

**IN THE FAMILY COURT AT PORTSMOUTH**

The Courts of Justice  
London Road  
Southampton  
Hampshire  
SO15 2XQ  
Date: 16<sup>th</sup> June 2017

BEFORE:

**HIS HONOUR JUDGE HESS**

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BETWEEN:

**SOUTHAMPTON CITY COUNCIL**

**APPLICANT**

- and -

(A)

**(1) RESPONDENT**

(B)

**(2) RESPONDENT**

**(R) BY HER CHILDREN'S GUARDIAN REBECCA  
WELLS**

**(3) RESPONDENT**

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**Legal Representation**

Miss Jessica Habel (of counsel) on behalf of the Applicant  
Miss Judy Earl (of counsel) on behalf of the First Respondent  
Second Respondent neither present nor represented  
Miss Hayley Gow (solicitor) on behalf of the Third Respondent

**Other Parties Present and their status**

None known

**Transcript Approved on 14<sup>th</sup> November 2017**

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**Judgment**

Reporting Restrictions Applied: Yes  
Children Act 1989

*“If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person”.*

**His Honour Judge Hess:**

1. I shall now deliver judgment, and start by saying that I have before me two applications. The first, dated the 24<sup>th</sup> October 2016, is an application made by the Mother, pursuant to Section 39(1) of the Children Act 1989, to discharge the Care Order made by Her Honour Judge Miller QC on the 31<sup>st</sup> March 2016. The second, which is dated the 19<sup>th</sup> April 2017, is an application by the Local Authority for a Placement Order.
2. I have heard these applications over four days, on the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> June 2017. The applications relate to one child, (R), who was born in November 2012 and is therefore now aged 4 and a half. The parties to these applications are first of all the Mother (A), she was born in 1982 and is therefore now aged 35. Secondly (B), to whom I shall refer as the Father, who was born in 1971 and is therefore now aged 46. Thirdly the Southampton City Council, to whom I shall refer as the Local Authority, and fourthly (R) herself, who has been represented via a Children’s Guardian throughout these proceedings, which is currently Rebecca Wells.
3. The representation before me in this hearing has been as follows. For the Mother, Miss Judy Earle of counsel. For the Local Authority, Miss Jessica Habel of counsel. For the Guardian, Miss Hayley Gow, her solicitor. I want to thank all the advocates for their assistance over the last few days. The Father, it is sad to report, disengaged from R’s life in April/May 2016, certainly by June 2016, and seems to have had nothing to do with her since then and certainly has had nothing to do with this litigation. Although he has been served with it and knows about it, he has by his own choice not engaged and not been represented at the final hearing, or indeed at any of the earlier hearings.
4. I just want to mention some other relevant people who are not parties, but engaged in the story which has unfolded in the last few days. First is (C), who was born in 1956

and is therefore aged 60. He has not been married before, but started a relationship with the Mother, they became engaged at Easter 2016 and married in 2016 and so has been very much involved with this case and indeed has been present throughout the evidence. He is a qualified and working electronic engineer.

5. Secondly, the foster carers who cared for R from June 2015 until 24<sup>th</sup> March 2017. And the third foster carer who looked after R from 24<sup>th</sup> March 2017 to date.
6. Thirdly, the Guardians. The first Guardian in the current proceedings, who was also the Guardian in the earlier proceedings, was Jane Young. Sadly, in March 2017 she had what I was told was a serious road traffic accident, and it was expected that she would be off work for a significant period of time. Accordingly, with effect from April 2017, she was replaced with the current Guardian, Rebecca Wells. I would be grateful if my very best wishes were passed on to Miss Young for a good recovery.
7. In considering this application, I have considered a bundle running to three lever arch files, which includes the following material:
  - 1) The threshold document presented at the beginning of the earlier proceedings, dated the 19<sup>th</sup> June 2015, at page A5 in my trial bundle, and the threshold document presented and agreed at the end of those proceedings, dated the 31<sup>st</sup> March 2016, which is labelled page A4(a) in my bundle in these proceedings.
  - 2) I have some material from the Mother, a statement of the 28<sup>th</sup> November 2016 and a second statement, of the 23<sup>rd</sup> May 2017.
  - 3) (C), the Mother's husband, I have statements from him, dated the 16<sup>th</sup> January 2017 and the 22<sup>nd</sup> May 2017.
  - 4) Peter McBride, who was the allocated social worker from September 2015 to January 2017, when he ceased being an employee of the Local Authority and moved to live in Thailand. I have statements from him dated the 12<sup>th</sup> December 2016, and a single assessment dated the 7<sup>th</sup> November 2016.

5) Stacey Wooldridge, who is the current Local Authority social worker allocated to this case, she having been allocated from January 2017 to date. I have two statements from her, one dated 31<sup>st</sup> March 2017 and a second dated 17<sup>th</sup> May 2017.

6) I have a report from the special assessment team, dated 6<sup>th</sup> October 2016, whose authors are Peter McBride, whom I've just mentioned, Laura Hutchings, a newly qualified social worker with the Local Authority, and Helen Freebody, a family engagement worker with the Local Authority.

7) I have a report written by Laura Hutchings, the Local Authority newly qualified social worker, described as an intervention report, dated 12<sup>th</sup> December 2016.

8) I have a report from Loz Foskett, who is a qualified play therapist, and her report under the heading BRS, or Building Resilience and Strengths, dated 19<sup>th</sup> January 2017.

9) I have a report from Lucy Earle, who is a Local Authority social worker, and that is a capacity to care assessment on the Mother and (C, the mother's partner), dated 1<sup>st</sup> March 2017.

10) I have the up to date care plan prepared by Stacey Wooldridge, dated 31<sup>st</sup> March 2017.

11) I have the position statement dated 18<sup>th</sup> December 2016, prepared by the earlier Guardian, Jane Young.

12) I have the final analysis, dated 6<sup>th</sup> June 2017, presented by the newly appointed Guardian, Rebecca Wells.

13) In part F of the bundle, I have some miscellaneous documents, including some medical reports, a counselling report and a character reference.

14) Part G of the bundle consists of a large number of contact notes and foster care notes relating to the time in which (R) has been in care. We have looked at quite a number of those in the course of the hearing, and I have read all of those.

15) Part I of the bundle are the placement application documentation.

16) There is a supplemental bundle which consists of the bundle, or at least part of it, from the previous proceedings, which led to the Care Order made on 31<sup>st</sup> March 2016.

8. As well as the written material, I have heard oral evidence tested in cross-examination from the following: 1) Helen Freebody, 2) Laura Hutchings, 3) Lucy Earle, 4) Stacey Wooldridge, 5) Peter McBride, 6) Loz Foskett, 7) the Mother, 8) (C) and 9) Rebecca Wells.
9. I have also had the benefit of full submissions from the advocates, both in their closing oral submissions and also in their closing written submissions. The written submissions from the Guardian and the Local Authority, I had yesterday and I have read. And Miss Earle's written submissions on behalf of the Mother, I had first thing this morning by email, and I confirm that I have read and considered that in the course of the day.
10. The evidence and oral submissions were completed on the afternoon of 15<sup>th</sup> June 2017, yesterday, and I am delivering this judgment on the afternoon of 16<sup>th</sup> June 2017, having had overnight and part of today to consider all of the matters arising and my reactions to them.
11. I want first to make some general comments about the mechanics of the hearing:
  - 1) I have heard evidence from Peter McBride via a telephone link. This was rendered necessary because he lives in Thailand now. A video link could not be arranged, because of a number of technical and logistical complications, but it was possible to arrange a telephone link. Whilst we

did lose the link on a couple of occasions in the course of his evidence, my view was that it was a generally very satisfactory method of receiving his evidence. It was audible in both directions, and he had access to a computer, with an electronic bundle, in front of him so he was able to refer to individual documents. So, in my view, nothing was lost by the absence of having a video link for his evidence or indeed of his physical presence. I was able to hear and assess his evidence perfectly satisfactorily.

2) I want to say something about the imposition of time limits on cross-examination. In an ideal world, parties would have unlimited time for these hearings and for cross-examination within the hearings, but the need to avoid delay in litigation means that in the real world it is necessary to impose overall hearing time estimates and cross-examination time limits, as a matter of case management. Pursuant to this, I set out a plan at the outset of this hearing, and in so doing I had firmly in mind that I needed to deal with the case within its three day time estimate. In fact, I am giving judgment on the afternoon of the fourth day, so it has slipped slightly beyond that original estimate. I also had clearly in mind the guidance in the Family Procedure Rules 2010 Rule 1, the so called overriding objective, including the need to deal with a case expeditiously, and utilising an appropriate share of the Court's resources, but always taking into account fairness. It is a very important factor, indeed an axiomatic factor, that Article 6 rights are respected for all parties and that every party has the right to a fair hearing. In particular, it is important to ensure that all parties have sufficient time allocated, both to put their own case and to challenge that of the others. It is important, I think, not to apply those time limits too rigidly, for example if the cross-examination takes longer than expected for reasons beyond the control of the questioning advocate. But overall, I am entirely satisfied that these aims were achieved in this case. I want to say in particular that there was in my view a very good sufficiency of time for the Mother to challenge the case against her and to put her own case. On a very broad estimate, perhaps 60% to 70% of the 13 or so hours of evidence over two and a half days in this case were devoted to that end.

12. This case and these applications arise out of a history which I shall now attempt to summarise. The Mother, who, as I have said, is now aged 35, is of Zimbabwean origin. She comes from a Zimbabwean family, which is, on the face of it anyway, an educated middle class family in Zimbabwe. The Mother came to the UK in about 1999, and on her arrival she lived with family members and trained as a nurse in the UK. Indeed, I believe that she is qualified as a nurse, to this day.
13. The Father, who is a little older, as I have said, aged 46, was also of Zimbabwean origin. Although I do not think I have been given a precise date, my impression is that he arrived in the UK rather earlier than the Mother did. He has a family as well, although I do not think he, at the relevant times, has been living with them.
14. The Mother and the Father formed a relationship in about 2009, and that relationship sadly broke down in 2012 whilst Mother was pregnant with (R). My impression is that the Father had very little to do with (R), really, at any stage in her life, having separated from the Mother before she was born
15. Unfortunately, at that stage the Mother had been detained in prison, having been convicted of using false documentation to access the UK. She was in prison in the period between November 2012 and February 2013.
16. I want to make clear that the fact of the Mother's imprisonment is not something I find of significance in my welfare analysis of the case now. I mention it simply because it sets a context for what subsequently happened, in particular, I think, a context for some of Mother's immigration related financial difficulties. As a result of her immigration status, it was not possible for her to work, and she had no recourse to public funds, no right, anyway, to public funds. And this must have been a difficult period for her, with a young baby, and I am sympathetic to Mother's predicament in this respect. All those things having been said, it is my view that none of those things have much of a bearing on the welfare issues that we are now discussing.
17. The Mother looked after (R) as the sole carer for the earlier period of her life, and it was not until 2015 that matters came anywhere near a court. One or two things did happen before that which caused some concern. I pick out two matters, although there were others. On the 23<sup>rd</sup> October 2014 and the 8<sup>th</sup> May 2015, the Mother attended

hospital by ambulance with (R), having administered EpiPen, after believing her to have respiratory problems. The medical staff questioned the necessity of the use of EpiPen on both of these occasions.

18. Also, on a number of occasions the Mother presented to the Local Authority and asked for financial support, saying probably correctly that she was suffering financial hardship at that time. Notwithstanding those matters, there was no intervention by the Local Authority at that stage, and the Mother continued to care for (R).
19. Matters came to a head, however, when the Mother was arrested in 2015 by the police, on suspicion of fraud and neglect. It appears apparent from the documentation relating to that time that as well as the fraud issues, there was a thinking that the Mother may have been engaged in fabricated illness in relation to (R).
20. It was the thinking in relation to those matters which, in the view of the police dealing with the matter at the time, justified the arrest. It is right to record that the police did not in the end pursue any charges in relation to these matters, and it is very important that I put out of my mind these matters. They have not been proved in either the criminal or the civil Courts, and they should be disregarded. And I so disregard them.
21. Mother's view, and in this respect I have a degree of sympathy for her, is that if she had never been arrested there might well never have been any Local Authority intervention, and the spotlight would not have been shone on her on the way that it has. These facts, whilst true, do not affect the fact, however, that I have to judge the case on the evidence now available, rather than speculating about what might have happened if the arrest had never occurred.
22. The events surrounding the arrest, however, were momentous for the Mother and for (R) because they caused the Local Authority to intervene. Because the Father was not on the scene at that time and there were no other family carers put forward, it was necessary first for the police to execute police protection in relation to (R) on 17<sup>th</sup> June 2015, and for the matter to be brought to Court, such that an interim Care Order was made on 19<sup>th</sup> June 2015. And the care plan for that interim Care Order was that (R) would be placed with foster carers. As it happens, she has been there ever since.



23. The litigation proceeded in the fairly standard way through 2015 and 2016. In late 2015, the Local Authority allocated social worker, Mr McBride, was in fact favouring rehabilitation to Mother on the basis that she would go to live with her uncle, (name 6), and his wife, (name 7), (name 6). And that seemed to Mr McBride and to the Mother to be an acceptable way forward at that time, in late 2015.
24. Had matters not moved on from that position, that might have been the end of the matter, but in early 2016 there was some sort of falling out between the Mother and her uncle and aunt, and that possibility was no longer available. The view then of Mr McBride and the Local Authority was that it was not appropriate for (R) to return to the Mother's care, absent the protection which might otherwise have been provided by the uncle. He formulated a plan which was that (R) would go to the care of the Father, as sole carer. The Father at that stage was agreeable to that proposition, and the Mother, perhaps reluctantly, was willing to go along with it, rather than perhaps face something which was worse than that.
25. So, when the matter came to Court on 31<sup>st</sup> March 2016, there was agreement by all parties that there should be a Care Order and that the Court should approve the care plan of placement with the Father. The Mother, as I have said, agreed that at Court, having received appropriate legal advice from her solicitor and counsel at that stage. Accordingly, Her Honour Judge Miller made the Care Order on 31<sup>st</sup> March 2016.
26. She also approved a threshold document. It would not be right, I think, for me to speculate as to how exactly the threshold document came to be in the form that it was, but it is common ground that it took the form that now appears at page A4(a) in my bundle. The document was signed by all of the parties, including the Mother and the Local Authority, and that was approved by the Judge. This document has gained a level of importance in this case, which means that it is appropriate for me to read it out in full into my judgment, and it says the following:

***“Agreed threshold to satisfy Section 31 of the Children Act 1989***

***It is accepted by all parties and agreed by the Court that at the relevant date, 17<sup>th</sup> June 2015, the child, (R), has suffered and/or was at risk of suffering significant harm attributable to the care given to her by her***

*parents, not being what it would be reasonable for a parent to give her because:*

*1) The Mother was an overprotective parent, and as a result misinterpreted some of (R)'s symptoms, not least because of the Mother's unawareness of the severity of (R)'s sleep apnoea.*

*2) The Mother accepts that her overprotectiveness led her to administer (R)'s EpiPen to her on two occasions when this was objectively not necessary. The Mother says she did this in the honest but mistaken belief that (R) was suffering a serious allergic reaction.*

*3) The Mother accepts, with hindsight, that her own medical training should have put her in a better position to respond appropriately. However, her concern as a mother took over and prevented her from seeing the situation objectively.*

*4) The Mother can see how the way she responded and acted led a range of professionals to be concerned about the risk of escalation of medical interventions which (R) might receive, and to question the Mother's motives for seeking medical and/or financial assistance. The Mother accepts that this could have impacted on (R)'s development, which has accelerated in foster care.*

*5) The Mother now realises that the way in which she presented (R)'s difficulties made them look more serious than they actually were.*

*6) Both parents failed to give consistent and reliable information as to their roles in (R)'s life and their ability to provide care for her before and after she came into care.”*

As I say, that was approved by Her Honour Judge Miller QC. And so the matter went off.

27. It was not long, sadly, before the rehabilitation programme, in which care was to be returned to Father, fell apart. The Father did not cooperate, and by May 2016, certainly by June 2016, the Father had disengaged, and the rehabilitation plan had had to be abandoned.
28. The Local Authority, very concerned with this matter, had a meeting, and I have been able to see the notes of that meeting. The following are quotations from those notes:

*“Review*

*The Local Authority have now been granted a Care Order in respect of (R). The final care plan of the Local Authority had been the rehabilitation of (R)’s Father’s care. Father has recently demonstrated less commitment to this, and indeed has now withdrawn from this. The Local Authority would propose to consider mum in the longer term, however recognise that we need to undertake further work with mum and need to consider her future husband, (C). The Local Authority wish to reconsider the Mother in her ability to care for (R). However, this will need to be completed within a limited timeframe so that the permanency of (R) remains a priority. The Local Authority would wish now to commence a reviewed plan.*

*Laura Hutchings, assisted by Maxine [who I think is the contact supervisor] will between them observe the contact and will liaise. The Mother has requested feedback from her contacts, and it was agreed that Laura Hutchings will do as such. There was some discussion as to how this feedback would be received, with initial discussion that it could be over the phone. However, identified group work has been proposed for the Mother, protective parenting. Yet it was considered that Laura Hutchings could also do some bespoke one to one work with Mother instead, and, within this, reflection and feedback on contact could occur. Laura Hutchings is therefore to make contact with the Mother next week, to meet, observe contact and arrange one to one sessions for protective parenting and reflective review of contact.”*

29. It is right to observe, and it can be seen from those notes, that at that stage in June 2016 the Local Authority were open, in fact really quite favourable, to the Mother, especially Mr McBride, the allocated social worker. There was some reason for hoping that the Mother had moved on, particularly with her new relationship with (C), in which by that stage they were fiancées, and prospects looked good. As a result of that, the Local Authority did not bring the matter back to Court, a matter which caused some criticism later by the Guardian, but the main reason they did not was that they were actively considering rehabilitation to Mother.
30. By October 2016 the Local Authority had really changed their mind about this. Mr McBride, who told me that within the department he had been her champion, perhaps against the view of some others or some of the scepticism of some others in the Local Authority, himself reached the conclusion that rehabilitation to Mother was not possible. I shall explore later why he changed his mind and in what circumstances. But the Mother got wind of that change in the Local Authority view, and that caused her to take some action, hence the application on 24<sup>th</sup> October 2016 for a discharge of the Care Order.
31. There was a little delay in the matter coming to Court, but eventually it came to Court, on the 9<sup>th</sup> January 2017. And at that hearing I set down a final hearing for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> May, and timetabled a number of assessments and statements to that final hearing.
32. In March 2017, as I have said, the Guardian had her road traffic accident and, as a result, it was necessary to review that timetable. And at a hearing on 21<sup>st</sup> April 2017 I retimetable it to allow the appointment of a new Guardian and listed a final hearing for three days on 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> June 2017, i.e. this week.
33. In the meantime, the Local Authority's position hardened and clarified, and that was that there should be a plan for a Placement Order, and on 19<sup>th</sup> April 2017 they made a placement application, this by now being their final care plan. There was some delay in the issuing of the placement application relating to the identification of a birth certificate, but that was eventually sorted out.

34. So, the final hearing of both of these applications comes before me this week. At the conclusion of these days of hearing, the final positions can be summarised as follows. The Local Authority and the Guardian say that I should not discharge the Care Order, that I should approve a care plan for adoption and that I should make a Placement Order, dispensing with the parents' consent as necessary. The Mother's position, supported by her husband, (C), is that I should discharge the Care Order or at least approve a care plan which leads to rehabilitation of (R) to Mother within a care order. In the words of Miss Earle's closing submissions:

*“Mother's primary objective is to invite a consideration of rehabilitation of (R) back into her care and that of her husband, (C). In these circumstances, she would not object to the imposition of any public law order/mechanism of support in order to achieve the result, if the Court considered this was necessary.”*

In reality, they seek a dismissal of the Placement Order application, and a rehabilitation either now or in due course, to the Mother and (C).

35. It is right to record that I do have the option of making a Care Order with a long term fostering care as an option, or at least inviting the Local Authority to change their care plan to that. That plan is nobody's first choice, but it is perhaps everybody's second choice. It is right to record that the Father, having disengaged, has expressed no views.

36. I first need to consider the law relevant to the applications before me, and I need to remind myself that there are two separate, albeit related, applications before me. The first is under Section 39(1) of the Children Act 1989, for the discharge of the Care Order, and the relevant law is set out in the Court of Appeal's judgments in *Re S (Discharge of Care Order)* [1995] 2 FLR 639 as follows:

*“Before any Court can exercise jurisdiction to grant a Care Order, the Judge or Justices must first be satisfied as to the threshold requirements in Section 31 of the Children Act 1989. The enquiry as to whether the threshold requirements are satisfied has to be treated as a clinical issue of fact determined in the light of the circumstances prevailing when the process was initiated, and divorce from the discretionary considerations*

*of the child's paramount welfare enjoined by Section 1 of the Act. Once, however, they are found to be satisfied, it becomes a matter of discretion for the Court to consider whether a Care Order should be made or not. Section 39 of the Act allows the Court to discharge a Care Order, on the application of, inter alios, a parent, hence the jurisdiction is discretionary from the outset, there being no obligation on the parent to satisfy the Court that the threshold requirements no longer apply. The issue has to be determined in accordance with Section 1 of the Act.*

*The Local Authority and the Official Solicitor submit that the underlying purpose of the Children Act, namely that the regime which it created for resolving private and public disputes concerning children, should operate flexibly, so as to preserve for the Court at all times a range of options, from which the one most favourable for the current best interests of the child can be selected. The Act must be construed in a sense which will reserve to the Court at every stage power to review, and in the extreme cases to disregard findings reached at earlier stages of the family history, in the light of the evidence available and the circumstances occurring at the time of the current hearing.*

*I am satisfied that the argument for the Local Authority and the Guardian is correct. An awareness of dangers of reopening past findings will prompt the Court to allow use of jurisdiction to review antecedent findings of fact only in very limited circumstances. The principle can be expressed in this way. A Court hearing an application under Section 39 of the Act, to discharge a Care Order made under Section 31, is bound by Section 1(3)(e) to have regard to any harm which the child has suffered or is at risk of suffering. The risk to be considered is the risk current at the date of the discharge hearing, there being no counterpart on the discharge application of the need to date the inquiry back in time to the initiation of the process which was to apply when the threshold requirements were being tested under Section 31. In the great majority of discharge applications, the Court is likely to be concerned with appraisal of current risk.”*

37. In the present case, after initial skirmish, and notwithstanding that the threshold found in 2016 was the result of a lawyer led compromise rather than a Judge led sequence of findings of fact, it has been common ground that I should not seek to reopen the threshold findings which were agreed on 31<sup>st</sup> March 2016 and recorded in the document at page A4(a). That is to say, neither is the Mother arguing, in her formal case anyway, and I shall return to what might lie in her heart in due course, that the agreed findings went beyond what happened in the period leading up to the care proceedings, nor is the Local Authority arguing that the agreed findings fell short of what happened in the period leading up to the care proceedings.
38. Accordingly my task, taking into account all the evidence before me, but crucially the threshold agreed in 2016, what has actually happened since 2016, the current assessment, based on all of this evidence, I must make a welfare assessment against the criteria set out in Children Act 1989, section 1, the so called Welfare Checklist, which is as follows:

*“(1) When a court determines any question with respect to—*

*(a) the upbringing of a child; or*

*(b) the administration of a child’s property or the application of any income arising from it,*

*the child’s welfare shall be the court’s paramount consideration.*

*(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.*

*(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—*

*(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*

*(b) his physical, emotional and educational needs;*

*(c) the likely effect on him of any change in his circumstances;*

*(d) his age, sex, background and any characteristics of his which the court considers relevant;*

- (e) any harm which he has suffered or is at risk of suffering;*
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;*
- (g) the range of powers available to the court under this Act in the proceedings in question.”*

39. The second application is by the Local Authority for a Placement Order, and although I shall consider the applications alongside each other, they are separate and distinct applications with distinct legal tests. It is a theoretical, anyway, option open to me to refuse the discharge application and also to refuse the Placement Order application, and request the Local Authority to look again at their care plan. That is an option that I need to bear in mind.
40. I remind myself, in considering the placement application, that I need to keep in mind all the matters of the Welfare Checklist in Adoption and Children Act 2002, section 1:-

*“(2) The paramount consideration of the court or adoption agency must be the child’s welfare, throughout [her] 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 [her] 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.”*

41. I also need to remind myself of the provisions of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which reads as follows:

*“Article 8 – Right to respect for private and family life*

*1 Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

42. I also remind myself of the seminal and oft quoted speech of Lord Templeman in *Re KD* [1988] 1 AC 806:

*“The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child’s moral and physical health are not endangered.*

*Public authorities cannot improve on nature. Public authorities exercise a supervisory role and interfere to rescue a child when the parental tie is broken by abuse or separation. In terms of the English rule the court decides whether and to what extent the welfare of the child requires that the child should be protected against harm caused by the parent, including harm which would be caused by the resumption of parental care after separation has broken the parental tie.”*

43. This citation was expressly approved by Hedley J in *Re L* [2007] 1 FLR 2050 when he said this:

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

44. I also need to remind myself of the pertinent points of the judgment of the President of the Family Division, sitting in the Court of Appeal in the case of *Re B-S (Children)* [2013] EWCA Civ 1146. These can perhaps be summarised as follows:

*1) Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child.*

*2) The court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities can reasonably be expected to offer.*

3) *Orders contemplating non-consensual adoption – care orders with a plan for adoption, placement orders and adoption orders – are "a very extreme thing, a last resort", only to be made where "nothing else will do".*

4) *It is the obligation of the local authority to make work the order which the court has determined is proportionate. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking.*

5) *Section 52(1)(b) of the 2002 Act provides ... that the consent of a parent with capacity can be dispensed with only if the welfare of the child "requires" this. "Require" here has the Strasbourg meaning of necessary, "the connotation of the imperative, what is demanded rather than what is merely optional or reasonable or desirable".*

6) *In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.*

*The linear approach ... is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare. The judicial task is to evaluate all the options, undertaking a global, holistic and ... multi-faceted evaluation of the child's welfare which*

*takes into account all the negatives and the positives, all the pros and cons, of each option.*

45. So, with these words firmly in my mind, I now turn back to the facts of this case. Before I go on to make a holistic assessment of the various options open to me, I want to make a number of observations about the evidence I have heard and the issues raised.
46. First, there are some cases which come before the Courts, in the Family Courts in public law cases, where something very specific and serious has happened to a child, for example a serious inflicted injury, or where the parents have very serious and obvious personal problems, for example where they are serious substance abusers or have long established mental health issues or criminal convictions for violent behaviour or something else. The present case does not fall into this category. The allegations are of a different nature, and are more subtle and perhaps harder to pin down. Nonetheless, the legal tests I have set out above, and in particular the principle of paramountcy in the child's welfare, still apply.
47. It is right and proper for me to acknowledge that the Mother and (C) have many positive qualities and features. They are both intelligent and educated and have good job qualifications. They are both active in their religion and regularly attend for worship. (C) has good, well paid employment, and in different circumstances the Mother might well have the same. They are not aggressive or violent in character. Indeed, they struck me, both, as generally very soft spoken. They are not substance abusers. They have no criminal convictions relevant to my deliberations. They own a house and they have savings from which their mortgage could be completely paid off. They really have no financial difficulties.
48. Now that the Mother has married (C), her past immigration difficulties are unlikely to be a problem in the future. The Mother, by her own initiative, has sought help from, amongst others, The Incredible Years programme and from counselling with a therapist in the period between April and June 2016, and she has sought out and been given reflective work on contact, with Laura Hutchings.

49. In most circumstances, when all of these considerations prevailed, I would venture an opinion that this would be a family in which the Local Authority Children's Services department would be unlikely to be involved, so why is it, I have to ask myself, that a range of professionals here have unanimously assessed the Mother and (C) in so negative a way? All of the professionals involved who have expressed a concluded view on this have advised the Court that (R)'s best interests are for her to be adopted. In view of the background which I have just described, these questions have to be considered very carefully, and what lies behind them properly scrutinised.
50. Secondly, I want to deal with what I feel is at the heart of what the Mother and (C) believe in their own hearts. They believe, and strongly, that the Mother, being a black African by origin, is the victim of institutional racism by the Local Authority or, worse still, is the victim of a deliberate racist conspiracy designed to oppress the Mother and to remove her child. That they believe this is clear from numerous pieces of evidence. For example, in (C)'s written statement he said this:

*“As seen in the Local Authority assessments, reports and contact notes, my wife, who is of black African origin, is constantly over criticised, and her actions are never good enough. Yet, due to automatic white privilege, special concessions are made for the foster carers and to me. In my opinion, anti oppressive practice has not been implemented, resulting in breaches of the Human Rights Act 1998 and the Equality Act 2010. My step daughter, like me, is a registered British national, acquired by heritage, and is entitled to statutory resources and assistance. The major difference is that I am white British and (R) is black British, which has created grounds for racial discrimination.”*

51. Similar sentiments can be found in the records made by Lucy Earle, when she said this:

*“The Mother and (C) both share the view that (R) is in Local Authority care due to institutional racism within Southampton City Council, who do not want to provide assistance to black families. The Mother found it difficult to identify what concerns the Local Authority had about her, apart from commenting, ‘It’s got personal now,’ and stating, ‘I can’t change my ethnicity.’”*

52. It is also clear from some of the oral evidence before me from (C)'s evidence, where he said, amongst other things, this:

***“White people get more privileges than black people. That’s my opinion. I think the Mother is a victim of racism.”***

53. Mother said to me:

***“I think this is racism. Hannah Longford [who was the original social worker, in 2015] told me, ‘We will get you deported.’”***

54. Those are just examples, and there are many more.

55. I have listened very carefully to all of the Local Authority’s witnesses, and I have to say that I have not heard anything at all which has suggested to me that any of the Local Authority witnesses in any way and at any time have been engaged in conscious or subconscious acts of racism. In each case, the Local Authority witnesses convincingly denied the suggestion, and I could identify no part of the evidence which supported anything which has happened or been said which supported the proposition advanced by the Mother and (C).

56. It is interesting to note that if this really was a racist conspiracy, it would have to involve not only numerous Local Authority employees, perhaps seven in all, but also the two independent Guardians, who are independent of the Local Authority and of each other, and also the paediatrician, against whom similar allegations were also made. Further, it is to be noted in this context that the Local Authority, at various stages, both in late 2015 and June 2016, were actively supportive of rehabilitation to Mother, which would surely not be the case if this was indeed a racist conspiracy.

57. I have given further thought to whether or not the Local Authority’s conclusions are in some way invalidated by their failure to give due allowances to cultural considerations. The Guardian told me that she could see nothing which suggested this at all, and overall I agree with her.

58. I want to make clear that I wholly reject this part of the case advanced by the Mother and (C). It is a matter of concern that the Mother and (C) have believed this and have continued to believe it, and this has been a substantive problem and would continue to be a substantive problem because it would overhang and obstruct any rehabilitation plan, if the Court felt that that was the way forward.
59. Thirdly, I want to deal with another of the points strongly advanced by Miss Earle in her presentation orally before me and also in her written presentation she developed in some further and persuasive detail. This is what she has described at various points as the faulty baseline problem. In brief on this point, her case is that the Local Authority witnesses, and the Guardian as well, have approached the case on the basis that the problems that existed in reality in 2015 were far more serious than what was ultimately contained in the March 2016 threshold document, in other words that the real belief of the Local Authority and of the Guardian is that what happened in 2015 was something akin to fabricated illness or neglect, and that that was the true position, and they, the Local Authority witnesses and the Guardian, have allowed this belief to influence their judgement in their assessment of the current risks.
60. The theory advanced in this way by Miss Earle was given some weight by the perhaps surprising fact that some of the Local Authority witnesses, including the allocated social worker, was not actually in possession of page A4(a) of the bundle, i.e. the threshold document from 31<sup>st</sup> March 2016 until very recently, and also that at the outset of the case Miss Habel, on behalf of the Local Authority, indicated that, despite the fact this had not been teed up at any of the earlier directions hearings, she might wish to persuade the Court to go beyond the March 2016 threshold in part.
61. But it is fair to say that after initial discussion, Miss Habel, I think appropriately, withdrew from this proposition, and it was common ground throughout this trial that the proper legal approach was for me to regard the 2016 threshold as the defining basis of what was established and what was not established of the pre June 2015 allegations.
62. As far as Miss Earle's faulty baseline theory, I have given careful thought as to whether this is a point of substance. In the end, I have not been persuaded that there is anything of substance in this point. In my view, it has not been established that any of the Local Authority witnesses, and all of them were questioned in some detail about this, have

approached the case on any significantly faulty understanding of what was established and what was not established of the pre June 2015 allegations. Whilst they may not have concentrated their minds on the A4(a) threshold document, it seems to me that all of those people had an understanding of what happened in March 2016, and I have been unable to identify any injustice to the Mother flowing from this point.

63. Indeed, in the case of the Guardian, Miss Wells, she satisfied me that she knew perfectly well about this, to the extent that in her first meeting with the Mother, she actually had the A4(a) threshold document up on her screen and showed it to Mother and allowed her to read it. Although the Mother at one stage seemed to be suggesting that Miss Wells was lying about this, I am perfectly satisfied that the Mother was entirely wrong to suggest this and I accept the evidence of Miss Wells on this point. In any event, it is fair to point out that Mother, at least through her legal representation, backed away from this proposition as the evidence progressed.
64. Having thought very carefully about it, concluding after reading the careful thoughts on this point made by Miss Earle in her final written submissions, I have reached the conclusion there is not any significant weight in Miss Earle's submissions on this point, her faulty baseline theory.
65. Fourthly, notwithstanding that Mother's formal legal position in March 2016 and in this hearing, in June 2017, and in ironic contrast, perhaps, to Miss Earle's faulty baseline theory, I am satisfied on the evidence that Mother, whilst she was with lawyers, and, as part of her formal legal case to the Courts, both in March 2016 and in this hearing, signed up to the threshold document at page A4(a), in her heart she never really did sign up to it. From her own evidence to me, for example she told me that she could not identify any risk of significant harm or any significant harm having occurred. Also, from what she told Stacey Wooldridge, set out in the statement, which I shall quote from Stacey Wooldridge's statement:

*“The Mother stated that the Local Authority had raised concern in respect of her being anxious and overprotective of (R). The Mother's view is that the Local Authority made things up and were prejudiced towards her, especially since they are taking out legal action against them. The Mother stated that someone from the Local Authority had*



*told her that they wanted (R) adopted and her deported, due to not wanting to give her any long term financial support. When I asked who had stated this, she said she could not tell me. The Mother continues to be of the view that (R) was removed from her care unfairly.”*

66. Further on:

*“The Mother stated that there had been an injustice of the whole case and it is ridiculous.”*

67. A little further on:

*“The Mother did not accept that she had any role in the significant harm that was caused to (R) while she was in her full time care. The Mother continues to be of the view that the Local Authority treats her unfairly due to her taking legal action against them. The Mother continues to say that the Local Authority remains racist towards her because of her race and culture, and that we continue to have an attitude towards her that the Local Authority should need to change.”*

68. It is also apparent that the Mother took that view, from her conversation with the Guardian at their first meeting, on 31<sup>st</sup> May 2017. The Guardian records this, and I accept:

*“The Mother continues to seek R returning to her care. She has married (C) and she believes they can provide care to a good standard. The Mother states that she no longer agrees with the agreed threshold within the previous proceedings. The Mother has raised concerns that the Local Authority have a plan to have her daughter adopted, herself deported, and their initial intervention raises concerns about institutional racism.”*

69. It is clear to me that the Mother does not in her heart accept, whatever her formal legal position may be, that there was ever evidence to get the case over the threshold. The Local Authority and the Guardian are, in my view, appropriately concerned that this

attitude represents a real difficulty of Mother ever moving forward. Although the Mother has attended The Incredible Years programme and counselling, it is not clear to me that this has caused any real change in her thinking or attitudes about these matters.

70. Fifthly, I accept the evidence of the Local Authority that the Mother's decision to make a determined series of allegations, between September 2016 and February 2017, that (R) had received numerous "unexplained injuries" whilst in the care of X and Y, the foster carers, which ultimately led them to feeling obliged to withdrawing their services in March 2017 caused great distress to (R). The Mother's behaviour in this way was, in my view, deeply inappropriate, handled very badly, for example making aggressive demands and comments in front of (R), and was a manifestation, in my view, of the resurgence of her overprotection and misinterpretation which had been identified in the original March 2016 threshold.
71. For example, and I accept this account as being an accurate picture of what happened, it is recorded that on the 12<sup>th</sup> November 2016 the following thing happened. At the end of contact, Mother asked for (R)'s injuries to be documented on a skin map and for photographs to be taken. (R) started to become grizzly:

*"I asked to see the injuries, and she was only able to get a quick glimpse. I could only see a minute mark on (R)'s chest that did not appear to be inflamed or a scratch. It looked like a small patch of dry skin. This mark did not appear to be giving (R) any concern or problem. (R) put her head down and would not let anyone see it again. She was getting more upset. I informed the Mother that I was not going to photograph the mark nor record it on a skin map. The Mother asked, in a way which I felt was threatening, if I was prepared to justify my actions. I was not able to answer. And she then asked if I was qualified to make this judgement. I did not respond, as (R) was clearly upset at being looked at.*

*When the contact supervisor said to (R) that they were going to go and look for X and Y, she immediately calmed down and went with the contact supervisor to find them. I accompanied the contact supervisor and (R) with X and Y outside the centre and informed them of the*

*Mother's concerns that I had not agreed to photograph or document the injuries, as I felt that there were none. I did not want to further upset (R) and thought the best person to deal with any marks would be the foster carer, who could check this without causing (R) any distress."*

72. It is right to note, and I accept, that although the Mother described these as unexplained injuries, there were explanations for some of these marks, actually plainly set out in the communications booklet which passed between the Mother and the foster carers. Mother would have been aware of what the explanation was, yet she chose to disregard it, and disregard it not passively but, in my view, aggressively. For example, when she reported that the then Guardian, Miss Young, she sent her a text message saying this:

*"I'm concerned. I do not accept that R's recent injury is from hot wax. My daughter's of black ethnicity, hence her skin type injuries have distinctive characteristics. In my own opinion and experience, the injury appears to be from a hard object such as an iron."*

73. So, the nature of the allegation was that (R) had been injured by contact with a hard object such as an iron. It was not surprising, perhaps, in the view of all of that, that the foster carers X and Y felt obliged to withdraw from the case in March 2017, and it was certainly not in (R's) interest that they should do that.
74. I agree with the Guardian that this behaviour, as well as being an illustration of the overprotection and misinterpretation identified in 2016, is also an illustration of the lack of Mother's attunement to (R)'s needs. I agree with the Guardian that, whilst we cannot know for sure how these matters would precisely manifest themselves in the future if (R) should be living back in her Mother's care, there is on the strength of these matters a significant risk that they would manifest themselves in some way and in something which might cause physical harm, for example the inappropriate administration of medication or emotional harm, for example in having freedoms restricted. Those were examples given by the Guardian, which I think are realistic fears as to what might happen in those circumstances.

75. The fact that the Mother has repeatedly said to different professionals that X and Y treated (R) like a dog, when, from an objective view, (R) plainly did not wish to leave their care for a different foster care, is further evidence of her inability to attune to (R)'s needs.
76. Another, and quite serious, example of this is Mother's refusal to ensure that consent was given to (R) having her MMR vaccination. By refusing to sign the necessary paperwork, her vaccination was delayed for a very long period of time, and during that time (R) was put at risk of those unpleasant and potentially dangerous diseases. When I heard Mother being asked questions about that, it seemed to me that she had extraordinarily little insight as to why those steps were necessary, and it seems to me that her reaction to what happened in that context was inappropriate, potentially harmful to (R). And she was thinking not of (R)'s needs but her own position.
77. Sixthly, I accept the evidence of the Local Authority and the Guardian that in the event of a rehabilitation of (R) to the Mother and (C), (C) would be likely to defer to Mother on matters pertaining to (R)'s upbringing. It seems to me, having seen him, he has neither the strength of character nor the knowledge and experience of children nor the will to do otherwise, and it is very difficult to see him as a protective factor. This was apparent from a number of the assessments made, and also was entirely clear from his presentation in Court.
78. Seventhly, Miss Judy Earle of counsel has repeatedly stressed the significance of the contact notes, of which there are many, in the bundle, suggesting that I should construe those as showing that all is well in the relationship between (R) and her mother, and also that the criticisms made of the contact relate to earlier periods of contact in time, or only the commencing minutes of each contact session. This is developed persuasively in Miss Earle's written submissions in the following way, when she says this:

*“A variety of practitioners have assessed Mother's contact, with the issue of Mother's capacity to meet (R)'s needs in mind. This is an evolving position, and it is submitted that a full understanding of context and development is necessary in order to measure progress and change over*

*time. The assessments of Miss Freebody, Miss Hutchings and Miss Earle collectively flag the following:*

- 1) (R)'s reaction at the start of contact.*
- 2) (R)'s reaction at the wedding.*
- 3) Mother being uncertain and tentative.*
- 4) Physical distance,*
- 5) (R) not trusting Mother.*
- 6) Mother misattuned to (R)'s emotions.*
- 7) Mother's lack of initiative or child led parenting.*
- 8) (R) physically stiff.*
- 9) Lack of foundations present, for secure attachment.*
- 10) Lack of emotional warmth and closeness.*
- 11) Lack of mutual enjoyment.*

*Of note, the practitioners did not have any updated knowledge of how contact had developed since their reports. It is submitted that a careful reading of the contact sheets over the past 12 months reveal a clear pattern of positive development in relation to the issues flagged. It is submitted that the positive aspects of contact plainly outweigh the negatives, and in the main the negatives relate to (R) holding back, usually only for a short while, with the contact supervisor at the outset, and the Mother raising the issue of injuries.”*

79. Although there was something in what was said by Miss Earle, with due respect to her argument, I cannot agree that this is an accurate or full description of the evidence about contact which I have heard. The use of contact notes has to be treated with some care, first of all because it does not take into account everything. They are written by contact supervisors, who are not the assessors before the Courts. Also, it is possible to cherry pick the favourable parts of contact notes. Although it is a perfectly legitimate forensic exercise to refer to them, one has to treat them with a degree of care. But more importantly in any event, while some of the witnesses, it is correct, were reporting earlier contacts, generally speaking they were asked to read the contact notes, and that did not cause them to change their position.
80. Particularly powerful, I had very clear evidence of recent assessments of contact, from the Guardian Miss Wells in relation to contact on 27<sup>th</sup> May 2017 and 3<sup>rd</sup> June 2017, and Miss Wooldridge on the contact on 20<sup>th</sup> May 2017. In each case, those professionals were struck by difficulties in the relationship between (R) and her Mother, Mother not being attuned to (R)'s needs, evidence of insecure attachment, for example (R) repeatedly looking round at the contact worker for encouragement and security, even when she was at times cuddling to her Mother. They also noticed a lack of warmth between (R) and Mother. That came across particularly powerful in the Guardian's evidence. Also, they noticed a lack of boundaries in the way in which Mother and (C) behaved towards (R). They were not able easily to make her do what they wished.
81. As the Guardian said:
- “Whilst I accept of course that there were some good parts about contact, two years on from June 2015, when (R) first came into care, we are not where we should be.”***
82. Of course, I understand why Miss Earle would wish to point to the positive aspects of the contact notes, but in my view an overall assessment of them, in particular the assessments of those two recent witnesses, does I think undermine the proposition advanced by Miss Earle that the contact notes support that case that all is well between the Mother and (R).
83. Eighthly, Mother's case at times focused on the proposition that in fact the harm done to (R) was the very act of taking her into care, which had caused difficulties in the relationship between (R) and her mother, and that before that there was nothing wrong with that relationship. I agree with the professional witnesses who have commented

on this that if, as Mother says, all had been well before June 2015, the relationship, its warmth and the trust for (R) of Mother would quickly re-establish itself after the hiatus of June 2015, certainly long before now. The clear evidence is that this has not happened.

84. In this context, I was particularly struck by the evidence of how (R) treated her mother differently from the contact supervisor in the course of contact, seeming, even within contact, even two years after the Care Order was first made of an interim Care Order, that her real attachment to the contact worker was greater than that of her Mother. The contact worker was more able to provide security and emotional warmth than was the Mother.
85. Ninthly, I found the evidence of the Local Authority witnesses to be, without exception, appropriately fair, well considered, convincing and reliable. There is no area in the Local Authority case where I could identify a Local Authority employee on the ropes under cross-examination, or giving a faulty conclusion or recommendation, or the identification of any lacuna or gap in the assessment process. I could not identify any bias, any lack of wisdom or any lack of sincerity, or any failure to give the Mother and (C) a fair chance to establish what they wanted to establish. Indeed, it could be said, and was said by the Guardian, that the Mother and (C), because of the way this case has unfolded, have had more assessments and far more time to establish their credentials than would normally be the case.
86. In particular, I agree with the conclusions of the social worker's evidence, which include the following. Mr McBride, the allocated social worker for a long time, in particular gave Mother and (C) every chance and willed them on, a fact which seems to me to add weight to his negative conclusions once he reached them, which he had done by the end of 2016 when he said this:

*“I am unable to support an application to discharge the Care Order at this time. I don't feel there's enough evidence that the Mother has changed in her previous view that (R) was safe in her care. She doesn't provide evidence of what would be different now, compared to March 2016, when the Court hearing resulted in a Care Order. I am concerned that she puts her own needs for validation above those of her daughter,*

*who she would claim was her reason to return to Court. It's my opinion that the Mother is not motivated to change. She continues to believe that she must fight the Local Authority on every occasion in a legal battle, when what is required is that she shows a willingness to reflect on her actions, her beliefs and her behaviour, and to consider how that impacts on (R)."*

Albeit that that opinion was given in December 2016, it seems to me that that rings every bit as true now as it did then.

87. The same is true of Laura Hutchings. Although a newly qualified social worker, I found her evidence to be clear, compelling and persuasive, and her conclusion as follows:

*"The Mother has presented as defensive and preoccupied, and the majority of the sessions tend to focus on historic events. Whilst at one stage it appeared that contact sessions were improving, and Mother was engaging positively in feedback/reflective sessions, it has become more evident these changes have been short lived and not maintained. The Mother still refers to her parenting as child led and continues with her view that she must always wait for (R) to come to her. The Mother has continued to label (R) with attachment issues, possible brain damage, with complex health needs and communication difficulties. The Mother is insistent that despite (R)'s speech developing, communication should be through the use of Makaton. The Mother has been inconsistent in her responses and understanding of (R)'s needs.*

*The Mother will frequently digress within sessions, focusing more upon herself and her own personal development and progress. This has caused the session to be less effective, and limited the ability to discuss any contact in depth. The Mother has stated consistently that she takes no responsibility for the current situation or the past, including (R) being placed in Local Authority care.*



*It is evident within contact that Mother demonstrates a considerable lack of emotional availability towards (R). The Mother continues to demonstrate a limited ability to recognise (R)'s needs without professional assistance. I remain concerned that the Mother consistently demonstrates an inability to prioritise (R)'s needs above her own."*

Again, that was written in December 2016, but I heard Laura Hutchings giving evidence, and there is no reason that I could identify why that position had changed. Certainly, she maintained that position clearly and compellingly.

88. Thirdly, Loz Foskett, experienced and well qualified in attachment issues, reached in her written conclusions the following views:

*"The complex and inconsistent nature of (R)'s early childhood resulted in her not yet developing a secure attachment to a main carer. The relationship she has with her mother has been inconsistent, and there would appear to be evidence that she does not have a secure attachment to her, as seen in the contact with her mother. The development of secure attachment in infancy is vital, for a child to develop both a healthy sense of self, a security in their relationship with others and a framework in which a child can develop both physically and emotionally, to thrive in later life. (R)'s emotional reactions to both separations and also to strange or scary situations are either to display distress or become clingy.*

*The fact she has become to look for reassurance from her carers, such as wanting them to hold her hand as she falls asleep, suggests she is capable of forming secure attachments when she is provided with warmth, acceptance of nature and physical reassurance. To help her develop a healthy sense of self and therefore a secure attachment style, she will need a consistent care and nurture with carers who have an understanding of the importance of attachment or support to help them in understanding how much she needs to develop this base."*

89. Miss Foskett told me in her oral evidence:

*“I observed an insecure attachment between (R) and the Mother.”*

90. After reading some of the more recent contact notes, she said:

*“I would disagree that contact has got better. There are still signs of lack of attunement, still inconsistent boundaries and a question mark over warmth.”*

91. For Lucy Earle’s view in her written report, it is as follows:

*“There appears to be no change in Mother’s view since the previous proceedings. Mother does not appear to accept responsibility for any of her actions in the past and places blame on a variety of sources. I do not doubt that Mother will have experienced both overt and more subtle instances of racism within society. However, in holding on to the mindset that any challenges, criticism or difficulty she may face are due primarily to issues of discrimination. The Mother demonstrates a lack of capacity to reflect on her own behaviours and actions, and therefore to make any meaningful changes. I experienced the Mother to adopt some of the same evasiveness and avoidance described within the previous documents.*

*The Mother presented as more open to questions, however would often respond to these by asking a question of her own, giving a response that did not seem connected to the question, or restating her assertion that there is no evidence that (R) had been harmed or that Mother had been prejudiced against. When looked at in terms of protective capacity, it is my view that (C) lacks the ability to identify and acknowledge risk, question situations or challenge Mother in any way.*

### Conclusion

*It has been a year since the making of the Care Order in respect of (R). Whilst there have been changes in the circumstances of Mother in that*

*she is now married, there is no acknowledgement or acceptance of concerns or evidence of an internal shift that would indicate that the experience of (R) in the care of her mother would now be different. There is evidence that some concerns presented in the initial proceedings are continuing, such as Mother and (C) highlighting marks on (R) that do not correspond with the contact practitioner's observations. Whilst (C) my not pose the same risk in his individual care of (R), in terms of being a co parent he is not able to balance the risk, because he adopts the same mindset as Mother. He is unequivocal in his support of her and does not accept the Local Authority concerns.*

*It is my conclusion that (R) continues to be at the same level of risk as in March 2016, when the Care Order was made. Subsequently, it is my assessment that the mother and (C) do not have the capacity to care for (R) and meet her emotional needs, due to their lack of acceptance of concerns and of the need for change. And there is no intervention I can recommend that would be beneficial, particularly when considered within the timescales of (R).”*

That opinion was written on 1<sup>st</sup> March 2017. Miss Earle stuck to this view tenaciously, clearly and convincingly, in my judgment, in her evidence before me, despite a strong cross-examination.

92. Stacey Wooldridge's view chimes very much with all of the others when she said this in her conclusion:

*“I found it compelling during my visit that there was no emotion shown by Mother whilst talking about (R). Mother was able to state on a basic level (R)'s needs. However, there was no sense of (R) when she was talking about her. I would be significantly concerned about the Mother's ability to meet (R)'s emotional needs if she were to be placed back in the full time care of Mother and (C). In my professional opinion, this would leave (R) at risk of harm if she were to be placed in the full time care of the mother and (C), due to her mindset about the Local Authority.”*

Likewise, to my mind, Miss Wooldridge under cross-examination held to these views convincingly and persuasively.

93. Overall, I have no difficulty in reaching the conclusion that I can accept and attach weight to the Local Authority evidence.
94. Tenthly, I was similarly satisfied that the Guardian who came to this case in April 2017 gave compelling evidence. I was satisfied that she came to the case with an open and independent mind, and I am satisfied that she carried out a full, comprehensive and fair assessment within the time available to her. Her conclusions are as follows:

*“(R) would be at risk of physical harm if the Mother continues to present as overanxious in her parenting, causing further occasions where she is wrongly medicated. She is also likely to become aware of her mother’s exaggerated views of her health, potentially leading (R) to believe that she has more health needs than she does.*

*I have considered whether the parents could provide adequate care for (R) with support. This is a case, however, where the care being afforded to (R) by her mother was unsafe, and ongoing support would not ameliorate the risk of harm to (R). Furthermore, the support which would be required would be so high that I would deem this as intrusive to (R). No amount of support and unannounced visits by professionals could protect (R) from the risk of further unnecessary medical intervention, inappropriate use of medication or emotionally neglectful care. If (R) was to return to the care of her mother, this would have been managed under Care Orders, but (R) is likely to require intensive support and intervention in all likelihood throughout the duration of her minority. This is clearly not in her best interests.*

*I am of the professional view that (R) would be placed at significant risk of harm if she was to be placed in the care of the Mother and (C).”*

95. I found the Guardian to be a compelling witness, and I have no doubt that I can attach considerable weight to her evidence. I note in passing, although I do not attach much weight to it, that the earlier Guardian, Miss Young, although had not written her final report, had expressed a view of the case to the Local Authority, which was similar to the one ultimately taken by her successor, Miss Wells, and is recorded in the social worker's statement.
96. Eleventhly, the evidence from Stacey Wooldridge, having researched the subject to a limited but appropriate extent, was that there are reasonable prospects of a successful adoptive placement being found for (R). As ever, of course, it is not possible to be sure that this is the case, and it is right to note that (R) is getting towards the top end of the age when adoption is something that can be properly contemplated. But on the facts of this case, it seems to me that there are reasonable grounds to be hopeful that if a care plan of adoption was approved by the Court, there would be good prospects of success in finding her a good adoptive placement.
97. Having made those findings and observations, I turn back to the holistic evaluation of the options open to the Court. To assist this process, I have the benefit of the *Re B-S* analyses done by the Local Authority's social worker, in pages 15 to 20 of her statement of 31<sup>st</sup> March 2017, and by the Guardian, in pages 10 to 13 of her report of 6<sup>th</sup> June 2017. In broad terms, these two analyses follow the same route and reach the same conclusion.
98. In relation to option 1, the Care Order and Placement Order option, there are obvious advantages. (R) would have a forever family, who would nurture her and love her for the remainder of their mutual lives. Such a solution is possible or should be possible, even given her age, and would allow (R) to have a fresh start, and the way in which she has been able to bond with her foster carers suggests that this should be possible again with new carers. The other advantage is that she would be protected from the risks of harm which have been identified by the professionals, which I have already gone into in some detail. An obvious negative of this solution is that (R) would lose her birth family, and very likely her contact with her birth parents, in particular her mother, at least during her minority. I have not underestimated the significance of that fact.

99. Option 2 is the long term fostering option that carries with it some of the advantages of the adoption placement, though not as full, because (R) would be forever a Local Authority placement, subject to regular review, social worker involvement and possibly changes of foster carer, with all the downsides that those things bring. (R) would not necessarily have a forever family, although it might be possible to find a long term fostering family which is reasonably secure. There would be the advantage also of having some contact with the birth family, in particular with Mother. But the downside is that it would not be quite as permanent and secure as an adoptive placement, and it could be disruptive for (R) over a period of time.
100. As far as option 3 is concerned, which is rehabilitation to Mother and (C), the obvious positive to (R) was that she would be being cared for by her birth family, but there are some very clear negatives, which are essentially the flipside of the positives of adoption. It would open up (R) to the potential harm identified by all the professional opinions that are before me in this case and which I have analysed already.
101. These, it seems to me, are the main pros and cons of each of these options. Stepping back and making a holistic view, taking into account all the matters which I have mentioned, I have reached the clear conclusion in the end that the best interests of (R) throughout her life is for me to agree with the Local Authority plan that a Care Order should remain in place and that I should approve the new care plan and that I should make a Placement Order. I have reached a clear conclusion in the end that this is the best way forward for (R) now, in the short and longer term throughout her life. I have reached the clear conclusion that nothing else will do, on the facts of this case, and also that this is a proportionate response to the facts which I have set out above in the context of Article 8 of the European Convention on Human Rights and also the Court's decisions in cases such as *Re B-S*, *Re KD* and *Re L*, all of which I have cited above.
102. To make reference to the Welfare Checklist factors of both Children Act 1989 and Adoption and Children Act 2002, to set out some of the main points thereunder, although they are really the same points as I have made already:
103. (R)'s needs. She has a need for a forever home with carers with whom she can have a secure attachment. This is the clear conclusion of Loz Foskett's report, when she said this:

*“(R)’s primary therapeutic need is for a permanent, stable and secure family which will continue to offer her stability and security. She requires a family who can meet all her needs, with particular emphasis on building secure attachments. Ideally, this will be on talking, listening, problem solving and play, attention, involvement and empathy, as well as predictable, consistent and clear routines and boundaries. The positive attunement she receives from primary carers has promoted a more positive sense of self and identity, allowing her to develop her emotional and social skills.”*

It seems to me that those aims can best be met in an adoptive placement. The evidence which suggests that (R) can adapt and build a new relationship with a new family and create a new loving relationship with secure attachment is, in my view, clear.

104. Risk of harm. It seems to me, as I have already assessed on the evidence, that there are risks of harm to (R) if she were to be returned to her care, from Mother’s lack of attunement with (R)’s needs, her overprotection, her tendency to misinterpret situation and her lack of warmth. All of these matters present significant risk of both physical harm and emotional harm in the future by virtue of how Mother may react to a variety of situations in the years ahead. (R) has a need for a warm relationship with a carer, and I accept the evidence that that is not the case with the Mother. Nor is there evidence that that is likely to change in the foreseeable future.
105. I take into account also the delay that would be involved in further attempts to rehabilitate Mother, which might involve some further work with her and further assessments, before anything could be achieved. I remind myself that a lot of time has passed since this case first started, and (R) has been in foster care for two years already. She has a need for permanence and for decisions about her long term future, and I think that I must come to make those decisions now. A further delay, which it would seem to me would be the inevitable consequence of what the Mother is suggesting, would not be in her interest.
106. In my view, all of these factors strongly outweigh the benefits of the potential for (R) having a continuing relationship with her birth family, in particular her mother and

(C), throughout her life. I think (R), at the age of 4, is really too young to have any wishes or feelings, or at least any wishes or feelings to which the Court should attach significant weight.

107. Accordingly, for all of the reasons set out above, I have reached the conclusion that it is appropriate for me to dispense with the consent of the parents, on welfare grounds, to the Placement Order, under Section 52(1)(b) of the Adoption and Children Act 2002. (R)'s welfare, in my judgment, requires me to do that.
108. I reach the conclusion, looking at the care plan, that I should approve it, both in its main features, in the sense of adoption being the plan for (R), but also in its details over timing and in terms of the reduction in contact between (R) and the Mother and (C).
109. So, for all of these reasons, I am going to make the orders requested by the Local Authority, first to reject the application for a discharge of the Care Order, next to dispense with the parents' consent, on welfare grounds, and then I am going to go on to make a Placement Order in relation to (R). I might need to ask Miss Habel to draw an order to reflect all of these matters.
110. It seems to me also, as a final thought, that it might be helpful for a transcript of this judgment to be prepared, and, unless anyone strongly disagrees with that, I am prepared to do that and direct that it is necessary to do that, and that it therefore should be dealt with by an equal expense of the parties involved. That will assist anything which might arise in the future. That is my judgment.

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This Transcript has been approved by the Judge on 14<sup>th</sup> November 2017

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