Neutral Citation Number: [2024] EWFC 183

Case No: BT22C50001

**IN THE FAMILY COURT**
**SITTING IN THE ROYAL COURTS OF JUSTICE**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/07/2024

**Before**:

**MR JUSTICE MACDONALD**

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**Between :**

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| **The London Borough of Enfield** | **Applicant** |
| **- and –** | |
| **RE** | **First** |
| **-and-** | **Respondent** |
| **SW** | **Second** |
| **-and-** | **Respondent** |
| **E** | **Third** |
| **(through her Children's Guardian)** | **Respondent** |
| **-and-** | |
| **TD** | **Fourth** |
| | **Respondent** |

**Ms Tabitha Barran** (instructed by **London Borough of Enfield**) for the **Applicant**
**Mr Jeremy Hall** (instructed by **Burke Niazi**) for the **First Respondent**
**Ms Susan Quinn (instructed by Duncan Lewis) for the Second Respondent**
**Ms Jane Rayson (instructed by Beck Fitzgerald) for the Third Respondent**
**Ms Kate Claxton (instructed by Morrison Spowart) for the Fourth Respondent**

Hearing dates: 8, 9, 10 and 12 July 2024

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# Approved Judgment

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

**Mr Justice MacDonald:**

INTRODUCTION

1. In this matter I am concerned with the welfare of E, a girl, born in December 2021. E has a diagnosis of sickle cell anaemia. E is represented by Ms Jane Rayson of counsel through her Children's Guardian, Amy Watkins. Ms Watkins was not the original Children's Guardian in these proceedings, having been allocated on 4 April 2023. The proceedings are brought by the London Borough of Enfield, represented by Ms Tabitha Barran of counsel. The final care plan of the local authority is for E to be placed in the care of her paternal aunt, TD, in the jurisdiction of Ghana under the auspices of a Special Guardianship Order (SGO).

2. As I set out in detail below, these proceedings have been the subject of very concerning delay. The case had already been ongoing for 2 years when it was re-allocated to me in April 2024. It is currently in week 131 as against the statutory time limit of 26 weeks stipulated by s.32(1)(a)(ii) of the Children Act 1989. Prior to the matter being reallocated to this court, the case had been dealt with by no less than nine judges across seventeen hearings. There have been seven Issues Resolution Hearing listings and an adjourned final hearing. Prior to it being re-allocated, the case had passed through the hands of a total of thirty-three different advocates. Having been the subject of proceedings and placed in foster care since shortly after her birth, E is now aged 2 years and 4 months old. The observation of the Children's Guardian in her final report that the proceedings are "significantly beyond the target timeframe for reaching decisions regarding [E's] permanency" is the very definition of an understatement. Whilst this judgment must and will concentrate on the decision that falls to be made for E, I am obligated to deal also in this judgment with the manifest and wholly unacceptable delay for E.

3. The mother of E is RE. She is represented by Mr Jeremy Hall of counsel. The mother seeks the return of E her care and opposes the care plan. The mother has been assessed as being in the extremely low range of intellectual functioning with an IQ score of 67 on the 1st percentile. Her capacity to comprehend language is assessed as extremely low, with a VCI of 68 on the 2nd percentile. The mother's reading ability is good enough for single words, with a reading age of 11 years old, but her ability to make sense of what she reads is lower. Whilst the mother does not strictly speaking fulfil the criteria of learning disability, the psychological report before the court concludes that she presents with a number of clear impairments in adaptive functioning consistent with such a diagnosis. In these circumstances, the mother has the benefit of an intermediary. The court has been careful to have regard to the recommendations of the intermediary to ensure the mother can participate effectively. The court also implemented special measures pursuant to FPR 2010 Part 3A by way of a screen in court having regard to the allegations domestic abuse made by the mother against the father. The mother has filed and served four statements and the court heard short oral evidence from the mother.

4. The father of E is SW. He is represented by Ms Susan Quinn of counsel. The father and the mother separated prior to the birth of E. The father supports the care plan of the local authority. Were the court not to endorse the care plan advanced by the local authority, the father contends that E should be placed in his care. The father has also

filed and served four statements and the court heard short oral evidence from the father.

5. The paternal aunt is a respondent to these proceedings and is represented by Ms Kate Claxton of counsel. The paternal aunt is a Nigerian national who has been resident in Ghana for some 20 years, for which jurisdiction she has a resident permit that gives her the right to live and work in Ghana. The paternal aunt is married with her own teenage children. The paternal uncle lives and works in Nigeria. In line with the care plan, the paternal aunt seeks for E to be placed in her care in the jurisdiction of Ghana under the auspices of an SGO. The evidence of the paternal aunt, set out in three statements of evidence, was not challenged.

6. None of the counsel appearing at the final hearing have previously been instructed in this case.

BACKGROUND AND EVIDENCE

7. On 14 October 2021, a referral was made to the local authority by the hospital after the mother made allegations of domestic abuse against the father. Whilst a more expansive schedule of findings has been provided by the mother, in circumstances where it is for the local authority to prove the threshold criteria pursuant to s.31(2) of the Children Act 1989 I am satisfied that the court should determine those findings sought by the local authority. Those findings are set out in the final statement of threshold criteria:

    i) On or around 1st September 2021, the mother and father were arguing. The mother was 4 months pregnant. The father was intoxicated. The father poked the mother in the eye, grabbed her neck and scratched it.

    ii) On 14 October 2021, the police were called to the father's property by a neighbour who heard the mother and father arguing. The mother was 5 months pregnant. The father grabbed the mother around the throat, choking her. The mother slapped the father in self-defence. The father then pushed the mother to the floor and she fell on her side, hitting her head. The father was highly intoxicated.

8. The father denies perpetrating domestic abuse against the mother. Both the mother and the father address the allegations of domestic abuse in their statements and I heard oral evidence from both the mother and the father with respect to the allegations. The court also heard evidence from PC Bonnington, who attended the father's property on 14 October 2021. I deal with my findings in respect of the allegations below. The mother has also reported domestic abuse in previous relationships. Information from the police contains nine entries relating to historical allegations of domestic abuse of the mother and include allegations of stalking, harassment, threats to kill, rape, assault and malicious communication. The mother has stated to assessors that these entries are "false statements".

9. On 25 October 2021, the mother stated that she was in a new relationship with a man called K. She had not met him in person but stated an intention to marry him. The local authority contend that the mother refused to provide to the social worker the surname of this man, his address or his date of birth. It seeks a finding to that effect.

The court heard oral evidence from the social worker in post at the time, Ms O. She reiterated that whilst the details had ultimately been provided by the mother's solicitor after proceedings had commenced, the mother had been asked by the social worker on a number of occasions to provide them but refused. Ms O stated that she had made attempts to ascertain this information when she visited the mother in hospital, the mother having refused to engage with home visits or local authority meetings. The social worker endeavoured to provide the mother with information about grooming behaviour and advised the mother that, if she intended to meet him, she meet the man in a public place. The social worker states that the mother resisted this advice on the grounds that it would be disrespectful.

10. A pre-birth Child Protection Case Conference was held on 9 November 2021, which the mother did not attend. E was born prematurely on 4 December 2021 after the mother was admitted with pre-eclampsia, her estimated delivery date having been 2 February 2022. The mother met K for the first time at hospital and confirmed to staff her plans to marry him. A referral was made by the hospital for an adult safeguarding assessment but the mother did not engage. On 8 and 9 December 2024, the midwifery service raised issues regarding the state of the mother's accommodation, asserting that it was dirty and that no preparations had been made for E's arrival.

11. On 12 December 2021, the mother attended hospital and became angry when K was asked to sit outside due to COVID-19 restrictions then in place. She was asked to leave the hospital. On 14 December 2021, whilst visiting E on hospital, the mother accused staff of switching her baby. The mother then soiled herself in the visiting bay as a result of taking too much laxative to relieve constipation. Staff were concerned that the mother had bought trainers for E that were appropriate for a toddler and was using a dirty breast pump to express milk. The mother refused to engage with social services and again refused support from the adult safeguarding team. Staff were further concerned as to the time the mother spent away from the ward and her refusal to consent to a scan of E recommended due to a reduction in her growth rate.

12. Proceedings were issued on 4 January 2022. Following the making of directions on issue and allocation, the matter came before the court on 7 January 2022. By the order of that date, the case was not allocated to an identified judge but rather was adjourned to a floating list. The position as to interim placement appears, at best, to have been confused. DNA testing of the father was directed. A further hearing took place on 11 January 2022 before a different judge that resulted in a further adjournment to a hearing on 12 January 2022. This adjournment appears to have been the result of the local authority seeking still further time to locate a residential placement. At the hearing on 12 January 2022 before the same judge an interim care order was made on the basis that E would be removed and placed in foster care "as a holding position". The matter returned to court again on 14 January 2022. The order of that date (which does not carry the name of the judge) gave permission pursuant to s.38(6) of the Children Act 1989 for a residential assessment of the mother. Permission was given for a cognitive assessment of the mother to be undertaken by a jointly instructed expert. The order also contained a generic direction that any applications for permission to instruct an expert under FPR Part 25 should be made 48 hours prior to the next hearing. It is not clear on the face of the order what further Part 25 applications were contemplated. A fifth case management hearing was listed to take place 26 January 2022.

13. Thus, a total of *four* case management hearings took place in the first 10 days of the proceedings simply to determine the question of E's interim placement, notwithstanding that a pre-birth referral had been made to the local authority some 3 months earlier on 14 October 2021.

14. The cognitive assessment of the mother was undertaken by Dr Janine Braier and is dated 24 January 2022. Dr Braier's evidence was not challenged at this hearing. Dr Braier emphasised that her conclusions were predictions and required to be tested through a parenting assessment, as the mother might be more competent in practice. Dr Braier noted the following:

    i) That the mother's knowledge on basic care, hygiene, safety and health had more significant gaps than might be expected at her life stage.

    ii) The mother tended to underestimate a child's capacities when asked about developmental milestones.

    iii) The mother was confused about what did and did not constitute emotional abuse, though she had a fair, if basic understanding of the impact of domestic abuse on a child.

    iv) In responding to scenarios on children's growing emotional needs, the mother was not always able to provide sensible solutions, being naïvely permissive, giving in rather too easily and coaxing or begging with a younger child, whilst being overprotective and having difficulty providing autonomy for an older child.

    v) The mother did not have the parenting knowledge needed to understand a child's practical or emotional needs and might struggle to process and respond to emotional and behavioural issues effectively if and when E ran into more challenging problems.

    vi) Cognitive impairments, combined with sensitivity to criticism and a lack of insight into having any difficulty at all, meant that it might be harder for the mother to accept professionals' concerns at all.

    vii) Although the level of functioning exhibited by the mother is not always a bar to parenting, research indicated that parents with an IQ in the range exhibited by the mother might be less likely to succeed in their parenting without support than those functioning at a higher level.

    viii) The mother might struggle to recognise problems as they arise and generate creative and effective solutions. She might also have difficulty establishing effective boundaries and discipline and in maintaining the dominant, adult position in her relationship with her child.

    ix) The mother lacked basic knowledge regarding childcare and developmental milestones, but did not realise this and might be unwilling to acknowledge it might be due to limitations in some of her cognitive abilities.

    x) The mother did not have a helpful support network.

xi) The mother presented with a blanket denial of most of the concerns around violence and her management of the relationship with the father. Whilst she acknowledged that one person had scared her such that she called the police, she stated that other reports of her being a victim of abuse were "false statements".

15. The matter came before a third judge on 26 January 2022. The order from the case management hearing of 26 January 2022 recites that on that date the residential assessment unit had given notice on the placement of the mother and E due to concerns that the mother required prompting with respect to each and every parenting task, including a requirement to prompt her to feed E at the necessary intervals. Notwithstanding this, the local authority is recorded in the order of 26 January 2022 as searching for an alternative residential assessment unit to undertake a PAMS assessment of the mother. It is unclear why a further residential assessment placement was being sought in circumstances where the residential assessment approved at the hearing on 14 January 2022 had broken down as described, although it would appear that the Children's Guardian was also advocating a further residential placement at an organisation called Symbol. The order of 26 January 2022 further records that the court and the parties were "in agreement that there needs to be an urgent assessment of the *potential* deterioration in the Mother's mental health" (emphasis added). No directions were made, however, towards any assessment of this issue. Rather, the time for filing "any" Part 25 application was extended again to 31 January 2022. A sixth case management hearing was listed on 1 February 2022.

16. The order of 1 February 2022, which was made by the fourth judge before whom the proceedings had come, directed a PAMS parenting assessment of the mother. The order of 1 February 2022 further records that Symbol had indicated that it would not accept the mother for a residential assessment without a psychiatric assessment. The court directed such an assessment. The assessment was directed even though (a) the court had made no decision on whether a residential assessment at Symbol should be granted pursuant to s.38(6) of the Children Act 1989, (b) the court had *in any event* and by the same order directed a PAMS assessment of the mother to be filed and served by 29 April 2022, (c) aside from generalised concerns expressed by the hospital and residential placement there was no cogent evidence of the mother suffering from a significant mental health condition such as to justify assessment by a psychiatrist (it is not clear whether the mother's medical records, which evidence no significant mental health issues, had been obtained prior to the parties seeking permission to instruct an expert psychiatrist) and (d) the court already had a comprehensive expert psychological assessment from Dr Braier. Permission for a psychiatric assessment of the mother appears to have been given simply on the basis that Symbol had indicated it would not agree to assess the mother without such an assessment and that the parties agreed to an assessment, rather than on the basis of any reasoned decision that such an assessment was considered by the court to be necessary to determine the proceedings justly pursuant to s.13(6) of the Children and Families Act 2014. It was only at this sixth case management hearing that an assessment by Communicourt was directed to determine whether the mother needed the services of an intermediary during proceedings. The order of 1 February 2022 again contains a generic direction that "Any further Part 25 application" be filed and served "no later than at least 48 hours before the next court hearing". An IRH was listed for 14 June 2022.

17. Dr Ranga Rao, consultant psychiatrist in General Adult and Perinatal psychiatry with South London and Maudsley NHS Foundation Trust, reported on 25 April 2022. Unsurprisingly, Dr Rao confirmed that the mother had no diagnosis of any major mental illness and that, as identified by Dr Braier, the issues with the mother's parenting capacity were primarily due the mother's intellectual level.

18. As I have noted, the order of 1 February 2022 directed a parenting assessment of the mother to assess the mother's capacity to meet the long-term developmental needs of E. The direction for that assessment was expressed as a direction for a "PAMS parenting assessment" to be undertaken by the Edmonton Family Assessment Team. The report was completed by Ms V, senior social worker.

19. The outcome of that assessment was negative. Acknowledging that the mother had demonstrated some areas of strength in the assessment, Ms V concluded that the prospect of the mother being able to provide E with good enough, safe care was very poor. I have considered carefully the contents of the assessment. Whilst it contained positive aspects, to which I shall return, the following points from the assessment are of note:

    i) From the time-limited supervised contact sessions and the parenting interviews carried out with the mother there were already indications of some of the difficulties anticipated by Dr Braier, including difficulties in responding and adapting to different situations, in establishing effective boundaries and discipline and difficulties in providing reassurance to E when she was upset.

    ii) The assessment revealed issues concerning the mother's ability to meet E's needs with respect to basic care, emotional care, stimulation, guidance and boundaries, safety and stability. The mother lacked insight into her own need for support. Whilst the mother scored 'good' on two, 'adequate' on five and 'borderline' on eight out of the 31 Knowledge Cartoons, the mother had significant gaps in her parenting knowledge of infant feeding, parental responsiveness, stimulation, guidance and boundaries, parent healthcare and parent communication.

    iii) With respect to basic care, the mother needed support and guidance to be able to meet E's needs within the time-limited supervised contact sessions and, at times the advice had to be repeated and modelled more than once. The mother struggled to grasp that E's needs are changeable and as such she needed to be able to adapt on a day to day and week to week basis. She took a highly rigid approach to what she had been taught. As E's needs change the mother would need a high level of ongoing advice and monitoring in respect of her ability to meet those needs.

    iv) The mother continued to struggle to independently pick up on E's cues, or communicate with her in an engaging and reassuring fashion. Despite repeated modelling, prompting and her own best intentions, the mother did not appear to be able to 'tune in' to E's signals and she had not been able to respond to her in a way which soothes and engages her. The level of support and the encouragement required by the mother to continue to make changes in this area would be great.

v) Whilst committed to stimulating E in contact, the mother had needed advice to make sure the way in which she utilised means of stimulation was child friendly. The level of support required by the mother to pick up on E's cues and change her approaches as E grows would be high.

vi) Whilst reluctant to conclude that the mother has been intentionally or knowingly dishonest, there were some areas where that appeared to be the case. When asked about prior partner relationships, the mother was adamant that she had not had any relationships of any sort between her late teenage years and when she met the father and denied that she had experienced domestic violence with previous partners dating back to 2017, asserting "false statements" had been made about her. This left a significant unknown area of risk.

vii) The mother was assessed as being very suggestible, to have difficulties in her comprehension, and to be eager to please and 'do right'. She also had a very limited social network. These factors meant that she is a vulnerable individual and would be susceptible to being led by prospective partners who have significant issues of their own, or otherwise malevolent intentions towards her.

viii) The mother's insight into the local authority concerns was very limited. She disputed the notion that domestic abuse should be have been a concern and did not appreciate the concerns about her partner relationships more broadly. The mother also lacked insight into the need for day-to-day parenting support. The mother took almost no responsibility for the difficulties that had been raised with respect to her conduct in hospital following the birth of E.

ix) Whilst a parenting courses on domestic violence related course might be able to increase the mother's knowledge about how she could parent and do so safely, there was no service which would be able to provide the level of support the mother would require to implement her newly acquired skills. The mother's inability to adapt to E's changing needs had already emerged as a significant issue within contact sessions.

20. In the forgoing context, Ms V considered in her assessment what support may enhance the mother's capacity to provide short, medium and long term care for E and what assistance should be offered to the mother from the local authority should E be placed in her care.

21. Ms V concluded mother would need an extremely high level of support in order to meet E's needs in the community. This support would need to be *constant* such that the mother would need another suitable adult to take on the role of primary carer for E's care at all times. As I will come to, this view was also reflected in the assessment of the Children's Guardian that in order to parent E safely, the mother would need "24/7 moment to moment support". In the circumstances, Ms V was of the view that given the *very* significant deficits in the mother's parenting identified, there was no service that would be able to provide the constant level of support required to permit the mother to parent E in the community. She further considered that the mother lacked the personal social support which would provide sufficient mitigation for the difficulties identified in the assessment. During the course of the assessment, the

mother was twice resistant to the idea of a referral to adult services and did not consider that she needed additional support on account of her learning needs.

22. Ms V gave oral evidence at this hearing. On behalf of the mother, Ms V was challenged by Mr Hall as to whether she had in fact carried out a PAMS assessment as directed by the court. Notwithstanding Mr Hall's careful and considered cross-examination, Ms V was clear that, whilst she conceded that she had not utilised the PAMS computer software to record and present her conclusions, she had utilised the PAMS tools to conduct the assessment. Ms V noted that the PAMS assessment model had been designed some years ago for assessments in a community setting, a situation different to that being assessed in this case and not one for which the PAMS assessment had been designed. Ms V was also concerned that the data entry requirements of the PAMS software militated against nuance. In the circumstance, Ms V stated that she utilised the PAMS tools, together with other tools, to tailor the assessment in a bespoke fashion to the mother's needs. Ms V makes clear in her report that she was mindful of the advice given by Dr Braier with respect to the mother's cognitive needs. Ms V further conceded that she had not made any suggestions within her assessment for a programme to assist the mother to make improvements. Ms V was clear, however, that given the fundamental deficits identified in the assessment to have done so would have set up the mother to fail. To use Ms V's words, she considered it would have inappropriately given to the mother "false hope".

23. Ms V was clear during her oral evidence that, given the outcome of her assessment, she would *not* have recommended any further parenting assessment of the mother. Having read the updating material filed and served since her assessment, and in particular to the supervised contact during which the mother has received high levels of support and modelling, Ms V considered that the mother continues to demonstrate very significant difficulties in adapting, modifying and applying parenting skills to E. Having regard to that material, Ms V considered that the difficulties identified in her assessment have been consistent throughout the proceedings. These include the mother's continuing difficulty in reading E's needs in real time, even in the immediate context of supervised contact when the mother only has E to concentrate on. Ms V reiterated during her oral evidence her view that without an alternative primary carer living with the mother full time and undertaking all aspects of E's care, the mother is not able to parent E safely.

24. Whilst matters have moved on in this case, and as such the question of E's welfare falls to be considered on all the evidence that is now before the court, I pause to note that as this case approached the 26 week time limit provided by s.32(1)(a)(ii) of the Children Act 1989, the court had before it an assessment that, sadly, evidenced clearly the mother's inability to meet E's needs within a timescale commensurate with her welfare, which assessment was consistent with the outcome of the failed residential assessment and the psychological assessment of Dr Braier.

25. The matter came before the court for an IRH on 14 June 2022. Once again, the matter was heard by a different judge, the fifth judge to deal with the case. The hearing was ineffective. However, even though the case had reached the IRH stage, and for reasons that are not clear, the court did not list a further IRH. Rather, the matter was listed for a seventh case management hearing and directions were given permitting the mother to argue for a further residential assessment at that seventh case management

hearing. The order of 14 June 2022 did not fix a date for that hearing but rather provided that it be listed on the first open date after 27 June 2022. The order contains no indication that the court had considered whether, pursuant to s.32(5) of the Children Act 1989 an extension to the 26 week time limit stipulated by s.32(1)(a)(ii) was necessary to enable the court to resolve the proceedings justly, s.32(7) of the Act providing that such extensions are not to be granted routinely and require specific justification.

26. The seventh case management hearing was ultimately listed over two months later on 15 August 2022, before another judge who had not had seen the case before. At that hearing the court joined the father as a party to the proceedings and directed that the local authority to undertake an initial assessment of the father. The father was required to propose any alternative carers by 17 August 2022. There was no suggestion by any party that a psychological assessment of the father was necessary. The court, with the support of a duty Children's Guardian, gave the mother permission to instruct the Symbol residential unit to undertake an initial assessment of her and listed her application pursuant to s.38(6) of the Children Act 1989 to be determined at an eighth case management hearing. That hearing was, again, listed without a fixed date. Once again, it is not clear why this initial assessment of the mother by Symbol was considered to meet the strict criteria of necessity in s.13(6) of the Children and Families Act 2014, particularly in circumstances where the first residential assessment had broken down, the report of Dr Braier identified serious gaps in the mother's parenting knowledge, the report of Dr Rao was consistent with the report of Dr Braier and the parenting assessment had concluded that there was no level of support that would permit the mother to parent E safely in the community. For the first time, it was proposed to assess the paternal aunt in Ghana by way of a viability assessment

27. Again, the order of 15 August 2022 contains no indication that the court had considered whether, pursuant to s.32(5) of the Children Act 1989 an extension to the 26 week time limit stipulated by s.32(1)(a)(ii) was necessary to enable the court to resolve the proceedings justly. On 13 September 2022, the case management hearing was adjourned administratively by consent to a ninth case management hearing on the first open date after 20 September 2022.

28. The initial assessment by Symbol, considering the viability of a further residential assessment of the mother, was completed on 16 September 2022. It was not challenged at this hearing. The viability assessment provided by Symbol drew the following adverse conclusions:

    i) The mother reported that she was not aware that she had been assessed as functioning intellectually within the extremely low range.

    ii) The mother was reluctant to engage in discussing previous relationships. Acquiring information from her relied on direct questions, as she was not able to respond to open questions about her relationship history. The mother found it very difficult to engage in open and clear discussions.

    iii) The mother's account about interactions with professionals following the birth of E gave rise to concern in the professionals working with her. The mother could not reflect with the assessors regarding this issue, repeatedly saying that

professionals were not telling the truth. She was not able to engage in general discussion about her experiences with professionals. The mother contended that she was in the position she was because social services had "lied" about her and that the information in the bundle was untrue.

iv) The mother's insight into the difficulties raised by professionals with respect to her parenting was very limited. She considered the concern regarding her relationship with the father had been exaggerated, she did not accept that her parenting capacity was a cause for concern and did not accept concerns centring on a lack of preparation for E's birth, the impact of her emotional wellbeing on E, her failure to attend the Child Protection Case Conference, her relationship with K or her forensic history. The mother became agitated when discussing these matters and left the room.

v) The mother was not forthcoming about information about her current emotional wellbeing, previous emotional regulation difficulties or historical mental health presentation.

vi) The mother was unable, even with support and reassurance, to accept or reflect on the concerns of the local authority.

29. The parenting assessment of the father was completed on 21 October 2022. The assessor concluded that, provided the father accepted further support and training, attended a domestic abuse prevention course, remained separated from the mother and did not enter a further abusive relationship then, subject to the relevant statutory checks with respect to health and offending behaviour, the father would be able to improve his confidence relative to his parenting skills and his ability to safely care for and meet E's overall developmental needs.

30. In October 2022, the mother completed work with Family Based Solutions. The report from family based solutions dated 27 October 2022 makes clear that it was intended that the mother would complete both the Domestic Abuse Recovering Together (DART) course and sessions on "parenting and what it looks like", "parenting and the impact on children" and "mental health and the impact on children". The report from FBS contains no analysis of the outcome of that work with the mother.

31. The ninth case management hearing was ultimately listed nearly three months later on 16 December 2022. Again, the matter came before another judge who had never seen the case. At the hearing on 16 December 2022, the court granted a Part 25 application by the Children's Guardian for a psychological assessment of the father. Once again, there is no recording on the face of the order setting out why the court considered such an assessment necessary to resolve the proceedings justly for the purposes of s.13(6) of the Children and Families Act 2014. There is nothing in the evidence to suggest in respect of the father a complex mental health presentation, difficult questions of behavioural, emotional or neuropsychological functioning, serious forensic risk or chronic substance misuse or addiction.

32. In addition, and notwithstanding that (a) the first residential assessment of the mother had broken down within two weeks, (b) that the mother had been the subject of a psychological report and a psychiatric report indicating that she would likely face

significant difficulties parenting E, (c) that a full parenting assessment had concluded that there was no level of support beyond the presence of an alternative primary carer that would permit the mother to parent E, and (d) that a further assessment of the viability of a residential placement at Symbol was definitively negative, at the ninth case management hearing the court directed an addendum PAMS parenting assessment be completed. As before, it is wholly unclear on the face of the order why this further addendum parenting assessment, nearly a year after the proceedings had been issued, was considered *necessary* by the court given the circumstances I have summarised. On the face of it, the further assessment of the mother appears to have been ordered simply on the basis of a submission that time had passed.

33. The order of 16 December 2022 listed the matter for a second IRH, although the copy of the order contained in the bundle contains no date for that IRH hearing. Once again, the order contains no indication that the court had considered whether, pursuant to s.32(5) of the Children Act 1989 an extension to the 26 week time limit stipulated by s.32(1)(a)(ii) was necessary to enable the court to resolve the proceedings justly.

34. Thereafter, nothing appears to have happened until a consent order was lodged by the parties with the court dated 9 March 2023. That order does not recite the name of the judge who approved it. The order provides for the case management timetable to be further extended, apparently on the basis that there had been a failure to complete an addendum parenting assessment of the father also ordered on 16 December 2022. As with the previous orders extending the timetable, the order of 9 March 2023 contains no indication that the court had considered whether an extension to the 26 week time limit was necessary to enable the court to resolve the proceedings justly. It would not appear that an IRH hearing had ever been fixed as a result of the order of 16 December 2022, but the order of 9 March 2023 provided for a third IRH listing on 3 May 2023.

35. The expert psychological report on the father by John Dowsett, Consultant Clinical Psychologist, was received on 10 March 2023. Unsurprisingly, that assessment revealed no psychological or mental health issues in respect of the father. The information contained it regarding the father's parenting capacity, insight into concerns, level of risk and ability to learn and change could plainly have been provided by the allocated social worker.

36. The addendum parenting assessment of the mother directed by the court on 16 December 2022 was undertaken by Erica Tucker, Independent Social Worker, and is dated 24 March 2023. That assessment was, again, negative. Again, I have considered carefully the contents of the addendum parenting assessment. Whilst acknowledging that the mother had made improvements in some limited areas, Ms Tucker made following points in her addendum assessment:

    i) Despite the sessions completed at FBS with respect to responsiveness to E, reading her cues and meeting her needs, progress was slow with respect to how the mother adapted her parenting to E's changing needs, a situation also evidenced in the contact notes.

    ii) When things changed the mother had to re-learn tasks and often reverted to previously incorrect methods.

iii) The mother had a limited understanding of sickle cell disease and what would be needed from her to keep E well.

iv) There were numerous examples during contact of the mother not recognising when E is hungry or full. When Ms Tucker asked the mother how E shows she is hungry, the mother was not sure.

v) The mother struggled to think of what an older child may need from her that was different to what E needs now. She considered that E's needs as a five year old child would be the same as now.

vi) The mother struggled to recognise issues around guidance and control and the nature and consequences of emotional abuse.

vii) The mother stated that she knew how to bring her child up and would not require *any* support to do so. The mother continued not to recognise the gaps in her parenting capacity.

37. Ms Tucker concluded that, whilst the mother had made some progress in protecting herself from domestic abuse and her home was organised and clean, those improvements appeared to be due to the amount of prompting, modelling and repetitive learning opportunities provided to her in contact. Ms Tucker considered that the main issue was that the mother was unable to read E's cues or anticipate her needs and would have to learn or relearn a new skill every time E's needs changed as she grew and developed. In Ms Tucker's view, and in line with the conclusions of Ms V, safe parenting by the mother could only be achieved if the mother were to parent E with another adult who could constantly supervise her care and that this would have to be an ongoing situation throughout E's minority. Ms Tucker concluded that (emphasis added):

> "5.2 If [the mother] cannot understand E's rapidly changing needs over time, her needs are more likely to go unmet resulting in a possible impairment of her overall development. It is my understanding that [the mother] is about to undertake another parenting course, but I am of the view that to address the gaps in her parenting safely, she will need to have another adult alongside her who can teach and guide her parenting *in real time*. I do not believe that [the mother] would intentionally harm E in any way, but by not understanding her emotional needs could result in unintentional emotional harm that would impact E's emotional development, confidence and self-esteem. If [the mother] does not understand E's health needs, such as sickle cell, any unmet need in this regard would be unsafe."

In these circumstances, Ms Tucker considered that the mother remained unable to achieve the required parenting capacity within a timescale commensurate with E's welfare.

38. Ms Tucker also gave oral evidence to the court at this hearing. Ms Tucker considered it unhelpful that Ms V had not utilised the PAMS software to present her findings and was surprised that the assessment contained no teaching programme. However, Ms Tucker was also clear that the initial parenting assessment of the mother was robust in

that the PAMS tools were utilised. Whilst Ms Tucker conceded to Mr Hall that she would have ideally wanted more time to be allocated to her addendum assessment, and that her addendum assessment ideally should have followed the parenting course completed by the mother in the summer of 2023, having regard to the information gleaned during her addendum assessment, and in particular contained in the contact notes, Ms Tucker considered that the mother remains unable to meet E's needs. In particular, Ms Tucker was clear that the mother remains unable to read cues from E, even though this has been repeatedly modelled in contact. Ms Tucker reiterated in oral evidence her clear view that the mother does not have the necessary parenting skills to care for E safely.

39. As I have noted, the current Children's Guardian was allocated to the case on 4 April 2023. At the third listed IRH on 3 May 2023 the local authority's care plan was to rehabilitate E to the care of her father. There appears, however, to have been a disagreement between the local authority and the Children's Guardian as to the speed at which the transition to the father's care should take place and ultimately a slower transition plan was agreed. A fourth listing for the IRH was set for 9 June 2023. As before, the order of 3 May 2023 contains no indication that the court had considered whether, pursuant to s.32(5) of the Children Act 1989, an extension to the 26 week time limit was necessary to enable the court to resolve the proceedings justly.

40. At the IRH on 9 June 2023, it is clear from the recitals on the face of the order that both the Children's Guardian and the Independent Reviewing Officer had growing concerns regarding the ability of the father to provide good enough care for E and the local authority was directed to provide a statement setting out its response to those concerns. It was required to file and serve its final evidence by 10 July 2023. In the context of the concerns expressed by the Children's Guardian and the IRO about the viability of a placement with the father, the court directed that the local authority also file and serve a full care plan with respect to the placement of E with the paternal aunt, the court directing:

> "…a full care plan relating to potential placement of E with her relatives in Ghana, setting out how such a transition and placement would be achieved, to include a timetable (commencing at the date of any final decision by the court), details of how visa and immigration arrangements would be made, how it is proposed that mirror orders would be sought (and at what stage of the process), contact arrangements for E to maintain a relationship with her parents, details of proposed medical and practical support available to E and/or her carers for E's diagnosis of sickle cell anaemia, and other matters required to be included within a care plan."

41. The fifth listing of the IRH took place on 13 July 2023 at week 79. Regrettably, this hearing was again before a different judge, albeit one who had had some earlier involvement with the proceedings. At the fifth listing of the IRH, the local authority informed the court that it had changed its care plan and now sought to place E with her paternal aunt in Ghana. The court joined the paternal aunt as a party to the proceedings. The matter was thereafter listed for what was termed in the order a "PTR" on 21 November 2023 and final hearing on 11 December 2023 with a time estimate of five days. The final hearing was thus listed some five months after the fifth listing of the IRH.

42. The copy of the order from the "PTR" on 21 November 2023 that is before this court provides simply for the final hearing to be "before Recorder []", with no name identified. The final hearing came before a Recorder on 11 December 2023. The Recorder was the *ninth* judge to deal with the matter, at a point where the proceedings had reached week 102.

43. As I have noted, E has a diagnosis of sickle cell disease. On 6 December 2023, she was admitted to hospital in splenic crisis. During the course of her hospital admission the hospital staff and the foster carer alleged difficulties regarding the level of engagement with E at the hospital by the paternal aunt, who was in the jurisdiction for the final hearing. Within the context of E's splenic crisis, and the concerns raised by the local authority regarding the paternal aunt, the final hearing was adjourned and the court listed the matter for a sixth IRH listing "in the week commencing 19 February 2024". The order 11 December 2023 records that the local authority sought to undertake further assessment of the paternal aunt.

44. No findings are sought by any party with respect to the concerns raised regarding the level of the paternal aunt's engagement with E in hospital. The paternal aunt deals with those matters in her statement. During the course of his oral evidence, the allocated social worker Mr D stated that the stated matters of concern had been investigated by the local authority and that the local authority had been satisfied that its care plan remained appropriate. The Children's Guardian was clear that the matters of concern raised by the local authority in respect of the aunt were entirely explicable by the fact that the paternal aunt was required to travel straight from the airport to the hospital where, in circumstances that were not clearly explained to her, she was thrown into the role of primary carer for E in a hospital setting.

45. At the further IRH on 22 February 2024, the court was informed that E had in January 2024 again been admitted to hospital in a critical condition with splenic crisis. The local authority's care plan remained the placement of E with her paternal aunt in Ghana. At the hearing on 22 February 2024 the judge dealing with the matter re-allocated the case to me in my capacity as Family Presiding Judge for London. When the matter first came before my on 12 April 2024, I directed that the matter be listed for an IRH on 24 June 2024 and a final hearing on 8 July 2024.

46. The local authority's care plan at this hearing remains that E should be placed in the care of her Paternal Aunt in Ghana under the auspices of an SGO. A viability assessment of the Paternal Aunt dated 31 August 2022 concluded that the Paternal Aunt has the capability to provide a suitable permanent home within the birth family for E and such a potential long-term placement should be further explored. In this case, the Special Guardianship report has been completed by Henrietta Coker and is dated 30 January 2023. The contents of that assessment have not been challenged. The following aspects of the assessment are pertinent:

    i) The paternal aunt is an experienced care giver. The paternal aunt and the paternal uncle have raised their own three children.

    ii) The couple's own children are teenagers aged 15 and 17 and a young adult aged 19. The two older children are currently at university studying medicine and medical science respectively.

iii) The paternal aunt's home, a three bedroom property in a suburb of Accra, is well presented and clean. It is proximate to the hospital that will be responsible for managing E's sickle cell disease. The paternal aunt's parents in law live next door to her and are able and willing to assist with childcare.

iv) The paternal aunt is a trained Montessori teacher and has a number of years' experience as a Sunday school teacher of primary school aged children. She well positioned to assist E with her education.

v) The assessment considered that the paternal aunt has already dealt well with being challenged by the mother and will be able to protect E should the mother travel to Ghana and challenge her care of E.

47. The Special Guardianship report was completed over a year ago. The court however heard evidence from the allocated social worker in this case regarding the paternal aunt. Mr D considered that the paternal aunt has remained "extremely committed" to E, noting that she has travelled to England regularly to have contact with E and has committed to taking two months off work in Ghana to travel to England to complete the transition plan should the court make an SGO. In addition, Mr D noted that the paternal aunt has already met with Dr B and the nursing team at the Accra hospital proximate to her home that will be responsible for managing E's sickle cell disease in Ghana and has done her own research into E's needs arising out of that condition. Finally, he noted that the paternal aunt committed to bringing E back to England for contact with her mother even before the local authority had agreed to fund travel for the first three years for that purpose. Mr D expressed himself to have a "high degree of confidence" in the paternal aunt's ability to meet E's needs.

48. Given the need for clarity with respect to the issues of immigration and settlement in this case, the court has the benefit of a series of expert reports from B&P Associates, lawyers in Accra specialising in family and immigration law in that jurisdiction in order to confirm the immigration and settlement position should the court grant an SGO and give the paternal aunt permission to remove E permanently from the jurisdiction of England and Wales. Those expert opinions are dated 19 May 2023, 15 November 2023, 14 March 2024 and 6 May 2024. The following points made by the expert opinions are pertinent:

i) As a British National, E must comply with the immigration laws of Ghana. As the United Kingdom is not on Ghana's visa exempt list, E will require a visa to enter Ghana, which requires E to be legally resident in the country in which the Ghana Mission is sited (in this case the United Kingdom), have a valid passport, a letter of consent from her parent or legal guardian, proof of address and a yellow fever vaccination certificate. If she travelled on a Nigerian passport, E could remain in Ghana for 90 days before need to apply for a residence permit.

ii) Once E is in Ghana, an application can be made for a residence permit to enable her to stay in Ghana. Once she is resident in Ghana E will be afforded the rights detailed in the Children's Act 1998 (Act 560). In circumstances where the paternal aunt is a Nigerian citizen, E would not be granted a residence permit that exceeds the duration of the Paternal Aunt's residents

permit. The processing of the resident permit application takes between two to six weeks.

iii) In order to secure E's settled status in Ghana the English court will need to ensure that E is legally permitted to be in the care of her paternal aunt and an application will need to be made for a residence permit once E is in Ghana. The expert report details the documents required to enable an application for a residence permit to be made.

iv) An SGO is not enforceable in Ghana under the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993 (LI 1575) and the Courts Act 1993 (Act 459). However, once E is resident in Ghana, an application can be made for a mirror order, Ghanian law providing for custody order. A custody order will be granted to a person other than the parents if it is in the child's best interests having regard to the welfare factors set out in s.45 of the Children's Act 1998 (Act 560). The consent of the parents is not a pre-requisite to the granting of a custody order. There can be delays in securing such orders from the Ghanaian courts.

v) A mirror order may not be required in circumstances where E is a British Citizen and an English order is sufficient to evidence the paternal aunt's status as her carer for the purposes of the application for a resident permit. The Special Guardianship order can be attached to the application for a residents permit, alongside a copy of the order permitting the paternal aunt to remove E from the jurisdiction for a period of greater than three months, to demonstrate that the paternal aunt has been appointed as the Guardian for E and is entitled to apply for a resident permit without the consent of the parents. If, however, the immigration authorities insist on a document emanating from the Ghanaian courts, an application for a mirror order would be advisable.

vi) The paternal aunt will have available to her in Ghana support from the Child and Family Welfare Division of the Department of Social Welfare and the Ghana Immigration Service.

49. E has now been commenced on a sickle cell treatment plan of regular four weekly blood transfusions. She has been referred to Great Ormond Street Hospital for a splenectomy. That operation is now scheduled to take place in mid-August at GOSH. In the Special Guardianship report, Ms Coker raised a concern that sickle cell disease remains one of the top five causes of infant death in West Africa and a concern as to the availability and affordability of drugs and medical screening in Ghana to ensure that E's Sickle cell is well managed. Ms Coker recommended that consultation take place with clinicians managing E in this jurisdiction and the hospital in Accra to obtain advice on how well E's condition can be managed in Ghana. In the circumstances, the court has sought to confirm the extent to which E's ongoing medical needs arising from her sickle cell disease can be met were she to move to live with her paternal aunt in that jurisdiction.

50. The medical evidence before the court includes the transcript of a meetings held between Dr W, E's treating Consultant Paediatrician in this jurisdiction, Dr F, Consultant Community Paediatrician for E and Dr B, Consultant physician in the Sickle Cell Anaemia unit at the Greater Accra Regional Hospital in Ghana on 9

January 2024 and the transcript of a meeting held between Dr B and Ms M, Consultant Paediatric surgeon from GOSH who is responsible for E, on 13th June 2024. The following matters are pertinent:

i) Given the prevalence of sickle cell disease in that jurisdiction, Ghana has a national protocol for the management of sickle cell disease following children from birth.

ii) Dr B is experienced in providing comprehensive paediatric care for children with sickle cell disease at a tertiary hospital proximate to the paternal aunt's property in Accra. The Sickle Cell team has some 600 children with sickle cell disease under their care.

iii) Ghana uses a vaccination programme tailored to the needs of children with sickle cell disease.

iv) The paternal aunt has visited Dr B and nursing staff and discussed the care requirements for a child with sickle cell disease. The aunt is keen to learn and has commenced the process of familiarising herself with the care needs of a child with sickle cell disease.

v) E meets the criteria for a splenectomy and is ready to undergo that procedure.

vi) In circumstances where cause E is receiving monthly blood transfusions because of her past history and has been the subject of an MDT at GOSH and is on the surgical list there with a fixed date for her surgery, it is optimal if E undergoes a splenectomy before she moves to live in Ghana.

vii) Following the splenectomy being undertaken, the recovery time for E would be approximately five days in hospital, provided the procedure could be carried out laparoscopically, followed by six weeks of ensuring E does not engage in heavy physical activity.

viii) If E is stable and on her medication, no additional precautions are required for travel by air with sickle cell disease. On the basis that the splenectomy is abdominal surgery and not thoracic surgery, subject to recovery time, the fact of having had a splenectomy does not present a risk for travel by air.

ix) The paternal aunt will register E at the paediatric sickle cell clinic at the hospital in Accra with a referral letter from her GP in this jurisdiciton. Baseline lab results will be provided to the clinic prior to E's initial attendance at the clinic.

51. A Special Guardianship support plan has been provided by the local authority. The local authority confirmed at this hearing that the paternal aunt will receive the maximum Special Guardianship allowance for the remainder of E's minority. The local authority has also provided a transition plan. The latest iteration of the transition plan is dated 3 July 2024. The following aspects of the transition plan are of note:

i) As noted, E will have her splenectomy performed at GOSH prior to her departure to the jurisdiction of Ghana. The paternal aunt will arrive in this jurisdiction 5 days prior to the date that E is due have her surgery.

ii) Whilst in this jurisdiction, the paternal aunt will be provided with accommodation within which her transition to caring for E can be managed.

iii) In the context of the paternal aunt having maintained her relationship with E through video calls since her return to Ghana in December 2023, the paternal aunt will have daily contact with E during the period prior to her surgery and during her recovery period as an in-patient in GOSH.

iv) E will return to her foster placement for a further seven day recovery period, following which the paternal aunt will have regular unsupervised contact with E moving to overnight contact. The contact between E and her parents will reduce to once per week.

v) In the sixth week of the transition plan, E will moved into the full time care of the paternal aunt and will remain in her care for two weeks prior to their departure for Ghana.

52. Mr D authored the transition plan and was pressed by Mr Hall on behalf of the mother as to whether, given that E will be moving to another jurisdiction shortly after having undergone surgery, the transition period was adequate. Mr D was clear that, whilst ordinarily a three month period would be desirable, he considered a two month transition plan sufficient. Mr D pointed to the following matters in his written and oral evidence:

i) Prior to the arrival of the paternal aunt in this jurisdiction on 19 September 2023 to commence introductions to E a photo album of her family was created and provided to E's foster carer to show it to E to support her to become familiar with the paternal and her family. In addition, regular video calls were commenced between the paternal aunt and E, facilitated by the foster carer.

ii) The paternal aunt was introduced to E on 20 September 2023 and had regular direct daily contact with E during the period she spent in this jurisdiction which went well. During contact the paternal aunt prepared meals for E and fed her. The paternal aunt also joined E's contact with the mother.

iii) Whilst in the jurisdiction in September 2023, the paternal aunt took E to her scheduled health checks with the Health Visiting Service and was provided with information concerning E's health needs, her health assessment and health plan to manage her sickle cell disease.

iv) The paternal aunt returned to this jurisdiciton in December 2023 in anticipation of the final hearing. In the circumstances set out above, the paternal aunt had further and extensive both supervised and unsupervised contact, including unsupervised staying contact, with E, which went well and continued to build the relationship between the paternal aunt and E.

v) Subsequently, the paternal aunt has maintained regular contact with E via weekly video calls from Ghana with E.

53. The Children's Guardian has provided a final analysis and recommendations dated 28 June 2024. In her final analysis and recommendations, the Children's Guardian notes

the mother's "unwavering desire to care for her daughter [E]" but is clear in her assessment that the mother does not have the capacity to care for E. During her oral evidence, Children's Guardian confirmed that she considered Ms V's assessment to have been robust in using the PAMS tools to underpin a more holistic approach to assessment. Whilst the Children's Guardian conceded that it was "quite unusual" for a parenting assessment of a parent with learning difficulties not to contain proposals for work, that situation emphasises the size of the gap that would have to be bridged in order for the mother to be in a position safely to parent E, with no foundation to build on to seek to achieve that end. Cross examined by Mr Hall on behalf of the mother, the Children's Guardian conceded that the addendum parenting assessment had been completed before the mother undertook a parenting course, but considered the practical modelling done with the mother in contact to be far more valuable. The Children's Guardian was clear that that contact continued to demonstrate that the mother does not possess even the basic skills to recognise E's needs in the moment and meet those needs.

54. The Children's Guardian remained of the view that paternal aunt is the best available option for the long term care of E, noting that the care plan enables E to remain within her family network and to be parented by her aunt, who is fully capable to meet her needs long term. In the circumstances, the Children's Guardian continues to recommend that E be made the subject to an SGO in favour of the paternal aunt. Whilst the Children's Guardian acknowledged when pressed by Mr Hall that there is a degree of risk inherent in a transition plan that contemplates E's move to the care of her paternal aunt in Ghana immediately after recovering from surgery, she considered that a swift transition plan is, in fact, preferable for E to a drawn out process given E's age.

RELEVANT LAW

55. Before the court has jurisdiction to make an order with respect to the child's welfare in proceedings under Part IV of the Children Act 1989, it must be satisfied that the threshold criteria pursuant to s.31(2) of the Children Act 1989 are made out. In this case, if the threshold for State intervention in family life is met, the local authority, with the support of the Children's Guardian, the father and the paternal aunt, invites, the court to make an SGO in favour of the paternal aunt.

56. Under s. 14A of the Children Act 1989 the court may make an SGO appointing one or more individuals to be a child's special guardian. Pursuant to s.14C of the 1989 Act, the effect of an SGO is to permit the special guardian to exercise parental responsibility for the subject child to the exclusion of all other persons holding parental responsibility. Pursuant to s.14C(4) a special guardian may remove the child from the jurisdiction of England and Wales for a period of no longer than three months. Pursuant to s.14D an SGO lasts until the subject child is 18 years of age, although it can be varied or discharged before that point.

57. Pursuant to s.1(4)(b) of the Children Act 1989, in determining whether to make an SGO, the legal framework governing the court's approach in this case is provided by the Children Act 1989 s 1 which stipulates as follows:

**1 Welfare of the child**

(1) When a court determines any question with respect to –

(a) the upbringing of a child; or

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

the child's welfare shall be the court's paramount consideration.

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

(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare.

(2B) In subsection (2A) "involvement" means involvement of some kind, either direct or indirect, but not any particular division of a child's time.

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

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

(b) his physical, emotional and educational needs;

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

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

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that –

(a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) the court is considering whether to make, vary or discharge a special guardianship order or an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

(6) In subsection (2A) "parent" means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned –

> (a) is within this paragraph if that parent can be involved in the child's life in a way that does not put the child at risk of suffering harm; and
>
> (b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child's life would put the child at risk of suffering harm whatever the form of the involvement.
>
> (7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).

58. As noted, the mother opposes the application for an SGO in favour of the Paternal Aunt and advances herself as a carer for E in opposition to the care plan. She seeks for E to be placed in her care with support from the local authority to parent him by way of regular visits from the social worker. She contends that this represents the best option for E's placement.

59. Where the court is required to decide at final hearing between two or more placement options for meeting the child's welfare needs, the court must undertake a process of comparative welfare analysis of the competing options (see *Re G (A Child)* [2013] EWCA Civ 965 at [49]-[50] and *Re B-S (Children)* [2013] EWCA Civ 1146 at [44]). Within this context, in determining which of the competing options in respect of the child's care is in their best interests, having identified the child's welfare needs it is then necessary then to undertake an evaluation of each of the options available for the child's future upbringing before deciding which of those options best discharges the duty to afford paramount consideration the child's welfare, having regard to the principle of proportionality under Art 8(2) of the ECHR.

60. Even were the court to conclude that the mother is not capable of parenting E, it remains incumbent upon the court to satisfy itself that placement with the paternal aunt is in E's best interests by reference to the principles set out above.

## DISCUSSION

61. Having listened carefully to the evidence and submissions in this case, I am satisfied that the threshold criteria pursuant to s.31(2) of the Children Act 1989 are met. I am further satisfied that it is in E's best interests to grant an SGO in favour of the paternal aunt and to give the paternal aunt permission to remove E permanently from the jurisdiction of England and Wales to the jurisdiction of Ghana. My reasons for so deciding are as follows.

### *Threshold*

62. The only substantial dispute with respect to matters of fact in this case concern the allegations of domestic abuse relied on by the local authority in its threshold document and an allegation that the mother refused to provide details of the man she was in a relationship with at the time of E's birth.

63. With respect to the allegation of domestic abuse on 1 September 2021, I am satisfied that on that occasion the father was drunk and poked the mother in the eye and grabbed her neck. The father accepts that he drinks on occasion, although he denied

getting drunk. The father conceded in evidence that he had been notified on that day that he was being made redundant, consistent with the mother's account that the father was not happy when he came home from work and started drinking before re-directing his anger and frustration towards her. As with the later incident on 14 October 2021, the flash point was the mother seeking to leave the property. As with 14 October 2021, the alleged abuse involved the mother's neck. Whilst completing the subsequent DASH questionnaire on 3 September 2021 the mother answered no when asked about strangulation, I do not consider that answer to be inconsistent with her allegation that the father had attempted to grab her neck having regard to the mother's cognitive limitations. The mother was prepared to concede that the father poking her in the eye may have been accidental in the ensuring struggle. In concluding that on 1 September 2021 the father was drunk and poked the mother in the eye and grabbed her neck, I have borne in mind my findings with respect to the incident on 14 October 2021.

64. I am satisfied on that date that, whilst drunk, the father grabbed her around the throat, choking her, that the mother slapped the father in self-defence and that the father then pushed the mother to the floor causing her to fall on her side and hit her head. The father does not dispute that an argument occurred between the parents on 14 October 2021. As with the earlier incident on 1 September 2021, the flash point was the mother seeking to leave the property. Whilst the father denied being drunk, he sought in evidence to change his story with respect to drinking on this occasion, asserting before the court that he had not been drinking on 14 October 2021 when he had told the police that he had drunk a can of Heineken. Both police officers who encountered the father on 14 October 2021 considered him to be highly intoxicated and I am satisfied on the balance of probabilities that he was. I also have regard to the fact that the first statement made by the mother to the police officers from the window of the property was "He pushed my head against the floor just now". It is further significant that the first statement made by the father to the officers was "Don't worry about what she has to say". The mother repeated her allegation of being strangled and choked by the father when the DASH questionnaire was undertaken later, stating "He choked me earlier as I wanted to go home". The father became notably more exercised when cross examined by Mr Hall in respect of these matters.

65. Whilst, as pointed out by Ms Quinn, there are some inconsistencies in the mother's accounts of domestic abuse over time, in assessing the weight to be attached to those inconsistencies, I bear in mind the mother's significant cognitive limitations. I consider the fact that the mother reported these matters to the police to further support a finding in circumstances where the mother does not actively seek out support, as does the clear and consistent account given to the Children's Guardian by the mother. There is no credible basis for contending that the mother was lying about these matters in order to get the father into trouble in circumstances where she was demonstrably reluctant on both occasions to cooperate with police and for the father to be prosecuted.

66. Finally, I am satisfied on the balance of probabilities that the mother was unwilling to provide details, including a surname, address and date of birth of a man who she stated it was her intention to marry. Whilst the mother provided these details through her solicitor once proceedings were issued, I accept the evidence of the original social worker that she did not do so following E's birth. I am not able to accept Mr Hall's

submission that this course of action did not give rise to a risk of significant harm to E. E was a new-born baby. The mother was bringing K to the hospital to see E. The mother's refusal to provide details of K to the local authority deprived it of any opportunity to undertake safeguarding checks on that individual. I am satisfied that this exposed E to a risk of significant harm.

67. Having regard to the foregoing findings, I am satisfied, as all parties accept, that the threshold criteria pursuant to s.31(2) of the Children Act 1989 is made out on the following grounds:

i) On 1 September 2021 the father was drunk and poked the mother in the eye and grabbed her neck.

ii) On 14 October 2021, whilst drunk, the father grabbed the mother around the throat, choking her, the mother slapped the father in self-defence and that the father then pushed the mother to the floor causing her to fall on her side and hit her head.

iii) In the context of a history of domestic abuse, the mother refused to engage with domestic violence services including the assistance of an IDVA.

iv) Following the birth of E, the mother refused to engage with a referral to adult safeguarding, considering that she had no mental health issues.

v) The mother refused to attend the initial Child Protection Conference on 9 November 2021 when E was made the subject of a pre-birth child protection plan.

vi) Following E's birth, the mother was unwilling to provide details, including a surname, address and date of birth of a man who she stated it was her intention to marry.

*Welfare*

68. I turn next to consider E's welfare within the framework of s.1 of the Children Act 1989. At the age of two years old, E is not able to articulate her wishes and feelings. It is reasonable to assume, however, that she would wish to be cared for within her family, ideally by one or both of her parents. In terms of her physical needs, E has the same needs as any child her age but beyond that, and in particular, she requires care that recognises her serious medical condition and provides a level of parenting commensurate with the need to monitor and manage that medical condition. E's primary carer must be aware of and respond quickly to any signs that she is experiencing a sickle cell crisis. E's emotional and educational needs are the same as for any child her age. In the context of this case, it is important to note that, like all children, as E grows and develops her physical, emotional and educational needs will change over time and become more complex. Within this context, E will require a primary carer who is able to understand, acknowledge and adapt to her changing needs over the course of her minority. E is a child of Nigerian and Sierra-Leonian heritage and it is important that this is recognised in meeting her needs. A family placement would provide the optimum means of ensuring this need is met.

69. Having regard to E's identified needs, and with regret in circumstances where the mother is in no way responsible for the position in which she finds herself, an examination pursuant to s.1(3)(f) of the 1989 Act of how capable the mother is in meeting E's needs leads me the conclusion that the mother is not capable of meeting E's needs in this case.

70. It is, as Mr Hall submits, important to see the difficulties the mother has in meeting E's needs in context. The mother experienced a number of childhood traumas including a war, having been born in Sierra-Leone during the civil war, separation of her parents and being adopted by her aunt at the age of 5 years old. She alleges significant emotional neglect as a child. In considering the parenting capacity of the mother, it is also important for the court to have regard to the positives in respect of the mother.

71. Ms Braier makes clear that the mother benefits from some, although not many, of the mitigating factors that typically raise the probability of long term parenting success for parents in her intellectual range. In particular, the evidence before the court demonstrates that, over the extended period of these proceedings, the mother has been highly focussed on, and clearly wants to do her best for, E. Her attendance has been punctual at her supervised contact sessions with E which have been taking place three times per week over an extended period. Despite her limitations the mother took the assessment process very seriously and her telephone communication was good during the assessments. The mother has managed to establish and maintain positive relationships with the Contact Supervisors. She has been consistently polite in her interactions and does not generally become defensive when advice or feedback is given. She has been able to manage her own basic needs sufficiently. She has demonstrated an ability to sustain employment, manage her finances and manage her tenancy. The mother was in mainstream education. Notwithstanding these matters however, I am satisfied that the assessments of the mother, and the course of contact to date, demonstrate beyond peradventure that the mother does not have the capacity to meet the welfare needs of E.

72. On behalf of the mother, Mr Hall has carefully and thoroughly sought to illuminate what he submits are deficits in the parenting assessments undertaken in respect of the mother in this case and the risks of relying on the contact records forensically when considering the mother's parenting capacity. However, whilst some of Mr Hall's criticisms have a degree of force when they are considered in isolation and applied at the time the relevant assessment was completed, looked at as a whole I am satisfied that the assessments of the mother carried out over the long course of these proceedings, and the extensive contact notes chronicling the extensive support and modelling work that has been undertaken with the mother in those contact sessions, provides a solid forensic foundation for the court to determine how capable the mother is of meeting E's needs. I do not consider that Ms V assessment was deficient by reason of her not having utilised the PAMS software. Ms V undertook a comprehensive assessment utilising the PAMS tools. Whilst both Ms Tucker and the Children's Guardian pointed out some difficulties with the absence of empirical figures when it came to considering progress, both were satisfied that Ms V's assessment was robust and that longitudinal information on the mother's progress on the issues of concern is provided, and in the view of the Children's Guardian was

better provided, by the notes of the contacts in which the mother has been supported and assisted with continued modelling and reinforcement.

73. That material, sadly, makes plain that the mother has not been able and remains unable to identify, understand and respond to E's needs as they present in real time and will not be able to develop and adapt her parenting as E grows and her needs change. This notwithstanding that, during the course of contact sessions spanning many months, advice and modelling of parenting tasks has been consistently repeated. These difficulties are further exacerbated by the fact that the mother, as she recently informed the Children's Guardian, does not feel she needs any support or help to care for E.

74. Mr Hall further relies on the decision of the Court of Appeal in *Re H (Parents with Learning Difficulties: Risk of Harm)* [2023] EWCA Civ 59, in which the Court of Appeal made clear that, with respect to a parent with learning difficulties, there is an obligation on the court to enquire as to what support is needed to enable parents with learning difficulties to show whether or not they can become good enough parents, that support for parents may have to be long-term extending through the child's minority and the courts must scrutinise carefully evidence that the level of support required by the parent would be on a scale that would be adverse to the child's welfare and should look for options for ameliorating the risk of harm that might result from a high level of support. In this regard, Mr Hall pointed to the requirement articulated by the Court of Appeal for the court to identify and describe the support required, ascertain what can and should be done under the local authority's obligations and determine whether, with the support in place, the child's welfare needs will be met.

75. I am, of course, acutely conscious that the fact that a parent has a learning difficulty does not, of itself, preclude that parent from caring for their child. However, adopting the discipline articulated in *Re H (Parents with Learning Difficulties: Risk of Harm)*, the level of support identified by Ms V, Ms Tucker and the Children's Guardian that the mother would need in order to parent E is variously formulated as constant, such that the mother would need another suitable adult to take on the role of primary carer, as requiring the mother to parent E with another adult who can constantly supervise her care and, in the words of the Children's Guardian, as requiring "24/7 moment to moment support". Such twenty four hour support plainly extends beyond that which the local authority is obligated to provide pursuant to s.17 of the Children Act 1989. It is further difficult to see how E's welfare needs would be met by a placement where her mother is only a parent in name, with her primary care being met by professionals all day, every day for the remainder of her minority. Sadly, there are no family members who would be able to provide the mother with that level of support.

76. Through his compassionate and focused submissions, Mr Hall said everything that could possibly be said on behalf of the mother. However, having regard to the extensive assessment evidence before the court, and the records of contact, I regret that I must conclude that the mother is not capable of parenting E.

77. As I have noted, the fact that I am satisfied that the mother is not able to meet E's needs with a timescale commensurate her welfare does not inevitably lead to the conclusion that it is in E's best interests to be placed in the care of her paternal aunt in the jurisdiction Ghana under the auspices of an SGO. The care plan advanced by the

local authority falls to be considered on its merits in determining which course before the court best discharges the duty to afford paramount consideration to E's welfare, having regard to the principle of proportionality under Art 8(2) of the ECHR. Applying those principles, I am satisfied that it is E's best interests to be placed with her paternal aunt under an SGO order and for permission to be given for the paternal aunt to remove E from the jurisdiction.

78. The contents of the Special Guardianship report have not been challenged. The report demonstrates that the paternal aunt is a very experienced parent who has successfully raised three children of her own, two of whom are now in tertiary education. Whilst parenting E's medical needs will bring with it challenges that were not present for the paternal aunt when bringing up her own children, the evidence before the court demonstrates that the paternal aunt has engaged proactively and in detail with the arrangements for the care and management of E's sickle cell disease in Ghana, which jurisdiciton is evidently well equipped to deal with E's medical condition. Whilst I further accept that a placement with the paternal aunt in Ghana will represent a very significant change of circumstances for E, in particular in that it will represent a wholly new environment and a radical reduction in the level of contact between E and her mother and father with whom she will not be living, I am satisfied that those disadvantages are outweighed by the welfare benefits of E being cared for within her family by a primary carer who is able to meet her needs, including her needs arising out of her heritage. The willingness of the paternal aunt to travel regularly to England to facilitate direct contact will further mitigate the impact on the significant change of circumstances inherent in the care plan advanced by the local authority.

79. Mr Hall's cross examination and submissions on the length of the transition plan *have* given me pause. As the Children's Guardian made clear, the fact that the proposed plan involves E moving to the care of the paternal aunt immediately following her recovery from surgery must be a matter that gives the court pause. As made clear by Sir James Munby in *Re P-S (Children)* [2018] 4 WLR 99 at [68], if the child has never lived with the proposed Special Guardian the court will need to consider what steps need to be taken and over what period to test the proposed placement, in respect of which question the opinion of professionals will be of crucial importance. Having regard to the evidence of the professionals in this case, I am satisfied that the transition plan across two months by which E's will move into the care of the paternal aunt is appropriate, subject always to the need for flexibility having regard to any change of circumstances consequent on E's forthcoming surgery.

80. E was introduced to her paternal aunt in September 2023. The Children's Guardian observed paternal aunt with E on 29 September 2023. E had already spent the majority of the week with her as part of the planned introductions. They were seen to be developing a familiar and trusting relationship with E seeking comfort and reassurance from her aunt. The paternal aunt appeared calm, patient and unphased in her care of E. The paternal aunt has continued to have indirect and direct contact with E since that time, including extensive unsupervised contact with her during December 2023. She will be present in the jurisdiciton and having contact with E during E's medical treatment and thereafter in order to increase E's feelings of stability and security in her new carer. The professionals consider that the paternal aunt presents as experienced, confident and committed to care for E. As I have noted, she is an extremely experienced parent in her own right. Once again, the paternal aunt has

been proactive in preparing to manage E's medical needs, having already established contact with the clinical team in Accra and having used that team to gain knowledge of E's condition and its management. In these circumstances, and again subject to the flexibility required in the context of E's recovery from surgery, I am satisfied that the two month transition period is appropriate.

81. Evaluating each of the options available to the Court for the E's future upbringing, I am satisfied that placement with the paternal aunt under an SGO and permitting her to remove E from the jurisdiciton to the jurisdiction of Ghana best discharges the duty to afford paramount consideration to E's welfare, having regard to the principle of proportionality under Art 8(2) of the ECHR.

CONCLUSION

82. For the reasons set out above, I am satisfied that the threshold criteria pursuant to s. 31(2) of the Children Act 1989 are met in this case. I am further satisfied that it is in E's best interests that an SGO be made in favour of the paternal aunt and that permission should be given to the paternal aunt to remove E permanently from the jurisdiction of England and Wales to the jurisdiction of Ghana. I will make orders accordingly.

83. As noted above, I cannot leave this case without addressing the manifest and wholly unconscionable delay that has occurred. Bluntly, this case has demonstrated nearly every type of poor practice that FPR 2010 Part 12 and, in particular, the Public Law Outline in PD12A was intended to eradicate. That these matters of poor practice are still occurring demonstrates that the provisions of the PD12A are still not being applied consistently and with sufficient rigour by the courts, legal practitioners and welfare professionals.

84. The prompt determination of care proceedings under Part IV of the Children Act 1989 is not a mere aspiration. It is what the *law* requires. Section 1(2) of the Children Act 1989 commands the court, as a matter of law, to have regard to the general principle that delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of that child. Section 32(1)(a) of the 1989 Act requires, again as a matter of law, the court to draw up a timetable with a view to determining public law proceedings without delay and, in any event, within 26 weeks. As Sir James Munby P observed in *Re S (Parenting Assessment)* [2014] 2 FLR 575:

> "Section 32(1)(a)(ii) does not describe some mere aspiration or target, nor does it prescribe an average. It defines, subject only to the qualification in section 32(5) and compliance with the requirements of sections 32(6)(7), a mandatory limit which applies to all cases."

85. FPR 2010 Part 12, including PD12A provides a statutory code setting out the legal requirements for the case management of public law proceedings under Part IV the 1989 Act designed to ensure that the mandatory time limit in s. 32(1)(a)(ii). Again, this code is not an aspiration. It is the *law*. It is what Parliament has required for the benefit of the children who find themselves the subject of proceedings.

86. Of course, and as has been observed elsewhere, justice must never be sacrificed on the altar of speed. A balance must be struck between the need for information and the

presumptive prejudice to the child of delay as enshrined in s.1(2) of the Act (see *S-L (Children)(Care Orders: Adjournment)* [2019] EWCA Civ 1571). However, the extent to which the 26 week period can be extended is strictly circumscribed by reference to the child's welfare and the impact on the duration and conduct of the proceedings. Pursuant to s.31(5) of the Act, the court may only extend the 26 week period if it considers an extension necessary to enable the court to resolve the proceedings justly. In considering the justice of the case, the legal requirement in s.1(2) of the 1989 Act to have regard to the prejudicial effect on the child of delay will weigh heavily in the balance. To repeat, s.32(7) provides that such extensions are not to be granted routinely and require *specific* justification.

87. In the foregoing statutory context, there have been multiple examples in this case of a failure by the court, legal practitioners and welfare professionals to comply with the law put in place by Parliament to ensure that children do not suffer damaging delay in the determination of care proceedings brought in respect of them. The failure in this case to comply with law governing delay and the case management of proceedings under Part IV of the Children Act 1989 has led to a new-born child remaining in foster care for over two years whilst the errors and omissions summarised above played out before nine different judges over seventeen hearings involving thirty-three different advocates. The adverse impact on E cannot and should not be underestimated. As the Children's Guardian rightly observes:

> "E has been cared for in two foster families who she will have grown close too whilst simultaneously developing and sustaining relationships with her birth parents during the regular time she spends with them. Her life is regularly interrupted by professional visits and meetings concerning her welfare. Coupled with her significant health needs, her lived experience to date is marked by considerable ambiguity but also the emotional and physical strain of being a very young child in care. The longer this has continued, the more likely E will be affected by the changes in her circumstance when the time comes to move on to her permanent placement."

88. A particular feature in this case has been the repeated applications and directions for assessment of the mother notwithstanding the breakdown of the residential assessment within two weeks in circumstances where the mother required prompting with respect to each and every parenting task, the psychological assessment by Dr Braier which concluded that the mother did not have the parenting knowledge needed to understand a child's practical or emotional needs and the conclusion of the PAMS parenting assessment that the mother would need another suitable adult to take on the role of primary carer for E's care at all times.

89. It is to be acknowledged that, for the reasons set out in *Re H (Parents with Learning Difficulties: Risk of Harm)*, care must be taken to ensure that a parent with learning difficulties is given a fair chance to demonstrate that they have the capacity to care for their child, that compassionate welfare professionals will find it hard to rule out a parent who is unable to parent through no fault of their own and that legal practitioners are required to act in the best interests of their client. However, to continue to pursue assessments in the face of clear forensic evidence that a parent does not have the capacity to parent their child not only causes prejudicial delay for the child. It also amounts, ultimately, to cruelty masquerading as hope for the parent.