broke down a door and grabbed the mother by the neck. Later that year the mother was again provided with alternative accommodation, but once again she returned to live with the father.

9. In December 2015 the police attended the home and found the mother incapacitated through drink. A few days later the police were again called to the home by the mother, who alleged that the father had raped and assaulted her, but subsequently she withdrew that allegation.

10. Meanwhile on, 16th October 2015, the local authority had started care proceedings in respect of the mother's children, B and L. The father was joined as a party to those proceedings. On 6th November the children were made the subject of emergency protection orders, and removed into foster care. Five days later, the children, that is to say B and L, were made the subject of interim care orders. On 23rd December 2015, care proceedings were started in respect of the father's five older children. At a hearing on 20th January 2016, the five H children were made subject to interim supervision orders. The mother was joined as a party to those proceedings. After a number of case management hearings, in the course of which it was directed that the two cases be heard together, they were listed for final hearing before Her Honour Judge Atkinson for six days starting 7th June 2016.

11. The allegations on which the local authority relied included the allegations by the father's previous partner, A, that he had raped her on two occasions in 2014, and a series of allegations of domestic violence between the father and the mother, and also that the mother had a significant drink problem, which impeded her capacity to care for the children.

12. In the event, the hearing was not completed during the allotted time and was adjourned to dates in July 2016. In the interim, however, the five H children were made the subject of interim care orders. At this stage, the mother and father separated for a period and cross non-molestation orders were made against each of them. The final hearing resumed over the further eight days in July. In the course of that hearing the mother withdrew the allegations against

the father which had led to the non-molestation orders and those orders were discharged.

13. At the conclusion of the hearing on 13th July, Judge Atkinson reserved judgment and extended the interim care orders in respect of the H children. Four days later, on 17th July, the mother gave birth to P. On 19th July, the local authority started proceedings in respect of P and two days later, at a further hearing before Judge Atkinson, she was made the subject of an interim care order until the end of the proceedings and removed from the care of the mother in hospital and placed in foster care. P has not been in the care of her parents since that date.

14. On 31st August 2016, Judge Atkinson delivered her final judgment in the conjoined proceedings concerning B, L and the five H children. I shall consider her findings in further detail below. Suffice it at this stage to say that she made a number of substantial findings concerning the behaviour of the parents and the impact of that behaviour on the children. In short, they were: (i) against a background of controlling behaviour, on two separate occasions, the father raped A; (ii), in the nine months between March 2015 and December 2015, there were nine specific instances of volatile and unpredictable behaviour between the father and mother, often including violence and often played out in front of one or more of the children; (iii), the mother had exposed B and L to a lack of stability and chaotic lifestyle through her frequent moves and her prioritising of her relationships; (iv), the father and mother had persistently prioritised their relationship with each other over their respective children and demonstrated a unified inability to work openly and

honestly with professionals; (v), the mother continued to abuse alcohol; (vi), the father had neglected the five H children whilst in his care on occasions.

15. On the basis of those findings, the judge found the threshold under section 31 of the Children Act 1989 to be crossed. She made final care orders in respect of B and L on the basis of a care plan that both children be placed in the care of B's father. The final decisions concerning the H children and P were adjourned for a further hearing. At the hearing on 31st August, when judgment was handed down, an application was made by the local authority for a contra mundum injunction restraining publication of information relating to the proceedings, prompted by social media activity by the parents. The judge made an interim order on that application.

16. In the course of the hearing counsel instructed separately for the parents withdrew. From 5th October 2016, the parents represented themselves for several months. Shortly afterwards the mother filed a notice of appeal against the judge's findings in the judgment of 31st August.

17. On 21st September 2016, the mother filed a notice of appeal, seeking permission to appeal against the findings and orders made on 31st August. On 5th October, at the next hearing before Judge Atkinson, the parents applied for the judge to recuse herself. The application was refused. The parents then applied for a community based parenting assessment of P in their care. That application was also refused. Directions were given for the final hearing of the outstanding applications for four days, starting 31st October, and the interim contra mundum injunction was extended.

18. Meanwhile the father had been charged with offences of rape of A. On 16th October 2016, he was acquitted of those charges. The final hearing on the welfare issue and the proceedings concerning the five H children, and the care proceedings in respect of P, concluded with a further judgment delivered by Judge Atkinson on 10th November 2016. At the conclusion of the hearing, the judge made a care order and a placement order in respect of P. She approved the care plan for adoption and a staged reduction in contact, culminating in a final farewell visit. The judge also made care orders in respect of the five H children, coupled with orders under section 91(14), restricting the father's right to make further applications in respect of those five children.

19. In mid-December, a meeting between social workers and the parents was allegedly brought to a premature end before the social workers were able to pass on information about P. On the local authority's case, the reason for bringing the meeting to an end was that the father threatened one of the social workers and as a result the police were called. Following that incident the LAC review, scheduled for 20th December, did not go ahead and no such review occurred until after P's placement. At a meeting of the adoption panel on 22nd December, P was matched with prospective adopters. On 7th February 2017, the prospective adopters were approved by the adoption and fostering panel and a few days later, on 13th February, they were introduced to P. Shortly afterwards, on 15th February, the final farewell contact visit between the parents and P took place and on 20th February she was placed with the prospective adopters.

20. The local authority now accepts that it acted unlawfully in that it did not inform the parents of the date the child would be placed, nor inform them of the legal implications of the placement, nor alert them to the existence of potential legal remedies. It is the local authority's case that a letter, apparently undated, had been sent informing them that the panel had recommended placement and that the manager had approved the recommendation, but the letter was subsequently returned. Plainly, however, this letter did not satisfy the local authority's full obligations as summarised above.

21. On 10th February the local authority had sent an e-mail to the parents informing them that:

> "An adoption family *(sic)* had been found for P and that she would be placed soon, hence the reason for the goodbye contact being arranged."

22. The parents plainly received this e-mail because the mother replied saying that their baby was not for sale and the father subsequently posted on Facebook a photograph of P, taken at the farewell visit, with the message headed: "Please share worldwide, stolen for forced adoption.", stating that she was now, "supposedly placed with potentially adopters", and asking people to let him know if the child was seen with a couple or family that did not previously have a beautiful baby girl.

23. It is evident that the parents knew that P was going to be placed before the farewell visit. It is equally plain, however, that the terms of the local authority's e-mail of 10th February did not fully satisfy its obligations as set out above.

24. On 17th March 2017, the local authority issued an application for orders under section 34, subsection (4), of the Children Act in respect of B, L and the H children, permitting them to withhold contact between the children and the parents. Also for an order under section 91(14) in respect of B and L, and final determination of the contra mundum injunction application.

25. On 13th April 2017, the mother's application for permission to appeal the findings and orders made on 31st August 2016 was refused by Lord Justice Moylan and, on 17th May, at a hearing during which it is said that the parents were removed from court by security staff because of their behaviour, the judge made the order sought by the local authority, namely an order under section 34(4) in respect of B and L and the five H children, an order under section 91(14) in respect of B and L, and final contra mundum injunctions. Of its own motion the court also made a non-molestation order against the parents to safeguard the placement of B and L.

26. At a subsequent hearing on 5th June, which the parents did not attend, the non-molestation order was extended until 2020. On 30th June 2017, P's prospective adopters filed an application for an adoption order. On 26th June 2017 the father and mother applied for permission to discharge all the care orders. For the reasons which are not clear to me those applications were not issued until 3rd August 2017. At a hearing on 22nd August, the parents applied to Judge Atkinson for leave to oppose P's adoption. They asserted that they had not received official notice she had been placed. On 29th August 2017, L's father applied to discharge the care order in respect of L, seeking an order that she be placed with him instead of with B's father. At the next

hearing before Judge Atkinson on 6th September the parents were refused permission to apply for discharge of the care order in respect of P. The application in respect of the H children was also refused. The application in respect of B and L, however, was adjourned to be heard alongside the application by L's father.

27. It is the local authority's case that following this hearing, the father resumed his campaign on social media, making Facebook posts about adoption and care proceedings . At a further hearing on 14th September the application was further adjourned, for the parents to obtain legal advice as to the legality of P's placement. .

28. At the next hearing on 2nd October the mother's application for permission to apply for the discharge of the care order in respect of B was refused, but permission to make a similar application in respect of L was granted and consolidated with L's father's application.

29. On 11th October 2017 all applications concerning the parents' children were transferred to the High Court. I assume that the reason for the transfer of P's proceedings was the concern as to the lawfulness of the placement process which had emerged as a result of the complaints made by the parents, who by this point were again legally represented and who had sent a letter before action indicating they were proposing to file proceedings for judicial review.

30. At the first hearing in this court on 26th October before Mr. Justice Holman, the local authority acknowledged that it had failed to comply with the procedural rules governing the placement of P for adoption, in particular by failing to inform the parents of their intention to place her, and as a result the adoption application was withdrawn. The parents indicated that they intended to file a further application for leave to apply to revoke the placement order and Mr. Justice Holman accordingly gave directions with regard to that proposed application. Those applications were duly issued by the father and mother on 8th and 15th November respectively.

31. The hearing of the applications for leave to apply to revoke the placement order took place before Mr. Justice Holman on 29th January 2018. At the conclusion of the hearing the learned judge, for reasons set out in a judgment which has been transcribed and disclosed to me, gave the parents permission to make the application. He gave directions, timetabled his application through to a hearing this week and it was subsequently listed before me as described above.

32. Mr. Justice Holman also gave directions for the proceedings involving L, which are listed before him next week -- now, this week. It is the hope of the parents that they will in due course recover care of most of their children, excluding E, who is now an adult and is apparently estranged from her mother, having, according to the mother, sided with B's father in the ongoing dispute. Also probably excluding the father's two older sons, who have been placed with the father's mother, and who have had no contact with him for some time.

33. Amongst other proceedings there are ongoing criminal proceedings [redacted]. Those proceedings are due to be heard next month. I was told by Mr. Norton QC, on behalf of the father, that he intends to plead not guilty to those charges. In addition, there have been other non-molestation orders made, including by the father's mother, with whom his two older children are currently placed.

The law

34. I am grateful to all counsel for their helpful submissions in this case, including their submissions as to the law. Section 1 of the Adoption and Children Act 2002 provides, in so far as relevant, as follows:

> (1): Subsections (2) – (4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
>
> (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
>
> (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
>
> (4) The court or adoption agency must have regard to the following matters (among others) –
>
> (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
>
> (b) the child's particular needs,
>
> (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
>
> (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

> (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,
>
> (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –
>
> (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
>
> (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
>
> (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

35. Subsection (6) provides:

> In coming to a decision relating to the adoption of a child, a court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

36. Subsection (7) provides *inter alia*:

> In this section, 'coming to a decision relating to the adoption of a child', in relation to a court, includes -- (a) coming to a decision in any proceedings where the orders that might be made by the court include an adoption order (or the revocation of such an order), a placement order (or the revocation of such an order) or an order under section 26 or 51A (or the revocation or variation of such an order).

37. Subsection (8):

> For the purposes of this section -- (a) references to relationships are not confined to legal relationships, (b) references to a relative, in relation to a child, include the child's mother and father.

38. Those provisions apply to applications to revoke a placement order. Thus, on this revocation application, as opposed to an application for leave to apply for

revocation, P's welfare is my paramount consideration and I must have regard to all the matters set out in section 1 (4).

39. The revocation of a placement order leads to the revival of the care order which preceded the making of the placement order. Revocation of the placement order therefore does not lead automatically to the discharge of the care order. On the revocation of a placement order, a person other than the local authority may not remove the child from the prospective adopters (section 34(1) of the 2002 Act), but the court has the power to direct the local authority that the child be removed from the prospective adopters (section 34 (3), and also has the power to direct that the child is returned to her parents (section 34 (4)).

40. In this case, the parents accept that if the placement order is revoked P cannot be returned immediately to their care. Instead, they propose a staged return over a period of a few weeks or months.

41. The application of the principles in section 1(4) to applications to revoke a placement order have been considered in previous cases, notably by the Court of Appeal in the decision in *MA v Camden London Borough Council* [2012] EWCA Civ 1340. At paragraphs 57 and 58 of her judgment, Dame Janet Smith said, *inter alia*:

> "The single question which the judge has to answer is: what solution or arrangement is in the best interests of these children for the rest of their lives? The answer to that question can only be found by the exercise of judgment on a range of factors and issues. Some of those factors were findings of fact, as to matters in the past, which the judge had to decide on the balance of probability. Having found those past facts, they are established as true and any doubts or uncertainties the judge may have had in considering the evidence fall away. That is

> not so when the judge has to consider the prospect of what might happen in the future; there he is in the realm of assessing risks, possibilities, probabilities and maybe a sense of confidence and assurance. The process is not to decide what is likely to happen on a balance of probabilities and then to put aside doubts and uncertainties. The uncertainties remain to be taken into account when the judge makes his overall judgment as to what outcome is in the children's best interests."

42. Later, at paragraph 82 of the judgment, Lady Justice Black added:

> "Any judge who is determining what order would best serve a child's welfare must look at all the relevant circumstances and balance them to arrive at his decision. The concerns for the child will vary infinitely from case to case and so will the weight to be given to the various considerations. Plainly, the benefits of being brought up by a natural parent if that is safely possible will be very significant but so also will many other factors such as the child's history so far, the need to avoid further delay, the chances of successfully reuniting parent and child and the consequences for the child should there be a failed attempt to do so. Where the child's history so far has been damaging and it is critical for the child to be in a long term dependable placement without further delay, and where the adoption placement on offer maybe the child's last chance to be united in an adoption placement with his sibling, all of which was the case here, then the judge is likely to look for a greater degree of certainty in relation to the parent's ability to provide a safe and appropriate home for the child than in a case where, say, the child is still a small baby with time on his side and there have been no earlier attempts to place him with the parent."

43. In *Re B* [2013] UK SC 33, the Supreme Court held that adoption is the last resort only to be permitted "where nothing else will do" and that a child's interests include being brought up by her parents or wider family, unless the overriding requirements of her welfare make that not possible.

44. In *Re W* [2016] EWCA Civ, 793, Lord Justice McFarlane, said at paragraphs 68 to 69:

> "Since the phrase 'nothing else will do' was first coined in the context of public law orders for the protection of children by the Supreme Court in *Re B*, judges in both the High Court and

Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child as described by Baroness Hale in paragraph 215 of her judgment: "We all agree that an order compulsorily severing the ties between a child and her parents can only be made if 'justified by an overriding requirement pertaining to the child's best interests'. In other words, the test is one of necessity. Nothing else will do." The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s 1). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons (see *Re B-S* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 715 and other cases).

69. Once the comprehensive, full welfare analysis has been undertaken of the pros and cons it is then, and only then, that the overall proportionality of any plan for adoption falls to be evaluated and the phrase 'nothing else will do' can properly be deployed. If the ultimate outcome of the case is to favour placement for adoption or the making of an adoption order it is that outcome that falls to be evaluated against the yardstick of necessity, proportionality and 'nothing else will do'."

The hearing and witnesses

45. The hearing took place over five days, including a reading day, last week. I had oral evidence from Lynda Beat, the independent social worker instructed as an expert witness in the case, Mr. Brian McKenzie, the psychologist instructed to carry out an assessment in the proceedings, the mother, Ashley Tolmie, the mother's alcohol treatment coordinator, the father, Patrick King, social worker currently assigned to the case, and Matthew Jeary, the children's guardian. Before the hearing I had the benefit of opening position statements and at the end both written and oral submissions from counsel instructed in the

case. I am very grateful to all counsel and their instructing solicitors for their assistance.

46. I shall consider the key elements of the evidence below, but at this stage I want to say a word about the evidence of the parents. It is absolutely plain that at various points earlier in these proceedings the mother and father have behaved in a difficult and challenging way including, on occasions, in the court building. I wish to record that this has not occurred on this occasion. They have sat through the case, listened carefully to the evidence and, when they came to give their own evidence themselves, done so in a helpful and courteous way. They have answered questions and where they have disagreed with points being put to them, they have done so without allowing the disagreement to colour the substance of their evidence.

47. It is plain they feel a strong sense of injustice and that they are highly critical of social workers, other professionals and indeed the court for actions and decisions in the past. I am aware that they have continued to express their dissatisfaction on social media right up to the present day, occasionally in intemperate terms. One recent example is a post put on Facebook by the mother containing a poem concerning P in the course of which she referred to Judge Atkinson as "the evil judge", something which, I was told in submissions, she now regretted. Another example is a message posted on Facebook by the father in which he asserted that:

> "Social Services are stealing children to order, children are being taken without any foundation on malicious reports and on lies and being forcibly adopted out to same sex couples."

48. I am also aware, as said above, that both parents face the charge [redacted] [redacted]; charges to be heard by the magistrates next month, to which they intend to plead not guilty. It is clear to me that the mother and father have on occasions expressed their views and behaved in an inappropriate way. At the hearing before me, they have not done so. Whilst holding and expressing strong views at times including, in the father's case, in the course of his evidence his expression of a genuine belief in the corruption of the local authority, they have not allowed their feelings to affect the way in which their case has been presented.

49. It is plain to me, however, that their views and the way they express them have affected their behaviour at earlier stages during these proceedings, up to this hearing. The father, as is plain from his evidence, still genuinely believes that the local authority is motivated principally by financial considerations. He told me that he would love to believe that local authorities acted in the best interests of a child's welfare, but his experience was that this was not so; everything in his view is money-driven. This intransigent attitude and the way it has been expressed in the past has undoubtedly had an impact on the local authority's analysis of the issues as I shall describe below.

Expert evidence

50. As stated above, there were two experts instructed in these proceedings, and I shall now consider their evidence. Mr. Brian McKenzie, chartered clinical and forensic psychologist, was instructed to carry out a psychological assessment of the parents for the purposes of this application.

51. In order to carry out that assessment he visited the parents at home. He reported that the property was well presented, spacious and with a good outlook. That is to be contrasted with the findings made by Judge Atkinson earlier in the proceedings. He reported that he had received a warm welcome from the parents, who were courteous and cooperative. He described the father as being initially jovial and accommodating, although as the interview progressed he became more serious as the subject matter became more important. He seemed intellectually within normal range with no overt indication of disordered thoughts, mood or perception.

52. The mother's intellectual capacity appeared to be in the lower average range, although she too showed no immediate disorder of thought or perception. She appeared sensitive to perceived criticism, although fairly critical of herself. Although the father tended to dominate the conversation, Mr. McKenzie did not feel that he was being controlling over the mother.

53. The father acknowledged an interest in conspiracy theories, although at no point did either party demonstrate paranoid hostility to Mr. McKenzie. Mr. McKenzie carried out psychometric testing of both parents, incorporating the Million Multiaxial Inventory III, and the Child Abuse Potential Test. These suggested that the father has a degree of narcissism, just below the level of suggested clinical pathology and that the mother had a degree of histrionic behaviour, together with elevated dependency on alcohol. There was nothing in either parent's score to indicate a risk of physical abuse.

54. Mr. McKenzie was asked in his instructions whether either parent suffered from a psychological disorder. With regard to the mother there was no

evidence that she suffered a severe cognitive impairment, although Mr. McKenzie did not dispute the mother's own view that she suffers from mild to moderate specific learning disability in relation to reading and writing. There was nothing to indicate she that suffered from any social developmental disorder or any severe psychological disorder. There were however signs of less severe psychological disorders. Mr. McKenzie concluded that her history let to the unequivocal conclusion that she has suffered a substance misuse disorder, namely alcohol, for a significant period of her adult life, and in his view the weight of the evidence suggests that her level of alcohol abuse has impaired her primary care for the children on occasions and led to severe emotional outbursts and aggressive behaviour.

55. Mr. McKenzie reported that the mother's account of her drinking was that she had not consumed alcohol on a daily basis but had rather tended to drink when under stress. It was his view that it appeared to suggest there remained a significant danger of her misusing alcohol in the future at a level which would impair her social and parental functioning, although he reported that the mother herself did not accept she would easily return to this pattern. Mr. McKenzie recounted that the mother had reported having traumatic memories of domestic violence during childhood. At one stage during their conversation, the mother had become tearful in recalling this history.

56. Mr. McKenzie concluded, although this was challenged on behalf of the mother in oral evidence, that these memories frequently preoccupy her, leading to underlying feelings of apprehension and security and a reduced ability to cope. These memories have been exacerbated by her own

experience of domestic violence, in particular during her relationship with B's father. In addition, Mr. McKenzie noted that the mother had poor self-esteem, which had manifested itself in an incapacity to assert herself and in a sense of being a victim during relationships.

57. Mr. McKenzie concluded that whilst these symptoms denoted a complex set of discernible psychological difficulties around insecure attachment, low self-esteem, traumatic memories and poor emotional control, he did not think this amounted to a personality disorder, but rather he described her as an emotionally fragile woman who becomes disinhibited under severe stress or alcohol use. He concluded that her underlying psychological difficulties were at a level which required treatment.

58. In summary Mr. McKenzie concluded that those difficulties with which the mother struggles are (a), periods of heavy alcohol use, associated with erratic and problematic behaviour, often aggression; (b), underlying dysthymia, which can worsen to more severe bouts of depression; (c) periods of anxiety and emotional instability, associated with traumatic memories of emotional and physical abuse; (d) attachment insecurity and low self-esteem.

59. Looking to the future and bearing in mind the mother's report of being absent for several months, Mr. McKenzie said in his report that he felt "cautiously optimistic" that she is making headway with her drinking problem. He warned however that the underlying problems, as he identified, would take a significant period counting in years for her to recover. He thought that, free of alcohol, and in a supportive relationship, her psychological problems may not be of a severity that would immediately preclude the care of the child. On the

other hand they remain risk factors and set the scene for a return to alcohol use. He said that he would feel more optimistic about the future after she had demonstrated twelve months without drinking.

60. In oral evidence, however, pressed on this point by Mr. Clive Newton QC, on behalf of the mother, Mr. McKenzie accepted that, given that the mother had remained totally abstinent, on her case, for over eight months by the date of the hearing, it was more likely than not that she would remain abstinent hereafter.

61. So far as the father was concerned, Mr. McKenzie noted that he showed no indication of any developmental disorder or severe disturbances of mental health. Although he had looked for support on the internet for his conspiracy theories, Mr. McKenzie concluded this was not evidence of a paranoid outlook, although he thought that the father has a tendency to over-value ideas which he might hold on to in the face of contrary evidence. As with the mother, there was no evidence of a severe personality disorder, although Mr. McKenzie noted in evidence that the father had become aggressive within intimate relations, on the basis of Judge Atkinson's findings, including as she had found, sexual aggression.

62. Overall, Mr. McKenzie concluded that the father's symptoms were consistent with a mild to moderate narcissistic personality disorder, resulting in a tendency to put his own needs above others. Despite evidence of violent behaviour within relationships, he did not have the markers of an individual who is habitually violent in other circumstances, i.e., outside relationships. That suggested to Mr. McKenzie that the disorder is not severe.

63. Mr. McKenzie concluded that the relationship between the parents appeared more settled with the quality of "codependence". He concluded that the relationship had settled as a result of the mother's abstinence so that it had become a more functional working relationship. As a result, Mr. McKenzie thought it likely that the relationship would continue for some time, although it was difficult to predict precisely how it was going to progress.

64. So far as the future treatment is concerned, Mr. McKenzie regarded it as essential that the mother continues to engage in programmes helping her maintain her abstinence, either in a group setting or individual treatment. In addition, he thought it helpful for her to receive help to address her depressed mood, underlying trauma and emotional attachment and self-esteem problems. He in addition recommended couples therapy or counselling focusing on conflict resolution.

65. A parenting assessment of the mother and father was carried out by Ms Lynda Beat, an independent social worker. For the purpose of her report, she met the parents on three occasions at their home. Like Mr. McKenzie, she found the home well presented and welcoming and the parents helpful and cooperative. She described the couple as appearing happy and calm during her visits and noted that they were able to disagree without difficulty and to listen to each other's point of view. The mother and father told Ms Beat that they had made significant changes during the past seven months. They described how the mother had addressed her alcohol issues and how they had attended various parenting courses. The father had attempted to enrol on domestic violence

perpetrator problems, but had been unsuccessful due to his refusal to accept the findings made by Judge Atkinson.

66. The couple told Ms. Beat that there had not been any violence in their relationship, although they acknowledged that their arguing and inappropriate behaviour had on occasions impinged on the care of the children. Ms. Beat stated that the parents had demonstrated commitment to improve their parenting by engaging in various programmes and other work. They had acquired an improved ability to reflect on what they needed to do to improve their parental capacity and develop insight into their methods of parenting. They were able to acknowledge that their parenting in the past had caused the children's behaviour to become unmanageable.

67. On the other hand, Ms. Beat noted their continued refusal to accept a number of the findings made by Judge Atkinson. She reported on the father's sense of injustice and unfairness regarding those findings. Ms. Beat also noted the history of difficulties the parents had had working with professionals, including a number of outbursts during meetings and comments made on social media. On the other hand, she was critical of the errors made by the local authority in failing to comply with the procedural requirements prior to the placement of P with prospective adopters, and also of a history of poor communication by the local authority.

68. Both parents raised objections to P being adopted by a same sex couple. It is their view that the children should be raised by a man and woman. On the other hand, to Ms. Beat, and also in their evidence to this court, they have expressed a degree of sympathy towards the prospective adopters and do not

blame them for the difficulties that have arisen. They have accepted that P would have initial difficulties in being separated from her current carers.

69. In conclusion, Ms. Beat noted that, although it was positive that the parents have taken steps to address the concerns and improve their skills and abilities as parents, they continued to deny the significant findings made by Judge Atkinson and, as a result, important aspects of the difficulties identified by the judge. In particular, those surrounding the father's behaviour had not been addressed.

70. There remains, she concluded, a risk that the father will lose control when conflict arises in intimate relationships. Ms. Beat noted that the couple had not had care of their children for a significant amount of time and expressed the view that the changes they had made were as yet untested on a practical level. In her view, removing P from her current placement, where she is secure and settled, would not be in P's interests.

The mother’s drinking

71. The mother describes her history of drinking as having continued for a number of years, until October 2017. Since then, she says she has been totally abstinent and she is able to state at any point the precise length of time she has been dry, down to the nearest minute. She described her drinking pattern as that of a binge drinker; someone who would drink a lot under stress rather than someone who physically needed to drink all day every day. In her evidence to me she accepted she was an alcoholic and would always be an alcoholic.

72. The evidence of others, including the independent social worker, was that she had not described herself as an alcoholic. The mother denied that this was so. She said that she had accepted that and stated she was an alcoholic. In hearing her describing her drinking, her treatment and determination to recover, I found the mother to be an impressive witness. She spelt out in detail the structure programme of recovery and treatment she has undergone, through Reset, a drug and alcohol unit in Tower Hamlets. She described in detail the treatment programme, the recovery centre, the treatment centre, the groups she had attended, in which she had learned, for example, strategies about how to cope under pressure, and how to avoid drinking under pressure; the tests, physical tests, urine, blood and breathalyser tests she had undergone, and her balancing mood programme, which she said had become a major part of her life and introduced her to an effective way of coping with life, to mindfulness and cognitive therapy workshops and ongoing attendance at AA meetings.

73. Having come through the intense recovery programme, she has moved on to long-term treatment, and continues to use the resources of the programme. She plans to continue attending AA meetings indefinitely, because "every day is recovery".

74. As a result of her treatment, she says she has turned her life around; she is sleeping better, she is eating better, she has become a vegetarian. Listening to her evidence and the bright and confident way she spoke about her recovery, it was hard not to be impressed. I have thought carefully about her evidence, and considered whether she was simply presenting a false, optimistic picture

to the court. I did not find her evidence false, and I believe her account, that she is not drinking and that has been totally abstinent since October.

75. There is inevitably a danger she may lower her guard and become complacent and at two points in her evidence she said things which on one view might be thought to indicate complacency. For example, on one occasion she said that staying dry for a further four months to complete the one year identified by Mr. McKenzie would be "a breeze", and something she would do "standing on her head". I do not think however that she was being complacent when she said that but, rather, that she is vigilant and has strategies in place that she feels confident that, if tempted to drink, she would use to avoid drinking again.

76. Her positive account is supported by her impressive treatment worker, Ashley Tolmie, who is confident that she will stay abstinent providing she sticks to her programme. Her evidence is also positively supported by comments in writing by the psychologist at Reset, Dr. Dutheil.

77. In addition, and strikingly it might be thought, the mother has been identified for an ambassadorial role by Reset to help others in the way she has been helped herself. She is, I find, a strong and articulate advocate for alcohol recovery treatment.

78. This is not the first time that the mother has tried to get free from alcohol. On at least two previous occasions in the past she has embarked on programmes only to relapse. The local authority and the guardian submit that the court cannot at this stage be confident that she will not drink again.

79. Mr. McKenzie's view, in his written report, was that he would be more confident that she would stay dry in the long-term if she manages to do so for a year, that is, in another four months. As I have already observed however, in oral evidence and cross-examination on the basis she has remained completely abstinent for the last eight months, he expressed the view it was now more likely than not that she would stay dry. I agree.

80. Having heard her evidence and the evidence of others concerning the drink problem, and in particular Mr. Tolmie and Mr. McKenzie, I conclude it is more likely than not that this mother will not drink alcohol again. That is a great achievement and I congratulate her.

81. As I have stressed however, at many times during this hearing, this is unfortunately not the only issue in this case.

Findings and reaction to findings

82. I have set out above in short form the findings made by Judge Atkinson in the hearing in August 2016. At this point, I shall set out her more detailed findings as follows:

(A) Allegations of rape and assault made by A against the father:

(i) Against a background of controlling behaviour, on 6th and 7th May 2014, the father raped A and, on 10th May 2014, he assaulted her by punching her and hitting her with a rolling pin, and then he raped her for a second time;

(B) Other volatile and unpredictable behaviour to which the children have been exposed:

(i) On 22 February 2015, the mother slapped the father round the face;

(ii) On 4th May 2015, the mother inflicted red marks to the father's face by punching and scratching him;

(iii) On 4th May 2015, the father bit the mother's finger, smashed her phone, pushed her and sat on her, holding her down by the neck. She sustained bruising;

(iv) The mother and father were under the influence of alcohol and fighting in the street on 4th July 2015. The mother accepted a caution for common assault. She had a black eye;

(v) On or around 1st August 2015 there was an aggressive incident between the mother, father and L's father. The children were exposed to this;

(vi) There was a physical altercation again between the mother and father between 20th and 30th August 2015. The father broke down a door and grabbed the mother by her neck;

(vii) The mother and father would argue, shout and swear at each other, which caused B to have nightmares and he could not sleep;

(viii) The father and mother exposed the children to inappropriate public arguments on Facebook. The mother referred to the father's oldest child as "evil" and tagged him in a post describing him as a "little prick";

(ix) On 19th December 2015, the mother alleged to police and hospital staff that the father had raped her and assaulted her.

(C) Exposure of B and L to a lack of stability and chaotic lifestyle:

(i) Despite the findings made on 30th October 2012 in the previous care proceedings relating to E, B and L, that the children had been frequently disrupted by sudden relocations, that lack of stability and chaotic lifestyle has continued since the conclusion of those proceedings;

(ii) In April 2014, the mother and the children moved to a hotel in Brent;

(iii) In September 2014 the mother states that she was considering moving in with L's father;

(iv) In February 2015 the family suddenly moved to live in another part of London, to live with the father and his five children;

(v) On a number of occasions in the lead-up to the issue of proceedings, the children were moved out of the H home following an incident, only to return some days later.

(D) The mother and father's prioritisation of their relationship with each other over their respective children and their inability to work openly and honestly with professionals:

(i) The mother was given alternative accommodation to protect the children from witnessing incidents of aggression after 5th May 2015 and on 7th September 2015, but returned to the father with B and L on each occasion;

(ii) The father and mother had each prioritised their relationship over the needs of their children, choosing to remain together, even though this has meant the removal of their children;

(iii) The father and mother have not worked openly and honestly with the professionals. They breached the written agreement of 3rd November 2015, when the mother returned to the family home on 5th November 2015, and leading to the removal of B and L to foster care.

(E) The mother's alcohol dependence:

(i) On 18th December 2014, B's father left B and L in the care of the mother after an argument between them when she was drunk;

(ii) On 16th December 2015 the mother was intoxicated and self-harmed in the home by hitting herself with a kettle. The father pulled her to the floor. The police found the mother to be aggressive, uncooperative, incapacitated through alcohol and had wet herself;

(iii) On 9th December 2015 the police found the mother to be heavily intoxicated in the home. The children were present. She threatened self-harm.

(F)Neglect of the children in the H household:

(i) The father failed to care adequately for the family dog, resulting in him urinating in the home and on beds;

(ii) On 16th December 2015 and 19th December 2015, the police found the H home to be dirty and unkempt.

83. This constellation of findings is substantial, and contains a number of extremely serious findings. To a very considerable extent they are not accepted by the parents. So far as the finding of sexual violence is concerned, that had four components: (i), a controlling background; (ii), that the father

raped his previous partner, A; (iii), that subsequently he assaulted her, including hitting her with a rolling pin, and; (iv), he then raped her again.

84. These are, on any view, extremely serious findings and plainly give rise to a risk of future harm to a child in his care. It is true that Mr. McKenzie's tests did not reveal evidence of aggressive behaviour to a wider community i.e., to those outside a relationship with the father. It is in the context of a relationship that these attacks occurred, against the background of what Judge Atkinson found to be controlling behaviour.

85. There is an unquantifiable risk that the father would behave in a similar way in relationships in future. Any child placed in his care would be at risk of emotional harm. The father's response is, first, that he denies that the assaults ever happened as the judge found. He continues to assert that the judge did not have the full evidence before her when she made the findings, an assertion not accepted by the local authority, and points to the fact that he was subsequently acquitted by the jury of rape.

86. That acquittal of course was in proceedings at which the higher criminal standard of proof was applied and does not, for the purpose of this court, in any way negate the findings made by Judge Atkinson. The father understands this. On his behalf, Mr. Andrew Norton QC submits, rightly, that it is not an essential prerequisite of a return of a child that a party accepts every finding made against him. I agree. But the fact that this father refuses to accept this very serious finding is inevitably a significant matter which has to be taken account in the balancing exercise I have to conduct.

87. Secondly, the father contends that whatever happened in his relationship with A, there is no likelihood of a repetition now in his relationship with the mother, because their relationship is now settled on an even keel. There is no evidence of any recent altercations of the sort found by Judge Atkinson. Having interviewed them, Mr. McKenzie thought it more likely than not that their relationship would continue for some time. In court, they have presented as a caring and supportive couple.

88. The problem the court faces, however, is that they do not accept the findings of domestic violence in their own relationship in the past. They accept there were arguments and that the children would have been affected by those arguments, but they portray those arguments as attributable entirely to the mother's drinking and their joint difficulties struggling to blend the two families together, and with managing teenage children. They do not accept that the relationship was violent in any way, or at least in the way found by the judge.

89. The findings were serious, and give rise to a pattern of disturbing behaviour on both sides, especially the father, but occasionally of the mother, of resorting to violence. One example of their minimising their conduct concerns an incident which was one of the findings made by Judge Atkinson, in which they were seen fighting in the street on CCTV. They asserted before me they had simply been play fighting. This illustrated the extent of their ongoing denial and their willingness to deceive the court on this matter.

90. The father's explanation in oral evidence was that, in so far as there had been any physical contact between him and the mother during arguments, it was no

more than reasonable force. That is manifestly contrary to Judge Atkinson's findings.

91. In these circumstances, I have no confidence that the parents have really begun to address their history of difficulties, or their tendency of violence towards each other. I acknowledge that the father had hoped and tried to get on a domestic violence perpetrator programme, but he has failed to do so, because of his failure to acknowledge that he had been violent in the past.

92. Thirdly, the father and mother say that the court can put to one side the findings of Judge Atkinson, because the other work they have done has made any risk of future violence reduced. Whatever the findings were, in particular it is their case that the principal underlying cause of the difficulties in the relationship was mother's drinking, and that now she is dry, those difficulties will not arise in future. In addition, both parents have been on other courses, including, in the father's case, a course run by Reset for partners of recovering alcoholics and addicts, and also a course called strengthening families, through which he has learned techniques about managing difficulties within families and relationships and, he says, gained insights which will reduce the risk of any further difficult behaviour on his part.

93. I accept, as I have set out above, the mother has tenaciously tackled her drinking and that both of them, to their credit, have attended courses in an effort to improve their parenting. But the fact remains that they have not faced up to the fact that their relationship in the past was toxic and seriously affected by their tendency to be violent to each other in stressful situations, as found by the judge, and as a result of which the children suffered harm.

94. This again gives rise to a serious and unquantifiable risk that some conflict may recur in the future if P is returned to their case, so she would be exposed to a further risk of emotional harm in the way that her siblings have suffered in the past.

Social media

95. The mother and father are enthusiastic and frequent users of social media, like millions of others. The family justice has had to get used to the fact that many people use social media as a platform to criticise the law and the way the courts apply it, both in general terms and also on occasions regarding specific cases. Freedom of expression is a fundamental human right and people are entitled to exercise that right, provided that in doing so they do not break the law, either by committing criminal offences, or by infringing court orders.

96. In this case it is said by the local authority that the parents have used social media in a way which has exceeded reasonable behaviour, and in one case at least, broken the law. The Crown Prosecution Service is prosecuting them . The evidence about that allegation has not been put before me and I have not considered it for the purposes of the judgment.

97. Of more direct relevance is the local authority's assertion that in other respects the parents have used social media to express their views concerning the actions of the local authority and others in a way which shows a lack of insight and awareness of the impact of their conduct on their children, and which

undermines their assertions that they can now be relied on to work constructively with professionals in the future.

98. Examples of the postings relied on by the local authority include the following: First, as I stated above the father on one occasion posted the following message on Facebook:

> "Social services are stealing children to order, children are being taken away without any foundation and on malicious reports and lies and being forcibly adopted out to same sex couples, as there is a lack of children being willingly put up for adoption."

99. This received a number of responses from other people, including at least one other person dissatisfied with an order made by Judge Atkinson. In his oral evidence the father explained how he was involved in a campaign against non-consensual adoption called Forced Stop. It is no business of this court to prevent anyone expressing their views on this topic, which is, as I observed during the hearing, an issue which has attracted much attention and some criticism in certain quarters. The local authority asserts, however, that in making that comment, and similar comments, the father has not only displayed his rigid thinking, but has also shown his underlying unwillingness to work constructively with professionals.

100. A second example relied on by the local authority is from 2017, when the father used Facebook as a platform for showing images of a protest he had made outside Social Services' offices, in which he alleged that the local authority had allowed one of his older children to be beaten in foster care. It is right to record that following the granting of the contra mundum injunction, the father took off this post and, so far as I am aware, it is not alleged that he

has thereafter broken the injunction; certainly no application for his committal has been brought before the court so far as I am aware.

101. The local authority's point is that this incident shows a lack of consideration for the position of the child and the other children, who were the subject of this protest, and the impact on them of having their lives exposed on social media.

102. A third example, more recent, is that the mother and father posting images of the mother's previous partner, B's father, in a betting shop. The mother's argument is that he is continuing to gamble, notwithstanding financial difficulties. The mother asserts and asserted on social media, that she pays child support for B and L, which he spends in the betting shop. Once again the local authority asserts that this demonstrates a lack of insight into the impact of their conduct on the children. It is one thing to take photographs for use in court proceedings, it is quite another to post those photographs on social media.

103. In his oral evidence the father also accepted that he covertly records conversations with social workers and the guardian, that he has named and written about professionals on social media, that he has posted a photograph of a previous social worker on social media and referred to her on social media as "lying" and "a cow", and made similar allegations of comments about the previous guardian.

104. The local authority contends that this court of conduct demonstrates an incapacity to work with professionals and an intimidating attitude towards

professionals that makes it highly unlikely that these parents would accept advice and co-operate constructively were P to be returned to their care.

P

105. P's current circumstances are described in the evidence of Mr. King, the current social worker, and the guardian. She is now 23 months olds and living with a couple with whom she was placed for adoption in February 2017, although for reasons set out above, she is now not categorised as placed for adoption but rather as a foster child in their care. She has been with them for 16 months and, as all parties accept, is now settled.

106. According to Mr. King, she demonstrated in her behaviour she feels cared for by them and will feel safe because they are meeting her needs. She is thriving and meeting her developmental milestones. She has developed an attachment with her carers and seeks care and protection from them appropriately. For example, when the door is answered and a stranger walks in, she stands behind her carer's leg and peeps out inquisitively. When the guardian visited, she was appropriately wary of him and looked to the carers for reassurance. She is comfortable with groups of people but tends to sit closest to her carer and to check back with her if playing with others. She enjoys age appropriate activities, is sleeping through the night and is beginning to speak. Her carers have a life story book with photos of her birth family. She is a healthy child and as yet there are no signs that she has suffered any developmental delay or other problems as a result of her mother's drinking during the pregnancy. Although, it is the mother's case that she was in fact sober for a period of months during that pregnancy.

107. P is too young to verbalise her wishes and feelings. The guardian simply suggests that if she could tell him what she wants, it would be to be looked after well by a family that loved her and could look after her throughout her childhood.

108. She needs a permanent home that is safe, living with carers who are physically and emotionally available to her, and whose behaviour towards her is protective and predictable.

109. In making a decision about her welfare, I have to consider the effect on her of any change in circumstances. It is the view of the local authority and the guardian she would suffer a disrupted attachment were she to be moved from her present carers. Having been in their care for 16 months, she has developed a secure and healthy attachment. Any move from their care would unquestionably cause a degree of emotional harm and would require careful handling and possibly therapeutic intervention.

110. It is, of course, not impossible to move a child of this age who has formed a secure attachment. Indeed where a child has formed a secure attachment of this sort, it is often less difficult for them to form a bond with new carers. Nevertheless, in the short term there is a certainty of emotional harm and in the long time the risk that such emotional harm may continue, were she to be removed. These are factors to be taken into account in the balancing exercise.

111. In my judgment, in the circumstances of this case, they are not factors which need to be supported by expert evidence. In closing submissions, Mr. Newton QC on behalf of the mother suggested that if it were the case that the local authority and the guardian said that this was the factor which had a significant

decisive impact on the balancing exercise, expert evidence was required. In saying that, he relied on an observation of McFarlane LJ in the *re W* case, *supra*, at paragraph 66.

> "...where the relationship that the child has established with new carers is at the core of one side of the balancing exercise, and where the question of what harm, if any, the child may suffer if that relationship is now broken must be considered. The court will almost invariably require some expert evidence of the strength of the attachment that exists between the particular child and the particular carers and the likely emotional and psychological consequences of ending it. In that regard, the generalised evidence of the ISW and the Guardian, which did not involve any assessment of A and Mr and Mrs X, in my view fell short of what is required."

112. I do not read that passage as suggesting that in every case where there is an issue as to whether a child should be moved from a home where she is settled, expert evidence is necessary as to the assessment of breaking her attachment. Each case turns on its facts. There is no dispute that there will be some emotional harm to P were she to be removed from her carers. That is a factor to be taken into account in the balancing exercise.

113. If it was being asserted that every other factor pointed to P being returned to her parents where the consequences of a change in circumstances would be so harmful that she should not be returned, that would be an example of a case where a relationship with the carers was at the core of the balancing exercise and is likely that expert evidence would then be required. No party suggests that those circumstances exist here.

Submissions

114. On behalf of the mother, Mr. Newton QC and Ms. Obi-Ezekpazu understandably emphasised the importance of any child being brought up with

their natural family with parents and siblings. They submit that nearly five months after Holman J granted the parents leave to apply to revoke the placement order, the evidence in support of the application is even stronger. For example, and most importantly, the mother has continued to maintain her abstinence from alcohol and has now been abstinent for over eight months. They submit that the mother's drinking was the main factor in the volatility of the parents' relationship and the root cause to the problems which led to the children being removed. It permeated everything; the neglected and chaotic household and the lack of control and the arguments between the parents and the lack of insight which the parents then displayed.

115. They submit that the court can safely conclude that drinking will no longer be an issue in this case and that as a result the other factors have fallen away. They rely on Mr. McKenzie's conclusion there are no signs of significant psychological problems with the mother. They point to evidence that the mother and father have acquired a measure of greater insight. For example, in the mother's case her acceptance to Mr. McKenzie as repeated in court that 70 to 80% of the responsibility for what happened to the children was her fault. They rely also on the extensive work which has been carried out with the parents, which has led to this increased insight.

116. Mr. Newton QC and Ms. Obi-Ezekpazu further submit that there is clear evidence that the relationship between the parents is not as volatile as it was. There is no evidence of recent volatility, no police reports or other reports of the sort which occurred all too frequently in the past. There are other positive

signs about their relationship as identified by Mr. McKenzie, for example, their ability to listen to and respect each other's views.

117. In addition, there is an improved relationship with professionals, submits Mr. Newton QC and Ms. Obi-Ezekpazu. In contrast to their previous relationships with social workers which were extremely difficult and challenging, their relationship with Mr. King has been much better. They did not agree with him on a number of matters, but nevertheless have been able to maintain a professional relationship with him. Also, in the mother's case on at least one occasion, she sought his advice and support at a point when she was feeling vulnerable and distressed.

118. Mr. Newton QC and Ms. Obi-Ezekpazu, therefore, submit there has been a significant improvement in all areas in which the mother's drinking led to findings of deficiency in parenting. They acknowledge that P will suffer some emotional upset and disruption by being removed from her carers. The fact that the mother and father acknowledge this is identified as another example of their greater insight. It is submitted however that the emotional harm suffered by P, were she to be removed from her current carers, is not on a scale which cannot be managed by the parents with support by the local authority, which the parents, with their improved relationship with the social worker, will be willing to accept.

119. If contrary to the parents' expectation and argument the return of P to their care proves unsuccessful, for example, if the mother resumes drinking, those problems would, submits Mr. Newton QC, be likely to emerge sooner rather than later and in circumstances where it would not be impossible for P to be

removed and placed permanently again outside the family without suffering any significant further harm.

120. On behalf of the father, Mr. Norton QC and Mr. Elcombe, whose submissions are also adopted by counsel for the mother, acknowledged the findings made by Judge Atkinson and that the father has not accepted a substantial proportion of those findings. They submit it should not be a condition precedent for a successful revocation application that the father has to accept every finding made against him. They submit that the significant changes in the parents' relationship and generally are such as ought to give reassurance to the court that any of the concerns expressed about the lives of the children prior to these proceedings are no longer present and that regardless of the father's stance on the findings, the manner in which he and the mother will parent in future will be entirely consistent with the children's welfare.

121. In support of this, Mr. Norton QC points to the improvement in the home conditions, the mother's positive engagement with alcohol treatment, the father's efforts at improving his parenting and addressing issues through courses and in other work, improvement in the relationship between the parents and this social worker and notwithstanding the fact that the father continues to hold grievances against the local authority, his ability to put grievances to one side in the interests of the children.

122. Mr. Norton QC and Mr. Elcombe also point to the positives in Mr. McKenzie's report; the absence of any deeper underlying psychological problems and his positive observations concerning the parents' relationship, coupled with their clear sensitivity to P.'s needs. They acknowledge the ongoing social media

campaign but submit this needs to be seen in the context of the parents' sense of loss and of the significant mistakes which the local authority acknowledges it has made. Whilst it acknowledges that the court is bound to take the findings into account and the risk of repeated behaviour that exists as a result of those findings, Mr. Norton QC submits that the court can safely conclude that there is unlikely to be any such repetition, having regard to the strength of the couple's relationship, the insight they have acquired as to the effect of their past volatile relationship on the children, their positive engagement and treatment on courses focusing on aspects of their domestic relationship. It is submitted that in assessing the evidence of the independent social worker and the local authority, the court should bear in mind that both the independent social worker and the social worker seem to have misread Mr. McKenzie's report as suggesting that the psychological issues precluded the safe return of P to the parents' care.

123. In fact it was Mr. McKenzie's conclusion that the father's narcissistic traits did not preclude him caring for a child. The reality, submits Mr. Norton QC and Mr. Elcombe, is that having undergone the work they have taken on, the father and mother have acquired much greater insight into their children's needs and are now fully attuned to those needs. The court should not expect parents to be perfect but rather to demonstrate the capacity to change and address issues in their parenting, which these parents have done.

124. On behalf of the local authority, Mr. Ekaney QC and Miss Roberts acknowledged the extent of the mother's attempt to achieve sobriety. They submit, however, that it is simplistic and wrong to attribute all of the couples'

findings to her previous alcohol abuse. Against the background of this case, the changes made to date are relatively recent, superficial and unsustainable. They submit that given the history of drinking and the previous failed attempts at abstinence, there is significant reasonable risk that this later attempt will also fail.

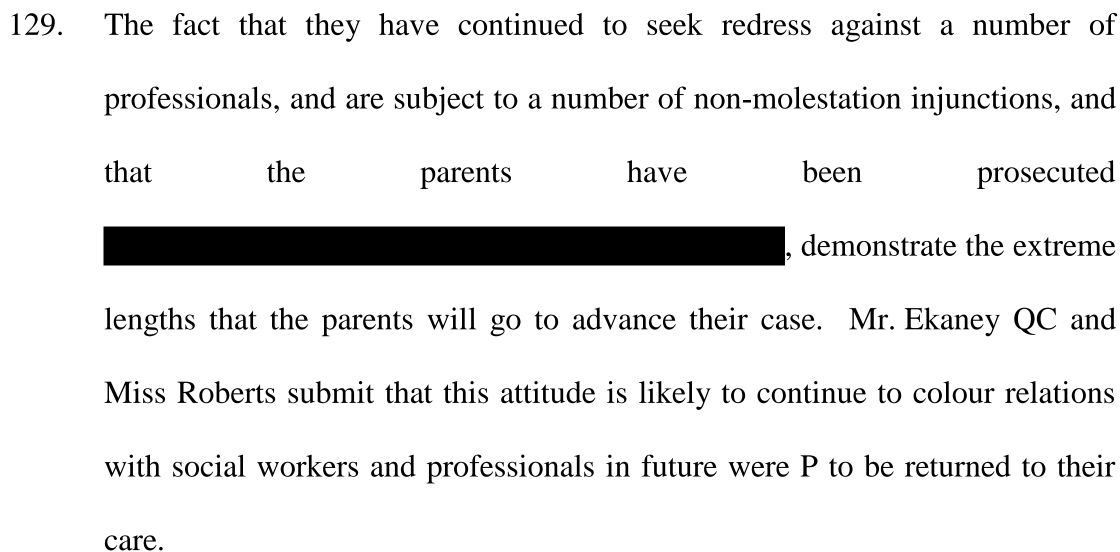
125. The triggers and vulnerabilities which are the risk factors to the care of the children are still present. In particular, the parents' refusal to accept the violence in their relationship and the findings made by Judge Atkinson, the minimisation of that behaviour, the rigid thinking displayed in the father's attitude and the underlying psychological problems as analysed by Mr. McKenzie give rise to an unacceptably high risk of harm should P be returned to their care.

126. Whilst accepting there has been improvement in the relationship between the current social worker and the parents compared to the relationship with previous social workers, Mr. Ekaney QC and Miss Roberts submit that the underlying difficulties remain. In criticising the parents, Mr. Ekaney QC rightly acknowledged the mistakes made by the local authority, prior to and at the time of P's placement with her current carers; in particular, the local authority's failure to inform the parents of their legal rights and potential remedies.

127. It is accepted that the process adopted by the local authority was unfair to the parents. As I pointed out in the hearing, however, and as Mr. Ekaney QC and Miss Roberts repeated in their submissions, the failures of the local authority have in fact given the parents opportunity to cross the section 24(3) threshold

and obtain leave to apply to revoke the placement order, which, in all probability, they would have failed to have achieved in February 2017.

128. Nevertheless, any assessment of the local authority's criticisms of the parents' attitude and behaviour towards social workers and other professionals has to be carried out in the light of the local authority's errors. Having said that, Mr. Ekaney QC submits that the parents' attitude and campaign on social media and the father's view that the local authority is fundamentally corrupt and his conspiracy theories demonstrate an attitude which would give rise to significant difficulties were P to be returned to the care of the parents.

129. The fact that they have continued to seek redress against a number of professionals, and are subject to a number of non-molestation injunctions, and that the parents have been prosecuted , demonstrate the extreme lengths that the parents will go to advance their case. Mr. Ekaney QC and Miss Roberts submit that this attitude is likely to continue to colour relations with social workers and professionals in future were P to be returned to their care.

130. In their care, cooperation between the parents and the local authority will be absolutely essential. Mr. Ekaney QC and Miss Roberts submit that evidence of past behaviour makes it unlikely that there would be sufficient cooperation here. In addition, the ongoing campaign demonstrates that the parents have not really acquired significantly greater insight.

131. Mr. Ekaney QC and Miss Roberts submit that whereas the parents have accepted that the carers will suffer distress if P is removed from their care,

their attitude to the carers in other respects has been to criticise them. In particular, they have expressed views concerning placements with same sex couples generally. Mr. Ekaney QC and Miss Roberts submit this makes it unlikely they will be sympathetic to P's need for a truthful narrative concerning her history with those carers.

132. They further submit that the parents do not present as being child focussed or sensitive people attuned to the level of emotional distress that P is likely to suffer were she to be returned to their care. This, coupled with the difficult relationship with social workers, gives rise to significant risks that P's emotional difficulties will not be properly addressed if she is returned.

133. The fact that they harbour hopes of recovering the care of a number of their other children is also advanced by the local authority as further evidence of their lack of insight and attunement to the specific needs of P.

134. The local authority submits that P requires a permanent placement where she can continue to receive safe care for the rest of her childhood. Although the loss of her relationship with her biological family is a serious factor, the facts are that she has had no relationship with them at all of any substance, having been separated at four days and having had no contact for over fifteen months.

135. The local authority submits that the only way in which P can receive the care and nurture she requires is through being adopted by her current carers.

136. On behalf of the guardian, Ms Joanne Brown concurs. She submits that in the words of Dame Janet Smith in *Re MA*, quoted above, that adoption is the best

way in which P's welfare can be secured. Adoption is the arrangement which is in the best interests of P throughout her life.

137. Ms Brown submits that the parents' characterisation of the role the mother's drinking played in the events leading to Judge Atkinson's findings has been distorted and has enabled the father to continue to deny his responsibility. As a result, the mother's recovery, while commendable, has not been based on a truthful account of the history. For that reason the guardian submits that the court cannot be optimistic about the prospects of the mother maintaining sobriety.

138. Ms Brown further submitted that the father's evidence was characterised by the narcissism which Mr. McKenzie identified, a trait which would impede his ability to be attuned to his children's needs and to put their interests first. Ms Brown cited as one example the fact that for a period of over a year, during which the father refused to sign a written agreement in respect of contact with his older children, the children were deprived of any contact with him altogether.

139. On behalf of the guardian, it was submitted that the father is rigid in his thinking and that whilst he has attended courses designed to improve his parenting, he continues to focus his efforts on his campaign against non-consensual adoption.

140. In the case of the mother, the guardian submits that her attitude towards her oldest child E amounts to scapegoating her for the problems which were attributable to deficiencies in her own parenting.

141. It is further submitted that the recent action of the parents in posting on Facebook pictures of B's father at a betting shop and making comments about the care of the children placed with him, that is to say B and L, shows an ongoing lack of insight into the impact of their behaviour on the children. It is therefore unlikely that they have the capacity to be attuned to the sensitivities that would be required in P's interests were she do be returned to their care, as demonstrated by the father's comments in evidence that P will be at no greater risk than any other child.

Conclusions

142. Drawing these threads together, I reach the following conclusion. I start with the judgment of Judge Atkinson dated August 2016. That provides the factual basis of all decisions about the future of P. The attempt at an appeal against those findings was dismissed and all courts must therefore follow the findings in that judgment. The father and mother recognise that this is how all courts and professionals involved with their family must proceed, but they do not accept the truth of many of those findings. They think the judge was wrong, but this court and everyone else has to proceed on the basis she was right.

143. The findings were very serious. There were no findings that the children suffered physical abuse but there were findings that the parents behaved in a way that caused the children emotional harm and gave rise to a risk of similar emotional harm in the future.

144. The parents' behaviour stemmed in part from the mother's drinking problems but also from their propensity to resort to violence in certain stressful situations. The judge's findings were not that either parent had only used

reasonable force but rather that on a number of occasions, sometimes in the presence of the children, they had resorted to physical violence against each other.

145. In addition the judge found that the father had raped and assaulted his previous partner against a background of controlling behaviour. Although he was subsequently acquitted of rape by a jury in criminal proceedings in respect of the incidents which Judge Atkinson made findings, her findings, which were, of course, made on the lower civil standard of proof applying in family proceedings, still stand and are binding on this court. They were not in any way expunged or watered down by the acquittal. As the father fairly recognised in evidence such findings are plainly relevant to the decisions about P's future. They demonstrate that he has the capacity to commit acts of sexual violence. Such a tendency gives rise to a risk of harm to any child in his care, not through any direct threat of physical or sexual harm to the child emotional harm but rather through the risk of emotional harm caused as a result of witnessing or being otherwise affected by violence within the domestic relationships in the household.

146. The findings of sexual violence are part of the picture of the father as a man who resorts to violence in stressful situations within the context of relationships. Unless the parents accept and face up to these findings, the risk to any child in their care will continue.

147. The mother's case before this court is that she has made a concerted and significant effort to address her drink problem. She has attended an intensive and structured programme and has, on her account, not consumed any alcohol

for over eight months. The local authority rightly points out that she has tried to break free from her drink problem but suffered relapses. Mr. McKenzie acknowledges the efforts that she has made but says he will be more confident that she would remain abstinent after a period of 12 months.

148. Having heard her questioned about this, as I have already said, I was impressed by her answers. I conclude that she is really serious about wishing to stay free from alcohol and that her actions in attending, the intensive and structured programme demonstrate a real determination to overcome her addiction.

149. On occasion, she has said things which may suggest that she underestimates the extent of the problem. I accept the evidence of Mr. King and Mr. Beat, that she has said words to the effect that she was not an alcoholic. However, addressing me she clearly said that she was and I think she does accept that she is. She has described her addiction as a form of binge drinking but she did not deny her problem was serious and I do not think she has been belittling the significance of her drink problem. She knows she is an alcoholic and needs to remain vigilant for the rest of her life. As I have already said, I think it more likely than not on balance that she will remain dry.

150. Unfortunately, however, her drinking is only one aspect of the difficulties faced by the family in this case, which led to the removal of the children. Of equal, if not greater significance, was the propensity to violence which both parents demonstrated and which disfigured their relationship. In addition in the case of the father, there is the propensity to sexual violence. So far as those problems are concerned, and in stark contrast to the issue of the mother's

drinking, there have been no significant developments at all. The father has made some attempts to get on a domestic violence programme, but has been turned away because he denies he has been violent. It follows, therefore, that the propensity to violence, including in the father's case, sexual violence, remains.

151. The parents assert that there is no risk of violence in the future. Partly, this assertion is based on their case that the real underlying problem was the mother's drinking and that now she is clear of alcohol, there will be no recurrence of the stressful situations which led to arguments in the past. But in addition, their assertion that there is no risk of violence in the future is based on their continuing denial that there was any violence in the past. The reality is they have simply not faced up to the facts as Judge Atkinson found them to be. The facts are that, in stressful situations, they have both in the past become violent to each other, and in the father's case to his former partner. As a result, children in their care suffered emotional harm and have had to be removed from their care for their own safety.

152. It is inevitable that stressful situations will recur as they always do in life and the risk, therefore, remains that they will resort to violence again. That risk will remain unless and until they face up to the fact of violence in their past and take steps to tackle the serious problems which they have.

153. Instead of facing up to this, they, and in particular the father, have sought to divert attention through their campaigns of social media and elsewhere against the judge, social services and professionals. They have allied themselves with others who believe they have been victims of miscarriages of justice. They

have levelled accusations of bias and corruption. They have put the details of the case on social media without any apparent thought of the potential impact on their children.

154. The parents are fully entitled to comment about the law concerning non-consensual adoption providing they act lawfully. I know that this is an issue about which there is considerable controversy and a legitimate public debate. Judges and professionals working in family law have to accept that they may be criticised. However, in this case, many of the comments posted by the father go beyond legitimate and fair comment. I fully accept that, in some respects, this local authority has made serious mistakes; in particular, in failing to comply with the procedures requiring it to give notice of the adoptive placement to the parents. However, allegations that this local authority and local authorities in general place children for adoption for financial benefit are simply untrue.

155. In his evidence, the father asserted that he has come across corruption with this local authority in other areas of life during his forty years living in the borough. He regarded that as evidence in support of his case that there has been corruption within the Social Services department. He has allied himself with other dissatisfied litigants and thereby gained support, which has buttressed his sense of injustice.

156. I consider all this activity as a diversion which consciously or not has led the parents, and the father in particular, to avoid facing up to the reality of the facts as found by Judge Atkinson that he and the mother have a propensity to

resort to violence in stressful situations which gives rise to a risk of significant emotional harm to any child in their care.

Balancing analysis

157. I therefore turn in conclusion to the balancing exercise. The advantages of revoking the placement order in this case and instigating a process by which P could be returned to the care of her parents and consequently the disadvantages of refusing to revoke the placement order are as follows.

158. First and foremost, P would have the advantage of being given the opportunity of growing up within her natural family and remaining in that family throughout her life. Wherever possible, all children should be brought up within their birth families. P has two parents who plainly love her and desperately want to care for her. In addition, P has half siblings, eight half siblings, although none of them are at present living with the father and mother and some of them are estranged from the parents, returning P to the care of her parents would enable her to form relationships with some of her siblings, immediately and in the long-term perhaps with all of them. Sibling relationships are life long relationships, and the opportunity of preserving them is an advantage which P would enjoy were she to be returned successfully to the care of her parents. In this way, P's identity needs would be met and she would grow up within the family and within the wider culture and social circumstances into which she was born.

159. Secondly, I accept that it is more likely than not that P's mother will remain abstinent in the long term. P would therefore be returning to the care of a mother who is a recovering alcoholic who has through determination and

perseverance learned to control her drinking and accept and acquire a degree of insight into the effect of drinking on her life generally and her parenting capacity specifically.

160. Thirdly, being returned to the care of the parents would mean that P did not face the risks present in adoption generally that the adoptive placement may break down. Not all adopted children enjoy a happy life. Some struggle with coming to terms of the circumstances and suffer from a measure of loss and confusion. P would be spared that if she were returned successfully to the care of her parents.

161. Fourthly, there are some grounds for believing that the relationship between P's parents is less volatile than it was. The evidence of Mr. McKenzie and others and the observations of this court suggest that there is now a more united relationship between them. Their home is tidier; their lifestyle less chaotic. There has, I accept, been some improvement in that regard.

162. The disadvantages of returning P, of revoking the placement order and returning P to the care of her parents and consequently the advantages of refusing to revoke the placement order are as follows.

163. First the parents have completely failed to accept any of the serious findings made by Judge Atkinson. In particular, the father has failed to accept the findings that he subjected his former partner to an extreme form of sexual violence on two occasions. Both parties deny that their relationship was characterised by domestic violence as Judge Atkinson found had occurred. As Mr. Norton QC accepted, this means there remains a risk of recurrence of violence. However, he contended that the court could have a degree of

confidence that this will not recur because the mother has now stopped drinking, the parents have acquired insight and understanding through the various courses they are undertaking and there are grounds for concluding their relationship is less volatile than it was.

164. In my judgment, however, the fact that the parents have failed to accept the judge's key findings is a very serious disadvantage in their proposal that P should now be returned to their care. Without any acknowledgment by the father of the findings of sexual violence, the extent of the risk of a repetition is unquantifiable but remains significant. The impact of any recurrence of such behaviour will be very serious on any child in the household. The failure of the parents to acknowledge the truth about their violent relationship means that the risk of a recurrence of that violence is unquantifiable, but in my judgment significant.

165. The father and mother assert that it was the mother's drinking that was the underlying problem. Drink was a problem, but it was not the only problem, nor in my judgment was it the major problem. The major problem was the propensity of the parties to resort to violence. As it has never been acknowledged by either parent, it is untreated.

166. There is no basis upon which this court could properly conclude that the problem has disappeared. On the contrary, given the seriousness and extent of the violence, the strong likelihood is that it remains and is likely to reappear at some point in the future unless and until the parents face up to the problem.

167. The parents' narrative that drink is the sole or principal problem is a false narrative. The underlying violent tendencies which disfigured their

relationship with the past and the father's earlier relationship remain unacknowledged and unresolved. Consequently, a major disadvantage of returning P to their care will be that she would be returned to the care of people with an unacknowledged and untreated propensity to resort to violence within relationships. It is inevitable she would suffer were there to be a recurrence of this violence.

168. A linked but further disadvantage arises out of the parents' ongoing lack of insight and failure to prioritise the children's needs. By their focus on their campaign and social media activities and the failure as highlighted above to appreciate the impact of this behaviour on the children, they have demonstrated that they lack the capacity reliably to put their children's needs first. P would be at risk of further emotional harm were she to be returned to their care as a result of these activities.

169. Thirdly, it is plain that any return home would require careful and sensitive planning and a close co-operative relationship between the parents and the social workers. Although the parents have demonstrated they can work with some professionals on the various courses they have undertaken, in particular the mother's close relationship with those professionals working with her on her alcohol treatment programme and have also formed a much better relationship with the current social worker, Mr. King, the history of the last three years demonstrates that these parents have an extremely challenging and confrontational attitude to social workers, judges and other professionals borne out of a view held by the father that social workers support forced adoption for financial benefit and his views as to the endemic corruption of local

authorities. The court cannot be confident they would co-operate to the extent required to ensure P's needs were met. This is a further significant disadvantage of revoking the placement order and returning P home.

170. The final disadvantage is that removing P from care of her current carers with who she has lived for 15 months and to whom she is unquestionably attached would definitely cause her significant emotional harm. This is not the most important factor in this case and if all the other factors pointed in favour of a return home, it would not be a factor of decisive importance. It is a factor of considerable significance and a disadvantage, however, of the proposal that P should be returned home.

171. Furthermore, its significance is increased by reason of the concerns already identified concerning the parents' lack of insight and attunement into the needs of their children and the high probability that the parents' difficult relationship with social workers would recur. I respectfully reject Mr. Newton QC's suggestion that the significance of this factor is reduced because any difficulties would be likely to emerge quickly so that, in those circumstances, P could be removed again. I think it more likely than not that were the circumstances to arise that required P to be removed again from her parent's care, she would suffer significant emotional harm.

172. Looking at the advantages and disadvantages and having regard to all the factors, in my judgment, the balance plainly comes down in favour of P remaining with her current carers.

173. I turn finally to consider whether in all the circumstances the plan for P to be adopted continues to meet the test of proportionality and necessity as

embodied in the European Convention on Human Rights and reflected in the need for this court to give paramount consideration to the welfare of the child throughout her life. In my judgment, placing P for adoption remains the only way in which her welfare needs can be met and her interests throughout her life satisfied.

174. I recognise that this decision will be devastating for these parents. I accept they desperately want her back. In my judgment, however, applying the law to the facts of this case, and my assessment of the issues as set out above, it is my duty to dismiss this application for revocation of the placement order.

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