

IN THE FAMILY COURT AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 2 April 2019

Before :

HIS HONOUR JUDGE WILLANS

Between :

THE LONDON BOROUGH OF BARNET

Applicant

- and -

(1) The Mother

Respondents

(2) The Father

(3) O (by his Children's Guardian)

Ms Caitlin Ferris (instructed by **The London Borough of Barnet Legal Services**) for the
Applicant

Mr Tim Parker (instructed by **Hanne & Co.**) for the **First Respondent**

The Second Respondent neither attended nor was represented

Mr Philip McCormack (instructed by **Harris Temperley**) for the **Third Respondent**
acting by his Guardian

Hearing dates: 5-8, 11-13 March and 2 April 2019

JUDGMENT

His Honour Judge Willans:**Introduction**

1. The structure of this reserved judgment is as follows:

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2. Given this judgment may be published I intend to use the following abbreviations: **M**: ('the mother'); **F**: ('the father'); **O**: ('the Child'); **SW**: ('the Social Worker'); **ISW**: ('the Independent Social Worker'); **MGM**: ('the maternal grandmother'); **RM**: ('the Paternal Aunt and proposed special guardian'); **CH**: ('Nursery Manager'); **JS**: ('Child and Adult Psychiatrist'); **BM**: ('Psychologist'); **FA**: ('Psychiatrist'); the **Guardian**. The maternal family are adherents of a religious faith which I will refer to as religion **Z**. The paternal family originate in [removed] which I will refer to as Country **X**. No discourtesy is intended by the use of these abbreviations and shorthand.
3. I am concerned with **O**. The applicant has issued care proceedings under the Children Act 1989 and has filed a care plan under which they seek to place **O** with his paternal aunt and uncle in **X**. **M** opposes this plan and asks me to extend the proceedings for a further period so that she can engage in therapeutic work with a hope for a possible rehabilitation in about 6 months' time. If I was

opposed to continuing the proceedings then she would seek for a final care order based on the care plan being modified to set out a plan of rehabilitation on the same basis. The **Guardian** commenced the final hearing urging me to reject the plan for placement in **X** and instead asked me to encourage the applicant to modify its care plan to provide for a plan for adoption. The applicant conceded that if I were minded to reject their placement plan then they would in such circumstances ~ and subject to further judicial review ~ likely amend their plan accordingly. They would then need to issue a placement application. However, prior to giving her evidence I was updated that the **Guardian** was now supporting the proposal made by **M**.

4. In considering this case I have had regard to the documents contained within the final hearing bundle; to the live evidence of the witnesses who appeared before me¹, and; to the written and oral submissions of counsel for each of the parties (the father playing no role in the final hearing). Within this judgment I will focus on certain key aspects of the evidence and will set out how I have resolved the relevant disputes and balanced the relevant evidence and arguments. I do not intend to consider every piece of evidence or indeed resolve every matter in dispute within this judgment. I will however continue to have in mind all the evidence placed before me.

Realistic Options

5. The realistic options are:
 - (i) The placement with aunt and uncle in **X**. Throughout this judgment I will refer to this placement by reference to **RM** although this is at all times shorthand for placement with the uncle and aunt.
 - (ii) Adjournment of the proceedings to permit further work to be undertaken by **M**
 - (iii) The making of a final care order with a plan for rehabilitation to **M** as per the works identified above

¹ SW; RM; JS; HC; CH; MGM; BM; FA; M, and; Guardian

- (iv) The making of a final care order with encouragement to the applicant to pursue a revised care plan of adoption
6. Only options (i) and (ii) are actively argued before me. Neither **M** nor the **Guardian** support (iii) for reasons which will be set out below, and the applicant candidly indicates it is most unlikely to accede to a request to reconsider a final care plan with such a plan of rehabilitation. Equally (iv) is not before me as an application, however I have noted that both the **Guardian** and the applicant accept that it would be their fall-back plan (in different circumstances) were their primary argument to be rejected. Given the dynamic of the debate and the way the case has been presented to me I consider I need to engage with all options to fairly and properly explain my conclusions.

Legal Principles

7. **O's** welfare is my paramount consideration. I will continue to bear that in mind throughout this judgment. Given the nature of the formal application this falls to be assessed pursuant to section 1(3) Children Act 1989, however given the nature of the international placement² and having regard to the presence of adoption arguments within the evidence I will also have regard to **O's** welfare throughout his life and to section 1(4) Adoption and Children Act 2002.
8. To make a public law order I must be satisfied **O** was suffering or was likely to suffer significant harm at the date at which the proceedings were initiated and that such harm was attributable to the care being given to him or likely to be given to him (if an order was not made) not being that which a reasonable parent would be expected to give to him: section 31(2) Children Act 1989.
9. In this case it is agreed the legal threshold is crossed and that I can make public law orders. The agreed threshold is found at [A47]. I am satisfied the applicant has made out the threshold test and I accept the threshold as agreed.
10. However, the making of a public law order additionally requires a separate qualitative assessment of the evidence and a balancing exercise consistent with legal principles. It should not be assumed the Court will make a public law order just because the legal threshold has been crossed nor should it be assumed a

² See observations of Peter Jackson LJ in A (A Child) [2018] EWCA Civ 2240 at §17

final care order will follow. In part this is because the threshold is found proven at the initiation stage and matters may have moved on. Secondly, intervention must be subject to a proportionality evaluation and the Court must ask whether the order is not only proportionate but also reasonable, necessary and lawful. It may not be a proportionate intervention to make such an order. In reaching my conclusions I must give proper regard to the family's right to respect for their private family life: Article 8. The Court must also have acceptance of a range of parenting styles and must take care not to engage in social engineering³.

11. Where there are disputes as to fact ('what has happened' as opposed to 'what should happen') it will be for the person alleging something has happened to prove it did happen. They will do so by establishing the issue on the evidence and on the balance of probability ('more likely than not'). The party against whom the allegation is made does not have to prove or disprove anything. In considering an individual's evidence the Court should have regard to the *Lucas* direction: that an individual who has been shown to lie on one matter remains worthy of belief on separate matters and should not be disbelieved simply because of the other finding. The Court should approach the issue understanding that individuals may lie for a range of reasons and that context is important.
12. When considering options, I should have regard to the realistic options. These should be considered in a holistic rather than a linear fashion with the respective positives and negatives of each option being identified before being balanced against each other.
13. A placement application further engages the principle that it should only be approved where 'nothing else will do'; that parental consent if not given can only be dispensed with if the welfare of the child 'requires it', and; as noted above, having regard to the welfare of the child throughout his life.
14. The advocates have additionally referred me to several authorities⁴. I bear these all-in mind.

³ See *Re L (Care: Threshold Criteria)* [2007] 1 FLR 1050 per Hedley J at §50-51 (although strictly speaking this is an authority on the question of establishing threshold)

⁴ *F (A Child)(Placement Order: Proportionality)* [2018] EWCA Civ 2761; *P (A Child)* [2018] EWCA Civ 1483; *A (A Child)* supra; *S (A Child)* [2014] EWCC B44 (Fam); *Re B (A Child)* [2013] UKSC 33; *Re B-S* [2013] EWCA Civ

15. In F the question faced by the Court was whether to make a final order including placement or adjourn the matter for three months to allow the mother an opportunity to ‘receive further help and show evidence of change’. In a decision which, it appears to me, is fact specific, the Court of Appeal found gaps in the trial judge’s proportionality assessment and his failure to accede to a relatively brief period of adjournment.
16. In P the Court was equally faced by a choice between placement or a 6-month adjournment in a case in which the mother was an alcoholic but in which there was uncontroverted evidence of her being abstinent for 13 months, having developed some insight into her condition, and; having ‘done all that could have been asked of her’. In a judgment in which, on my reading, the Court considered that the history had been given too much weight when contrasted with the progress made, the Court determined an adjournment should have been granted to see if the ‘green shoots’ could lead to the working relationship and the trust viewed as essential. The Court felt there was a purpose served by such an adjournment as explained at §56 – 60 of the judgment.
17. There is a separate line of authorities dealing with the approach to be taken to expert evidence. In summary the authorities recognise the need to give due respect to expert evidence; to bear in mind that learning can develop and that all is not necessarily known; that it is for the Court to make the ultimate decision, and; that a Court disagreeing with an expert should set out in clear terms why it disagrees with the expert (and should normally ensure the expert has the opportunity to comment on the point if has not been addressed by one of the parties). Of course, an expert is only an expert in their own field and must be careful not to pass outside the province of their own expertise.
18. In considering the impression I have formed of each witness I bear in mind the cautionary guidance of Leggatt LJ. in *Sri Lanka v The Secretary of State for the Home Department* [2018] EWCA Civ 1391 at 41:

No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to

1146; *Plymouth CC v G (Children)* [2010] EWHC Civ 1271; *Re G (A Child)* [2013] EWCA Civ 965; *Re HA (A Child)* [2013] EWHC 3634; *Re W (A Child) v Neath Port Talbot County Borough Council* [2013] EWCA Civ 1227

attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.

Background Details

19. **M** is a 42-year old woman. She was adopted as a child and this continues to be a source of emotional disturbance. The evidence suggests she has had difficult inter-personal relationships for most of her life and is socially isolated. An account of her relationship with her parents is found within the parenting assessment at [E182]. Whilst I accept this may include matters which **M** disputes and which were not tested at final hearing it does seem safe to conclude that **M** has been troubled in her relationship with her parents describing herself as being placed ‘*in the wrong family*’ and referring to them as ‘*the [parent’s surname]*’. The parents suggests a medical diagnosis of diabetes had a significant impact on **M**’s emotional wellbeing at age 13. She became emotionally challenging screaming and causing disturbance.
20. The summarised medical records [E334] indicate an ‘adjustment reaction’ at age 13; depression at age 18 and non-dependent alcohol use at age 20. **BM** [E326] reports **M** seeing a child psychotherapist in 1995 and being an in-patient at a Norgate Clinic in 1996, during which time she was refusing her insulin and there were periods when she was absent without leave.
21. The parenting assessment [E182] suggests **M** did not return to her family on leaving the clinic. It would seem the estrangement in the family continued for many years until after **O** was born. It would seem these were not easy times for **M** and by reference to the medical records and to **BM** it would appear **M**

suffered recurrent depressive disorder in 2007, 2012, 2013, 2014, and 2017. In 2008 she was reported to have alcoholism and chronic anxiety for periods in 2012, 2016 and 2018. She has completed 4-years of group therapy between 2004-08 and two years between 2012-14 during which period she was said to have made considerable progress.

22. The medical records further record 1998: drinking 7 cans of Strongbow every evening; 2008: misuse of drugs/cannabis; 2008: alcoholism drinking three bottles of wine every day and some vodka; 2014: drinking 100 units per week; 2014: pregnant drinking 50 units per week.
23. She was seen by the Tavistock Clinic in 2014 and a likely diagnosis of Emotionally Unstable Personality Disorder was made. When faced by emotionally challenging situations **M** was unable to contain her anger. I have seen a report from the clinician who worked with her at the Clinic [G11]. The work commenced with **M** being concerned as to the possible impact on the baby of her alcohol consumption during the early stages of the pregnancy. Post-birth she is referred to being 'besotted' with **O**. Following the birth of **O** there was a reconciliation with family who '*apparently welcomed her warmly*' [G13: 3.6], however '*being in their presence inflamed old wounds and soon in spite of their support...[M's] heightened sensitivity to them and their shared past began to cement a level of seemingly impassable toxicity*'. By early 2018 **M** was not coping and referrals were made to the applicant. It was noted that **M** is not easily tolerant if she feels misunderstood or unfairly mistreated. In February 2018 she reported she was not coping, she was shouting at **O** and needed a break. She was vehemently opposed to asking her parents for help and there was no-one else to turn to. She felt she was in a situation like that where a parent is not listened to and kills the child. The applicant acted on this concern.
24. It is difficult to get a clear sense of the relationship between **M** and **F** but it appears to have had limited depth and was of a fragile quality. It seems the relationship was relatively short lived and there were multiple disagreements and continuing tension in the relationship. Ultimately **F** returned to **X** in 2016.
25. The **SW** evidence paints a concerning picture around the time of intervention in 2018. By this time **O's** attendance at nursery had become sporadic and the nursery was concerned about his behaviour and **M's** presentation. **O** was only

attending when brought by his aunt and **M** was struggling to cope. By February 2018 concerns increased as **M** was reported as saying she was ‘*shouting at O for ordinary behaviours that he displayed and she was expressing her frustration by throwing things around the home*’. The social workers were concerned by **M** ‘*shouting, swearing and appearing about to lash out...*’. It was agreed **O** would be accommodated but **M** refused for the grandparents to look after **O**. There was a difficult situation when the social workers attended the house in company with the maternal grandmother.

26. The proceedings commenced on 23 March 2018 and so have now passed their first anniversary. I refer to section B of the bundle for the relevant case management steps. I have also had regard to the social work chronology at [C6-8]; [C57-64], and; [C95-106].

Discussion

27. My intention is to identify the key issues in the case and set out my observations on the same in the light of the evidence received.

M’s difficulties

28. The summary that follows is taken from the agreed expert evidence save where identified.
29. **M** has longstanding drink and drug (cannabis) issues dating back to her late teens. Her history suggests sustained periods of high level excessive alcohol consumption with periods of abstinence [see E334]. I agree with **FA** (and therefore disagree with **M**) in his conclusion as to **M** having an alcoholic dependency inconsistent with a healthy relationship with alcohol. The evidence of the medical detoxification in 2000; longstanding issues of abuse at a high level, and ‘yo-yo’ behaviour between excess consumption and periods of abstinence support such a conclusion. I find **M** demonstrated limited insight into her alcohol consumption when seeing **FA** in July 2018 (at a time when she was clearly binge drinking at around twice the recommended weekly levels over two days):

I drink occasionally, and I don't drink very much...like to drink less, but I'm on a journey and I enjoy it. It's not a problem, and it's natural progression that I will cut down' [E124-5]

I am troubled by **M's** insight at the final hearing and her belief that she can drink safely as a matter of choice. I note this remained her position despite engagement with the Westminster Drug Project over the last 6-months and despite the clear evidence of **FA** (heard by her on the previous day).

30. I accept **M** has abstained from both drink and drugs since at least October 2018. This is confirmed by a combination of hair strand testing; WDP testing and **M's** stated position (which I accept as unchallenged). I accept the evidence of **FA** that **M** should abstain from alcohol as a pre-requisite of therapy and that continued usage during such therapy will likely dampen the efficacy of the same. In making this finding I accept **BM** felt it would be sufficient for **M** to reduce usage to a manageable level however in accepting **FA's** evidence I consider there is no practically manageable level and that any use is effectively a slippery slope to relapse. In this regard I prefer **FA's** evidence.
31. I acknowledge the consensus of the professionals meeting was of a need to reconsider matters in the event of evidence of positive engagement with alcohol/drugs services. As such I particularly bear in mind the live expert evidence as to the positive demonstrated abstinence as set out above. **FA** observed such abstinence is indicative of insight into these difficulties and indicates a motivation to address the same but must be seen in the context of the long-term difficulties and of past engagement followed by relapse. I accept **FA's** evidence that given the history **M** is at heightened risk of relapse (**M's** historical journey supports this opinion). **JS** confirmed this was a 'marker of **M's** ability and willingness to do things differently'. **BM** considered engagement with WDP was positive and was a very positive starting point but just that "a start".
32. Turning to mental health difficulties **M** has longstanding difficulties including recurrent anxiety and depression and which should be viewed as an ongoing issue of a chronic nature rather than isolated relapses. These are worsened by alcohol and cannabis use. Further she is likely to exhibit with symptoms of an

emotionally unstable personality disorder (EUPD)⁵ and would benefit from Dialectical Behaviour Therapy (DBT). DBT is specifically designed to treat such disorders (**BM**) and works through group and individual treatments over a long-term period typically being a year. Such work can commence immediately as long as substance use is under control.

33. **M's** history suggests her ability to engage and work with services is dependent on her mood and motivation. An effort should be made to develop a trusting relationship, her ability to change is variable and whilst she has a capacity to make positive change this is reliant on her ability to seek and utilise support, to accept concerns and develop trust with individuals (**BM**) [E327: §3.3]. The appearance was that the period in which **M** was '*managing*' was a blip with the problematic position appearing closer to the status quo (**JS**) [E352]. **M** had been given ample opportunity to engage and it seemed she found it easier to engage with professionals addressing her needs rather than those relating to **O** (**JS**) [E344].
34. As to timescales and prognosis. 'Relapse to low mood and anxiety symptoms is more likely than not. Her prognosis in addressing her psychological difficulties and substance misuse is poor having regard to the entrenched nature of the mental health difficulties; continued difficulties despite long-term intervention; additional usage of substances; very limited insight; poor engagement' (**FA**) [E336]. 'Given the long-standing nature of the disorder likely to be a relapsing disorder with almost certainly periods of relapse' (**JS**) [E353]. 'The picture isn't that optimistic given the history for sustained change but given her intelligence and previous engagement [I] would not be totally dismissive of her chances of improving in the future...[T]imescales are a minimum of a year to see sustained change against a range of markers' (**BM**) [E354]. 'If positive outcome likely to be very gradual and incremental with a year being the minimum of expectation and that with the prerequisites of insight and motivation. It is going to be a very difficult course' (**FA**) [E355]. 'Talking about months or years of treatment' (**JS**) [E353].

⁵ Changeable emotional state including low mood and hostility together with a fragile sense of identity, and pattern of problematic relationships and self-defeating behaviours, poor managed emotional states, negative relationships and limited coping strategies when under stress [E57: **BM**]

35. The experts were wary as to expressing views as to prospects of success of DBT. **FA** agreed DBT was a recognised treatment and had been shown to be effective. With sustained engagement the evidence suggests a positive outcome. Whilst there is always hope for engagement and recovery, in this case at a theoretical level **M** has poorer prognostic indicators (*longstanding difficulty / comorbid alcohol difficulties / only recent insight and engagement / require commitment to a difficult therapy process with a temptation to dampen emotions using alcohol*). **FA** accepted the prognosis had improved but only time would tell and **M** is in the initial stages of recovery. **BM** felt it was very hard to evaluate the prospects of successfully engaging and sustaining change. The positives included evidence of some engagement and the recognition of the need for work and **M** having the intelligence to apply the work. The negatives included the inconsistency of engagement in the past and the longstanding nature of the difficulties with related difficulty in making change. It would take a lot to make changes but it is possible. I understood **JS** to defer to the adult clinicians but she did comment that things ‘were not as bleak as they were at first’, that ‘she had more confidence/less concerns in **M** than other parents she had worked with’.
36. The experts agreed **M** could not care for **O** whilst initially undertaking the work. **JS** in her live evidence expressed the view that ‘**O** would want professionals to ensure that the option of his mother had been explored completely’ and that a period/delay of 6 months for a positive outcome would be proportionate but if this were unsuccessful this would be a very negative period. She told me ‘it was worth waiting if there was a high chance of success within a reasonable timescale’. When questioned on behalf of **M** she stated one ‘would want to see markers of change within 6 months with a period of 12-18 months for return to her care’. **BM** agreed one could review the progress of any DBT programme after about 6 months which should give some indication as to how **M** ‘was doing’. When questioned by the local authority he made clear the work might at that stage be continuing at an intense and emotionally destabilising level ruling out return at that point.
37. As to the availability of DBT: I accept the evidence of **M** and **MGM** that there is private family support to fund this work and that work could commence immediately (which I take to be within the month allowing for an initial meeting and scheduling etc). I am troubled this feature was only confirmed during the

hearing despite (a) being told (and I accept) by **MGM** that the family had indicated they would pay for the same if they were shown documentary evidence that it would assist, and (b) there being documentary evidence as long ago as June 2018 confirming the benefit of the same [see **BM**'s first report]. On reflection there is no reason why the final hearing should not have proceeded with **M** being beyond 6 months of DBT. That she is not is deeply disappointing and in my judgment, can only be laid at **M**'s door.

***O**'s needs and timescales*

38. This issue engaged **JS** and the **SW** although there was relevant evidence from **M**, **MGM** and **CH**.
39. I was left with the very clear understanding that **O** is suffering at an emotional level as a result of his continued care status. This is notwithstanding a good level and quality of contact with both **M** and the maternal grandparents, and a good quality of care with the current foster carers. It is clear a combination of his separation from his mother and a series of moves in care (with three foster placements) have led to unsettled and behavioural issues on his part. The consensus was that such behaviour could be viewed as a positive as it was permitting **O** to vent his emotions. But it was clear from **JS** that his status in limbo is highly damaging for **O**. The evidence of the **SW** was that **O** could not afford to wait longer. At the professionals meeting **JS** observed:

*My bottom line is, very sadly. I don't think **O** can wait to see whether his mum can recover and meet his needs. I think her difficulties are so longstanding what's ahead of her is going to be such a task I think. I think we're talking about months/years of treatment and **O** is not yet four....I don't think he can wait to see whether his mum can engage and benefit in the long-term from such treatment' [E353]*

In her live evidence **JS** made clear she was less pessimistic than she had been in December but ultimately was of the view the appropriate recommendation was not for return to **M** (indeed she continued to support adoption). Having said this, she gave evidence as noted above as to it being consistent with **O**'s needs for there to be a 6-month delay if this led to a positive outcome with a plan of

return over 12-18 months. As I set out below I found these points difficult to reconcile.

40. As to the nature and extent of the impact on **O** I found the evidence at times inconsistent and somewhat contradictory. Both **JS** and the **Guardian** appeared to ‘talk up’ the level of impact on **O** as to be such as to require a specific form of long term care (single child placement) and to be inconsistent with an international placement in part due to the availability of specialist services in such jurisdiction. Yet ultimately **JS** when questioned did not demur from her assessment of **O** as being a ‘normal boy’ without any inherent problems and exhibiting behaviour flowing from his environmental circumstances. She told me the issues had just become more apparent; she was not recommending a specific intervention at this time rather she felt he should be flagged as a child showing signs of significant emotional difficulty. She did not suggest he needed anything other than good enough parenting so long as the carer was ‘attuned to his needs’. In this context she felt a move to an adoptive placement (albeit with a hope for an open arrangement as to contact) would be within his capacity for change. There was support as to his behavioural difficulties from **CH** who spoke of **O** acting out and having to be managed in a smaller group due to his behaviour (including serious incidents when he had scratched a carer).
41. Against this was the evidence of both **M** and **MGM** who spoke in terms of **O** being an intelligent and engaging child with some difficulties likely to arise out of his very unsettled year since being removed from his mother. The evidence of **MGM** was I felt warm and engaging. It was clear to me she loves **O** very much indeed (as does her husband) and she painted a moving picture of an interested and charming little boy who has a sense of his local community and a sense of his place in the world. Both **M** and **MGM** showed me cards made for them by **O**. If I may say they showed a beautiful little boy who seemed full of life. It was clear to me he is loved by all who know him and it was clear these were treasured mementos. Having listened to her evidence and to the surrounding evidence in relation to contact with **M** and as to the care of the foster carers it seemed quite clear that with settled and attuned care **O** has been able to exhibit normal behaviour patterns. There was also the evidence of the **SW** who has had considerable experience of **O** and whilst recognising the impact of the last year upon him viewed **O** as having needs but his principal

needs being for ‘stability and a feeling of confidence that he has a forever home’, his big anxiety is as to who will be his carer/mummy.

42. Ultimately, I struggled with the evidence which appeared to cast **O** as having special needs or a requirement beyond that of a need for a settled period of consistent and reliable care and with clarity as to his future. I found the evidence to the contrary contradictory and to an extent somewhat self-serving. I couldn’t reconcile the suggestion of a child with needs counter to family placement in **X** with one who would have his needs met by a stranger placement. Whilst I can imagine an argument could be developed in such regard I could not find within the evidence a critical analysis which recognised that adoption would face at least the same challenges as a kinship placement with **RM** or why those who advocated the same could not see the obvious contradiction. I was left with the uneasy feeling that opposition to international placement was impacting on the assessment of the child’s needs rather than the other way around. In her evidence I understood the **Guardian** to have a generalised opposition to international placement and this experienced professional told me she had never supported such a placement. Secondly, I was left questioning the underlying analysis which focused on **O**’s welfare being detrimentally impacted whilst in limbo but at the same time advocated for a plan which might leave him in that position for up to 18 further months. The more impressive evidence (**SW**) suggested to me that **O** is a child who has suffered harm; he is likely to evidence some behavioural issues in respect of any future placement (whatever its form), but he has the capacity to come to terms with the same so long as his carers are focused and want the best for him and are willing to accept him as they find him working to give him the stability and confidence that will permit him to settle. In such circumstances (as per the current foster carers) my finding is he will likely settle given the opportunity.
43. I am equally unimpressed by the notion that he requires a placement permitting one-to-one care as a requirement. I recognise the same would have benefits for **O** but he is approaching schooling age and will need to begin the process of establishing links outside of his primary care group. On my assessment of the evidence, whilst he has to date received significant one-to-one care this is not a prerequisite of his future care (indeed there is in the evidence a level of criticism where such one-to-one care has not been altogether positive). Frankly, I have

drawn little assistance from the difficulties which confronted **O** when in his second placement (in which there were two other children). My sense of the evidence is that there were extraneous factors which impacted on this placement beyond the number of children.

44. A further point relates to **O's** perceived needs in relation to his social environment. Both **M** and **MGM** expressed concern that a move to **X** would be so alien to **O** as to be contrary to his welfare. They spoke of his experiences including the sights and smells of North London. He was described as a 'North London Boy' who has a keen sense of his 'milieu'. I can empathise with the family in this regard, but I bear in mind their strong opposition to **O** leaving the jurisdiction and I was left with the very clear impression that their evidence in this regard was influenced by their wishes for his future placement and most particularly the sense that a geographically proximate placement might increase the prospects of contact. I was however somewhat surprised when both **JS** and the **Guardian** lent themselves to the same argument. In my judgment **JS** travelled far outside of her area of expertise in seeking to carry out a comparative analysis of life in North London against **X**. That she relied upon conversations with her mechanic and references to works of fiction which she had read is perhaps sufficient to make the point. The reality is that **O** is a 4-year old boy who akin with all other children of that age will have a social environment which is somewhat bounded and in which he experiences his life. **O** is not exceptional or unique in such regard although his specific 'milieu' will be unique to him. But I consider he has the capacity to transplant to an unfamiliar environment so long as his essential care needs are being met. Of course, many children experience such change without harm being suffered. The point appeared to be lost on both **JS** and the **Guardian** that in supporting adoption they had been advancing a proposition which would likely have a significant impact of the very same nature (albeit different to **X**). That this was not at least recognised concerned me. Again, it left me concerned as to a level of unconscious bias against one of the options before the Court.
45. As to timescales: I have already noted the apparent contradictions in the evidence between the harm of continued limbo against the potential for a further significant period in care whilst matters are progressed. In fairness to **JS** she commenced her evidence by suggesting a 6-month period could be supported if

it led to a positive outcome. All parties agree it would be inappropriate to give **O** any sense of expectation of a return home and so further delay would run the risk of further aggravating **O's** unsettled experience. The **SW** reported evidence from the current foster-carers as to concern that **O** is developing an attachment to them and a concern that he needs permanence sooner rather than later. On the evidence available to me I am bound to conclude that further delay is likely to be harmful to **O** as there is a limit to what he can be told (lest his expectations are improperly raised). Whilst I accept there is the prospect of his placement continuing this cannot be guaranteed. For me the question is not as to whether this further period would be harmful (it will be) but rather how it balances reflecting on the harm that may arise from an alternative outcome and factoring in the potential positives were the delay purposeful in the sense that it led to a positive rehabilitation into **M's** care.

M's insight

46. The expert evidence points to insight as being an aspect of the positive prognostic indicators. I agree with counsel for **M** that one should not expect or indeed demand full insight at this time and one should have regard to the fact that the process of therapy is in part hoped to increase insight. Nonetheless I consider it is relevant to consider what the evidence tells me as to the likely level of insight of **M** at this time given the experts referral to the same.
47. I accept the evidence of **FA** that engagement with WDP is suggestive of developed insight as to **M's** difficulties with alcohol and drugs. In addition, it is helpful and indicative of insight that **M** has demonstrated engagement with 'the Network'. To an extent peer related dialogue may further assist with insight. I also have regard to the evidence given by **M** in which she could articulate a good understanding of the issues in the case and the requirements facing her to safely care for **O**. Sadly, I was left with the sense of a gap between her ability to articulate the point and her ability to apply the understanding.
48. I have regard to the following:
 - I have concern as to the lack of insight in respect of alcohol dependency. It is concerning **M** considers she can drink or not drink as a matter of choice. In contrast I accept she likely has a dependency and that there is

a real risk of relapse if she were not to abstain. I have very little evidence of a period in her life when she has in fact had a healthy relationship with alcohol. The evidence is either of abstaining or drinking to excess. The concern of the expert (**FA**) is that therapy will have painful elements and there will be a strong pull towards using alcohol as a soothing agent with likely harmful consequences. The reality is the lack of insight in this regard significantly elevates the prospects of relapse.

- I have concern relating to the failure to pursue DBT despite this being signalled for several months and funding being in principle available. It is quite clear this was being advocated by **BM** more than 9 months ago. It is equally clear the paternal grandparents were open to funding. Yet when speaking to the **Guardian** [§37 of report] **M** was critical of the failure of the professionals to provide her with such therapy. Putting to one side the suggestion from the Tavistock Clinic of a referral previously being refused by **M** this still leaves me concerned as to **M's** real commitment to such work and/or her willingness to permit her difficulties with her parents to compromise her need for engagement. In this regard she has continued to prioritise her own needs over those of **O**.
- I have concern as to the very late level of engagement with the **SW**. I accept her evidence of **M** only engaging with her in a productive manner in recent times. **BM** made clear any review would need to have regard to progress in repeat of capacity to work with the social work team. At this time the evidence of such capacity is very limited and the history shows that this is a particular area in which **M** has struggled, with her being more able to work with those focused on her needs rather than those concerned with the impact upon **O**. I did form the opinion **M** has a more open approach to consideration of her psyche whereas she finds it very difficult to accept limitations with respect to her care of **O**.
- Further in evidence **M** maintained the position that her crisis was limited to the three-day period surrounding **O's** removal and told the **Guardian** that the local authority was wrong to bring her to Court. This suggests a signal lack of insight in respect of the difficulties she was facing and was

in contrast to the evidence she has heard from each of the experts. It is plain **M's** issues are longstanding and **O** has simply entered this situation.

- I bear in mind **M** indicated acceptance of the need for **O** to remain in foster care pending therapeutic intervention and that the experts accepted this might suggest positive evidence with respect to insight. However, as **JS** commented *"I am left with a massive sense of frustration that the progress made was not made much earlier...always conscious of parents making progress towards a deadline"* (live evidence). I also bear in mind **M** told the **Guardian** as late as 27 February 2019 that the experts had 'based their views on the wrong assumptions' when it was pointed out to her that they all agreed it would be harmful for **O** to be returned to her care. This raises a question as to whether the purported insight is genuine or rather articulated for tactical purposes.

Ultimately, I accept it may be difficult to accurately place **M** on a line between no insight (0) and total insight (10) (despite my request to the **Guardian** to do just that) but one can have a sense of where insight sits. I both disagree with the local authority in suggesting no insight (0) and the **Guardian** who suggested insight beyond the mid-point (and as I understood her evidence close to 7 on such a scale). My assessment is that insight is at the foothills level and if required I would assess it towards the middle of the lower half of the range. I disagree with the **Guardian** as I found her assessment lacked any real critical analysis and seemed to simply accept what **M** said at face value. When questioned by counsel for the applicant she was unable to evidence the basis upon which she felt insight had been demonstrated. As I have already noted such assessment flew in the face of the evidence.

Placement in X

49. This was a subject of real controversy at the hearing. Both the **Guardian** and **JS** being of the strong view it would be better for **O** to be adopted than placed with his paternal family in **X**. Legally this meant each determined that **X** was not just a secondary option but was so poor that the legal test for adoption ('that nothing else would do') could be made out when compared with such a placement. Both **M** and **MGM** lent their voice to the opposition to placement

in **X** with the paternal aunt (**RM**) and uncle. My sense was that each favoured adoption (albeit on the basis that an open adoption would be available) over placement in **X**. In contrast the local authority (**SW**); **F** and **ISW** either supported or assessed the proposed placement as being one which could meet **O**'s welfare needs.

50. I have already expressed criticism of the quality of evidence touching upon whether **O**'s environmental needs are contrary to placement in **X** [§35]. I do not intend to repeat these points save to note that I am not persuaded this is the case.
51. But the fact that **X** is not contrary to **O**'s welfare does not mean placement with **RM** (and her husband) is consistent with his welfare or that if it is it should be favoured over the other available options for **O**. I will return to the second question in my welfare assessment, however for the time being I will set out my findings with respect to the proposed kinship placement.
52. It is relevant to note at outset that all parties have spoken of **RM** and her family in positive terms [for example see **Guardian** at §101]. They are acknowledged as a 'nice' family and there is no suggestion they have anything other than a motivation for **O**'s best interests. In her own evidence **RM** made clear she was putting herself forward not as a challenge to **M** but to provide an opportunity for **O** in circumstances in which the alternative was adoption. I was left with no doubt this is a genuinely motivated family who are committed to **O** if he cannot be cared for by his maternal family. My strong sense is that this flows from a familial sense of responsibility and interest in achieving the best for him.
53. There are some consequences that naturally flow from this observation as follows:
 - I accept the family will keep to their commitment to ensure **O** can maintain a relationship with his maternal family. This would include Skype calls and regular (3 times per year) visits to the UK. In reaching this conclusion I bear in mind the family already travel to UK and have family here; that they have a sound financial basis to enable the same; that they put their case as being in the first instance secondary to the mother's case; that there is a good quality relationship existing between

a paternal aunt of **O's** which is likely to reinforce the commitment, and; that this was the clear unchallenged evidence of **RM**.

- I accept the family would follow through on any work or therapy required to assist **O**. I will return to the question of availability of such resource below but I find the family have the financial resources to access such resources if available; they have the commitment to **O** to ensure it is pursued and a sufficiently child focused approach to parenting to make this more likely than not.
54. It is important when considering the family to pay respect to the fact that there is a thorough **ISW** assessment available to the Court. In my judgment this is the primary source of information available for assessing the family. I bear in mind the other professionals in the case have not met with **RM** or her family. It is also appropriate to note that the author of the report (**ISW**) is very familiar with country **X** and it was clear to me she could speak with authority as to the resources available to the family and circumstances touching on the family. Subject to successful challenge this is therefore a significant piece of evidence.
55. In considering the evidence of both **RM** and **ISW** I was faced by a somewhat challenging video link. In circumstances similar to that referred to by Peter Jackson LJ. in Re A (§13) I am careful to ensure the hearing remains fair despite this difficulty. In seeking to overcome this issue the Court mixed the use of 'WhatsApp' video messaging with that of the Court video link. In the case of the **ISW** this had a material impact in the improvement in the quality of her evidence. My assessment was that she dealt with all points put in a fair and professional manner. She was clear in her evidence and gave me the sense of an experienced and balanced witness. Having heard her evidence I was left in little doubt I could rely on her report as a robust assessment.
56. **RM** came across as a relatively simple witness giving straightforward evidence as to her wish to provide a home for her nephew. The most significant criticism that could be made of her was that she exhibited a level of naivety as her ability to address concerning behaviour by the application of a 'loving approach'. I will return to this point. However, whilst her evidence was interrupted by technological difficulties and was far from perfect I did not form the sense that when combined with the assessment and the other available evidence I had any

essential misunderstanding of the type of mother she was and the family she was hoping to introduce **O** into. In forming this view, I bear in mind that if **RM** had impressed as a skilled and proficient witness this would ultimately tell me very little about her ability to care for **O**. The reality as in the case of many parents seeking to care for a child before the Court is that the presentation in Court is helpful to ascertain facts but must be considered alongside available assessments if one wants to form a robust assessment of capacity to provide good enough care for the child. A parent may well be able to provide acceptable care for a child whether or not they provide a virtuoso performance before the Court. The task for the family court is to consider the broad canvas of evidence in evaluating what is best for the child.

57. It is therefore helpful, indeed necessary, to look at the criticisms / concerns arising in this regard. The appropriate source in this regard is the **Guardian's** analysis [§99-103] in which she provides a comprehensive overview and notes the following points upon which I then comment. I note **JS** approved this section (*"I think [the **Guardian**] has summarised the problems succinctly and in a balanced way"*) and spoke in terms of the challenges of such a placement being 'colossal' [E342] and having a '95% chance of breakdown or limping on...':

- ***Change of culture:*** I agree with the **Guardian** that a move to **X** would be a massive change for **O**. I have though covered this point above in respect of the cultural/geographical change and I am not particularly impressed by the point [§35] and particularly not as a ground for severing family life altogether by way of adoption, which I remind myself remained the position of **JS** and the **Guardian** (up to the point of giving evidence). However it is a point which needs to be borne in mind. **JS** gave helpful evidence as to the type of work that could be done with **O** to prepare him for such a move were this to be the Order of the Court.
- ***Absence of monitoring / support post placement:*** These are fair points. Once placed **O** would become habitually resident in **X** and as such any application would have to be made within that jurisdiction. I appreciate **X** is not a signatory to the Hague Convention and this is a further feature. However, at one point it appeared it was being argued the placement

suffered from losing the ability to in some way recover **X** if things were not working well. In that regard **X** would be no different to any other international placement (Hague or otherwise). I agree the child protection structures are substantially less in **X** than in this jurisdiction (or indeed many other countries to which the Court may consider international placement). This acts a cautionary point when considering the balance of potential harm were placement to be at risk of breakdown. I also agree support is limited to that sought by the family by telephone. This is not a case in which the family seek financial support.

These points are all worthy of consideration. In circumstances in which there were a lack of confidence as to the robustness of the placement then the points might act as a tipping point argument against the placement. In contrast if the placement is judged robust then it seems to me I should be cautious not to be overly influenced by factors that would only come into play were my assessment to be proved incorrect.

- ***Absence of checks:*** As I understand matters the medical checks are now available and no issues have been raised. Likewise, whilst I did not see the police checks I understand they were on their way and again no issue has been raised. My sense of the assessment was that it suggested no warning signs to cause me to have doubts as to the capacity of the family to safely care for **O**. Finally, a point as to educational checks was satisfactorily dealt with within the evidence.
- ***Sharing the affections of the carer / awareness he has a different relationship to his carer than the other children in the home:*** I have considered the argument as to a need for a one-to-one carer and rejected the requirement for the same. Having heard the evidence, it was clear to me there is actually a high level of female adult involvement in the household (**RM**, her mother and a close friend). My sense was of a culturally appropriate matrifocal care style which all the children are thoroughly accustomed to. I felt this was in fact a significant balance to the argument made by the **Guardian** as it suggested **RM** would in fact have considerable time for **O** and that his presence would not be as divisive as she feared. Ultimately, I am not as impressed by this

perceived need as are the **Guardian** or **JS**. I accept **O** will appreciate his relationship with his carers is different to that of his cousins. This seems to me a generic point impacting on many SG placements and might equally impact on any adoptive placement. The balance would be that **O** would know this is his family and if it were approved, that this was to be his home. I keep the point in mind but I am not persuaded it carries as much weight as suggested.

- ***Impact on O and likelihood of ‘not fitting in’, ‘becoming sad and depressed’ and ‘developing emotional / mental health problems’:*** I should immediately note **JS** concluded **O** did not have an underlying difficulty and that issues (such as they were) were environmental in character. As such I put to one side the **Guardian’s** concerns as to inherited difficulties. But the balance of the concern justify consideration. This is at the heart of the assessment. Can this family make a stable and loving home for **O** in which he can find a place such that he is emotionally settled and comforted notwithstanding the knowledge that he is not with **M**? If they cannot (despite their best efforts) then **O’s** emotional security will be at risk and the concerns expressed by the **Guardian** may materialise. Added to this **O** will be far from ‘home’ and one would wonder what would then happen?

In approaching this question, I bear in mind the evidence from **MGM** which suggested **O** has a very strong sense of family and evidence that he retains a sense of **F** despite there being limited contact. I also bear in mind the evidence of the **SW** that **O** is focused on wanting to know who will be his mummy. It seems clear he is looking to have a home and whilst I accept he would likely want this to be with **M** I do not reject the notion that he has beyond this a residual wish for a home and a settled family even if not with **M**. This being the case I consider this is a significant factor when assessing his prospects of settling.

- ***Lack of understanding of O’s needs:*** Again, this is a respectable point and bears consideration. It does however have to be considered in the light of my assessment set out above. Having heard the evidence, it is clear **RM** does not ‘accept’ there is a current need for therapeutic

intervention. The suggestion was that **RM** was failing to appreciate **O's** needs and thus placing him at risk. The difficulty with this line of argument is that **JS** was clear that at this time intervention is not required, rather one needs to take a watching brief and to be aware of the potential need for some work to be undertaken. Having heard the evidence I consider it unfair to level this charge against **RM** and it is far from sound ground on which to criticise her potential care. What is more important is her likely response to a change in circumstance under which **O** evidences a need for therapy. Will **RM** acknowledge the same and will she act upon the need and seek out support?

I am persuaded she will. The evidence is clear that this family are financially secure, funding private education and it seems to me likely sitting in a relatively privileged position within their society. This is confirmed by the **ISW** who is well placed to inform the Court in such regard. In my assessment **RM** has a good grasp of **O's** current needs and her reference to applying a loving home as a solution if things become difficult is not indicative of a naive approach. Rather this simple language is indicative of the real world attuned parenting a Court can expect from skilled and loving parents.

I also consider the arguments touching upon the availability of therapeutic resources in **X** were such resources required. In this regard **JS** told me a colleague of hers deriving from **X** had raised concern as to the limited nature of therapeutic resources available in that jurisdiction. Whilst I consider this evidence was more valuable than that relating to **X** generally (see above) it must remain somewhat limited for two reasons: (a) because in principle it is generic and falls to have regard to the specifics of the family in question, and; (b) because I have specific evidence from the **ISW** who has carried out investigations and commented on the availability of CAHMS services within the capital city (which on the evidence was within a reasonable travelling distance). I am bound to prefer the evidence of the individual commissioned to report than the general observations of a professional who did not attend the hearing and is unlikely to know anything about the circumstances of the relevant family. It may be that such resources are difficult to obtain

in **X** for the average populace but not for those with greater access to both funds and contacts.

- ***Level of bond/attachment to O:*** The concern is of a limited relationship between **O** and **RM** and her family. The impact of this factors through in many ways but derives from there being only a limited number of occasions on which there has been contact with **O**. In evidence it was suggested there had been up to about 10 contacts although **M** suggested it was less than this. It was further suggested **M** had obstructed such contact, which was again denied. I heard evidence from **MGM** as to a perceived low level of interest shown by **RM** at contact whilst she was engaged with her young child. The suggestion of a mutual level of attachment/bond was challenged as being unlikely on the available evidence.

It seems to me there must be a relatively low level of attachment passing between **O** and **RM** in that direction. His age and limited direct contact is bound to influence this consideration. It is clear this relationship is significantly less relevant than that with the maternal family or indeed with the paternal aunt residing in the country.

But this does not mean there is an equally limited level of attachment in the opposite direction. **RM** has demonstrated a real commitment to **O** both at an emotional and practical level. She has travelled to this jurisdiction for contact and permitted her family to be assessed. She is (without financial assistance) offering her home and her family as a future for **O**. There is no suggestion this is other than genuinely motivated. It seems to be clear she is committed to **O** and has a bond to him arising out of their blood connection. In my judgment this commitment should not be understated.

As will often be the case with a proposed international placement the relationship will have nothing of the substance that one would expect from an individual ever present in the life of the child. For a 4-year old it will often be the case that family connections are limited but this is not an insurmountable problem where commitment is genuine and likely care positive.

I also bear in mind a point noted above. It is clear from the evidence that **O** has a heightened sense of family. In my judgment this is not limited to his maternal family and has the potential to assist in building an attachment were he to be placed in **X**.

56. Having assessed all the evidence, I have found no sound basis for substantially criticising the potential of the placement in **X**. I accept the kinship assessment as a robust piece of work and have formed the view that **RM** and her family have the skills, commitment and motivation to meet the needs of **O**. I accept such a placement would come with challenges in respect of **O** settling and that there may be a need for professional assistance but I find this family are both able and willing to pursue such work as is necessary to ensure success.
57. This does not mean I prefer this option over all others but it is a reasonable signal as to how it compares when balanced against a plan for adoption.
58. Before leaving this point I feel I must comment on the evidence of **JS** as to there being a 95% prospect of breakdown. I found this evidence concerning. Whilst **JS** had expressed (in the written papers) a balanced opposition to such a placement in the context of all options being problematic there was nothing to suggest such a level of concern. In my assessment such a judgment is akin to almost certainty and I would have expected this to be trailed in the written evidence. I have been left deeply concerned as to the evidential basis for this conclusion. Whilst I accept the concerns expressed as to such a placement there are many obviously positive features which mean such an assessment is difficult to accept. That it arose as it did left me with the feeling that it was expressed to bolster a point of view in circumstances in which the expert was struggling to make a case for the position she had become an advocate for. I simply do not accept this evidence and the frankly have reached the conclusion that the expressed level of confidence undermines the evidence of the expert rather than reinforcing her opinion.

Welfare Assessment (1): Checklist

59. Wishes and feelings: I bear in mind **O** is a child of 4 years of age and as such has only the most limited comprehension of all that is happening to him. Given

his age it would not be appropriate to ascribe to him wishes and feelings based on a mature assessment of the issues before me.

60. That being said the evidence suggests he has an essential wish to return to **M's** care. This is an understandable emotion on his part and it should not be lost that there are positives in the relationship between **M** and **O**. There is no doubt **M** loves **O** very much indeed nor is there doubt that she has provided him, for large parts of time, with a good level of parenting. As such there will be within **O's** bank of memories much to draw on which will inspire his wish to return home. He of course knows who his 'mummy' is and the evidence suggests there is a demand on his part to resume family life.
61. It is also quite clear **O** has a sense of his wider family and they appear to have importance to him. The evidence is clear **O** has enjoyed considerable time with his maternal grandparents. Whilst there may be a debate as to whether this has been all weekends in recent times, it is clear it has been for the majority of such weekends. His grandparents dote on **O** and provide him with a good level of care, love and stimulation. They are an intelligent family who are well placed to make his time with them enjoyable and there is nothing in the evidence to suggest **O's** experiences are anything other than enjoyable whilst with them. This is also bound to impact on **O** wishes.
62. I accept the evidence of the **SW** which echoes the views of the foster carers that **O** is wanting to have clarity as to his future carer. This is a further aspect of his wishes and feelings. I accept the evidence of **MGM** and I think other witnesses of **O** as a child with a real sense of family extending to his paternal relatives. Although I heard relatively little on the subject he appears to have a significant relationship with his aunt in the UK and has maintained video messaging contact with his family in **X** and retains a sense of his father despite their limited physical contact.
63. The evidence leads me to conclude there is a very real positive for **O** of being able to retain his family connections. The loss of the same (or indeed their substantial curtailment) is likely to have a real and significant impact on **O**. For the avoidance of doubt if there is an available option which permits the continuation of primary care in his maternal family within **O's** timescales then this would be a strong preference but failing this the options should focus on

alternative family placements particularly where they can maintain identity on both sides of the family. In my judgment an adoptive process would pose very real problems for a young boy with his sense of identity and wishes and feelings. I do not consider open adoption with contact likely set at perhaps 1-2 occasions per year would come close to meeting **O's** wishes and feelings.

64. Needs: The evidence has impressed me with a sense of a boy who is intelligent and articulate and is showing all the signs of educational promise. It is very important for **O** that this potential is nourished and promoted. On the evidence before me I am confident both families in the UK and **X** place a high value on education and could enable **O** to achieve to his potential.
65. Having seen **M** and **MGM** and having read the statement of the maternal grandfather it is clear these are individuals who are intelligent and have a focus on education. Within the evidence there is support for the suggestion of a fund being created to enable **O** to receive private education. Whilst I do not consider this to be a necessity it is an indicator of the value placed on education. Despite her difficulties **M** is plainly an intelligent woman who could articulate her case in clear terms. Whilst my view on **RM** (and her family) must be more limited it is clear to me that they also place emphasis on education.
66. I consider **O** to have the normal emotional requirements of all children. This is for consistent and predictable care of a good enough quality. I do not consider **O** requires a higher level of parenting but I do accept he needs attuned parenting. The concern in this case is that whilst **O** has for significant periods received such parenting he has also too often received unpredictable parenting in circumstances in which **M** has exhibited dysregulated emotions. During such periods **M** has not been able to make **O** her priority and his needs have been secondary to her own needs and have been lost in the moment. This has been emotionally damaging for **O** at a significant level and all parties agree he cannot be returned to **M** until she has made progress towards a position in which she can avoid such inconsistent care. An example (but only an example) of such behaviour is the occasion on which the grandparents attended the home and had to remove **O** at the time of his birthday with **M** shouting that he did not deserve a birthday.

67. If **O** were to return to **M's** care prematurely and prior to her having made appropriate changes in her presentation then there is a high likelihood that he will suffer the fallout from her relapse into problematic behaviour. This is likely to be associated with a breakdown of the family placement and (on the current circumstances) a return into care. This would be a disaster for **O** given the uncertainty that has reigned in the last year and the undoubted impact this has had upon **O**. It is imperative in my judgment that any return to **M** is in circumstances in which there is a sufficient level of confidence as to continued positive presentation on **M's** part. The timing of return will require a confident assessment that **M** has gained both the understanding and coping skills to ensure **O's** welfare is not placed in jeopardy.
68. On the evidence before me it seems the earliest time for such a return would be after 6 months of therapy. Allowing for the work to start and allowing for there to be a robust assessment of the prevailing circumstances at the conclusion of this period I question whether return could be commenced much earlier than 7-8 months (i.e. November/December 2019). The evidence indicates it is impossible to predict with confidence as to return at that time. It is possible engagement will be lacking or partial with a negative review. But it seems that even in the case of appropriate engagement there remains a real chance **M** will not be ready to take on **O's** care at that point. The evidence did not suggest any likelihood of being prepared to care for **O** at 6 months but rather this would be a milestone point at which one could assess **M's** progress. I therefore consider one must be at the optimistic end of the spectrum to expect or assume a return to **M** in the course of this year. More realistic is there being good indicators of progress suggesting the planning of a transitioned return to **M** (if at all) over the second 6 months of the work (i.e. by about April 2020).
69. This does pose a real problem when reflecting on **O's** emotional needs as this puts off providing any sense of clarity to **O** to a point at which he has been in foster care for more than 2 years. I agree it would be inappropriate to raise his hopes as to return to his mother and whilst he can be spoken to as to why he is not returning home at this time it will be very difficult to give him the sense for the future that he evidently craves. As such I consider it is likely his emotions will continue to suffer and it must be likely his behaviour patterns will continue. What worries me is that a point may come when repair becomes more difficult

without therapy and in circumstances where such behaviours become entrenched.

70. I accept that to a degree continuing contact with **M** and **MGM** (and to an extent with the paternal family) will be a militating factor when considering the risks set out above. However, it cannot be ignored the same contact brings centre place the very issue which is troubling **O** ~ namely a relationship without clarity. A further complication that cannot be ignored is as to the potential for issues to arise out of therapy impacting on **M** and thus on contact. The evidence is that therapy will be challenging (this is partly why rehabilitation cannot be contemplated now) and this will be exacerbated in circumstances in which **M** cannot self-medicate and sooth the emotional pain by use of alcohol or cannabis. This leaves the obvious dilemma around contact with **M** whilst she is passing through a difficult journey.
71. In contrast I have accepted the essential assessment of **RM** as positive and capable. This placement has the potential to provide **O** with clarity and a sense of permanence in a safe and secure setting. However, it is not lost on me that there will be undoubted emotional impact both in causing a substantial change in living arrangements and in have a significant restriction on maternal family contact. So, there is once again a balance to be drawn and the assessment of the balancing point is far from easy. Such a placement will also come with some delay however I appreciate **O** could in such circumstances have explained to him the planning in place. Furthermore, steps could be taken as per the advice of **JS** as to informing **O** as to his future placement.
72. I acknowledge an adoptive future has the potential to meet **O's** needs by providing both a sense of certainty and it would be hoped permanence on placement. However, it would come with a likely period of delay of at least 6 months (and possibly more if a range of restricting features were added to the appropriate profile ~ to include cultural features / a single placement and an open approach to contact) and this together with the reduction of familial contact and the knowledge of a stranger family would likely have an unsettling impact on **O**.
73. It seems to me reasonably clear all the options have the essential capacity to meet **O's** physical needs (in the case of **M** further to successful therapy).

74. Change in circumstances: The evidence tells me a change in circumstances is required. For reasons which I will set out below it would not be appropriate to make a final care order with a plan for anything other than short/medium term foster care (i.e. planned rehabilitation to **M**). So, **O** will either transition to his paternal family within the relative short term (next 3 months) or to an adoptive placement (6 months +) or to **M** (or either of the other options if **M** does not make the hoped-for progress) at about the 7-12-month point.
75. The adoptive approach amounts to a significant change in circumstance for **O** severing his family life in the most profound way and is justifiable only if nothing else will do. As I have noted above it would require work for **O** to be prepared and even then, I sense it would be a very bumpy ride. I am of the opinion this option becomes a harder proposition if delayed. I struggle to see the prospects of such a course of action if **M** fails in her progress. One would then be considering adoption in all likelihood in around 1 years' time with at least 6 months for placement. I reach this conclusion because I judge this could only be contemplated at about the end of this year. I consider it would be a controversial plan and would require evidence, possibly some expert evidence (as to the therapeutic process) and a final hearing. This process would take at least 3 months and would bring one to the anniversary of this judgment (or thereabouts). If approved the timetable for placement would be at least 6 months taking one to the end of 2020. I must observe the gravest reservations for **O** under such a timetable in which he would have been in care for 3 years of his short life and would be approaching 6 years of age.
76. The kinship outcome would also be a significant change in circumstance. Whilst I have rejected some of the evidence opposing an international placement I do accept it amounts to a profound change in bringing new carers in addition to a very different living environment. This would be a lot for **O** to come to terms with and would require care. I consider the process would be assisted by the familial connection and the opportunity and benefits this brings. It may also be the international aspect at some level interests or excites **O** in such a way as to make him receptive to the plan. I appreciate this is likely to be a short-term factor but it may assist to a degree. But as I have observed above it would have to cope with **O**'s loss of contact with his maternal family and with his foster

carers. On balance it does not have the extent of the difficulties associated with adoption but it has issues nonetheless.

77. The change in circumstances associated with **M** is complicated by the fact that it would in the initial period require no change. On balance the evidence (see the **Guardian**) was that the foster carers remain open to caring for **O**. Still there would be periods of disruption as respite care is required when the carers are away (I was told there are two planned trips in the foreseeable future). But this is not a positive one-way street given my observations of the lack of future planning that would be available whilst **M** engages in work with an uncertain outcome. The substantial change would then come in the likely transition period some 7-9 months out when, assuming progress has been made, **O** begins a slow transition back into the care of **M**. I consider one would need to approach this plan with care as it would create likely anxiety for both **O** and **M** and there is the potential for breakdown or at least difficulty. **O** may be challenging in his behaviour if he is feeling anxiety or concern as to what this will hold for him. I consider this process is also one that has the potential to be problematic and unpredictable.
78. Personal characteristics: **O** is a 4-year old boy who has spent a quarter of his life in care. He has an important ethnic mix which bears consideration. His paternal family are black African from **X** and this whilst this ethnic/cultural dimension has taken second place to his other identity issues it remains very important. Having seen photographs of **O** his cultural background is obvious and will over time become increasingly apparent to **O**. The other side of the equation is his cultural heritage deriving from his maternal family who are culturally and ethnically of the **Z** faith. This is also very important for **O** notwithstanding **M** was adopted into the family and has expressed some ambivalence towards this ethnicity. Still it is clear to me the maternal links are important and for the family their ethnicity is central. His geographical association with this jurisdiction has in many ways placed a focus on the maternal connections however I consider his mother's ambivalence and his obvious black ethnicity means each is of equal relevance to **O**.
79. The upshot of this is the continuing importance to **O** of being able to maintain a link with both sides of his family. On the evidence I have heard I have an

acceptable level of confidence that this will be not only possible but likely whether **O** is placed with **M** or **RM**. Placed with **M** he is likely to be continue to see his Aunt in this country and will have the opportunity to have a sense of his father and family in **X**. If he is placed with **RM** I am satisfied there is likely to be both video messaging and direct contact during visits to this jurisdiction.

80. Risk of harm: There is an agreed threshold in this case which I accept and which evidences **O** has suffered significant harm arising out of the care given to him by **M**. I accept this harm was not intentional in nature but rather a consequence of the difficulties which **M** faces. Pending resolution of these issues it is likely that **M** would continue to face such harm were he returned to her care. This would be an unacceptable outcome for **O**. Whilst I have identified an impact on **O** of kinship placement or adoption I do not consider this equates to the harm identified above.
81. Capacity of the parents: I have set out my conclusions with respect to **RM** and her family above. I accept the positive assessment undertaken by the **ISW**. It is clear these adults have demonstrated a high level of parenting to their own children who are described in positive terms. There is frankly nothing to raise concern as to their parenting capacity.
82. The position with respect to **M** is mixed. There is a general acceptance of periods of good care. **O's** presentation suggests he must have received good care during his life and this undoubtedly includes the role played by his mother. However, there have been periods highlighted by these proceedings during which **M** has not been able to meet **O's** needs to an acceptable level.
83. The relationship which the child has with relatives...the likelihood of such relationship continuing and the value to the child of its doing so...the ability and willingness of any of the child's relatives...to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs...the wishes and feelings of any of the child's relatives...regarding the child: I have commented above as to the relevance of the maternal family. There has been an opportunity within these proceedings to consider whether there are placement options within the maternal family. For reasons which I will not detail such options have not materialised. The reality is that the options are limited to **M** and **RM**. However, I acknowledge the value to **O** of his

relationship with both **MGM** and her husband and beyond that the maternal uncle. Having heard from **MGM** it is clear there is a strong wish for **O** to be cared for by his mother or failing that in this jurisdiction even if that means adoption (albeit this is based on open adoption).

84. Range of Orders: The realistic options have been set out at the start of this judgment. There is an issue as to whether, if I agree with **M**, this should be pursuant to an interim or final care order. Having heard the submissions I am reluctantly persuaded that the better approach would be that of an interim order were I so persuaded. I consider this to be the more appropriate of the two as it would leave the Guardian engaged and because this is not a case with a plan of transition back to **M** now. The future is so unclear under such an alternative that it would be unwise to make a final rather than an interim order. However, I repeat this if I adopt the position taken on behalf of **M**.

Welfare Assessment (2): Balancing Exercise

85. I can draw the following strands from the analysis above in respect of each option:

Interim Care Plan with view to rehabilitation (Effective adjournment)

Positives

- It would enable **O** to be raised by **M** and in doing so would be consistent with his wishes
- It would amount to the lowest level of interference and would maintain close family life and I accept this is the best outcome for **O** if it is consistent with **O**'s timescales
- It would be the smallest 'change' for **O** in circumstances in which some change is inevitable
- On the basis of success, it would permit **O** the opportunity to see his mother changed and capable to meet his needs. This has an obvious emotional benefit

- It would not require the complication of profound displacement including the need to settle into a 'new family'
- It would maintain O's association with his culture and with his social environment
- It would permit a closer level of professional oversight to monitor and safeguard the situation – in doing so it would give comfort whether the need for intervention was required
- It would likely permit the availability of supportive resources: e.g. CAHMS and the like if needed
- It would not amount to the legal severance occasioned by adoption

Negatives:

- The fact of adjournment will cause delay whether the process is successful or not. As set out above this delay is likely to be significant and during such period the ultimate outcome will remain unknown. It is likely O will suffer ongoing emotional harm as a result and the evidence suggests this will have behavioural impact. I have commented above as to a concern as to behaviour becoming entrenched
- Plainly if the delay did not bear fruit then this would be highly damaging in delaying the obtaining of any sense of permanence for O and potentially closing off options. It may mean he remains in care for another year. Delay may mean kinship options become more difficult. I have no evidence to suggest the placement in X has any time limit on it (as to commencement) but delay leading to behavioural deterioration may become a factor impacting on the prospects of placement
- There is on the evidence an argument that the likelihood of a positive outcome is less than likely and as such the wholly negative potentials of delay are likely to arise
- There is a risk of O continuing to be subject to inconsistent and harmful parenting with serious consequences for his development and behaviour.

Aligned to this must be the risk of there being future breakdowns and a return to care again with serious implications for **O**.

- Without a change in engagement with those concerned for **O** there is a risk of **M**'s isolation and consequent risk for **O**.

In setting out this balance I have reflected on the **SW** balance [C111] although I bear in mind that assessment presupposed an immediate return home rather than a possible return home pursuant to an adjournment. I observe the **Guardian** did not set out a balancing exercise for this option.

Placement with **RM** (which is a shorthand for placement with **RM** and her husband)

Positives:

- On my assessment this family are well placed to provide reliable and consistent care to an appropriate standard
- The placement can provide much needed permanence and is available without meaningful delay
- The placement provides an opportunity to meet **O**'s identity needs on his paternal side
- The placement will in my judgment permit continuing contact with the maternal family and in doing so will also permit for **O**'s maternal family identity needs
- The placement has the internal resources to ensure support (therapy etc) is available if needed and on my assessment, is likely to be willing to seek direct support from the social work team if the same is required
- The placement is a kinship/family placement with the emotional benefits this brings. It would allow a closer relationship with **F**
- The family have shown commitment to **O**
- The placement does not suffer from the difficulties which confront **M** and which lie at the heart of this case

Negatives:

- The placement would require a significant severance of the relationship between **O** and **M** and family. This would not be total but it would be significant and would be apparent as such to **O**. This is likely to have a damaging impact on **O**.
- The placement would amount to a significant cultural change for **O** in relation to a move to **X**
- The placement is with a family unit in respect of which **O** has only a limited experience
- There is no evidence to suggest **RM** has specific experience of dealing with a child with significant behavioural needs and so her actual capacity in such regard must be predicted rather than based on fact
- The placement is a profound change and one must accept once decided it will not be capable of reconsideration. On any move **O's** habitual residence would change and the welfare decision making would be subject to his locality. This is a legitimate concern

I bear in mind the balancing exercise undertaken by the **SW** [C109-110] and the **Guardian** [§102-103]. It can be seen I have spent some time on these aspects at §47 above.

Long term foster care

I do not consider this to be a realistic option in the case of **O**. It is with respect the worst of all worlds in failing to provide permanency or a settled future whilst making plain **O's** separation from family. There are well known differences between foster care and options providing permanence (see Re V per Black LJ ~ albeit when considering adoption). **O's** welfare requires permanence whether with **M**, family or another family and will not be secured by a life in foster care. I do not intend these comments to have any further implications for the rehabilitation process considered above. I am comforted in my conclusions by the fact that no party actively advocates for this as an option.

Adoption:

I remain cognisant of the fact this is not an actual option advocated by any party. But I reflect upon it as it informs my assessment of the evidence I have received and is the fall-back proposed by both the local authority and the **Guardian** were I to disagree with their principal argument.

Positives:

- This plan would provide permanence for **O**
- I accept an ultimately matched family would not pose the challenges for **O** that are faced when cared for by **M** pending any change
- Such a placement would likely offer **O** the opportunity of help and assistance should the same be required
- Such a placement would likely be well placed to manage any behaviour issues although I have commented as to my conclusions in such regard being less concerning than felt by the **Guardian/JS**
- Such a placement would be considered with care to meet **O's** needs and it may be this offers a place as a single child (although I consider this is not a need) and ongoing contact (although this cannot be guaranteed)
- Such a placement would in general maintain the basic social environment familiar to **O** albeit with some distinguishing features

Negatives:

- This option would sever family identity which is a profound interference with **O's** family life. Although I cannot be clear I sense **O** may consequently lose real inheritance rights in such circumstance
- I consider it most likely the option would limit or terminate familial contact. Recent authority confirms the restrictions on a Court imposing contact on would be adopters and I must have regard to the likely limiting impact on any pool of prospective adopters were contact a suggested pre-requisite. There is a real likelihood such placement would permit indirect contact

alone by way of letter-box contact. However, even if there were direct contact this would ultimately amount to contact at a likely level of perhaps twice per annum. I question the net effect on **O** of such occasional contact, giving him but glimpses of his family which he has left behind. I question the likely impact of the same on his behaviour and the permanency of the placement arising out of such behaviour. My judgment is that this would be a problematic situation

- I consider the placement will face challenges in attempting to replicate **O's** complex identity and heritage. My concern is this will amount to such a challenge that it will not be possible to meet this challenge.
- I bear in mind adoption is not a panacea and such placements can fail. In considering this issue I have regard to **O's** sense of his family; his age and his sense of identity. I bear in mind his understanding of his place in the world in relation to those around him. These features pose a challenge for any placement.
- The placement would be with strangers and this will remain the case whatever the timetable for transition into such placement

I bear in mind the observations of both the **SW** and the **Guardian** in this regard.

Conclusions

88. I am quite clear adoption is not the appropriate outcome for **O**. I have reached this conclusion as I do not share the concerns expressed by either **JS** or the **Guardian** (who I sensed was particularly influenced by **JS's** reasoning in reaching her own conclusions) as to the placement of **O** in **X** with **RM**. I found the opinion in such regard unconvincing and unsupported by the evidence. I remain troubled by the inherent contradictions when comparing the kinship placement against adoption and the failure to properly consider that many of the issues around placement in **X** are if anything magnified in the case of adoption.
89. In contrast I have reached a positive overall view in respect of placement with **RM** and family. I accept there are balancing features and the position is not without counter arguments but I do find it is a placement in which **O** will receive emotional warm and reliable care at a good enough level. In contrast to adoption

it has a significant advantage in permitting family life and a continuing relationship for **O** with **M** and the maternal family. Whilst I acknowledge the negatives I consider the balance rests plainly in favour of **RM** and against adoption when the two are compared. This is not a case in which ‘nothing else will do’.

90. The far more important balance is between the option proposed by **M** and the placement with **RM**. This is the real choice before me and it is the one deserving of the closest consideration.
91. I make it clear that **M** is the option of choice if placement with her can be assessed as likely to meet **O**’s needs within his timescales. If it cannot meet his needs or will take a period longer than is consistent with his timescales then it fails by comparison to **RM**. It is noteworthy this is the position taken by **RM** in putting her family forward as a default to avoid adoption / family severance if **M** cannot care for **O**.
92. The following points have influenced my decision:
 - Any delay is likely to be negative for **O** and the longer the delay the more concerned I should be. I am not assessing these options at month 3 or 6 of a Court timetable but rather at the anniversary of the application. **O**’s experience in care is already far too long and the evidence suggests he has suffered and is suffering as a result.
 - I do not have a satisfactory level of confidence as to prognosis to impose further delay on **O**. I accept the evidence of **JS** that a successful outcome after 6 months would be within **O**’s timescales. Were the evidence supportive of a finding that **O** would be likely to return into **M**’s care by October 2019 then despite the delay to date I would be open to a further delay. In that circumstances the balance would still be in favour of **M** having regard to the significant and enduring impact on **O** of an international move. My assessment is that for **O** such a point is the limits of the acceptable delay. The evidence I have does not support such an optimistic conclusion but rather indicates I may have a better understanding of how **M** is progressing after 6 months, and even then it is surrounded by clinical evidence indicating a likelihood of relapse;

slow and incremental progress, and; a series of poor prognostic indicators having regard to the entrenched history.

- In considering this point I do not accept the evidence of **JS** which appeared to extend the acceptable period for return to 12-18 months. I do not accept this as being consistent with **O's** welfare/timescales. This is far too long and particularly so given the impact delay was already having on **O**. I simply could not reconcile this line of reasoning with the ultimate conclusion reached by **JS** that **O's** welfare demanded family severance. In my assessment these points are mutually exclusive.
- The evidence of **FA** and **BM** provided a level of confidence as to a clearer picture at about 6 months but no confidence as to what that picture would look like. Rather, my assessment of the evidence was that there were a series of crucial factors that made the predictive assessment pessimistic in nature. In addition to this I bring into account my conclusions as to insight which somewhat impact on the positive features and some of the evidence (e.g. **M's** evidence as to an ability to have a healthy relationship with drink) which I consider would have likely troubled rather than comforted the expert.
- I consider the argument made on behalf of **M** took a series of factors and strained them to find a positive solution for **M**. The first point made was by reference to the evidence that **M** was the preferred option were this possible (which I accept in principle). Secondly, it was argued I could not reach a conclusion as to the prospects of success of a period of purposeful delay being unlikely in the absence of clear expert opinion to such effect. Therefore, it was suggested I must permit the adjournment to give an opportunity to see whether the period of delay would confirm a positive outcome. I have struggled with this approach. I consider I am obliged to carry out an assessment balancing the evidence as to prospects of success against the evidence of harm linked to delay, in conjunction with all the other features noted in this judgment. I am bound to consider the point reached in the proceedings and the opportunity that has been available to **M** and the use she has made of this opportunity. I am bound to reflect on the long history and the balance of recent engagement with

professionals against longstanding difficulties, relapse and continued issues with engagement with other professionals. I cannot ignore the evidence that only in the course of the hearing was the availability of private DBT confirmed despite this being a central factor. I cannot ignore **M's** acceptance of the expert opinion was only expressed just prior to final hearing. I am obliged to evaluate these factors whether or not the experts can provide a clear answer on the question of prognosis.

- At this point in the proceedings, and with great sadness, I do not consider **O's** welfare is consistent with what is an experimental delay to see what progress can be made. Whilst the positives are not set at zero they are insufficient to counter-balance the negative features that will arise out of the delay and particularly so in the absence of anything like sufficient confidence to justify such a further delay in decision making.

93. Ultimately **M's** position must be understood as being an application for adjournment at a point beyond week 52 of the proceedings rather than an argument for placement into her care. The problem is that **M** has failed within the period provided to use the opportunity to make her case and has failed to utilise the options open to her. Whilst she has made some progress in other important areas the progress is limited. At the date of final hearing there aren't sufficient grounds for confidence as to a positive prospect associated with adjournment, at best one can conclude a clearer picture will be known at week 78 with a possible plan thereafter over the months ahead. This falls far short of a justification for adjournment and does not meet the test of necessity required to further extend the proceedings. Most importantly it is inconsistent with **O's** needs.
94. The conclusion I have reached is that the alternative plan of placement with **RM** is the only option consistent with **O's** welfare and as such I approve this care plan. I have explained in clear terms why I disagree with the **Guardian** as to her assessment.
95. I consider this outcome is proportionate in seeking to maintain family life and interfere at the lowest level required to safeguard **O's** needs. Any lesser form of interference would require delay without confidence as to outcome and with a high likelihood of continuing emotional harm to **O**. The outcome is reasonable

having regard to the welfare analysis and is necessary as **O** requires permanence and stability in his life as a matter of priority. It is lawful.

96. I have reflected on the authorities relied upon by **M** and I have particularly considered the application of the principles in both **F** and **P** to this case. I consider this case is materially different to the situation in **F** (see in particular para 23). This is a case in which there were real concerns when **O** was last in the care of his mother and it is agreed by all that pending change it would be unsafe for him to return into her care. In contrast to **F** this mother does have significant mental health issues and I have accepted the clinical judgment as to alcohol dependency. Turning to **P** I consider the factual matrix was very different with markedly different timelines. The parental progress in that case was significant whereas in this case the important DBT has not yet commenced. Whilst it would be unhelpful to consider there is laid down any time based tipping point this case is closer in my judgment to the alternative situation referenced by the Court in para 57 (being up to 18 months and not yet commenced) rather than that in **P** where the timeline was a further 6 months and there was professional optimism as to outcome.
97. I appreciate there will now be a need for transition planning to include:
- The obtaining of travel documentation
 - A process of transition contact. I appreciate the timetable may need to be extended or modified having regard to the features of the case
 - Medication re certain illnesses prevalent in **X**
 - A formal application to a section 9 Judge for permission to permanently remove from the jurisdiction.
98. I will hand this judgment down as intended on 2 April 2019 at the West London Family Court as previously informed. I appreciate this judgment has been slightly delayed and so whilst I would welcome any corrections or requests for clarification received by 4pm on 1 April 2019 I will consider any submissions in such regard at the hearing itself.

His Honour Judge Willans