

IN THE FAMILY COURT SITTING AT LIVERPOOL
IN THE MATTER OF THE CHILDREN ACT 1989
AND IN THE MATTER OF THE HUMAN RIGHTS ACT 1998

Before:

HIS HONOUR JUDGE SHARPE

RE A (A CHILD)(INJUNCTIVE RELIEF)

A MOTHER

Applicant

-and-

WIRRAL METROPOLITAN BOROUGH COUNCIL
THE GREAT-GRANDPARENTS
A (A CHILD)

The Respondents

Ms Suzanne Evans (counsel) for the Applicant Mother
Mr Simon Heaney (counsel) for Wirral MBC
Mr Shaun Spencer (counsel) for the child
Mr Calum Smith (solicitor) for the Maternal Great-Grandparents

Hearing date: 11 June 2021

JUDGMENT

Introduction

1. Families come in all shapes, sizes, colours and creeds. For many children ‘family life’ is not a singular concept but a reality which is made up of a network of connections with a wide variety of

individuals for differing reasons. In most cases the fact of parenthood is sufficient to create that tie, even where the actual interactions between the child and parent are marked more by absence than presence. A combination of a shared genetic inheritance and experiential history is the basis for sibling relationships which are held up on a daily basis in the Family Court as being of significant importance because of their probable longevity. In a different way, a child's relationships with older generations within the family are regarded as of importance as they enable the child to understand their history, background, culture or heritage, especially when that heritage may be geographically centred far from where the child is living. Even when the genes are completely different and history is short, family ties abound for many children through their attachment and commitment to those whose presence in their life is despite rather than because of their own existence. Many children living in blended families form strong attachments to a step-parent or a partner of their parent and such attachments can continue long after the collapse of the adult relationship through which it first developed. The essence of a family relationship is not in its form or label but in the quality of the personal relationship between the child and that other person and this is recognised in the law, '...family life... is essentially the real existence of close personal ties': *Lebbink v The Netherlands* (App NO. 45582/99, judgment of 1 June 2004).

2. In the case with which I am concerned that reality was either wholly ignored or completely misunderstood by Wirral Metropolitan Borough Council (the Local Authority) in its decision-making in respect of Adam (not his real name), the child who is the subject of these proceedings, and, as a consequence, his family life was significantly disrupted without justification but with considerable and unnecessary emotional upset to the child.
3. It is right to acknowledge at the outset of this judgment that the Local Authority has now reflected upon its earlier actions and returned Adam to the care of his family but the failings which precipitated that removal were both multiple and egregious to the point that a public judgment is appropriate to attempt to ensure that repetition of those failings is avoided.
4. Those failings were, in my judgment, fourfold and cumulatively provided more than satisfactory grounds, but for the Local Authority's change of mind, for the grant of the injunction sought by the family to mandate the return of Adam to his great-grandparents.
5. This judgment is given to explain those failings I have found to have occurred.

The relevant background

6. Bearing firmly in mind the guidance of the President of the Family Division that in these times judgments must be focused upon relevant issues and avoid unnecessary narrative (see *The Road Ahead*, paragraph 48) I shall limit the detail of the background to that which is necessary only to give context to the decision.

7. Adam is five years old who since November 2019 has lived with his maternal grandmother and her partner, Ms R and Mr N under a care order made in favour of the Local Authority. Adam's mother has a younger child, Beryl (not her real name), who lives with her and Adam's maternal great-grandparents under the aegis of a Special Guardianship order. That order was made three months after the making of the care order in respect of Adam.
8. In March 2021 Adam alleged that he had been smacked by Mr N. The allegation was made at school and followed an episode of unprecedented bad behaviour by the child that day. It was repeated both during that day and the following day when a social worker attended at school. This allegation was considered in the light of earlier concerns of the Local Authority arising from when Adam sustained a bruise to his cheek, reported by the family to have been caused when he fell but which was alleged by Charlie, Ms R's youngest child, also five years old and also living in the same property, to have been caused by Mr N. That incident was investigated but the conclusion was that there was no additional evidence to support the accusation of assault and no further action was taken.
9. The consequence of that investigation was a deterioration in the relationship between Ms R and Mr N on the one hand and the Local Authority. A relationship which had already been less than harmonious was made worse and not improved when a second injury was observed to Adam in February 2021 but for which an explanation of walking into a door could not be gainsaid.
10. It was in that atmosphere of suspicion matched by defiance that Adam made his third allegation at the beginning of March and which caused the Local Authority to decide to move him to the care of his great-grandparents, Mr and Mrs R, whilst matters were once again investigated. Adam duly moved to his great-grandparents on 3 March without difficulty.
11. On his move the family had been instructed by the Local Authority to avoid Adam coming into contact with either Ms R or Mr N during the period whilst the investigation was on-going. Initially that did not appear to present a problem but the investigation was not swiftly concluded and both Adam and his great-grandparents began to be more vocal about when Adam could return to Ms R and Mr N's care. Adam missed Charlie, his friend and playmate, as well as Ms R and said so. To the Local Authority this appeared to have been contrived by Mrs R to expedite the investigation and steer it to a particular outcome. For their part, in the absence of evidence of action, Mr and Mrs R became frustrated with the prohibition upon meeting with Ms R and began to openly discuss engaging a solicitor to bring about a resolution.
12. The care given to Adam during this time was more than adequate and Adam had a good relationship with his great-grandparents with whom he was obviously close. There were some concerns raised about the difficulty in ensuring that family members maintained a necessary distance from each other during the investigation and also about the absence of adequate sleeping accommodation for Adam in Mr & Mrs R's home. Adam was in a single bed in their bedroom with

all other bedrooms already filled. Otherwise Adam was properly looked after by his great-grandparents.

13. To these issues was added a view that the maternal great-grandparents as septuagenarians were not well placed to care for a five year old child other than for the short term. That view sat at odds with the fact that they had been approved as Special Guardians for Beryl, their younger great-grandchild, but the additional work of caring for another child was a matter which also factored in the Local Authority's thinking.
14. The aggregation of age, accommodation restrictions, the number of children requiring care, the difficulty of maintaining separation between family members, the Local Authority's view of Mr and Mrs R as foster carers and the deteriorating relationship between the Local Authority and the family all combined to cause the Local Authority by mid-April, several weeks after Adam had been moved to their care, to decide that he should now move again but this time to foster care and on a permanent basis.
15. That conclusion was not notified to the family when formed or even for some time thereafter and it follows that their ignorance about the decision meant that they had had no opportunity to make any contribution to the process by which it was made. Instead, on 5 May, at a meeting at which the mother, maternal grandmother and maternal great-grandmother were present, the Local Authority informed the family that Adam was going to be moved to foster care as soon as possible. Hardly surprisingly the family disagreed with the Local Authority and expressed their views in what can be best described as robust terms. It was made clear to the Local Authority that legal advice would be taken with a view to moving the whole question of the separation of Adam from the family into court.
16. On 6 May the Local Authority were informed that an application was being prepared by the mother to discharge the care order. On 6 May at 16:59 an application to discharge the care order was received by the court. However, on 7 May and despite that indication the Local Authority instigated the move and an upset Adam was collected from school by the social worker and moved directly to foster carers.
17. It is unclear what happened to that application immediately upon its arrival but in response to an email sent on 12 May I listed a hearing on 27 May during the lunch break, which was the only time available that month. On that day a very short hearing took place which reflected sterling work undertaken by counsel for the mother and for the Local Authority, ably assisted by the solicitor for the child. It was clear that there was a significant issue between the family and the Local Authority but it was equally clear that those most closely involved in that issue were the maternal great-grandparents rather than the mother. On the day of the initial hearing the great-grandparents were actually in the process of securing legal representation as I was exchanging emails with the advocates in an effort to identify issues and so best manage the limited time available to actually

conduct a hearing. My gratitude for the agility and collaborative skills demonstrated by all involved to progress the case to enable an effective hearing to be set up is properly recorded here.

18. Directions were given on that day and a substantive hearing was set up on 10 June, the earliest occasion when it could take place due to my own unavailability and general pressures on the court lists. The result was that Adam would be away from family care for over a month. A matter for regret at the best of times it was made worse as it became clear that there were serious question marks over the actions of the Local Authority as will be later set out.

The applications

19. On 6 May 2021 the mother applied to discharge the care order made in 2019. On an initial consideration I formed the view that in fact the primary issue was not whether the care should be discharged but whether the Local Authority should be ordered to return Adam to family care.
20. Subsequently on 4 June 2021 the mother filed her application for an injunction under the Human Rights Act 1998 together with her statement in support. Exhibited to that statement were, amongst other documents, an exchange of emails between the solicitors for the mother and for the Local Authority which confirmed the mother's instructions to seek an injunction in the event that the Local Authority pressed ahead with its plan to remove Adam and the Local Authority's view that as the maternal great-grandparents were only substitute carers and did not meet the Local Authority's minimum requirements for foster carers (as considered by the Local Authority) a move was inevitable and would proceed as planned.
21. On 11 June the maternal great-grandparents were legally represented and accepted the invitation made within the initial order to participate at the adjourned hearing.

The issues

22. Whilst the original application in time was that of the discharge of the care order no participant (whether party or invitee) was pressing that as an issue at the adjourned hearing.
23. The real issues therefore were these:
 - a. Was the removal of Adam from family care on 7 May justified in law the light of the facts as known?
 - b. Was the process by which that removal was determined (a) adequate and (b) appropriate?
 - c. If the answer to any of the above questions was in the negative was it appropriate to injunct the Local Authority to require the immediate return of Adam to family care (it being agreed between the family that the only realistic option was a return to great-grandparental care)?
24. To answer those questions requires the identification of the relevant legal principles.

The law

25. In considering the applicable legal principles I acknowledge the Position Statement drafted by Mr Spencer on behalf of the child in which these matters are set out with both force and clarity. Tempting though it would be to crib assiduously from that document I have attempted to refrain from so doing but the framework he set out has been of considerable assistance.
26. The starting point is the decision of Baker J (as he then was) in *Re DE [2014] EWFC 6*. Although regarded as a 'go-to' authority for family lawyers for its authoritative detailing of the procedure to be followed for dealing with an application to resist or reverse a decision to remove a child placed at home on a care order, the first half of this guidance judgment sets out the principles of law upon which that process of challenge sits:
 - a. There is a general duty upon Local Authorities to promote the upbringing of children by their *families* (my emphasis): s.17(1), Children Act 1989.
 - b. Whilst a Local Authority to which a care order has been granted has the power to determine the extent to which [a parent, guardian, Special Guardian or step-parent] may meet their parental responsibilities for the child, such determination is limited by it being necessary to do so in order to safeguard or promote the child's welfare: s.33(3)(b), Children Act 1989.
 - c. That limitation extends to a decision about removing the child from her home. The existence of the care order of itself provides no authorisation to effect a removal.
 - d. This is because Article 8 of the ECHR (the right to respect to private and family life) is engaged when issues of removal from home are raised.
 - e. Article 8 has both substantive and procedural aspects. The former requires that any interference with that right is limited by the need to comply with the restrictions set out in Article 8(2). The latter requires that the decision-making process by which an interference is deemed to be justified is itself fair. Fairness requires, amongst other things: providing advance notice of any removal; setting out the reasons for that removal and the factual basis underpinning that reasoning; allowing those with the care of the child to answer any allegations being levelled at them by the Local Authority; allowing them to challenge the proposed removal through direct participation in the decision-making processes as opposed to simply attempting to do so either after the decision has been made or even after it has been effected.
 - f. To fail to do so is to act in a way which is incompatible with a Convention right, which it is unlawful for a Local Authority, as a public body, to do.
 - g. The decision to separate a child from family care whether in the short or the long term is subject to stringent tests.

- h. In the short term the appropriate test is now set out in the decision of *Re C (A Child)(Interim Separation)* [2019] EWCA Civ 1998 and requires, in essence, an immediate risk of harm in the light of which removal is a proportionate response and which cannot be mitigated through any less intrusive arrangement.
 - i. Long term separation will only be sanctioned if on grounds of a child's welfare such an outcome is necessary (i.e. 'that nothing else will do'). Further that conclusion requires a thorough assessment of all realistic options, both internally and comparatively, prior to an assessment of the proportionality of such an outcome: *Re B* [2013] UKSC 33.
 - j. Whilst that process is on-going the child should remain at home unless their safety requires immediate removal.
27. The decision in *Re DE* was focused upon a planned removal from parental care. However Article 8 does not limit 'family life' to the relationship between a parent and child but is engaged in respect of any relationship which amounts to 'close personal ties' (see paragraph 1 above). The litmus test was succinctly set out by Munby J (as he then was) in *Singh v Entry Clearance Officer New Delhi* [2004] EWCA Civ 1075:

'Typically the question will be, ... , whether there is a 'close personal relationship', a relationship which has 'sufficient constancy and substance to create *de facto* family ties.'

Accordingly the protections which are afforded to parental care are equally applicable to any relationship which carries with it that essential characteristic of a close personal tie.

28. It follows that a removal from home is not defined as only a removal from a property inhabited by a parent but should be cast wider to include any removal from family care into proposed permanent non-family care (see paragraph 34 of *Re DE*). Further support for that proposition (were any needed) can be found in the decision of Mr Recorder Tyler QC (sitting as a Deputy High Court Judge) in *Re BH* [2017] EWFC 15, in particular at paragraph 60.

Discussion

29. In paragraph 23 above I posed three questions which encapsulated the issues upon which the applications before me were based. When considering those questions in the light of the law as set out above and the facts as provided in the witness statements filed (no oral evidence was heard) four critical failings in my view stood out. Those failings were these:
- a. A failure to properly apply the law.
 - b. A failure to ensure the decision-making process was fair.

- c. A separate failure to properly consider and apply the National Minimum Fostering Standards when determining the suitability of Mr and Mrs R as prospective long term carers.
- d. A failure to assess information in the light of the realities of family life.

The proper application of the law

- 30. Adam was removed from the care of his grandmother and her partner, his original carers, by reason of the on-going investigation into his allegation that he had been hit by Mr N. No party has sought to suggest that that removal decision was not appropriate nor that the circumstances in which it was made did not, at least arguably, amount to an issue of safety for a child requiring an immediate removal as referenced by Mr Justice Baker in *Re DE*.
- 31. In any event the change for Adam was from his grandmother to his great-grandparents, not of itself a removal from family care. Whilst it was a separation from his primary carers it was, again arguably, a proportionate response which was mitigated by a placement in family care and with carers with whom he had established relationships.
- 32. The removal from his maternal great-grandparents was an entirely different matter as it not only marked the departure of Adam from family care but on a proposed permanent basis.
- 33. The Local Authority had always accepted that Adam had a close relationship with his great-grandparents, in the documentation it filed it acknowledged that 'there is no question that [they] are dedicated grandparents [sic] who love [Adam] dearly' and that '[Adam] clearly has a positive relationship with his great-grandmother, and it appears she is the main significant person in [Adam]'s life, and we continue to promote this relationship in his best interests.'
- 34. Additionally there can be no argument therefore but that Article 8 was engaged in any decision to remove Adam from that caring relationship.
- 35. The removal decision was made on the following grounds:
 - a. Notwithstanding that there was no further evidence to establish the truth of Adam's allegation against Mr N, including an ABE interview in which he did not repeat his original allegation, a decision was reached that it was not appropriate for Adam to continue to live with Ms R and Mr N.
 - b. The maternal great-grandparents had been informed when Adam was initially placed with them that they would only be considered as short term carers and therefore this was never intended to be anything more than a temporary move.
 - c. The Local Authority concluded they could not be approved as foster carers for Adam in the future.
 - d. Adam's long term future was to be in foster care and this therefore needed to be progressed.

36. The removal decision was specifically not made because of any immediate risk to Adam's welfare, who was observed as happy in his great-grandparents' care. The Local Authority's own documentation noted that it had 'no significant concerns with the basic level of short-term care they have provided for [Adam]' with the single caveat of whether he was having his teeth brushed regularly (of which more later). There was certainly nothing to support any conclusion of an immediate risk to safety (in accordance with *Re C*).
37. Neither was the removal decision made on the basis of any analysis of long term options and certainly not from any conclusion that Adam's welfare necessitated permanent non-family care. The principles of *Re B* (supra), as incorporated through the guidance set out in *Re DE*, were wholly ignored. It is not unfair to categorise such decision-making as did take place as being entirely linear: the mother had already been ruled out, the grandparents were now ruled out, the great-grandparents could not be ruled in and therefore long term foster care was the only option available. There was no consideration of whether any of those options had changed, whether decisions previously made concerning the unsuitability of family placement options now needed to be revisited in the light of the possibility of permanent non-family care or whether the possibility of exclusion from family care via fostering merited a consideration of other possible placement options, such as a Child Arrangements order or a Special Guardianship order, to prioritise a family relationship as opposed to a type of legal placement.
38. On a much simpler level there was a further failing by the Local Authority in terms of its application of the law. The guidance in *Re DE* stipulated a minimum notice period of 14 days between the communication of a decision to remove and its' execution. In this case the decision was communicated on 5 May and Adam was removed on 7 May. The family received not two weeks' notice, but two days
39. The basis for the Local Authority's stance was clearly and helpfully set out in the following recording inserted into the draft order agreed between the advocates and forwarded to me for approval on 27 May 2021:

The LA position is that it removed [Adam] from the MGPs in emergency type circumstances given the allegations made by him of physical abuse against his male carer. [Adam] was then placed with the MGGPs as a holding placement only, pending the outcome of the s47 investigation into the allegations. The LA therefore does not accept that it has breached the guidance within Re DE as the relevant removal was from the care of the MGPs in March 21 arising out of allegations of physical abuse by [Adam] which he has maintained. In any event the outcome of the s.47 investigation identified significant concerns with respect to the insight of the MGGPs with respect to the allegations made by [Adam] and the potential risks that arise in consequence thereof.

40. The justification therefore for the failure to apply the guidance set out in Re DE was that:
 - a. The removal on 7 May was not the relevant removal, and
 - b. There were significant concerns about the insight of the maternal great-grandparents into Adam's allegations which might have created a future risk to him.
41. I hope it is now sufficiently clear to the Local Authority from all that is set out above that in my judgment this view of the scope of the guidance in Re DE is not one which should be repeated as it is fundamentally misconceived and completely fails to apply the necessary precepts set out therein.

The fairness of the decision-making process

42. As noted above the engagement of Article 8 imports to any decision-making process which will affect family life a requirement that that process is fair, allows for involvement of those whose rights may be affected and that such involvement requires being provided with information, given an opportunity to respond and the means of challenging that decision before its implementation.
43. In this case not only were none of those requirements met but in fact the Local Authority took deliberate steps to ensure that they could not be met.
44. Immediately upon placement of Adam with his great-grandparents Mr and Mrs R were informed that it was only a temporary placement. From the outset, therefore, the Local Authority had formed a view in relation to the question of long term placement with them which had not been discussed, considered or ventilated with Mr and Mrs R and which indicated that it arrived at the issue of the possibility of their caring for him on a long term basis with a closed mind.
45. Despite that indication the great-grandparents were involved in a limited review of their previous assessments as prospective foster carers insofar as the matter was discussed with them by the individual who had previously undertaken the earlier assessments. It is not clear from the documentation disclosed the extent to which the conclusions of that re-assessment were thereafter shared with Mr and Mrs R because whilst a short (two page) document exists it is not clear whether it was ever provided to Mr and Mrs R at the time or used purely for internal discussion within the Local Authority.
46. What is clear is that there was both internal discussion by the Local Authority about Adam being cared for by Mr and Mrs R and multi-agency discussions involving health and education professionals. On 16 April 2021 a meeting took place involving the Local Authority, a health professional and a member of staff at the relevant school which came to four conclusions:
 - a. Adam could not return to Ms R and Mr N
 - b. Adam could not remain with Mr and Mrs R
 - c. Adam therefore would transfer to long term foster care

- d. The family would not be informed about this decision but instead be informed that the above decisions have not yet been made.
47. The Guardian, through Mr Spencer, refers to the outcome reached on that day as a deceit. I agree. The lack of involvement of the family in the decision-making process at any stage is itself a serious breach of protective procedural rights and worthy of criticism of the Local Authority for its failure to act in a fair and transparent fashion. However to then compound that error by deliberately misinforming the family of what had been decided, to effectively string them along, possibly with misdirection but certainly through omission, can only be deplored in the strongest terms. Given that they were informed only on 5 May it would appear that for a period of over two and half weeks the family languished in ignorance whilst the Local Authority made their plans for removal. It is not lost on me that the period during which the Local Authority denied the family any information was longer than the period of notification to which they were actually entitled.
48. The upshot of all of this was a total failure to allow any proper, planned court application to be made, the creation of unnecessary urgency where none would otherwise have been required, a chaotic initial hearing with everyone bar the Local Authority on the back foot, including the court, a delay in enabling an effective hearing to take place and, worst of all given the reversal which then followed, an unnecessary and inappropriate move for a child which caused avoidable distress over a prolonged period.
49. Procedures are important, they are not unnecessary bureaucracy serving only to generate meaningless delay, but create the architecture for decision-making by which timeliness, transparency, sufficiency of information and equality of access to resources such as information and professional advice can combine so as to render the process fair and thereby enable certainty to be accorded to decisions which affect people's lives. Departures from established procedures must be justified by sound reason and limited to what is necessary to achieve good outcomes without sacrificing baseline requirements which might undermine that outcome. In this case there was a total failure of proper procedural safeguards which was compounded by a deliberate misdirection.

The application of the National Minimum Fostering Standards

50. I include this issue because it is the second time in the last three months that I have had cause to be concerned at the way in which these necessary standards of good practice for fostering services have been deployed as a simple test by which people are either passed or failed and if the latter rejected as possible foster carers.
51. I must here acknowledge the benefit I received from reading the judgment of HH Judge Clive Baker in *MBC v X and Ors* [2018] EWFC 42 who first highlighted this issue. As this is to be a public judgment

it is appropriate to replicate the relevant section of Judge Baker's judgment in full to ensure that his conclusions, with which I wholly associate myself, are further promulgated:

The National Minimum Standards for Fostering

57) *I will comment that I have a fundamental issue with this approach which I believe arises out of a misunderstanding by this and many local authorities as to the purpose of The National Minimum Standards for Fostering ("NMS").*

58) *Their purpose is in fact defined quite clearly under the heading "Legal status of the standards" on page 4. It says:*

"... [The NMS] aim to enable, rather than prevent, individual provider to develop their own particular ethos and approach based on evidence that this is the most appropriate way to meet the children's needs. Many providers will aspire to exceed these standards...

...

*The standards apply to fostering services. Where a standard places an expectation on a foster carer, **this should be interpreted as an expectation on their fostering service to support the foster carer to meet the standard.**" (my emphasis)*

59) *It seems clear to me that the NMS are not a means by which potential foster carers should be excluded as being foster carers without at least first considering whether the potential carers can be supported to meet the standard purported to be 'failed' by that proposed carer. Indeed, both viability and full assessments that approach the question of children's placements with relatives and connected persons from the perspective of first asking the question "Do these carers meet the Fostering National Minimum Standards?" is, in my view, answering the wrong question at the wrong time. The ethos behind and basic questions that should be asked and answered by such assessments must surely be:*

i) *Is it in the welfare interests of the children to be placed with these carers?*

ii) *If yes, what legal structure for such a placement best meets the welfare needs of the children?*

60) *Only then, having answered the above questions, do the National Minimum Standards become relevant and engaged thus: Do the proposed carers meet the NMS? If the proposed carers do not meet them, can they be supported to attain the standard?*

61) *Failure to approach the matter in this way leads to a perverse result.*

62) *The NMS are in place to promote the welfare of children in foster care. If foster carers (or the service) do not meet the standards then usually that is directly relevant to the welfare of the children that may be placed with them. For example, if the fosters carers have shown themselves unable to protect children from “abuse and other forms of significant harm” they do not achieve standard 4.1. That would of course be highly relevant to the welfare of the children.*

52. In March of this year I handed down a judgment in which I set out the following passage:

‘Allied to the nature of the assessment process was the concern that failing to meet the National Minimum Standards thereby evacuated any possibility of both being a foster carer or even a Special Guardian. I was troubled by the extent to which an inability to meet some of those standards was regarded as a litmus test for failure rather than an indicator of work to be done. On considering those standards I reminded myself as to what the National Minimum Standards are designed to achieve:

They [the NMS] aim to enable, rather than prevent, individual providers to develop their own particular ethos and approach based on evidence that this is the most appropriate way to meet the child’s needs.

The standards apply to fostering services. Where a standard places an expectation of on foster carer, this should be interpreted as an expectation on their fostering service to support the foster carer to meet the standard.

(Page 4, Fostering Services: National Minimum Standards)’

53. That was a different case but not a different Local Authority. To have to address this issue once might not cause undue concern but to see the same approach being taken again by the same Local

Authority within a comparatively short time leads me to the view that this Local Authority is applying these standards not in their intended fashion as a means to gauge where foster carers require assistance and to provide a framework in which that assistance can be offered and the outcomes measured but as a test to be passed, or more frequently in my experience, to be failed with the consequence that willing and potentially able carers, especially family relatives, are therefore discarded as possible long term carers under the umbrella of a care order.

54. In my judgment the Local Authority took a snapshot approach to the assessment process, made a simple measurement against what it considered to be fixed standards and determined the issue without any consideration of how any necessary change might be effected.

The reality of family life

55. The final failing is the most difficult to articulate but still requires addressing. In this case I have concluded that the social work team failed to exercise their professional judgment with any reasonable degree of perspective or appreciation for the realities of family life for the individuals concerned. It might, hopefully not discourteously, be regarded as a lack of common sense.
56. This failing can be found in numerous small examples following the move of Adam from Ms R and Mr N to Mr and Mrs R.
57. On 3 March the maternal great-grandparents were instructed to ensure that Adam was not allowed to be in the company of Ms R or Mr N. Given that the allegations were only ever centred upon Mr N and that Adam repeatedly stated how he missed both Ms R and Charlie it is not entirely clear why that exclusion was also thrown around Ms R as well. Be that as it may the Local Authority expressed concern when it was reported that Adam had been seen in Ms R's car in the company of Mrs R. Mrs R explained that she had collected Adam and Beryl from school but was having to walk home due to Mr R, who had driven her there, then having to attend an appointment. It was raining and Ms R, who was collecting Charlie at the same time from the same school, offered all three of them a lift home.
58. A concern was expressed during the time Adam was with Mr and Mrs R that either he himself was not brushing his teeth regularly or others were failing to do it for him. The importance of dental hygiene for young children is not disputed. The reality of getting young children to brush their teeth whilst only just about avoiding a pitched battle taking place is a challenge with which many parents and carers of children may be familiar. As an example of inadequate parenting sufficient to justify permanent removal it is not.
59. Mrs R was regarded as being incapable of offering long term care for Adam because of her age (71, with apologies to Mrs R) and the fact that she stated that she was on occasions 'knackered' by the efforts of looking after both Adam and Beryl. Looking after two young children can deplete the energy reserves of a parent in their 20s at the best of times. Caring for young children in periods of

lockdown caused by the restrictions of the Covid-19 pandemic has, for many families, been as far removed from the best of times as they can remember or hope to ever experience again. The notion that a great-grandparent is rendered unfit for consideration as a long term carer based solely upon age or the honesty with which they acknowledge their challenges is not one with which I can agree.

60. Mr R in particular was perceived to have a negative approach to social workers. This would appear to stem from his willingness to disagree with their decisions and to be less than reticent in articulating that opposition. Again it should be standard operating procedure for social workers that families caught between divided loyalties such as involving a daughter, a granddaughter and a great-grandchild are highly likely to be reluctant to compartmentalise their feelings and to automatically assume that the social work team knows best. It should now be clear that in terms of the Local Authority's decision-making Mr R was, in my judgment, entirely right to be critical of it and even to reject it, given that that is exactly what I have done.
61. In pointing the above out I should make it clear that I recognise that it is easy to cherry pick individual instances and make them appear to reflect the general approach even when they do not. I also acknowledge that it is always easier with the benefit of hindsight and when matters are laid out in the courtroom far removed from the pressures of the moment to form a view which was utterly obscured at the time for very good reasons. The Judge has the opportunity to evaluate the completed process rather than assess the significance of events as they unfold and this gives proper grounds for reflective decisions but must not then become the basis for criticisms which are unwarranted because those same opportunities were not available on the ground at the time.
62. With that caveat in mind I am confident that I have neither cherry-picked nor retro-viewed here. What I have highlighted reflects the overall stance adopted by the social work team which contaminated their thinking to the extent that the decision-making process was wholly flawed. There was a lack of common sense in their collective approach which is always an ingredient in the best examples of social work practice. It is not a compromise of child welfare, let alone safety, to apply theoretical precepts and recognised practice to a lived situation and then to calibrate that analysis to ensure that proper account is taken of individual circumstances. That is the essence of good social work practice but that did not happen here.

In conclusion

63. This judgment is critical of this Local Authority on a number of bases but I remind myself that this Local Authority, certainly in my court, has a proven track record of professionalism, good intent and commitment to children. That much is clear from the clear-sighted and honest reflection it undertook in reversing its decision and ensuring that Adam returned to the care of his great-grandparents immediately following the hearing on 11 June. The failings demonstrated are highlighted not as an example of on-going problems but as a means of ensuring that repetition is

avoided and essential misunderstandings of law, of duties and of the importance of applying professional responsibilities within a context of lived reality are corrected and avoided in the future.

64. Finally, it will not have gone unnoticed that the Local Authority in question was identified at the outset of this judgment. That was intentional and in accordance with the Guidance issued by Sir James Munby P in 2014 and Sir Andrew McFarlane P in 2018 (Transparency in the Family Courts: Publication of Judgments: Practice Guidance, 2014 as supplemented by Practice Guidance of December 2018: Family Court – Anonymisation Guidance). At the outset of the hearing I was invited on behalf of the Guardian to deliver a public judgment and I acceded to that application. The guidance is clear that where permission is given for publication the starting point is that public authorities should be named in the judgment absent compelling reasons against identification. In the circumstances of this case insofar as there are compelling reasons they are in favour of identification and not against. Accordingly I identified Wirral Metropolitan Borough Council.
65. That is my judgment.

15 July 2021