



Neutral Citation Number: [2024] EWHC 666 (Fam)

Case No: NG22C50188

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22/03/2024

**Before :**

**MRS JUSTICE LIEVEN**

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**Between :**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

**Applicant**

**and**

**THE MOTHER**

**First Respondent**

**and**

**HD**

**Second Respondent**

**and**

**TL**

**Third Respondent**

**and**

**X**

**(A Child, through his Children's Guardian)**

**Fourth Respondent**

**and**

**THE FATHER**

**Fifth Respondent**

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**Ms Judy Claxton (instructed by Nottinghamshire County Council) for the Applicant**  
**The First Respondent did not attend and was not represented**

**Mr Stephen Williams** (instructed by **Jackson Quinn**) for the **Second Respondent**  
**Mr Justin Slater** (instructed by **Sills Legal**) for the **Third Respondent**  
**Ms Helen Knott** (instructed by **Foys Solicitors**) for the **Fourth Respondent**  
**The Fifth Respondent did not attend** and was **not represented**  
**Mr Richard Posner** for **Nottinghamshire Police**

Hearing dates: **5 March 2024**

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 22 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE LIEVEN

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

**Mrs Justice Lieven DBE :**

1. The issue before me falls within care proceedings concerning a 4 year old child known as X. One of issues in the care proceedings is whether the Second Respondent, HD, can be permitted to spend time unsupervised with X and the terms of HD's bail conditions set by Nottinghamshire Police. The care proceedings are before HHJ Reece to consider the welfare of X and are listed for a final hearing in the week of 4 March. I am only considering the interface between the bail conditions and the orders as to unsupervised contact that HHJ Reece can make.
2. The Local Authority ("LA") were represented by Judy Claxton, the Mother was not represented and did not attend, HD was represented by Stephen Williams, the Third Respondent, TL, was represented by Justin Slater, the Guardian was represented by Helen Knott, and the Father was not represented and did not attend. Nottinghamshire Police were represented by Richard Posner.
3. A summary of the case is as follows. HD and TL were appointed as Special Guardians for X in March 2020 and he remained in their care until events in September 2022. HD and TL were also approved as foster carers and had a child, Y, placed in their care in August 2022. Until September 2022 HD was also employed as a social worker.
4. In September 2022 the foster child Y sustained serious injuries in the care of HD and TL. The perpetration of these injuries, and injuries sustained in August 2022, was the subject of a 5 day fact-finding hearing in September 2023 when HHJ Reece made findings. The injuries were found to have been caused by TL, but additional findings were made against HD regarding his non-disclosure of previous injuries observed to Y in August 2022 and his failure to protect Y.
5. The LA was ordered to undertake a risk assessment of HD which came to a negative conclusion. The final evidence of the LA dated 10 January 2024 proposed that X remain cared for by BL (TL's mother) under a Special Guardianship Order with HD to have supervised time only with X. This position was opposed by HD who sought a return of X to his sole care. The Guardian proposed that X remain with BL but under a Care Order. She supported there being no unsupervised contact for X with HD.
6. At the time of the fact-finding hearing and thereafter, TL and HD have been subject to police bail conditions. The conditions prior to charge were that they were not to have any unsupervised contact with any children under the age of 18, save with the consent of the Police or the Local Authority.
7. At a hearing on 31 January 2024 the court adjourned the final hearing until 3 days of the week of 4 March due to issues that had arisen. One matter was the outcome of any charging decision and the bail conditions that were imposed upon HD by the police pre-charge. HHJ Reece ordered the Officer in the Case, DC Waters, who was present at the January hearing, to file a statement setting out the answers to various queries, including:

*"The position of the police/CPS in relation to whether [HD's] bail conditions can be amended to include provision that [HD] could either have the care of [X], or unsupervised contact of [X] if determined safe*

*by HHJ Reece. In the event that such a variation is not agreed to set out the reasons why this variation cannot be agreed by the police/CPS.”*

8. The police charged HD on 9 February 2024 with two charges regarding his actions in relation to the injuries to Y. Those offences are:

*“Caused a child to suffer serious physical harm or were/ought to have been aware that there was a significant risk of serious physical harm being caused to that child by the unlawful act of a member of his household – Contrary to s5(1) and (8) of the Domestic Violence Crime and Victims Act 2004.”*

*“Neglecting, abandoning or exposing DP in a manner likely to cause him unnecessary suffering or injury to health – Contrary to s1(1) Children and Young Persons Act 1933.”*

9. At the time of charging HD, the Police amended HD’s bail conditions to prevent any unsupervised contact with any child under 16 years and with all contact to be supervised by an adult approved by social care in advance. The ability of the LA to agree to unsupervised contact was removed and there was no provision for the Family Court to allow unsupervised contact.
10. The reasons recorded on the charge sheet (MG04) for these bail conditions were the risk of committing an offence whilst on bail, interfering with witnesses, committing further offences or otherwise obstructing the course of justice. However, before me Mr Posner, on behalf of the Police, accepted the reasons on the MG04 were incorrect, and the only actual reason was the risk of committing an offence, i.e. a risk of harm to X.
11. DC Waters has filed two statements within these proceedings. The statement dated 9 February 2024 sets out the details of the charges against HD and the bail conditions. The first hearing in the Magistrates’ Court is on 14 March 2024. DC Waters has been told by the CPS that the first hearing in the Crown Court is likely to be on 11 April 2024.
12. DC Waters was asked to file a further statement due to the first statement not dealing with the issues raised by HHJ Reece in his order dated 31 January 2024. The second statement dated 14 February 2024 deals with the request in the following limited ways:

*“The position of the police is that the bail condition detailed in my previous statement is proportionate and necessary, however after the first court hearing bail conditions are ultimately a matter for the court, dependant on any representations made.”*

13. DC Waters has further emailed the LA to inform them of the decision making process in respect of bail conditions and noted:

*“When I left court last time nothing had been agreed about the bail conditions and I thought I made it clear in the discussion that took place*

*beforehand that any amendments to bail conditions would need to be authorised by an Insp rank.*

*I heard HHJ Reece's comments about the bail conditions in court and fed those back to my line managers, however as outlined in the statement that I have already shared with you, the police position is that the current bail condition is proportionate and necessary.*

*If I am to attend court again please can it be made clear to the respondents in advance that I will not be able to agree to any amendments to the bail conditions."*

14. The LA in the time since the hearing on 31 January 2024 considered its position regarding X's long-term care and filed a position statement dated 28 February 2024 which explained that the LA was exploring a 'Resolution' style approach for the care of X to be transferred over a period of time to the care of HD. Ms Claxton explained that the LA were proposing a very careful and highly contingent plan, with assessment at each stage. There was therefore no certainty that X would necessarily end up in HD's full time care. In the LA plan X would commence with unsupervised contact on Saturday mornings, when HD would take him to his kick boxing class, and on Sundays. Unsupervised overnight contact would not commence until August.
15. The Guardian, via email on 1 March 2024, confirmed that "*provisionally and depending on receiving a detailed plan the CG would support the LA's proposals*".
16. HD filed a position statement on 4 March 2024 (which reflected an emailed position sent to the parties on 1 March 2024) agreeing to a gradual return of X to his care pursuant to a plan that he was putting forward.
17. The LA filed a plan on 4 March 2024 which proposed that unsupervised contact commences in April 2024 contingent on bail conditions no longer being in place and no other concerns being raised. HD's plan progresses more quickly than does the LA's.
18. HHJ Reece on the first day of the final hearing listed this case before me, as the Family Presiding Judge for the Midlands, due to his concerns regarding the Police failing to adequately answer the matters raised with them within the order dated 31 January 2024. He noted that the bail conditions had become more restrictive, thus preventing the Court from making orders to give effect to a rehabilitation plan, if that is determined to be in the welfare interests of X.
19. This hearing before me is not to determine the wider welfare case regarding X, the case is likely to be resolved by HHJ Reece on Thursday 7 March 2024 having heard submissions from all parties. The following issues remain between the parties in the substantive case:
  - a The speed of any transition of X into the care of HD and what support/assessment/monitoring should be in place at each stage;
  - b The orders underpinning the transition of X into the care of HD.

20. This hearing is solely to consider the issue of HD's bail conditions which currently preclude any rehabilitation plan coming into effect.

### Legal position

21. Post-charge police bail can be imposed by the Police when releasing a person on bail to appear at court at a future date and may impose conditions on that bail. There is provision for an application to be made to the Magistrates Court on behalf of a person to vary the conditions of bail. The CPS rather than the Police will deal with applications to vary police imposed bail conditions, albeit the CPS should ask the Police to give a view on the application.

22. S.4 Bail Act 1976 provides that a person has a general right to bail except as provided for within Schedule 1 of that Act. Part 2 of the Schedule provides a number of exemptions to the general right to bail namely:

*“The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would—*

- a) fail to surrender to custody, or*
- b) commit an offence while on bail, or*
- c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.”*

23. The subsequent paragraphs provide other potential exemptions to the general right, none of which apply within this case.

24. Paragraph 8 (1) and (2) of the Schedule then provides:

*“8(1) Subject to sub-paragraph (3) below, where the defendant is granted bail, no conditions shall be imposed under subsections (4) to (6B) or (7) (except subsection (6)(d) or (e)) of section 3 of this Act unless it appears to the court that it is necessary to do so—*

*(a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or*

*(b) for the defendant's own protection or, if he is a child or young person, for his own welfare or in his own interests.*

*(1A) No condition shall be imposed under section 3(6)(d) of this Act unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.*

*(2) Sub-paragraphs (1) and (1A) above also apply on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.”*

### The issue

25. This matter was referred to me because HHJ Reece informed me, and the parties agree that this is the position within their knowledge, that Nottinghamshire Police are now routinely imposing bail conditions requiring no unsupervised contact with a child, in cases where there are Family Court proceedings, without including a caveat that there can be unsupervised contact if the Family Court, and/or the LA agree. This stance of the Nottinghamshire Police is, to my knowledge, different from that usually adopted by other Police Forces across the Midlands where, if a bail condition prohibits unsupervised contact, or indeed any contact, with children then that is subject to the LA or Family Court allowing such contact.
26. It is not for this Court to seek to dictate to, let alone order, the Police what bail conditions they should apply. That is a matter for the Police in the light of their statutory duties and responsibilities.
27. However, it is important that State agencies work together in the best interest of children and of the justice system. This principle supports both good administration but also the interests to be protected. The reality of the Police and the Family Court (and LA) taking a potentially different approach to HD's contact in this case has been a great deal of wasted public expense, which could have been much better used.
28. It is important to have close regard to the reason why bail is requiring supervised contact only with HD. If the ground for refusing to countenance unsupervised contact was that of potential interference with a witness, then that is an issue where I would expect the Police to have an entirely separate area of expertise. The assessment of that risk would generally be a matter for the Police, but would necessarily have to be reconsidered on a regular basis.
29. However, the sole ground for the bail condition is the risk of HD committing an offence against X.
30. On the facts of this case, I have no doubt that HHJ Reece is in a much better position to determine any risks to X from HD, and whether unsupervised contact can be appropriately managed, than are the Police. HHJ Reece has conducted a 5 day fact finding hearing, including having heard oral evidence from HD. He also has the benefit of recommendations from the Guardian employed by Cafcass, who is a senior social worker with enormous experience of assessing risk to children. The task of the Family Court Judge in a case such as this, is largely to assess and balance risk to children in a timely and proportionate manner. The Family Court Judge has to undertake their task taking into account their statutory duty under section 1 of the Children Act 1989. It is no disrespect to the Police to say that they will have neither the detailed knowledge of the child's best interests in the case nor the same expert advice as will HHJ Reece.
31. I note that during the hearing Mr Posner made clear that if I considered that HHJ Reece should be able to order unsupervised contact, then the Police would agree to vary bail conditions. On the facts of this case this was a helpful change of position. However, I note that it only came after a High Court judge had to intervene in the case. I would very much hope that in the future the Police will carefully consider the position and role of the Family Court when they come to determining bail conditions in cases such as this.