



Case No: ZC20C00633

**IN THE HIGH COURT OF JUSTICE**

**FAMILY DIVISION**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 17/03/2021

**Before:**

**MR JUSTICE WILLIAMS**

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**Between:**

The Applicant is the Local Authority

**Applicant**

**- and -**

The first respondent mother is RR,

**Respondent**

The second respondent father is AA,

The third respondent child KK through his Children's Guardian

The child is separately represented by Ms Barbara Hecht, Solicitor

Mr Richard Harris (instructed by Borough Solicitors) for the Applicant Local Authority

Ms Trisan Hyatt (instructed by Universe Solicitors Ltd) for the First Respondent

Mr Andrew Lorie (instructed by Morrison Spowart Solicitors) the Second Respondent

Ms Barbara Hecht (Solicitor)(instructed by Hecht Montgomery Solicitors) the Child

Mr Gary Crawley(instructed by Creighton & Partners Solicitors) The Children's Guardian

Hearing dates: 1 March 2021

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE WILLIAMS

## Williams J

1. I am concerned with a young man KK who will be 16 on 14 July 2021. He is the subject of an application by the Local Authority for a care order issued on 20 October 2020 and also the subject of applications by his mother RR and father AA for child arrangements orders; this tranche of litigation between them dating back to 5 July 2018 when the mother issued an application for the extension of prohibited steps and family assistance orders which had been made on 3 October 2017 and later an application made on 12 September 2018 for enforcement of the October 2017 child arrangements order.
2. The road that has led to this hearing has been long and winding indeed. What appeared to me initially to be the starting point was the separation of the parents on 13 December 2016 when the father and the two boys left the family home following the father reporting the mother to the police for pulling KK's arm. Since then, the father and the two boys have lived together sharing father's cousin's accommodation whilst the mother has remained in the family home. The principal reason the matter has been before the courts has been the mother's attempts to secure an ongoing relationship with her two sons although in the course of 2019/20 that was overlaid with more general concerns about KK's well-being and which led to local authority involvement. KK's elder brother BB. BB reached the age of 18 in 2018 and so has receded in prominence in these proceedings although has plainly remained a significant force in KK's life. It seems that since the boys left the family home in December 2016, they have broadly been hostile to the idea of spending any time with their mother. BB in particular has expressed himself in trenchant terms. KK himself has also said he does not want to spend any time with his mother and has referred to incidents which he says made him fearful of her. When he has seen her those observing have noted that he appeared to enjoy spending time with her.
3. However, as the case before me progressed it began to emerge that perhaps the starting point predated December 2016 by a very long while indeed. When the mother gave evidence, she said that her marriage had never been happy that she and the father had not shared a bedroom since BB's birth and that the father had no redeeming qualities. Even giving due allowance for the possible impact on the mother of her unadjudicated allegations of domestic abuse and the inevitable frustration and distress she feels at the loss of her relationship with her two sons this seemed an unusual and bleak portrayal of the marriage and family life that they shared for 16 odd years. The father himself painted a rather happier picture of family life although seem to accept the parties had been separated but living together since 2014 and struggled to say anything positive about the mother and it seems clear that the rejection by the boys of their mother since they were 16 and 11 probably reflects a chronic issue within the household rather than an acute event or period in the household in 2016.
4. I find myself expressing myself in tentative terms because the nature of the hearing that was set up and which has taken place before me has been of very limited ambit arising out of the most recent history of this sad case.

5. The October 2017 order was made in proceedings between the parents which dated back to 2016 when the mother issued applications for a child arrangements order, a prohibited steps order and a specific issue order following the departure of the father and the boys from the family home. Rather unusually on the facts as they then presented themselves it provided that the children were to live with both the father and the mother but acknowledged that the children were not then spending much time with the mother, still less staying overnight with her and were saying they wanted no contact. No application was made by the father for orders under the Family Law Act which would have allowed he and the boys to resume occupation of the home and the mother's own application for a non-molestation order and occupation order was compromised by undertakings given by the father. Although a fact-finding had been listed at one stage it had never taken place and so the children's allegations against the mother and the mother's allegations against the father were never adjudicated upon. In July 2017 the Cafcass report noted:

*a number of cross allegations were made by the parties with M stating she experienced domestic abuse in the form of controlling and coercive behaviour from the father and F raising concerns about the mother's mental health and allegations she had physically and emotionally abused the children on 12 December 2016 and at other times.*

6. In a 2017 BB perceived his mother as being responsible for their situation for what he saw as domestic violence against KK. He had a very polarised narrative in relation to his parents and was refusing to see his mother then. In 2017 KK appeared to believe that all his experiences in life had been negative including his mother and his schooling. He was only positive about his father and brother. He did not wish to spend any time with his mother because he said he was fearful of her. The Cafcass officer thought both KK and BB offered their views without prompting and appeared initially justifiable but on examination the incidents appeared to have developed a greater level of significance than appeared warranted. She thought their views were influenced by their awareness of the conflict and alignment with the father. However, she also noted that if they were true, they indicated occasions where her parenting had proved inadequate and may have been frightening for the children. She noted that:

*the children have been consistent in expressing a negative opinion of arrangements [in relation to contact with the mother] ..... These proceedings have also resulted in the children being compelled to spend time with their mother against their expressed wishes. It appears from the comments during the contact sessions that this has resulted in their views becoming more entrenched and increasing feelings of powerlessness and anger. Arguably, however, it is the ongoing nature of the parents opposing views and acrimony that is having the biggest impact on them. They witnessed high levels of parental acrimony over an extended period of time including prior to their parents separation. The negative impact ..... of prolonged and entrenched parental hostility is well documented. This in some ways explains the children's negative attitude towards having a relationship with their mother. The rejection of a parent by children is an effective coping strategy when faced with enduring conflict..... These children do not appear to be resilient. A quick and robust conclusion to these proceedings will limit the impact for the children. Although allegations in respect of both parents remain unresolved there is no independent evidence to suggest any significant safeguarding concerns..... Whilst F is complying with the court order by making the children available to spend time with M in my view, he appears unable to emotionally give his*

*permission for the children to have a relationship with their mother. This clearly represents a significant limitation in his parenting skills which has implications for BB and KK's psychological development if it continues long term..... He would benefit from further support and education I have considered whether an order for the children to return to live with their mother, even by way of the bridging placement with a family member may assist however I would be concerned as to how such a transition could be achieved effectively given the children's current level of resistance. I would propose therapeutic intervention is the most likely means to assist BB and KK in re-establishing a meaningful relationship with their mother.*

Reference was made to CAMHS and the Anna Freud Centre possibly being able to assist. An FAO for 12 months was recommended.

7. With the benefit of hindsight, the making of an order without a fact finding has undoubtedly been a limitation. The order made in October 2017 was thus clearly made more in hope than expectation.
8. That hope proved futile and very limited progress in the restoration of any sort of relationship between the boys and the mother was achieved and thus the mother issued her applications to continue the prohibition on the removal of the children from the jurisdiction, for an extension of the family assistance order and to enforce the child arrangements order. Thereafter the case progressed achingly slowly. After extensive case management and investigation both through the local authority and through part 25 experts at a DRA on 27 April 2020 the mother's applications were listed for a 4-day final hearing on 28 September 2020. By the time of the DRA, the psychologist had reported and based on a conclusion that KK was alienated from the mother as a consequence of the father's attitudes she recommended a transfer of residence of KK from the father to the mother and the local authority who had been involved with the family had acknowledged that the section 31 threshold was met in respect of KK and they intended to instigate pre-proceedings procedures under the public law outline.
9. However, by the time the final hearing came on, the local authority had not progressed the public law dimension save that by 25 September they now intended to issue care proceedings and would be seeking an interim care order and removal of KK from the father. By this time KK had been diagnosed with ASD, he had not had contact with his mother for some 10 months, his school attendance was below 50%, he had physical health issues linked to IBS and obesity and there were aspects of his psychological presentation causing concern; high anxiety, anger, frustration and poor social relations. The communication of that decision occurred immediately prior to the commencement of the final hearing before HHJ George. However, although the local authority indicated they intended to seek an interim care order and to remove KK from the father's care they did not propose that he should move straight to his mother; not surprisingly given his hostility to her. They proposed he be placed in a bridging placement but had not identified any bridging placement.
10. At the final hearing HHJ George heard evidence from the author of the expert report, Dr Rogers, Ms Serrette, the independent social worker who had provided parenting assessments in relation to the father and mother and from Ms Alamutu the social worker. It had emerged from the various reports filed that the existence of the factual dispute as to the mother's treatment of the boys prior to the separation in December 2016 needed to be determined in order to provide a clear factual foundation for the

evaluation of the alienation issue. I am not sure why it crystallised so late in the day given that the boys objections to contact had been based on their allegations of their mother's behaviour towards them ever since Cafcass had been involved in 2017. As a result, the father had filed a Scott Schedule and so the final hearing was converted into a combined fact find and welfare evaluation. Following on from the expert and professional evidence the plan had been to hear from the mother and father and so to adjudicate upon the four allegations that the father made against the mother of behaving abusively towards him and the boys and on the mother's allegation that the father had alienated the boys against her. The mother's response to the schedule of allegations was in effect to say that innocuous events had been wildly exaggerated or fabricated. The father's response to the alienation allegation was that he was doing what he could to promote a relationship, but the boys had experienced the abusive events and thus had objective reasons for their opposition to contact. However, because the fact-finding element of the final hearing had emerged so late police disclosure was not available; two of the father's allegations had apparently involved police visits to the family home.

11. Thus the judge concluded that she would have to adjourn the hearing of the parents evidence to enable disclosure to take place and also for the local authority to progress their application and their proposal for placement of KK were the court to conclude he ought to be removed. In her judgement HHJ George said:

*I am afraid I remain pessimistic about the prospects of KK's relationship with his mother being restored, fact find, or no fact find; care proceedings or no care proceedings. I consider the local authority has delayed in providing positive and constructive assistance to this family and in particular to these children over four years and as a result the relationship with their mother may have been fractured for ever.*

12. The order that emerged from the hearing adjourned the case to 20 October 2020. On 20 October 2020 the local authority issued care proceedings in the Central Family Court which were transferred to HHJ George that day. Those proceedings were listed before the judge for 12 November with a time estimate of 90 minutes. The local authority sought an interim care order with a plan for immediate removal to what was described as a bridging placement with a plan to re-establish the relationship with the mother in due course to transfer KK's care to her.
13. On 12<sup>th</sup> November 2020 HHJ George made an interim care order which provided for the removal of KK from the father's care and his placement in foster care with a potential view to him later moving to his mother's care. This order was appealed by the father and on 18 December 2020 the Court of Appeal allowed the appeal on the basis that the decision was unjust by reason of serious procedural irregularities in that:
  - i) It was taken in circumstances where KK did not have the opportunity to make direct representations to the court where the Guardian's assessment of his competence had been undertaken in the context of private law proceedings for child arrangements orders rather than public law proceedings involving removal into foster care;
  - ii) Where the father had not filed any evidence on the issue of removal and had not given oral evidence in circumstances where he challenged the factual basis of some of the expert opinions which the court had heard oral evidence on; and

- iii) The care plan which was approved provided for a short-term bridging placement leading to the placement of KK with his mother and ruled out rehabilitation with the father but the order was expressed to be only an interim order where no findings had been made of any final decision reached as to his future.
14. The Court of Appeal consolidated the care proceedings and the child arrangements proceedings and remitted the case to Mr Justice Keehan, the Family Division Liaison Judge for London continuing the interim care order until he was able to rehear the application for the interim care order. By the time the case came before Keehan J, KK had instructed his own solicitor, Ms Hecht who considered him competent to instruct her directly. The case was then listed before me for final hearing commencing 1 March with a time estimate of five days. It was to be listed for directions before me in the week commencing 25 January 2021 but for reasons which I have not explored this listing was not obtained and the case came before Mr Justice Newton on 16 February 2021. By that time KK's unhappiness in his foster placement and his views in relation to spending time with his mother let alone living with her were considered by everyone to be so clear and trenchant that the view was taken that the pursuit of that approach was causing more harm to KK than any potential medium to long-term benefit and so the interim care order was discharged and replaced with an interim supervision order, an order was made that KK would live with his father and the case was timetabled to a three-day hearing before me. It was also noted that the father's representatives undertook to issue an application for an occupation order under the Family Law Act 1996 and that was to be further consolidated with the consolidated care and child arrangements proceedings.
15. By the time the matter came before me for final hearing the Local Authority sought no order on their application proposing that the situation on the ground be addressed by the implementation of a child in need plan which would implement a revised care plan and a proposed written agreement between the local authority and the parents. The mother was in support of the care plan and written agreement but took the view that its chances of implementation would be better if it were delivered under a supervision order. The father supported the local authority as did KK. The Guardian supported the making of a supervision order. The father, supported by KK, sought an occupation order. The mother opposed that application. The local authority and Guardian were essentially neutral on it.
16. However, that measure of agreement over the outcome masked a disagreement as to the basis upon which the section 31 threshold was met. At the hearing before Newton J the local authority had indicated that they relied only upon paragraph 4 of an interim threshold document. Prior to this hearing the mother had, as directed, filed a response to threshold in which she accepted that the threshold was met on that basis. This included an assertion that KK had been alienated from the mother by the father. The father had not filed a response to threshold in breach of the order. It was thus not clear whether he accepted that the statutory threshold was met and if so on what basis. At the commencement of the hearing Ms Hyatt on behalf of the mother made clear that the mother was pursuing a finding that the father had alienated KK. However, the trial timetable did not make provision for any of the experts, in particular the psychologist Dr Rogers or the independent social worker Ms Serrette to give evidence. Their reports contained the core of the expert opinion in relation to the question of alienation. Further the trial template allowed for only two hours of evidence from each of the mother and the father and their statements in the consolidated proceedings did not address many of

the critical factual matters which would have underpinned any enquiry into the issue of alienation, in particular the four allegations comprised in the private law Scott Schedule. In considering the issue of alienation an essential component is whether the child or young person has any objective reasons for objecting to contact with that parent. Self-evidently, were allegations of neglect, physical abuse and threatening behaviour towards the children and the father made out, that would provide an explanation for the boys' rejection of their mother. Conversely were it demonstrated that the allegations were either fabricated or wildly exaggerated that might either have left a clean sheet in which the mother's parental alienation case might have been drawn or potentially would have formed part of the construction of the alienation case. However, none of the parties had approached the preparation for the case either in terms of the scheduling of witnesses or in their written documents in a way which would have enabled this enquiry to have been undertaken. The inability to determine issues of abuse and alienation also sounded in the father's belated application for orders under the Family Law Act 1996.

17. Although Mr Justice Newton had made provision for any Family Law Act application to be heard at this hearing I noted when undertaking my (undirected) reading that I could not locate any evidence in support of that application which addressed the factors contained in sections 33 (6) and (7) Family law Act 1996. In addition to practical issues such as resources and housing needs both require the court to consider evidence of the parties in relation to each other and otherwise or harm attributable to conduct. The same point had occurred to the father's counsel who had been instructed late. On the afternoon of the first day Mr Lorie indicated that he might seek permission to rely on a statement that could be drafted overnight. Such a statement was drafted but neither I nor the mother was able to read it before she gave her evidence the following day and the issue of whether permission should be granted could not be determined until after the mother had given her evidence. I allowed Mr Lorie to put questions to the mother about practical issues. When eventually we were able to consider the father's application for permission to rely on his statement (which was firmly opposed by the mother) I observed that not only were there substantial procedural fairness issues arising out of its late production and the mother's inability to consider or respond to it but there were also justiciability issues because conduct, a critical factor in the statutory test, could not be enquired into or determined in this hearing. Overnight Mr Lorie and the father considered whether he would pursue the application and the father ultimately gave instructions not to pursue it.
18. The local authority, the mother and the father also considered the ambit of the threshold criteria in the light of the realisation that the issue of parental alienation could not be litigated during this hearing. In consequence a largely agreed threshold document emerged.
19. The care plan itself and the written agreement which would accompany it was broadly agreed; the issue was whether it would be delivered under the umbrella of a supervision order or within the framework of a child in need plan. The only other issue of significance in relation to the local authority's involvement was whether the existing social worker should be retained or whether as the local authority proposed a fresh pair of eyes be brought to bear. The father, mother, KK and the Guardian all considered that Miss Anamutu should be retained given her good relationship with KK.

20. Apart from the question of whether a supervision or no order should be made on the local authority's application for a care order the issues in the private law application which remained live at the commencement of the hearing were;
  - i) What order if any ought to be made in relation to foreign travel and the holding of KK's passport? The mother sought a continuation of the prohibited steps order until KK's 16<sup>th</sup> birthday and a specific issue order that she should hold his British passport until then. The father initially opposed those as did KK.
  - ii) Whether any form of spending time with order ought to be made? The Guardian in particular sought an order that KK be made available for contact with his mother on a monthly basis at a contact centre.
21. In the course of the evidence of the mother and father those issues further narrowed. The father said that he had no plans to travel with KK before October 2021 at the earliest and he was prepared to give an undertaking not to remove KK from the jurisdiction prior to his 16<sup>th</sup> birthday. In addition, it emerged that KK's British passport had expired at the beginning of February 2021 and that it would need to be renewed and the father undertook not to apply to renew it prior to KK's 16<sup>th</sup> birthday. The mother was prepared to accept these undertakings.
22. In her evidence the mother said that she had reached the conclusion that she should act on KK's expressed wishes not to have contact with her and that she should step back and leave the decision on contact to KK. Initially she seemed to be indicating that this included indirect contact but on further exploration she thought there was benefit to KK in knowing that she had not abandoned him but remained a loving and concerned parent who was there for him if he wanted her. She therefore concluded that there should be some ongoing indirect contact with a sign off letter now, a break and then the resumption of letter contact at significant moments such as Eid, birthdays, exam results and similar. The social worker did not consider that any order for contact was appropriate but also identified practical concerns in that the local authority contact centre could not accommodate supervision of contact between a 15/16 year old and a parent. She had initially suggested weekly letters which she would deliver to KK to ensure he received them. Having heard the mother's evidence and that of the social worker, the Guardian decided not to pursue any invitation to the court to make an order that provided for direct contact. The Guardian considered that weekly indirect contact was probably too frequent and that the mother's proposal for indirect contact for significant events was probably too infrequent.
23. Thus, by the time submissions had concluded the substantive issues as between the parties which remained to be determined were:
  - i) Whether a supervision order should be made on the local authority's application for a care order or whether no order was appropriate;
  - ii) Whether the existing social worker should remain; it being acknowledged that ultimately this was a matter for the Local Authority, but they would consider my views;
  - iii) Whether I approved the undertakings offered by the father and accepted by the mother in relation to foreign travel and passports; and



- iv) what provision should be made for indirect contact.
24. It also remained for me to consider the agreed threshold and the agreed care plans.
25. I had indicated that I did not think it necessary to see KK again but would communicate the substance of my decision in the form of a letter. The parties were in agreement with this.

### **The Agreed Threshold**

26. Following the removal of references to alienation and taking account of the Responses to Threshold filed by the mother on 25 February 2021 and the father on 2 March 2021 the Agreed threshold reads as follows

*The threshold criteria under s. 31 of the Children Act 1989 in respect of KK is made out in that, at the time protective measures were initiated 15.10.2020, he was suffering or was likely to suffer significant harm and that harm was attributable to the care given to him or likely to be given to him, if an order were not made, not being what it would be reasonable to expect a parent to give.*

*The Local Authority relies on the following facts:*

- a) *KK has suffered significant emotional harm and remains at risk of significant harm as a result of the parental conflict he has been exposed to arising out of their longstanding and ongoing acrimonious relationship.*
- b) *There has been protracted private law proceedings since 2016 involving various cross-allegations between the parents and father frustrating contact orders.*
- c) *KK has a diagnosis of Autistic Spectrum Disorder 'ASD' and situational anxiety and is reported to be showing signs that he is torn between his parents. CAMHS reports that KK's emotional difficulties are closely related to him being exposed to parental conflict.*
- d) *Despite continued support from social care since 2016, KK's relationship with his mother remains fragile, KK does not wish to spend time with his mother and contact has not progressed.*
27. Thus, it is agreed by the parents that the statutory test for potential public law orders has been met. It is also clear that the agreed threshold represents only a part of the issues which have so bedevilled the lives of this family and which have led to such long-term court and social services intervention over the years. However, it is equally clear that this is not a case where I ought to require those allegations to be determined. Given the situation we have reached in terms of KK's age, the continuing impact of proceedings upon him, the probable lack of difference to the ultimate outcome that such determination would lead to and the delay, the extensive time and resources that the court would need to dedicate to such a process I do not consider it to be KK's best interests or proportionate or necessary so to do. The only likely advantage to KK and the parties and indeed to the state in undertaking such a process would be to establish

the ‘truth’ and to provide an authoritative record of how this family ended up where it is today. Who that might provide comfort to or vindicate I am not sure. It might of course shine a spotlight on how the local authority and the family justice system has dealt with the case with the potential for lessons to be learned but whilst it is possible with the benefit of hindsight to identify some points where different decisions might have created an opportunity for a different outcome, I am not at all sure that different actions at any stage would have ultimately altered the trajectory for this family. If the roots of the current problem lie in the dysfunctional relationship between the mother and father, which existed from early in the marriage, the fact that the boys lived in that dysfunctional environment from birth until 16 and 11 respectively and the parents’ dysfunctional personal relationship was shaped over many years, it begs the question of whether this was simply one of those insoluble cases from before the moment it ever crossed the court or local authority threshold. As a result of the way the case has come before me, regrettably I am not able to reach any firm conclusions on anything other than the issues which have been argued before me. To seek to go further would be neither fair to the parties, appropriate or possible. The two points I do feel it appropriate to pass observation on are how the absence of any determination of the facts which underpinned the children’s stated objections to contact dating back to 2017 has prevented anyone from being properly able to evaluate the children’s expressed wishes and feelings. If they were physically and emotionally abused in the way they allege, they have good reason for their expressed wishes and any determination would have to reflect that. If those allegations were grossly exaggerated or fabricated, the father and the children would have to confront that fact and work would need to be done to understand why that had occurred and to remedy the consequences. A conclusion of parental alienation might then have been rooted in factual determinations. Had the allegations been found to have some core of truth but to have been grown in the fertile soils of parental separation the early identification of that fact might have allowed an opportunity to apply some metaphorical weedkiller to get them back under control. The opportunity for any of those has now passed. The allegations plainly are now an established part of the narrative within the father and the children’s household and are deeply rooted in their minds whether they are true or not. The other issue which emerges is how the removal of a teenager from their primary carer in the context of a very long running private law dispute is managed. Although the decision to remove was set aside by the Court of Appeal for procedural unfairness, the substantive merits of the decision were it seems to me strongly arguable. Whether removal would have been the outcome had the process been more fairly conducted I would hesitate to speculate. However, with the benefit of hindsight it seems clear that the removal whilst perhaps not doomed to fail was substantially undermined by the fact that KK, his father and brother were able to have almost unlimited continuing indirect contact and substantial face-to-face contact almost from the moment of removal. I understand why that occurred on the particular facts of this case; in part it reflects the imperfect way in which the removal was undertaken both in court and otherwise. But it is now easy to see that the maintenance of that powerful emotional dynamic between the father, BB and KK fed KK’s powerful desire to return to them and undermined any possibility of him settling in the bridging foster placement which led to all parties concluding that he was being harmed more by keeping him in foster care against his strongly held wishes than by returning him to the father’s care in which he also suffers harm.

28. It is contrary to the basic instincts of the judicial mind to leave a case without having established what happened to the family prior to their entry into the family justice

system or to have rationalised what has occurred since they came into the system but regrettably I am unable to fulfil that instinct in this case. I am sure there is a great deal more I could learn from the 739 page private law bundle and the 416 page public law bundle and from hearing in far greater detail from the experts, professionals and the parties but there is no real purpose to be served in so doing and so I accept that the threshold for public law intervention is satisfied in this case on the basis agreed between the parties.

### **The Care Plan**

29. The final care plan dated 19 February 2021. It is supported by a proposed written agreement. The essential elements of the plan and written agreement are:
- i) KK will continue to live with his father with support from the local authority.
  - ii) The father will encourage KK to attend his school regularly and the social worker will provide support to KK in relation to his education.
  - iii) The father will attend therapy to support him to come to terms with and move on from his feelings arising from his marriage to the mother. If the GP cannot refer for therapy within a reasonable time the local authority will fund therapy.
  - iv) The father will be helped to engage in a program addressing the consequences of parental conflict for children to help him to understand the impact of this on KK and to better support him.
  - v) The father will encourage KK to work with key professionals to help him with his emotional well-being.
  - vi) The father will ensure KK's physical health needs are addressed including his diet.
  - vii) The father will engage with the Meliot Centre, a family centre, who will provide support to the father including during home visits around applying appropriate guidance and boundaries and around KK's emotional needs.
  - viii) The social worker would visit at least every 20 working days and child in need meetings would be convened by the social worker as a minimum every 10 weeks.
  - ix) The social worker would continue to promote contact (in a light touch way) and to explore it with him including by delivering and discussing letters from the mother.

### **The Parties' Positions**

30. The parties' cases are set out in their position statements filed for this hearing, in their witness statements, in their oral evidence and in their closing submissions. Given the limited ambit of the disputes my summary of the parties' positions and in my later analysis addresses aspects of their evidence and of their submissions.

31. The local authority's position and the evidence in support may be summarised as follows:
- i) The local authority is committed to continuing to work with KK and the father to address the ongoing concerns. The threshold establishes that KK is continuing to suffer harm as a result of the conflict. It is not simply around his relationship with his mother that he has needs for local authority support. His education, his ASD and his physical health are all ongoing areas of concern. The care plan addresses all of those and provides support in each of the relevant areas.
  - ii) The Father has always engaged with and cooperated with the local authority. The social worker believes that he will continue to work with them there is no real issue in her mind over him disengaging.
  - iii) Within the local authority there is a concern as to whether KK's recent experience of being removed at the recommendation of the local authority has damaged his ability to work as well with the social worker and hence the local authority considers there may be benefits in a fresh pair of eyes or a fresh approach being brought to the case in the form of a new social worker. However, since KK's return, he has continued to engage well with the social worker including in recent days and has asked for her support in relation to education.
  - iv) Although KK says he does not want to have any further social services input he does engage with the social worker and has expressly asked for her help with education. He seemed to prefer a rather hands-off input rather than the more involved input that the care plan contemplates. The social worker was of the view that KK would cooperate as his nature is in general polite and respectful towards the social worker.
  - v) The care plan contemplates ongoing support for contact and the social worker identifies ambivalence in KK's attitude to it. Although he says he does not want it he often enjoys it when it occurs. When he has asked for it not to happen or for there to be changes and the mother has acted on them, he has then complained that she does not love him or is not committed to him. The social worker is prepared to deliver the first three letters from the mother to KK; one immediately, one in about two months' time and one around his birthday. Thereafter they could be posted. She would use that as an opportunity to see whether contact could take place. Thereafter she would be flexible in how she addressed the issue.
  - vi) Overall, the local authority consider that no order is required because the level of cooperation between the family and the social worker is such that the support that is contemplated in the care plan can be delivered through a child in need plan. The father's cooperation is likely to be better with a child in need plan than a supervision order.
  - vii) The court should adopt the least interventionist approach and in this case that means no order.
  - viii) In any event the imposition of a supervision order on KK may be counterproductive, as he will view it as something imposed on him and contrary

to his wishes. A child in need plan which is essentially voluntary is more aligned with his wishes and may engender greater cooperation. His perception is important, and his wishes and feelings should carry considerable weight.

- ix) In practice there will be no difference between the delivery of support under a supervision order or a child in need plan. If there is indeed no difference and the impact on welfare terms is the same the statute requires the court to make no order.
  - x) The making of a supervision order is not necessary to convey the court's perception that KK's position has caused the court considerable concern. The court can convey that in other ways. The court should not impose a supervision order simply because it feels the situation warrants the imposition of a public law order. The court must identify some welfare advantage to KK.
  - xi) Overall KK's welfare will best be met by the delivery of support under a child in need plan because it is likely that he will work better with a child in need plan than with a supervision order. His response to the interim care order was highly resistant and it had a detrimental impact on his education and his emotional well-being. His reaction should not be underestimated.
32. The mother gave evidence and her counsel made submissions in support of her position which may be summarised as follows.
- i) With considerable reservations about the exposure of KK to ongoing harm in the father's household she reluctantly (beaten down was the expression Ms Hyatt used) accepted that the situation that now confronted her and KK meant that she should accept his strongly expressed desire not to have contact with her. It was with a very heavy heart that she did so. She emphasised that she loved KK and very much wanted the best for him. That was also expressed in a letter to KK that she wrote at my invitation and which will be delivered to him. In her evidence she emphasised that she felt that given his age and what he had been through that she now had to listen to him and accept his decision not to have contact with her. She very much wished things had turned out different and that she had been able to maintain a relationship with him. She very much desires a relationship with him in the future but believes it must be led now by his decisions and she can no longer seek to either force it upon him or to actively pursue whether through litigation or otherwise attempt to persuade him to resume a relationship with her. She considered that there was a very real risk that he would lose his relationship with her entirely because in her view the father had been alienating him from her since when he was a toddler.
  - ii) Whilst she had wondered whether she should withdraw from his life entirely as that appeared to be what he was saying he wanted she considered that she ought to maintain some presence in his life. She would continue to attend parents evenings and engage with his school and thought that maintaining some indirect contact at significant moments would be a means by which she could reassure him that she was still interested in, committed to and loved him.
  - iii) Although she did not want him to be in a home where he was experiencing forms of harm both in terms of his estrangement from her but also in terms of the

failure to promote his education, but this was better than the harm he was suffering whilst in foster care.

- iv) She considered that the ongoing support ought to be delivered under the umbrella of a supervision order because it has greater legal force and she believes the father is essentially paying lip service to his engagement with the local authority. She considers that any additional power that the local authority gains which would result in the care plan gaining greater traction on the ground is of value to KK. There are various components to the care plan and each of them is important and each of them has the potential to benefit KK.
  - v) Although KK says he does not want social services involvement the evidence suggests that he is usually compliant with the social worker and the mother does not believe that he will disengage merely because a supervision order rather than a child in need plan is made. She did not accept that he would appreciate any real difference between them.
  - vi) She feared that he would be taken to Pakistan and would not return and hence until he was 16 did not believe the father or he should have a passport or be able to leave the jurisdiction. She was content with undertakings offered by the father and would provide the expired passport. She would seek to locate the Pakistan identity card.
33. The father's position and his evidence can be summarised as follows. Although he adopted his witness statement in respect of the Family Law Act application and gave evidence in support of it, I have not recounted that here.
- i) Mr Loie emphasised that this was one of those rare cases which had been dealt with by the courts both in the public law and private law domains and which had proved incapable of being resolved in the usual way. All that was now left was in effect a light touch support for KK and the family. This was not the least worst option but the best achievable now.
  - ii) Mr Azan accepted that KK had experienced harm as a result of the parental conflict but maintained that this was not due to him alienating KK but rather due to KK's own experiences of his mother's parenting.
  - iii) Mr Azan accepted that a child in need plan should be made and that he was in agreement with all of the various aspects of it and the requirements that were made of him. He did not accept that there were problems with his capability to meet KK's emotional and educational needs, but he was willing to accept support. He expressed full willingness to comply with the written agreement.
  - iv) The father emphasised that KK's wishes and feelings were strongly held and that at his age where he is on the cusp of adulthood his views should carry considerable weight. He wants an end to proceedings, no order and an end to social services involvement.

- v) The father emphasised he was able to meet KK's physical needs but accepted support was necessary in relation to his educational and emotional needs. The father emphasised that he supported KK's need to acquire an education.
  - vi) Having returned home after his terrible experience of being removed and being in foster care, KK is far more likely to see a child in need plan as positive support for him rather than the imposition of controls on him under a supervision order.
  - vii) Mr Lorie emphasised that the court might have the power to make a supervision order but a clear welfare advantage to KK had to be identified in order for the court to make an order rather than no order. In this case the father believed that no order was more in KK's welfare interests than a supervision order because the operative parts of the care plan could be delivered under a child in need plan with no material difference in delivery as compared with a supervision order. The child in need plan then would have the advantage of being more consistent with KK's wishes and feelings not to have a local authority order.
  - viii) What would the court be achieving by the making of a supervision order? If there is non-compliance what will the local authority do under a supervision order? There are no real options - it would achieve nothing. The messaging though is important in how effective the implementation of the care plan is. With a child in need plan the local authority could escalate it although again where would it take them? The reality is this is all reliant upon cooperative working between the local authority and the family and that will be better achieved under a child in need plan. A light touch may be better than a stick. Cogent reasons are needed to impose a supervision order when a local authority are not seeking one.
  - ix) Whether a supervision order or a child in need plan, the social worker should remain the same as the father and KK work well with her. Her involvement in the removal has not significantly undermined their ability to work cooperatively with her.
  - x) The father would seek to hold the passport even if it is expired. He is willing to undertake both not to apply for a further passport before KK is 16 or to take him abroad before he is 16. The pattern of life for the family was to go to Pakistan for two weeks at Easter. In reality the earliest opportunity hereafter would be October half term holiday but that is too short for a visit.
34. I met with KK on Monday lunchtime by Microsoft Teams. Ms Hecht accompanied him. Prior to meeting him I had read his eight-page letter which he had written after being removed into foster care and the position statement which had been filed on his behalf as well as Ms Hecht's statement in relation to his competence. I told him that the purpose of the meeting was to enable him to meet the judge who was making decisions about him and to make sure that he was reassured that I understood what his views were, and his position was. He was a polite and articulate young man who was able to express himself clearly. He became distressed at times. Having summarised his views as I understood them to be, he reiterated them and added further detail. He told me briefly about incidents which had caused him to fear his mother; those feature in the schedule of allegations that have not been adjudicated upon. In particular he emphasised how he wanted to be listened to in relation to contact with his mother and how he wanted to concentrate on his life, his education and his future. He said he felt he was

being strangled or suffocated by the continued case and involvement of social services around his mother. He appeared to hold his views strongly. I told him that I would of course take them into account but that I could not promise to act on them as I had to listen to his mother, his father the local authority the Guardian and to consider all of the information before reaching my own conclusion about what was in his best interests.

35. Ms Hecht on his behalf emphasised that:
- i) The statute requires that the court should make the least interventionist order necessary and that in this case it was in KK's welfare interests for no order to be made.
  - ii) He has said for a very long time that he wants proceedings to end and that he does not want to pursue a relationship with his mother. That should now be acted upon as his views have not been acted upon before. He should be afforded the respect that accompanies his age and his strongly held views that he wants social services out of his life and to be left alone – no more interfering in his family.
  - iii) The court should be cautious in discounting the weight to be given to his views. The idea that he is subject to some inner turmoil or conflict in his feelings about his mother is not evidenced. He has been consistent in his views.
  - iv) He is not a defiant or unruly child but is polite and the court should take account of this. He did not run away from foster care but works within the boundaries, but this should not lessen the weight the court gives to his views.
  - v) If the court is of the view that the situation is so serious that it needs to be emphasised to KK, this can be done in the court letter. It does not require a supervision order. Anything which adds further stress to KK should be avoided given his known anxieties and IBS issues.
  - vi) A child in need plan is more likely to result in positive implementation of the proposed work.
  - vii) The reality on the ground is that the supervision order adds nothing to the child in need plan. The only option if the family did not cooperate with a supervision order is a return to court and that will achieve nothing on the particular facts of this case. A supervision order would be no more than a marker and would risk being counterproductive.
  - viii) The father does not bear all the blame for the current situation. It is a complex matter where the court should not impose a public law order simply because it disapproves of the situation that has resulted.
  - ix) KK would prefer the existing social worker to continue. He has been exposed to involvement with numerous professionals over the years and some continuity would be better than a new one.
36. The Guardian's analysis was completed on 25 February 2021. Ms Taylor has been involved since 2018. She has moved from a position where she was recommending removal to endorsing the return of KK to his father's home as being the least harmful



option available. She considered that a supervision order should be made in order to implement the care plan because the statutory duties that accompanied the order were more likely to result in the local authority committing themselves to its implementation than a child in need plan. It would enable the local authority to insist whereas a child in need plan would be entirely reliant upon the cooperation of the family. Mr Crawley on her behalf emphasised:

- i) There are serious concerns in a number of domains; his education, his emotional development, the lack of parental control, his physical health and his relationship with his mother.
- ii) The supervision order delivers to the local authority and ability to maintain some control over him but where the situation does not permit countenance of his removal.
- iii) The statutory framework in section 35 and schedule three allows the social worker to direct KK to do certain things. In the absence of parental direction this is a valuable power.
- iv) The supervision order carries with it the ability to return to court and it should be reserved to this court. KK and the parents should know that the court views the case as sufficiently serious to take that step.
- v) The child in need plan is purely voluntary.
- vi) The local authority interventions have failed to achieve much impact so far. In particular when the court was not involved there has been really very little achieved. The father's engagement has been more obvious when under the umbrella of court proceedings. A supervision order is in fact likely to promote more engagement. It will aid the implementation of the care plan and will aid the father in implementing strategies or advice that he receives.
- vii) KK's wishes and feelings should carry very little weight with the court given there is strong evidence that he is conflicted and that they are not objective. The reality is that he is unable to articulate any positive feelings towards his mother because of the household that he lives in where the father is negative about the mother as is his older brother. When he says something that his mother acts upon, he then complains that she does not love him. The evidence of the positive contacts and his complaints show that he is caught in a conflict.

### **Legal Framework**

37. In order to make a Supervision Order, the court must be satisfied that the situation justifies the intervention of the state. This means that the local authority must establish the statutory threshold set out in s.31 (2) of the Children Act 1989, and so I only have the power to make a supervision order if I am satisfied that the child was likely to suffer significant harm and that the likelihood of harm was attributable to the care likely to be given to him, not being what it would be reasonable to expect a parent to give. The

relevant date is the date of the ICO. In this case, the threshold is accepted by the mother and the father.

38. Where the threshold is satisfied so as to give the court the power to make a Public Law Order, the court, in deciding whether to actually make a supervision order or no order, must treat the child's welfare as the paramount consideration, and must have regard to the Welfare Check List in s.1 (3) of the Children Act. Section 1(5) sets out the no order principle: the court shall not make an order unless it considers that doing so would be better for the child than making no order at all. Making 'no order' is a positive decision taken on welfare grounds. Baroness Hale of Richmond said in *Re I (a child) (contact application: jurisdiction)* [2009] UKSC 10, [2010] 1 FLR 361

*'There are many conclusions which the court hearing this case might reach. Among them is an order that it would be better for the child to make no order at all: section 1(5) of the Children Act 1989. But this is not a refusal of jurisdiction (cf Owusu v Jackson (Case C-281/02) [2005] QB 801). It is a positive conclusion, reached after the court has exercised its jurisdiction to hear and determine the case, that in all the circumstances it will be better for the child to make no further order about his future.'*

In the event that the court were to conclude that the outcome of the welfare evaluation were entirely evenly balanced then the application of the statute would require no order. Whilst there may be cases where the court concludes the balance is entirely evenly weighted, I do not consider this likely to be one of them. Whilst the evaluation may be a difficult one in terms of the attribution of weight to the various items as it is a holistic evaluation rather than a binary one where the scales tip one way or another it seems unlikely that I will be left unable to discern which course will best promote KKs overall welfare.

39. Section 1(1) requires the court to have regard to the welfare of the child as its paramount consideration in determining any question with respect to his upbringing. As the paramount consideration, the child's welfare determines the outcome. The classic formulation is that of Lord MacDermott in *J v C*<sup>1</sup>:

*'[the phrase first and paramount] connotes a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon and determines the course to be followed.'*

40. The courts have emphasised in a variety of contexts that 'best interests' (or welfare) can be a very broad concept: *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233, 2013 1 FLR 677; *Re A (A Child)* 2016 EWCA 759; *Re M (Children)* [2017] EWCA Civ 2164. In the latter case the Court of Appeal endorsed the *Re G* approach and emphasised the task of the judge is to act as the 'judicial reasonable parent', judging the child's welfare by the standards of reasonable men and women today, having regard to the ever changing nature of our world including, *changes in social attitudes*, and always remembering that the reasonable man or woman is receptive to change,

broadminded, tolerant, easy-going and slow to condemn. The appeal was allowed partly based on the conclusion that the judge had not fully considered how a reasonable parent in 2017 should confront the issue of victimisation and discrimination by the community in which the child lived.

41. In determining welfare, the court must of course apply the welfare checklist. The matters specified in s 1(3) are:
  - (i) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
  - (ii) His physical, emotional and educational needs;
  - (iii) The likely effect on him of any change in his circumstances;
  - (iv) His age, sex, background and any characteristics of his which the court considers relevant;
  - (v) Any harm he has suffered or is at risk of suffering;
  - (vi) How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
  - (vii) The range of powers available to the court under the ChA 1989 in the proceedings in question
42. The weight that will be given to the wishes and feelings of the child will depend on the circumstances of the particular case and will follow a holistic assessment of what best meets their welfare needs. The court has to assess the weight to be given to the children's views in the light of their age and understanding. The source of a child's wishes will be relevant, and if they arise from influence, their weight will be lessened. It may not be possible to determine the true or complete source of their views as there may be many factors in play. The views of an older child do not carry any presumptive weight outweighing other factors although it is unusual to make an order flatly counter to the wishes of teenage children. However, on the facts the court may decide to do so because the welfare of the child may diverge from the wishes of the child and at the end of the day it has to be the decision of the court and not the child.
43. The judicial task is always to evaluate all the options and to undertake a non-linear and global or holistic evaluation of the child's needs. I have to take account of the Article 6 and Article 8 rights of the child and of the parents, and of other significant family members affected. In determining what order to make, to the extent that it infringes the Article 8 rights of the mother and the father, the court must be satisfied it is necessary and proportionate and must take the least interventionist approach.
44. Section 31 Children Act 1989 provides that on the application of any local authority the court may make an order putting the child with respect to whom the application is made under the supervision of a designated local authority.
45. the nature of the supervision order set out in section 35 provides that whilst in force shall be the duty of the supervisor:
  - a) To advise, assist and befriend the supervised child;
  - b) To take such steps as are reasonably necessary to give effect to the order; and

- c) Where (i) the order is not wholly complied with; or (ii) the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or discharge.

46. Parts one and two of Schedule Three children act 1989 make further provision with respect to supervision orders.

### ***2. Power of supervisor to give directions to supervised child***

*(1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things –*

*(a) to live at a place or places specified in the directions for a period or periods so specified;*

*(b) to present himself to a person or persons specified in the directions at a place or places and on a day or days so specified;*

*(c) to participate in activities specified in the directions on a day or days so specified.*

*(2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.*

*(3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).*

### ***3 Imposition of obligations on responsible person***

*(1) With the consent of any responsible person, a supervision order may include a requirement –*

*(a) that he take all reasonable steps to ensure that the supervised child complies with any direction given by the supervisor under paragraph 2;*

*(b) that he take all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;*

*(c) that he comply with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.*

(2) *A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is required to attend with him.*

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

47. It was submitted by Mr Crawley that s2(1) of Schedule 3 permitted the supervisor to give directions for example to tell KK to go to certain places or participate in activities and that he would be obliged to follow that direction. Ms Hecht took issue with this in her oral submissions and subsequently in written submissions. She submitted orally that read together paragraphs 2 and 3 only allow the supervisor to give the directions under paragraph 2 if the court has made an order that they are included. I interpret this to mean that it has made an order under paragraph 3 imposing conditions with the consent of the responsible person. She submitted that absent such an order (which was not sought) that the sort of directions being considered in paragraph 2 are not ones the supervisor would have and therefore should not fall to be considered as an advantage of a supervision order being made in this case in weighing up the factors. Further, the sort of directions detailed under Paragraph 2 were neither addressed nor suggested by the Guardian in her Final Analysis or evidence. Whilst it was only in his oral submissions that Mr Crawley descended to the detail of paragraph 2, the Guardian had made very clear in her report and evidence that it was the nature of the supervision order and the legal powers and duties associated with it which led her to conclude that it was a better vehicle for delivering the care plan.
48. *In Re V (A Minor) (Care or Supervision Order) [1996] 1 F.L.R. 776* the court made it clear that conditions could not be imposed on a supervision order and that Sch 3 deals with directions given by a supervisor, requirements imposed with consent and requirements imposed in an order under paragraphs 4 and 5.
49. I am satisfied that the power of the supervisor to directions under paragraph 2 is not reliant on the court making such an order whether under paragraph 3 or otherwise. The court clearly has only a limited role under paragraph 2; it seems implicit in the word 'may' that a discretion exists whether to include a paragraph 2 requirement and that must be in the court. Under paragraph 3 and only with the consent of the responsible person the court can include a requirement for the responsible person to take reasonable steps to support directions given by a supervisor under paragraph 2 or requirements for psychiatric or medical examinations or treatment included by the court in the order pursuant to paragraphs 4 and 5. Whilst I can see that it is desirable to include a requirement pursuant to paragraph 3 in the supervision order in order to support the supervisor in any directions given under paragraph 2 I do not conclude that the two paragraphs are co-dependent. Clearly there will be cases where a supervision order is made in the face of strenuous opposition by a responsible person who will refuse to consent to requirements being included. If Ms Hecht was right, that would give the responsible person a veto on whether the supervision order could include the requirement for the supervised child to comply with any directions given from time to time by the supervisor and this cannot be right. Whilst the court in *re V* recognised that the implementation of supervision orders is heavily reliant upon the consent of the

responsible persons because there is no means of enforcement save for a return to the court that does not in my view as a matter of law mean that this paragraph 2 power can only be included in a supervision order if the paragraph 3 consent to requirements is forthcoming.

50. As it happens in this case, I am satisfied on the evidence that KK on the balance of probabilities will comply with any directions which are given although I think it likely that such directions would be sparingly given.
51. The provisions relating to children in need are set out in section 17 of the Children Act 1989. This in general terms provides that it is the general duty of every local authority to safeguard and promote the welfare of children within their area who are in need and so far as is consistent with that duty to promote the upbringing of such children by their families by providing a range and level of services appropriate to those children's needs. Specific duties are set out in schedule two of the Act. It was agreed between the parties that the implementation of the care plan in the form of a child in need plan was subject to the voluntary cooperation in its implementation by the father and KK and that were there to be non-cooperation the local authorities remedy would be to escalate matters to a child protection plan, or to initiate further public law proceedings.

### **Evaluation of the competing arguments over KK's Welfare**

52. The circumstances in which KK's welfare now fall to be determined are very different indeed to those which might have been expected only a few short months ago. The most draconian power of the court to intervene in the life of this family was deployed in the removal of KK from his family unit into foster care. For reasons which I have only touched on that intervention failed to get out of the starting blocks in meeting its goal. The motivation for the attempt was based in the evidence and although the Court of Appeal overturned the original order because it was reached in a procedurally unfair manner and notwithstanding that events have moved on and the situation that has been presented to this court is so different the evidential background still remains. All of those issues which were in play from 2018 through to late 2020 have largely fallen away and the evidence has not been tested and so I must tread very carefully and avoid seeking to rely on evidence that has not been tested or to draw conclusions which are not open to me on the basis of the case as it has come before me.
53. However, the threshold criteria for state intervention in this family's life is agreed to have been met. The harm that KK has suffered and is likely to suffer as a result of his exposure to prolonged parental conflict inter-weaved with his vulnerability as a young man with ASD, with physical health issues and with a poor educational record make him highly vulnerable and very much in need of support. It is accepted by the Local Authority, mother and Guardian that his return to live with his father exposes him to further harm, but that return is the lesser of two evils; the removal into foster care generating more harm than returning him to his father. Thus, in terms of KK's welfare this is a highly significant moment. Although the extent to which support can now be delivered and the extent to which the harm can be ameliorated are significantly constrained by the failures of the past, I do not underestimate how important it is to KK that help is delivered.
54. He has significant emotional educational and physical needs all of which need to be addressed. The care plan has components which deal with each of those. I am satisfied

that they represent the best package that can be and currently delivered in the situation that now exists. The critical question is how best to ensure that the package gains traction and delivers real change for KK which will have real life welfare benefits for him. Will the umbrella of a supervision order best promote his welfare? Will no order and the delivery of the care plan under a child in need plan best promote his welfare?

55. The father, the local authority and most importantly KK rely very heavily on the weight that should be given to his wishes and feelings in answering this question. His likely response to the option adopted by the court it is argued will have a significant impact on what traction the support gains on the ground. So, I ask myself what are KK's wishes and feelings in this regard and what weight should I put on them. What will his likely reaction be to adopting a course congruent with his wishes and one which conflicts with them?
56. His expressed views which are primarily evidenced in what he has said via Ms Hecht (not tested in evidence) but which also are given expression by Ms Alamatu and which appear in various reports down the years are not to see his mother and in relation to the point in issue to minimise social services involvement in his life – to get on with living it. He voiced those views to me but they didn't add anything to the substance of what he has been recorded as saying elsewhere. To what extent are these views rational, authentically his own, consistent with his welfare or indeed consistent with his actual behaviour? In judging his stated distaste for social work involvement and a supervision order I need also to consider what he has said about the other most significant issue namely his relationship with his mother.
57. It is certainly true that he has been consistent in his expressed views about his mother. However, there is good evidence that his expressed views are not consistent with his behaviour when he sees his mother in contact. There are also examples of his hostility to his mother face-to-face and through indirect contact. His behaviour during the session with Dr Roger was terrible; even if one were to approach it on the basis that all he had said about his mother's abuse is true. It is that disparity in his behaviours more than anything which suggest that there is a conflict. That would be hardly surprising in a child who has had any sort of beneficial relationship with a parent. Unless KK's experiences of his mother were almost entirely negative, one would expect him to harbour residual positive feelings about her, albeit they may be deeply buried under either negative feelings arising from abusive experiences (if that is the case) or under negative feelings generated by the dysfunctional parental relationship or more recently the parental conflict for however many years that has been a feature. Indeed, both parents, the local authority and the guardian accept that he has been harmed by the conflict between his parents and it has had a consequence for his relationship with his mother. Thus, although I accept that he does not want a relationship with his mother and that is his expressed wish it is not the whole picture. It is a subjective position coloured by his experiences of family life when together, by the conflict since separation, by the views of his father and brother, by his experiences of his mother since and by his exposure to a lengthy court process. I have little doubt that there remain some positive feelings for his mother. Whether or how they may make themselves known I know not. But the significance I think is that although KK has for extended periods of time expressed himself in trenchant terms to be hostile to seeing his mother, when he has seen her, there have been many productive enjoyable encounters which are at odds with his stated wishes. Those wishes could, if directly relevant to a decision,

be discounted notwithstanding his age and the very great weight given to the views of young men of his age in these sorts of decisions.

58. His views in relation to the supervision order and social work involvement are much less evidenced than his views on contact. I can feel reasonably sure that he wants proceedings to end. They will. I can feel reasonably sure that he wants the issue of his relationship with his mother to be laid to rest. Save for the very lightest of touches in relation to indirect contact and gentle inquiries from the social worker it will be. We are all listening to his views in that regard and accepting that, for reasons which I do not fully understand, he does not want that relationship now. So that will no longer be the dominating issue that it has been for the last 4 + years. I am satisfied that he wants social services involvement to be much less intrusive. I am not satisfied he wants it to end completely as that is not what he said to Ms Alamutu as recently as Monday afternoon. Given that he has repaired his relationship with her, notwithstanding her prominent role in the most traumatic event in his recent life, it seems to me that his objection to social workers is not a deeply held or entrenched one. I am satisfied that he would want an outcome less rather than more intrusive. I am equally satisfied that he recognises the value of support from social services in some respects. The evidence I heard in relation to his views about the making of a supervision order and no order was relatively limited and not explored in depth. Ms Hecht did not give evidence and nor did KK. Insofar as a supervision order nominally carries with it a tag of social services intrusion which is greater than a child in need plan, he prefers the less intrusive.
59. I also have to factor in the conflict between the father's acceptance of the care plan with its ongoing social services involvement and KK's position. This was not really resolved. KK's position was in reality inconsistent with the care plan with its relatively extensive social work involvement with the father with a view to support KK. The apparent conflict between the father's embracing of the child in need plan and KK's expressed wishes to distance himself from social services involvement was not really grappled with by the father. At one stage in when he was focusing on KK's strongly expressed wishes and feelings, I wondered whether the father was supporting no social services involvement but that was not so.
60. Ms Hecht submitted that he has consistently been asked his views, but no one has acted upon them and that the court should do so on this occasion. I pointed out that on the most significant issue of all namely the removal of KK into foster care that his wishes had been acted upon. Ms Hecht reformulated this not as the court acting on his wishes but rather all parties acting on the realisation that the harm, he was being caused in foster care was greater than the harm he was being caused living at home. Whilst I accept that this is a legitimate formulation, the underlying reality is that the harm he was being caused in foster care arose from the fact that his very strongly held view was a desire to be reunited with his father and brother and not to be in foster care working towards the resumption of a relationship with his mother. All of the parties ultimately acted on the consequences of continuing to act against his wishes and feelings on that very significant issue. I therefore do not think that it can legitimately be said that no one has acted on his wishes and feelings historically. I do accept that the continued efforts to build a relationship between KK and his mother have been against his expressed wishes for a very long time. The problem that has dogged the parties and the court is that the reasons underpinning his expressed wishes have never been determined. It may well be that he has good reasons for not wanting to see his mother. On the other



hand, it may be that or even his memory of events has been shaped by his situation. Whatever the truth his understanding of the past is now firmly embedded. If it is true, it will of course not shift, and the ball lies in the mother's court. If it is untrue, whether he will ever appreciate that, is impossible to know. In this significant issue it is also right that his wish not to see his mother is being acted on.

61. Given all that I have read of KK and indeed what Ms Alamutu said, but also what Ms Hecht has said it seems to me probable that KK will work with a social worker irrespective of whether I make a supervision order or whether the care plan is implemented under a child in need plan. It appears that KK's nature is not to defy authority in any obvious way; he appears a biddable or malleable character who would seek to get on with a social worker whether it be Ms Alamutu or a new one. I think there is some risk, either arising internally from KK himself or in consequence of the influence of others around him, that might prompt him to be obstructive if a supervision order is made but I consider this risk to be small given his high levels of cooperation and in particular his ability to mend his relationship with Ms Alamutu even after she had been the source of his removal from his father's home. Thus overall whilst I accept that KK does not want a supervision order to be made and that he wants to minimise the intrusion of social services into his life so that he can lead it, I do not give the views determinative weight at all. I take them into account but conclude that ultimately his position is neither as entrenched or as binary as is suggested. I think he is a bright young man who can see the advantages of support that can be offered through social services and with the encouragement of his father he will work with a supervision order if that were to be made. His express objection to it therefore whilst of some is of relatively limited weight in the overall holistic exercise.
62. The views of the mother as to the appropriate order and those of the father must also be taken into account. The mother will of course not play any direct role in the implementation of the care plan and so her response to the form of order is neither here nor there. The father opposes a supervision order but his track record of engagement with social services suggests that he will do that which is expected of him. He is not the sort to actively oppose or be obstructive whether in relation to social services or his children. Whether his engagement is sincere or whether it is disguised or whether his ability to act on advice is impaired as a result of his life experiences I do not know. I accept that he can act on advice and note that Ms Alamutu said he acted on her advice to ensure that KK did not overhear conversations between them which might expose him to negative information about the mother.
63. Hereafter the mother will play only a limited role in KK's life. Her views of the father were trenchant and harsh. She clearly has strong views on various matters I would guess and does not hold back when expressing them. This is probably in significant contrast to the father who seems to hold far less rigid positions. I would guess that this may have been a source of friction between them. I would infer that it was also very obvious to the way they parented the boys. She may need to reflect on how she expresses herself as undoubtedly her views on the father will play some role in how her sons engage with her. They live with their father and are plainly aligned closely with him. They are a unit. She needs to come to terms with that reality, not just in her actions, which she has, but emotionally and to adjust her approach to her sons (to the extent that she has any ability to engage with them) in a way which will enable them to sense a softening in her attitude to the father.

64. The care plan is reliant upon the father's sincere engagement with it. The father's stated support for KK's education seemed sincere but the difficulty though seems to be his ability to convert a desire for a good education into securing it in practice. The father's unwillingness to impose his views on KK or perhaps rather his willingness to accept KK's position rather than imposing his own on him means that in practice he fails to exert authority over KK but rather simulates KK's position. When I asked him about KK's extraordinarily rude behaviour to his mother during an assessment session with Dr Rogers the father's immediate response was to say that he was sure KK had a reason for behaving that way. This, despite his moments earlier emphasising how important it was for KK to respect his mother and how Islam taught respect for the mother as an important principle. Having maintained adamantly that he did not need to discipline KK because he was able to discuss matters with him and reach a resolution and having evaded the questions initially, he ultimately said that he had disciplined KK over this behaviour. I doubt that is true or if he did it was of a very modest form. I suspect the reality is that he does not need to discipline KK because the father accepts what KK says about any matter whether it is the reason for a detention or a reason for being abusive to his mother. All of this emphasises the need for the father to receive the support and to benefit from it which will only have real impacts if his engagement is sincere. I think he will engage with the services, but it may well be that he will be challenged more in some respects than he has been historically. I think there is some force in the mother's position that the father has engaged but on his terms. The TT Centre, the parental conflict programme, the therapy accessed by the local authority or the GP may all be far more challenging to the father which may lessen his willingness to engage. I think it will be at this point that a genuine weakness in the child in need plan may emerge. A purely voluntary plan will be susceptible to failure when challenging moments arise. A supervision order will not be quite so susceptible as the supervising social worker will be able to fall back on the statutory duty that the local authority have under the order. In short, they will not be able to take non-engagement lying down but will have to pursue it in some shape or form.
65. I accept that there is force in the argument that a supervision order carries with it greater legal force both because of the responsibility it places on the local authority and because of the powers that can be included in its to give directions to the child. It seems to me that at crunch points in the implementation of the care plan that those responsibilities and powers have the potential to have real welfare advantages in ensuring the continued adherence to the care plan and genuine engagement in it.
66. It is integral to the submissions of all parties that the nature of the order itself is of relevance. It is not simply the delivery of services but whether an order is made or not that has formed the main battleground. On one side the local authority, the father and the child argue that the nature of a supervision order will be poorly received and will be counterproductive. On the other hand, the mother and the Guardian argue that a supervision order carries with it both real legal powers but also a strong message that whilst it may not be measurable is likely to have real life impacts on how the father and KK respond to the outcome.
67. It seems to me that the nature of the father is to accept authority rather than to kick against it. It also seems to me that it is more in KK's nature notwithstanding his rejection of the foster care arrangement; but that had far more direct immediate impact than a supervision order will. I also think that the father and KK's natural respect for

authority will encourage them to treat the supervision order more seriously than they might a voluntary engagement with social services. The possibility of a return to court and further encounter with me is probably remote but I would want to emphasise that I consider this case to be a very serious one in my library of cases. I do not say that lightly. It hardly needs to be said and that demonstrates how seriously the court took the risks to him. I say that not because that course is likely ever to be in prospect again but simply because it indicates just how serious this case is which is why I will reserve any future application in it to me.

### **Conclusion**

68. For the reasons set out above I consider that a supervision order will be in KK's welfare interests rather than no order. The advantages of a supervision order mean that there are clear potential welfare advantages to KK in adopting that course and good reasons for diverging with the local authority's formulation and for going against KK's expressed wishes. I do not consider that I should give any determinative view in relation to the social worker who should seek to implement the plan. I can see clear advantages in maintaining continuity but equally I can see that at crunch times there may be advantages in another social worker being the one who has to challenge the father and KK and to stand on the authority that the supervision order delivers. Ms Alamutu has clearly worked hard and done her best in a terribly difficult situation but the baggage of having recommended KK's separation and having participated in its implementation may be an impediment to the robust approach that might be necessary. I merely identified these as issues and consider it ought to be left to Miss Alamutu and her managers to consider who can best deliver the plan for KK. I consider that the supervision order ought to include the requirement for KK to comply with any directions given by the supervisor. There are various components to the care plan which might in which those powers may be of benefit. They may counterintuitively also in a sense empower the father by association to exert some authority on KK were he to prove reluctant to do anything.
69. I will therefore make a supervision order with that requirement.
70. I will accept undertakings from the father not to apply for a further passport for KK until his 16<sup>th</sup> birthday and not to remove him from the jurisdiction until after his 16<sup>th</sup> birthday has passed. The mother can deliver the Pakistan identity card and the expired passport to the father so that the application can be made. They can be delivered on KK 16<sup>th</sup> birthday unless she chooses to deliver them earlier.
71. The issue of the occupation of the matrimonial home will be dealt with within the financial remedy proceedings. It is unfortunate that legal proceedings between the parents will not come to a complete halt with this judgement and that the financial remedy proceedings will remain as a hindrance to KK being completely clear of legal proceedings and the impact that has on his father and mother.
72. The mother has written a letter to KK which appears to me to be appropriate in content.
73. I will write to KK to tell him the outcome of this case. I intend to emphasise my concern for him, his wishes and feelings have been acted upon in the most important aspects but that I have diverged from his wishes and feelings in terms of the order that I consider will best promote his welfare. I intend to emphasise that his wishes and feelings and by

his mother's acceptance of those notwithstanding her deep love for him, her commitment to him and her readiness to resume a relationship with him whenever he feels he wishes so to do. He now needs to focus in particular on his education for it is perhaps through that route that he will begin to develop his independence and to feel a sense of departure from the conflict that has dominated his life for so long.

74. Lastly, I emphasise how concerning and difficult a case this has proved to be despite the apparent narrowness of the issues. The positive obligations of the state through the family justice system and through the local authority to promote the article 8 rights of KK but also the father and mother has not been achieved in a substantive sense in the re-establishment of full family relations in this case. That I am making an order which incorporates the termination of attempts to re-establish KK's relationship with his mother demonstrates how serious the case is. The fact that I am unable to provide to the parties or to KK a full explanation as to how we have reached this sad end is a further source of concern. However, there are cases where despite the best endeavours of those involved we are simply unable to resolve the issues in the way we can in most cases and that we have to accept that some family problems are insoluble to traditional remedies. Whether in this case that was because of things that were done or not done in the course of this family's journey through the family justice system or whether it was because of seeds that were sown long before they passed through our doorways I cannot know.
75. That is my judgment.