

**IN THE FAMILY COURT AT LIVERPOOL**

11th July 2018

**Before  
HIS HONOUR JUDGE PARKER**

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**IN THE MATTER OF**

**A local authority**

**-v-**

**M**

**F**

**L and D  
(by their children's guardian)**

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**MISS FREEMAN appeared on behalf of The Applicant**

**MISS MILES appeared on behalf of The Mother**

**THE FATHER did not attend**

**MR CARLEN appeared on behalf of The Guardian**

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**JUDGMENT APPROVED**

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

**JUDGE PARKER:**

1. I am concerned with two children: L aged seven and D presently aged three. They appear through the children's guardian, PW, and are represented by Mr Carlen.
2. The local authority have made applications for public law orders in respect of the children and they are represented by Miss Freeman.
3. The mother, M, is represented by Miss Miles.
4. There is no appearance by the father of D, F, , and I will say more about him later in this judgment. He will be referred to as “the father”.
5. The father of L is PC; he has played no part in her life after she was but a few weeks old and has played no part in these proceedings.
6. On a date (redacted) a 17 year old male called J was fatally shot in Location A. The father in this case is the prime suspect in that murder. He has been at large since the murder and his whereabouts are presently unknown to the police.
7. The mother was also arrested on suspicion of being involved in the commission of the murder of J and, as a result of that, has been interviewed on numerous occasions by the police: on the 10<sup>th</sup> of October 2017; 11<sup>th</sup> of October 2017; 12<sup>th</sup> of October 2017 and 14<sup>th</sup> of May 2018. She remains a person of interest to the police but has not been charged with any offence. The nature of the investigations made by the police in respect of the mother are clearly ascertained by reference to those lengthy interviews which run to in excess of 400 pages.
8. I am not asked to make any findings by the local authority in respect of any involvement of the mother in the commission of that murder and I do not do so.
9. The mother's relationship with the father commenced in 2011. The father has a very troubling criminal record which is set out in the bundle of documents received from the

police and reveals offences of violence going back to the 12<sup>th</sup> of January 2004. He is a prolific offender, he is a gang member. Gun violence for him is an occupational hazard.

10. In November 2011 referral was made to Children's Social Care. The father was on licence at that stage and not allowed in [Location B]. The mother was advised that if she allowed the father into her home she would be assisting him in breaching the order. The father was a 'golden nominal' but was being managed by Liverpool South Probation due to him living in a hostel in [Location C]. He was known to have associations with other gangs and gun crime nominals.

11. On the 18<sup>th</sup> of October 2011 he was arrested for assault and possession of a weapon. He was made subject to a violent offender's order.

12. On the 27<sup>th</sup> of November 2011 an incident occurred where the mother and L were in a car, the police stopped the vehicle, the father was a passenger therein. The mother and father were arrested. The mother was released without charge.

13. On the 4<sup>th</sup> of January 2012 the mother was arrested on suspicion of assisting an offender following a shooting where a witness identified the father as one of the perpetrators. He was arrested climbing over somebody's garden. The mother's property was searched as a result. Four motorbikes, four masks and four face-coverings were found. The father was remanded due to a breach of violent offender's order.

14. Throughout the period of assessment the mother was of the view that she was able to protect herself and L, however she was arrested on two occasions. She was told of the risks associated with the father but continued to maintain a relationship with him. It was recommended at the initial child protection conference that L was made subject to a child protection plan under the category of physical harm.

15. On the 28<sup>th</sup> of February 2012 a core group meeting was held. The mother said she had not had any contact with the father. She agreed to adhere to the request not to have contact with him.

16. On the 22<sup>nd</sup> of March 2012 the mother had direct work sessions with a family support worker and stated she wanted nothing to do with the father when he was released from prison.

17. On the 27<sup>th</sup> of April 2012 there was a report received from Her Majesty's Prison X that the mother had visited the father in prison on two occasions and the father referred to her as his girlfriend.
18. On the 11<sup>th</sup> of June 2012 the mother informed the social worker that she intended to maintain her relationship with the father as he was due to be released from prison soon. She said that the father had changed and wanted a fresh start.
19. On the 17<sup>th</sup> of July 2012 he was released from prison. A strategy meeting was held and it was decided that due to the significance of the father's involvement in serious and organised crime he was not to reside with the mother and L.
20. On the 4<sup>th</sup> of September 2012 the father was arrested and remanded in custody; he had been in the exclusion zone in the mother's car.
21. In February 2013 the mother was released from prison.
22. On the 15<sup>th</sup> of May 2013 a child protection conference heard that the mother and father had informed Children's Social Care that they wished to remain as a couple and reside together. The father informed the social worker that he was willing to cooperate and engage in a risk assessment. A decision was made for L to be removed from the child protection plan and further assessments to be completed under a child in need plan.
23. In 2013 the mother became pregnant with the father's child. The mother was aware of his involvement with Merseyside Police but felt she could help him to change.
24. On the 14<sup>th</sup> of October 2013 Children's Social Care closed their involvement with the family. It was known that the mother and father were in a relationship; it was believed that the father had made changes to his lifestyle. How wrong they were.
25. On the 16<sup>th</sup> of December 2013 the mother suffered a prolapsed umbilical cord after giving birth to her baby boy. He spent seven days on a life support machine and sadly died on the 23<sup>rd</sup> December 2013.
26. On the 14<sup>th</sup> April 2015 the mother gave birth to D at hospital; the father was present and registered.

27. On the 5<sup>th</sup> of February 2016 a strategy meeting was held due to information being received of a group of males in possession of a firearm looking for the father. He was also wanted in relation to Section 18 wounding and possession of a firearm that occurred 14<sup>th</sup> January 2016.

28. On the 9<sup>th</sup> of February 2016 the father was arrested at the mother's home. There was a concern that the mother was not taking the risks to the children seriously. There was a concern that the family home could be targeted as there was police intelligence which suggested that there was a threat to the life of the father. It was decided that the mother and her children needed to reside away from the family home to ensure their safety.

29. On the 2<sup>nd</sup> of March 2016 the child protection conference was held. It was suggested that the mother did not appear to accept the concerns of professionals.

30. The father was sent to prison for breaching his violent offender order and was not due for release until August 2016. By June 2016 the mother and the children had returned to their home as it was believed that the risk had reduced.

31. Following a MAPPA meeting in December 2016, a risk assessment was completed stating that the father could have contact with the children outside of [Location A] at an agreed location. This position was contradicted by probation, allowing the father to visit and stay over at the mother's house - to his mother's house where the siblings lived - his siblings.

32. In January 2017 a further risk assessment was completed which allowed the father to have contact with the children. The mother reported that she was not in a relationship with the father but was maintaining contact with him for the sake of the children.

33. On the 31<sup>st</sup> of March 2017 a single assessment was completed. There were no additional concerns raised about the father's lifestyle or any potential dispute since his release from prison in September 2016. The mother was believed to have separated from the father. The mother was informed that she needed to think carefully about her future choices. It was noted that the mother and the father concealed their relationship from professionals previously and this was a risk of the future. There was no evidence at the time that they were in a relationship and therefore it was decided that the children were not at risk and no longer required a child protection plan. How wrong they were.

34. In July 2017 the mother suffered a miscarriage at three and a half months pregnant.

35. On the 27<sup>th</sup> of September 2017 the case was closed to Children's Social Care.

36. On the 10<sup>th</sup> of October 2017 the mother was arrested on suspicion of murder and the children were placed in an out of borough foster care placement; the mother was held in cells for three days.

37. This history clearly demonstrates, in my judgment, that the father posed a clear risk to the children by his association with gangs and gang violence; that this risk was made clear to the mother but that she chose to continue a relationship with the father notwithstanding those concerns. The impact upon her and the children has been profound. She has been arrested several times, she has been questioned on suspicion of murder, she has had to move out of her place of residence and the children have been subject to local authority involvement for some six years leading up to the date of intervention at the commencement of these proceedings.

38. The mother has clearly put the needs of the father and her need to be in a relationship with the father before the needs of the children. She has lacked insight into the level, the magnitude of risk, the nature of risk to the welfare of the children and that posed by her association with the father. She has lied to the local authority and Children's Services about her relationship with the father.

39. This court has considerable experience of dealing with gangs and gang-related violence in Cheshire and Merseyside, both in the civil jurisdiction in dealing with gang injunctions under the Policing and Crime Act of 2009 as amended by Section 51 of the Serious Crime Act 2015 and in the family jurisdiction. This is the third set of care proceedings that I have dealt with this year involving a father who is a gang member and gun violence. That experience has taught me that the nature and magnitude of the risk in cases that involve gang members is that children can be caught up in the crossfire of gun violence between gang members with sometimes fatal or catastrophic consequences. This city has already seen a high profile case where an innocent child, wholly unconnected with any gang members, was killed in such crossfire.

40. The serious nature of the risk gang members and their associates pose to children cannot be overstated. The risk is posed not only by the father and his use of guns and other

violence but also the risk of reprisals, particularly following the murder of which he is the prime suspect. There is evidence in the papers of other occasions when gang members have been reported as looking for the father to effect violence and reprisal. The risk of reprisals knows no time limit. The risk can remain for years.

41. Notwithstanding that clear and obvious risk, the mother has continued in her relationship and association with the father, thereby exposing the children to that risk. That clearly continued up to the day of the murder in leading to these proceedings and the removal of children, initially into foster care and then into placement with the maternal aunt.

42. In those circumstances, I am satisfied that at the relevant date the children were likely to suffer significant harm and that likelihood of harm is attributable to the care given to the children and likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them.

43. The Section 31 Children Act 1989 threshold is met.

44. In those circumstances, the gateway is open to the making of a care or supervision order.

Care or supervision order - the law:

45. The differences between placement at home under a care order and placement at home under a supervision order have been considered by his Honour Judge Bellamy at the Family Court in Leicester in his decision of *Re FC (A Child: Care or Supervision Order)* reported at {2016} EWFC B90. I quote paragraph 58 onwards:

"That it is permissible to make a care order even when leaving a child at home in the care of her parents is not in doubt. In *Re T (A Minor: Care or Supervision Order)* [1994] 1 FLR 103, in giving the lead judgment in the Court of Appeal, Bracewell J said:

'The Children Act 1989, s 23(4) and (5) and the Placement of Children with Parents Regulations 1991 envisage that local authorities may place children with their parents even though the local authority has obtained a care order.

The 1989 Act also envisages that children may have remained at home pending court proceedings and may remain there after the granting of a care order."

59. "Although the 1991 Regulations have now been replaced by the Care Planning and Placement and Care Review (England) Regulations of 2010, the possibility of making a care order while leaving the child at home in the care of her parents remains open. However, although it is the case that the court has the power to make a care order in respect of a child who remains at home with her parents, the court should be cautious about making such an order if the local authority itself is not seeking a care order. In *Oxfordshire County Council v L* (Care or Supervision Order) [1998] 1 FLR 70, Hale LJ as she then was said that:

'Section 31(5) of the Children Act does of course allow the court to make an order other than that for which the local authority asks. If the local authority asks for a supervision order, the court may make a care order. If the local authority asks for a care order the court may make a supervision order. It is accepted, however, by the guardian *ad litem* that there must, in general, be cogent and strong reasons to force upon the local authority a more draconian order than that for which they have asked.'

61. "In *Re T* (A Minor: Care or Supervision Order) [1994] 1 FLR Bracewell J stated that:

'The nature of a supervision order is to help and assist a child where the parents have full responsibility for the care and upbringing. It does not involve any statutory level of monitoring and it does not give the local authority parental responsibility. Any conditions attached to the supervision order cannot in themselves be enforced by the court. That was made clear in the case of *Croydon London Borough Council v A* (No. 3) [1992] 2 FLR 350. Breaches can only be evidenced in further proceedings. The essence of a supervision order is to advise, assist and befriend the supervised child. The directions which



may be attached under Schedule 3 to the Children Act 1989 are restricted to requiring a responsible person, that is the parents in the case, to take reasonable steps to ensure the child lives at a specified place, presents to a specified person, participates in specified activities and submits to various examinations where appropriate. The limits of such requirements do not, in my judgment, begin to address the problems of these parents who continue today to exercise their parental responsibilities in a way which still merits some criticism. The contract drawn up between the parents and local authority cannot be enforced without further court proceedings, whereas a care order places on the local authority a positive duty to ensure the welfare of the child and protect her from inadequate parenting. That is the framework and essence of the Act."

Care order:  
paragraph 62:

"In *Oxfordshire County Council v L* (Care or Supervision Order), Hale LJ stated that there are a number of reasons which might be given for preferring a care order to a supervision order.

"The first is that a care order allows the local authority to remove the children from home. This has two aspects: the first is that it allows the local authority to remove the children without any judicial sanction in an emergency. The second is that it then allows the local authority to make long-term plans for those children and to place them elsewhere on a long-term basis, again without any judicial authority. The only way in which this can be challenged on behalf of the children or the parents is by an application for the discharge of the care order."

46. I insert into the decision of HHJ Bellamy that the additional means of an application for an injunction under the Human Rights Act following the decision of Baker J in *Re DE* [2015] 1 FLR 1001 ;

"A second reason for preferring a care order to a supervision order is that it enables the local authority to share parental responsibility with the parents.

The fact that it is contemplated that help will continue for a long period - albeit of a various nature - does not of itself mean that a care order is necessary. A care order would be warranted where there was reason to suppose that the parents would not accept the advice and guidance of the local authority as to the way in which they should be meeting their parental responsibilities. In that situation the parents could not be allowed to be the only people with those responsibilities."

47. Paragraph 64:

"In *Re O (A Child)* [2001] 1 FLR 923, Hale LJ (as she then was) repeated the two differences between a supervision order and a care order identified in *Oxfordshire County Council v L (Care or Supervision Order)* and added a third. The third point relates to the fact that whereas a care order can continue until a child reaches the age of 18, a supervision order only lasts for 12 months and can only be extended twice. The maximum length of a supervision order is, therefore, 3 years."

48. Hale LJ said, :

"The third difference is one of timing. Mr Forbes (counsel for the guardian) in particular has argued that it might be difficult to achieve a further order in 3 years' time but of course that difficulty would only arise if by then the risk of harm had disappeared or almost disappeared, or the need for an order had disappeared or almost disappeared. If that were not the case, the local authority would have to investigate and take any action which was thought appropriate to protect the child."

49. Paragraph 66:

"There is a fourth difference between a care order and a supervision order and that is the role of the Independent Reviewing Officer ('IRO'). Section 25(a) of the Children Act 1989 provides that: (1) If a local authority are looking after a child, they must appoint an individual as the independent reviewing officer for

that child's case. Any child who is the subject of a care order, even if placed in the care of her parents, is a looked after child for whom an IRO must be appointed under s. 22(1). It follows, therefore, that if the child remains in the care of her parents under a care order, an IRO must be appointed. If placed with the parents under a supervision order, an IRO will not be appointed."

50. Paragraph 67:

"What then is the role of an IRO? Section 25(b)(1) provides that the IRO must (a) monitor the performance by the local authority of their functions in relation to the child's case; (b) participate, in accordance with regulations made by the appropriate national authority, in any review of the child's case; (c) ensure that any ascertained wishes and feelings of the child concerned are given due consideration by the local authority; (d) perform any other function which is prescribed in regulations made by the appropriate national authority."

51. Paragraph 68:

"That the involvement of an IRO is an important point of difference between a care order and a supervision order was made clear in *RW v Neath Port Talbot County Borough Council* [2013] EWCA Civ 1227. Ryder LJ noted that:

'51. Children who are the subject of supervision orders are not looked after children (unless they are for some reason provided with accommodation by the local authority under s. 22(1)(b) of the Children Act 1989. They do not benefit from the duties imposed on local authorities by s. 22 or Part II of Sch 2 of the Act. The regulatory scheme for care planning placement and review does not apply to them. In the absence of supervision order regulations, there is no equivalent regulatory safety net for the exercise of the local authority functions in relation to them, including those exercised by Independent Reviewing Officers (IROs). By s. 35(1)(b) of the Children Act 1989 the duty that is imposed upon the supervisor is 'to take such steps as are reasonably necessary to give effect to the order.

'52. The general and specific duties which apply to children who are the subject of supervision orders are those which also apply to 'children in need' by reason of the broad definition of the circumstances in which 'a child should be taken to be in need' to be found in s 17(10) of the Children Act 1989. They are contained in s 17 and Part I of Sch 2 of the Act. They do not encompass the general and specific duties set out in s. 22 and Part II of Sch 2 which are owed to the individual child. The s 17 general duty is a framework duty owed to children in need in the local authority's area that does not result in a mandatory duty to meet the assessed needs of every individual child.

'53. In contrast, the arrangements for looked after children including children who are the subject of care orders are set out in regulations. In England, the relevant regulations have been consolidated since the 1<sup>st</sup> of April 2011 in The Care Planning, Placement and Case Review (England) Regulations 2010.

'56. The IRO has an important independent role in the governance of the local authority's implementation of the care plan and decisions made at looked after children reviews. By regulations 5(d), 6(3)(c) and 37(b) of the 2010 Regulations in England, the local authority is required to name the IRO on each child's care plan and give a copy of the care plan to the IRO and inform the IRO of any significant failure to make arrangements to implement decisions made at reviews and of any significant change in circumstances occurring after the review that affects those arrangements.

'57. It is now a statutory requirement that an IRO be appointed for each looked after child's case (s. 25(a) of the Children Act 1989) and by s. 25(b) the functions of an IRO include monitoring the performance by the local authority of their functions in relation to the child's case and referring the child's case to a Welsh family proceedings officer or an officer of Cafcass where the IRO considers it appropriate to do so for the officer to consider whether steps are necessary to safeguard and promote the welfare of the child, for example by instituting proceedings on behalf of the child (see regulation 45 of the 2010 Regulations for the position in respect of England).

'58. By this process, there is intended to be scrutiny, due process and change to care plans only where that has been approved within the regulated process. The process includes an obligation on the local authority, so far as is reasonably practicable, to agree the care plan or written arrangements with the child's parents and any other person who has parental responsibility. None of this involves the court. Parliament has provided a scheme for the implementation, review and scrutiny of care plans which is the responsibility of others. A court would only be involved if a new application is issued, for example to discharge the care order or on an application for judicial review or for a remedy under the Human Rights Act of 1998."

52. The plan of the local authority in this case was for rehabilitation with the mother which has commenced and the children are currently living with her. The local authority asked the court to make a child arrangements order in favour of the mother and a 12 month supervision order on the basis that that will meet the risk in this case. They suggest that there is no need and it would be disproportionate to make a care order and in a table which is set out at C81 they suggest that in fact the risk would be better managed under the auspices of a supervision order rather than a care order, suggesting that their involvement would be greater under a supervision order.

## DISCUSSION

53. Following the guidance of Ryder LJ in *Re W*, I directed on the first day of this hearing that the local authority produce an alternative care plan on the basis of a care order.

54. In my judgment, the approach of the local authority in this case demonstrates an automaton approach to placement of children at home with a parent and a desire to secure such placement with nothing more than a supervision order.

55. The way that the local authority has constructed its case to try and argue for a supervision order by saying that they would do more under a supervision order and it would be more intrusive than a care order I consider to be intellectually dishonest. For example, in terms of reviews they suggest that under a care order a review would only be held every six months. That of course is a minimum requirement. However, they say that under a supervision order there would be planning meetings held every four to six weeks,

legal planning meetings held every three months with a decision being made at nine months to see if an extension of the supervision order was required. That demonstrates at best a breathtakingly wooden approach to assessing what the requirements would be under a care order to meet the exceptional circumstances of this case.

56. In terms of social work visits, they suggested a minimum of six weekly under a care order but a minimum of four to six weekly under a supervision order.

57. I cannot conceive of any possible justification for having meetings at a greater frequency under a supervision order than a care order. It smacked of case creation rather than a genuine, thoughtful approach with careful analysis of risk and what was necessary to manage that risk. There was no proper analysis of the effect of having parental responsibility under a care order compared with no parental responsibility under a supervision order.

58. In giving oral evidence the social worker, who did her best to sell what was, she said, a management decision that there should be a supervision order, said that in the event of an emergency situation if there was a supervision order only then they would seek a police protection order or an emergency protection order, yet if they had parental responsibility Miss Freeman acknowledged that they could act on the spot if it was an emergency situation.

59. There was a wholly inadequate analysis of what the involvement of an IRO would be under a care order - see the authorities that I have just cited. In a way that I consider to be intellectually dishonest, the author of the table of C81 has sought to argue that the involvement of an IRO would be greater under a supervision order than it would be under a care order. There was no proper analysis of a need for an order over any period of time that exceeded three years, yet that was against a backdrop of a lengthy involvement with the mother and father of six years over which time the local authority involvement has proved singularly ineffective.

60. At C82, in terms of duration of order, there was, in my judgment, more intellectual dishonesty. In terms of the care order they suggest that the local authority would have a plan to apply to discharge at 12 months if there were no serious concerns yet, under the supervision order, there was an ability to extend up to a maximum of three years.

61. The table at C81 and C82 gave me the impression that the author was trying to make a supervision order look more attractive than a care order rather than analysing properly what would be required to meet risk if there was a care order.

62. Overall, the table at C81 and 82 gave me the clear impression of a local authority seeking to sell a policy decision without any proper analysis of the exceptional facts in this case. Those exceptional facts are that the father is a prime suspect in the murder of another child, he is at large - there is therefore an unquantifiable risk as far as he is concerned. The mother too was arrested on suspicion of being involved in the murder. She has demonstrated dishonesty towards social services in respect of her relationship with the father.

63. The social worker herself in oral evidence, when asked what she thought of the mother's most recent interview with the police in May this year, said that she thought that the mother was being dishonest with the police.

64. The mother was not being honest with the court in dealing with the events surrounding the murder and was inconsistent about how she came to get out of bed around midnight on the night of the murder at the behest of the father and his friend and leave the house and her children in it. However, I am not making any findings beyond noting that lack of candour.

65. If, as I suspect, the way that the local authority has presented its argument for a supervision order, it is part of a management policy to seek only supervision orders where children are placed at home with one or both of the parents, then there is an urgent need for radical rethinking on their part. If my suspicion is ill-founded then so be it.

66. There will undoubtedly be cases where a supervision order is the right and proportionate order where children are placed at home with one or more parents. But there are undoubtedly cases where it is not the right order and where a care order is the only proportionate order to meet the risk. That is a decision that can only be taken on a case by case basis following proper analysis of that individual case and what is required.

67. The guardian in this case was absolutely clear that there was a necessity for a care order on the basis that the children are placed with the mother and that such an approach was proportionate. It would provide the proper statutory framework to seek to manage the

risks in this case. Any lesser order would be inadequate. He said that it was the level of uncertainty that required greater thought in respect of what the local authority were empowered to do. The amended care plan, as it then was, provided for a care order which was inadequate in how it sought to address risk in terms of its detail. I note and I am grateful to receive a new version which requires further amendment in line with the observations made by Miss Freeman just before this judgment and that is a care plan which meets the risk, in my judgment.

68. What was important to the guardian was what power the local authority had in respect of future planning. The mother had hitherto shown a poor understanding of risk and had made poor safeguarding decisions. Whilst the mother was saying that the removal of the children had been a wake-up call for her, the child protection plans should have provided that wake-up call. The evidence suggested that the mother may be fearful of the father and the mother herself was described as secretive by her own family. She had demonstrated a lack of understanding around the issues of domestic violence and control.

69. The court's suggested undertakings were, said the guardian, proportionate to the risk and exceptional circumstances. That should be buttressed by a contract of expectations. The expectations placed on the mother have to be clear as she has no chances left. The mother's parental responsibility should be diluted due to the history and the events that led to intervention. The proposed undertakings were proportionate to the risk and the mother remained a person of interest to the police. Under a supervision order, the local authority's duty was to support and guide - the mother did not have to cooperate. In a cloud of uncertainty and given the negatives of the local authority's own decision-making in the past, a supervision order was not a proportionate way of dealing with the risk. There had to be a situation where the mother had a statutory responsibility to cooperate.

70. Whilst the mother's view is that there should be the least interventionist order, she does not seek to positively argue against a care order and, if the court deems that that is the appropriate order then she is prepared to agree to it.

71. It is also important that the court sets out the significant positives in the mother's case. The mother has an emotional connection and loving bond with both of the children. She is able to provide her children with appropriate stimulation. She has bought age-appropriate toys to contact. She clearly knows her children's likes and dislikes. She



appears to have implemented appropriate guidance and boundaries for the children. There have been no concerns in relation to their behaviour and they have clearly been taught right from wrong and are both generally well- behaved children.

72. Whilst it is apparent that the mother has missed numerous visits at home by various health professionals, the children's health does not appear to be suffering as a result and there are no outstanding health issues.

73. The local authority's case is that the mother clearly loves her children and there is evidence of a warm, strong and loving attachment between her and the girls. The assessment shows that she can provide them with good quality care.

74. I have read the school report for L from [[School A]] for the year 2016-2017. The report speaks in glowing terms of L, quote: "It was an absolute pleasure to be L's teacher this year. She is such a wonderful pupil who is keen to learn and has a fantastic attitude towards both school work and school life in general." Lower down: "It is very clear that L has a wonderful attitude to all areas of school life. She really is a role model to others." The only slight negative was that her attendance was 94 per cent which was less than the school target of 96 per cent but overall it was an excellent report.

75. There is also evidence that the children have struggled emotionally with separation from their mother and, in particular, L has suffered separation anxiety.

76. Furthermore, there is no evidence before me to suggest that the mother has had any form of contact or communication with the father since the commencement of proceedings and there is no evidence that anybody has sought to effect a reprisal that has even come remotely close to the mother and the children. But that is not a reason for complacency.

77. At my invitation the mother called the maternal aunt to give evidence and I agree with the professionals' assessment of AM, that she is impressive, per the guardian at E110. I am satisfied, having heard her evidence on oath, that she would be a safeguarding influence as far as a placement with the mother is concerned. She told me that if she discovered that the father was back on the scene and the mother had not reported that fact to the authorities then she would do so herself. She said that that would be the case even if the mother gave undertakings to the court not to allow that to happen and was in breach

of those undertakings, which in turn would place her in contempt of court and potentially liable to imprisonment for up to two years.

78. I found her a compelling witness. She was also able after some initial difficulty in understanding what was being asked of her, to articulate what the nature and level of the risk was as far as the father was concerned. She also stands as the contingency carer in the event that the mother proves incapable of providing good enough care for the children into the future and has provided care for the children after the initial short spell in foster care.

79. In terms of an analysis under s.1 of the Children Act 1989, I remind myself that the welfare of each of the children is my paramount consideration when determining any question with respect to their upbringing. I remind myself also that any delay in determining any question regarding their upbringing is likely to prejudice their welfare.

80. I have no doubt at all that each of the children wants to be and remain with their mother. I attach particular weight to L's view and also remind myself of the evidence of her suffering separation anxiety when away from the mother's care.

81. Each of the children now requires a warm, loving upbringing in a stable placement that is safe. There is good evidence to suggest that the mother is capable of meeting the educational needs of both children and also their emotional and physical needs. The risk to their safety is posed by future involvement of the father and any associates with the mother and the children.

82. The children have been rehabilitated back to the care of their mother and therefore any move away from the mother again would, I am satisfied, cause them significant emotional harm. These are two young girls who have had a difficult time following removal into care; they are vulnerable and must be kept safe. They are at risk of suffering significant harm and I have dealt with that earlier in this judgment.

83. I am satisfied that the mother is a very capable parent in terms of providing for the physical and emotional needs of the children, absent the father. If she were to allow the father back into the lives of these children in any way that is not controlled by the authorities then she would be exposing them to a risk of catastrophic harm, possibly even death.

84. There has been no parenting assessment of the father. He has been at large and on the run from the police since the commencement of these proceedings. He clearly cannot provide safe enough and good enough care for his children because of the lifestyle that he leads and his criminal activity.

85. I have considered the range of powers available to me under this Act. In my judgment, there is a clear necessity for a care order in this case on the basis that the children remain in the care of their mother. That is the proportionate order to meet the magnitude and nature of the risk. Nothing short of that will do. A child arrangements order and supervision order would be inconsistent with the welfare of the children.

86. It is necessary and proportionate for the local authority to share parental responsibility. There is a need to dilute the mother's parental responsibility. The local authority must have the ability to act in an emergency themselves without judicial oversight or having to rely upon third party agencies. There is good reason to think that the mother may not voluntarily follow advice and guidance from the local authority based on the history. It is necessary and proportionate to have an order that can extend beyond 12 months and three years in light of the history and the magnitude and nature of the risk. There is a need for an independent reviewing officer to be appointed to exercise the full powers of an IRO, particularly in light of the local authority's failings in the past, for example their failure to realise that there was no court referral for five months after a need for one was identified. There must be a statutory obligation on the local authority to act and a statutory obligation on the mother to follow advice and instruction of the local authority in accordance with the principles set out in *Re T* above.

87. I have considered the new draft care plan as presented to me today with the additions proposed by Miss Freeman which can be incorporated in the draft together with the contract of expectations and the draft undertakings and I am able to approve the permanence provisions of the care plan as now drawn.

HHJ Steven Parker