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Neutral Citation number: [2023] EWFC 144 (B)

**IN THE FAMILY COURT**  
**SITTING AT LINCOLN**

**Case No: LN23C50066**

**IN THE MATTER OF THE CHILDREN ACT 1989**  
**AND IN THE MATTER OF:**  
**'R' Born 2009.**

Lincoln Family Court  
360 High Street  
Lincoln

Date: 8.8.2023

**Before:**

**HER HONOUR JUDGE CARTER**

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Counsel for the Local Authority: Ms Alison Hunt instructed by Natalie Booker, Lincolnshire CC  
Counsel for the Mother: Ms Olivia Bennyworth instructed by Sarah Keeper at Bridge McFarland  
solicitors

Counsel for the Father: Ms Gina Allwood instructed by Chrystal Theofanous, Sills and Betteridge  
solicitors

Solicitor for the Children: Ms McGowan of Pepperell Solicitors

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**JUDGMENT**

## **Introduction:**

1. In this case I am concerned with a child R. R was born on the 2 November 2009, and therefore is aged 13.

## **Parties and their positions:**

2. The application before the court is for a care order brought by Lincoln County Council.
3. The mother (M) and father (F) accept the threshold is met, but they oppose the making of a care order.
4. The Guardian supports the application.

## **History:**

5. There is some relevant history to this case.
6. R was born in 2009. She is part of a large sibling group, who were the subject of extremely neglectful and abusive parenting. R was born withdrawing from substances.
7. R was taken into foster care when she was approximately five years old and lived with one of her siblings. She lived in foster care until she was 6 and a half, when she was adopted with her younger brother by M and F.
8. R managed quite well in the early part of her childhood, but as she came into her adolescence her behaviour became increasingly challenging.
9. Her mother had contacted the local authority in February 2022, and informed the local authority that the family were struggling to manage R's behaviour, suggesting that the family were in crisis and could not continue any longer. R's behaviour at that time was violent and extreme.

10. In March of 2022 R was excluded from school because she had assaulted a teacher. She had gone to hospital, and such was her distress that she tried to swallow a face mask in front of doctors, and tried to take an overdose of tablets, and they therefore admitted her. R engaged in extremely violent self damaging behaviours.
11. R went home in April 2022, but it is clear that was without any proper support put in place for the family. At the end of April 2022, she was placed in a residential unit after her parents signed a section 20 agreement to enable the local authority to accommodate her. It was hoped that there could be support provided for her and the family and she could return home, and various applications were made for funding, with some assessments to be undertaken.
12. It was thought that R had benefited from some therapeutic work, and through focused care and skilled responses from that unit. However, in February 2023 the unit said that they were terminating R's place there after a very significant incident where R assaulted a member of staff. This member of staff was so seriously injured that at one point there was some concern as to whether they would recover from the injury, luckily they have done and have not wished to press charges.
13. R did however have to move, and she was placed in an emergency foster placement in Lincolnshire. There were some positive aspects of that, however, R again self harmed in that placement, and was in hospital for some time, whilst another placement was sought.
14. In mid March of this year R moved into her current placement and she has remained there.
15. The family have worked with the local authority and in March 2023 said that they considered they were unable currently to have R return home and felt that her best placement was longer term in a residential setting.
16. I do not need in this judgment to set out all of the many difficulties that R has. They are set out carefully and thoroughly in the social workers initial statement, the parent's statements, and summarised very well and clearly in the guardian 's analysis. Those difficulties are not in dispute.

17. The initial social work statement sets out all of the work that is being done with R, and what has been done since she has been in her current placement.
18. That statement sets out what appear to me to be some inevitable matters whereby the local authority and parents do not entirely agree about some matters, but it is also clear they have managed to work together for some time now and R's needs are currently being met.
19. The local authority made an application on the 9th June of this year seeking an interim care order with a plan for R to remain in her current placement. They filed a detailed social work statement to accompany that, and of course a threshold document.
20. I heard the initial application on the 22nd June, and on that date the local authority did not pursue the court making an interim care order, the parents opposed that order being made as not being necessary.
21. I directed that the local authority filed a more focused threshold document, and that the local authority filed evidence to set out their proposals for R's care going forwards, and both parents to respond. In advance of that hearing the parents had filed substantial documentation which of course everyone had read.
22. On the 12th July I heard the matter again, and was told that the parents accepted on the basis of the amended threshold, which set out that R was beyond parental control, that the threshold was met. They however opposed a public law order being made in relation to R.
23. I therefore directed the local authority to file their final evidence, parents to file statements and the guardian a final analysis.

**Findings on threshold.**

24. The parents accept that the threshold has been crossed, and I have an agreed threshold document which appears within the papers. M and F agree that R is beyond parental control.

**Options available to the court;**

25. The court effectively has before it 2 options. The overall plan for R to remain in her current placement is agreed, it is only the question of whether she should also be made the subject of a care order that is in dispute.
26. I have carefully read the whole bundle in this case.

### **The Law**

27. **Re S (A Child) and Re W (A Child) (s 20 Accommodation)** [2023] EWCA Civ 1, the Court of Appeal comprehensively reviewed the use of section 20 accommodation.
28. Lady Justice King at paragraph 38 summarises the differences between a section 20 agreement, and a care order:

*38 Before moving on to consider the merits of each of the two appeals, it is helpful to understand not just the limits of a section 20 order, but also how it differs from a care order. Miss Fottrell KC summarised it by saying that a section 31 care order is the more draconian order and more interventionist. This is undoubtedly the case as not only does a local authority acquire parental responsibility pursuant to section 33(3)(a) CA 1989 when a care order is made, but also under section 33(3)(b)(i) CA 1989 the local authority may ‘determine the extent to which a parent may meet his or her parental responsibility’ for the child in question. In other words, as it was put in argument, when a care order is made, the local authority may (by section 33(4) CA 1989), in order to ‘safeguard or promote the child’s welfare’, ‘trump’ the parents whenever there is an issue between them. By contrast, as Ms Fottrell says, a section 20 accommodation order facilitates partnership and where it is functioning well under an agreed care plan, not only is the making of a care order not necessary but it is disproportionate. To make a care order in such circumstances would not she submitted, pursuant to section 1(5) CA 1989, be ‘better for the child than making no order at all.’*

*39. In deciding whether to make a care order, the section 1 CA 1989 paramountcy*

*principle applies and the court must also have regard to the welfare checklist found at section 1(3) CA 1989. Finally, the court must carry out a proportionality cross check before making a care order.*

29. Lady Justice King sets out that of course the reasons for the differences between the two orders are plain to see, in that a care order can only be made once the threshold has been met, and discussed how in the two cases that she was dealing with the threshold was met on the basis that the parents were not in her words ‘culpable’ in any way.
30. She reminds herself that the court has to have in mind the no order principle which applies pursuant to Section 1(5).
31. She goes on to summarise the parameters of section 20:
  - i. *Parents may ask the local authority to accommodate a child as part of the services they provide for children in need: Williams & Another v London Borough of Hackney [2018] UKSC 37, [2018] AC 421 at para. [41].*
  - ii. *A local authority cannot provide accommodation if any person who has parental responsibility and is able to provide or arrange for accommodation to be provided for the child objects: section 20(7).*
  - iii. *There is no statutory limit upon the duration of an order for accommodation made under section 20. That this is the case was confirmed in Williams v Hackney LBC at para.[49].*
  - iv. *Whilst a person with parental responsibility may not surrender or transfer any part of their parental responsibility, they may delegate it by arranging for some or all of it to be met by one or more persons on their behalf: section 2(9) CA 1989. In agreeing to the making of a section 20 order a parent is ‘simply delegating the exercise of her parental responsibility to the local authority for the time being’: Williams v Hackney LBC at para. [39].*
  - v. *Any person with parental responsibility may at any time remove the child from the accommodation: section 20(8).*
  - vi. *If there is a child arrangements order naming a person with whom the child is to live and that person agrees to the child being accommodated, then no other person with parental responsibility may either object to the placement under section 20(7) or remove the child from the accommodation under section 20(8).*

32. Lady Justice King goes on to consider Baroness Hale's comments in Williams & Another v London Borough of Hackney, which has been the leading case on this area for some time. She emphasises the differences in law between s 20 accommodation and public law orders, and the voluntary nature of a local authority providing families with a service, having reminded herself earlier in the judgment of the responsibility of the local authority to provide certain services pursuant to section 17 of the Children Act 1989.

33. At paragraph 53 she emphasises a common thread through the case law of

*“the need by parents who are not at fault to secure longer term support and services by way of accommodation without the need for a section 31 order in circumstances where they will work in partnership with the local authority.”*

34. In her discussion and analysis of the differences, and factors that might weigh in the analysis of which order is appropriate, Lady Justice King reminds herself of the recent case In the matter of H-W (Children) [2022] UKSC 1451 where the Supreme Court has considered the proportionality of care orders. Lady Justice King sets out the passage from Dame Siobhan Keegan's judgment at para 45:

*45. The effect of a care order is to vest parental responsibility for the child in the local authority: section 33 Children Act 1989. Thereafter, the parents can exercise their parental responsibility only to the extent that the local authority determines. As this court explained in In re B, that intrusive power clearly engages the article 8 rights of the parents and children. It follows that a care order can only be made, even if the statutory threshold criteria under section 31(2) are met, if such an order is necessary in a democratic society for the protection of the child(ren)'s right to grow up free from harm. That means that the order can be made only if it is proportionate to the needs of the situation. See especially Lord Wilson at paras 32-34, Lord Neuberger of Abbotsbury at paras 73-79 and Baroness Hale of Richmond at paras 194-198. And it follows also that, as Lord Wilson put it at para 45, a judge considering a care order has an obligation not to act incompatibly with the article 8 rights involved. In truth, the obligation under article 8 ECHR, so clearly recognised in In re B does no more than re-state the longstanding proposition of English childcare law that the aim must be to make the least interventionist possible order, but the emphasis given to the issue in In re B was overdue”.*

35. Lady Justice King then goes on to consider what was set out in the March 2021 Public Law Working Group, which commented in terms of best practice guidance concerning section 20 orders, and how the President had expressed his approval of that. She draws attention to how it was suggested there had been a decline in the appropriate use of section 20

provisions, in circumstances where the use of section 20 may have better met the needs of children and their families. She reminds herself of the Best Practice Guidance at Appendix G. and that everyone must identify the context and purpose for which section 20 is being considered.

36. Much of the concern recently of course has been in terms of section 20 being used when it is not appropriate, the statute itself is absolutely clear as Lady Justice King sets out on a number of occasions, there is in fact no time limit upon the use of section 20, although it's use must be regularly reviewed.
37. Lady Justice King goes on to consider the appeal in *Re W*. The facts are strikingly similar to this matter, but I am mindful of course that each case must be looked at on its own particular facts.
38. At paragraphs 77, 78, 79 and 80 Lady Justice King makes the following relevant observations:

*77. The judge in effect used as a makeweight the behavioural difficulties which she suggested may well arise during W's teenage years. I have thought carefully whether, notwithstanding the judge's error of law in relation to the use of section 20 orders, it would nevertheless be proportionate to make a care order to provide the local authority with the power under section 33 CA 1989 which would allow it to limit the extent to which the parents might utilise their parental responsibility in the event that issues in relation to setting boundaries or challenging behaviour should arise in future.*

*78. In my judgement, this concern would not justify the making of a care order. Upon the making of a section 20 order the parents delegate the exercise of their parental responsibility to the local authority (see *Coventry City Council v C*, and *Re N (Adoption Jurisdiction)* above). In reality, in this case that delegation is to the foster carers. The relationship between the parents and the foster carers has been tried and tested over many difficult and challenging months. There is no evidence to support the judge's speculation that, given W's history, trouble may lie ahead of a type which will necessitate the local authority having parental responsibility in order for her behaviour to be managed. The evidence before the judge was that W's mother has at every stage accepted advice, particularly in relation to the distressing issue of the reintroduction of contact as between herself and W.*

*79. Further, the Care Planning, Placement and Case Review (England) Regulations 2010 rule 33(2) ('CPPCR') requires the local authority to review W's case at intervals of not more than six months regardless of whether the placement is by way of a care order or under a section 20 order. There is also power under CPPCR rule 33(3)(a) to carry out a review before six months if the Independent Reporting Officer so requests. The considerations to which the local authority must have regard when reviewing a child's case are set out in detail in CPPCR Schedule 7. Those extensive requirements, which include consideration of placement and contact arrangements, apply equally to*



*section 20 placements as to placements under a care order.*

*80. It follows that, whilst KCC have delegated parental responsibility under section 20 rather than statutory parental responsibility under section 33 CA 1989, they do have delegated parental responsibility together with significant input into the arrangements for a child in their care through the review process. Taken together, this allows them to be highly influential in any decisions which relate to the welfare of W. In the unlikely event that these parents cease to co-operate or wish to act in a way which is regarded as contrary to the best interests of W, KCC can issue care proceedings and apply for an interim care order so as to maintain her placement.*

39. In considering the application before me, I must have regard to the Article 6 and Article 8 rights of all those concerned under the European Convention of Human Rights.
40. I shall consider the balance of the arguments for an against an order being made, in the context of the arguments put forward by the local authority and the parents' response to those:
- a) The local authority assert that a care order is necessary to ensure R's safety and well-being for the remainder of her childhood. They accept that this position is not a reflection of the engagement or collaboration of the parents. They accept that this is not due to any suggestion that the parents would withdraw their section 20 consent. They do assert however that R will be fast approaching independence, and would have her own choice to revoke her section 20 status to the exclusion of her parents upon reaching 16 years old. The local authority assert in their final statement that as R will be 14 in late 2023, the local authority would therefore have around 18 months to come back to the court should a concern be raised if R was to advise she wanted to discharge herself from foster care at the age of 16. They point out that would be another set of proceedings, which could be destabilising for R. If the order is made now R can be told that she will remain a child in care until she reaches adult hood, and they assert this would provide her with stability and security in terms of her long term plan. It was submitted by the local authority that this argument was really the key reason they seek the care order.
  - b) The local authority also suggests that R is becoming more curious about her life story and birth family links, and the local authority suggest they need to be alive to the increased possibility of this, and a care order may be of assistance.

- c) The local authority also suggest that they would wish to reassure the parents as to how the local authority would exercise parent responsibility, by way of reciting a number of matters. It would be fair to say that all those matters which are suggested could be recited are simply statutory matters that must be in place in any event.
- d) The local authority assert that R would continue to receive the local authorities support and resources while she remains a child in care, and would be entitled to access leaving care services in the future.

41. The parents response to each of these matters is as follows:

- a) In relation to the suggestion that an order is likely to be necessary in the future, they assert that does not mean that it is necessary now, and that they see no reason why they cannot discuss and agree such matters at the point that that is necessary. They pointed out that so far R is entirely happy with her situation, and there is no evidence that she will not be content to remain being looked after. Ms Bennyworth on behalf of the mother makes the point that if that were a proper argument, then surely that would then apply to almost every teenager being accommodated pursuant to s20, that a problem may arise in the future.
- b) In relation to R becoming more curious about her life story, the parents and the local authority appear to agree in relation to how this will be managed, so this is not a relevant factor.
- c) In relation to the issue of local authority trying to reassure the parents as to how they would exercise parental responsibility, the parents have expressed some concerns about how the local authority will work with R if they not only share parental responsibility, but the local authority can exercise that to the exclusion of the parents. The parents suggest that there have been recent incidents which were concerning in relation to R, such as her injuring another child, and R running away, and they were not told by those caring for her, it was R herself who told them. Some discussions they understand have taken place between R and a person working with her which they view as inappropriate. They are also worried there could be disputes in relation to the devices that R is allowed, with the suggestion particularly of R having access to an iPad and a mobile phone concerning them. They do not assert however that would cause the Court to consider a care order necessary, but rather the opposite, that they need to be able to work together

in partnership. The clear undercurrent is that the parents are concerned they will be sidelined if such an order is made.

d) In relation to the support and assistance that R would receive pursuant to a care order or pursuant to s20, it appears to be accepted that would be the same.

42. The guardian 's report sets out a comprehensive analysis of R, the history, and the difficulties in the case. It is apparent but she has taken some time to understand the concerns of both parents in relation to the different options.
43. The guardian makes the point that with or without the making of a care order, there will be some limit to how far the parents can direct the day-to-day care of R, and they will need to put trust in the professionals looking after her, although they are entitled to updates and raising any key issues.
44. The guardian spells out the concerns of the parents, that they are dissatisfied with some aspects of R's care and do not think her interests are at the heart of children services decision making. They are concerned they would be excluded from decision making about her, and worried that the assessment and support that R needs may not be completed or there could be extensive delays.
45. On behalf of R, the guardian accepts that currently whether there is a care order or no order, the services and support available to R now are unlikely to be different. She does however think that the sharing of parental responsibility makes a difference for R's long term planning and future. The guardian suggests that R needs the clear statutory duties of a care order to ensure that children services put in place the best support available. The guardian goes on to suggest that section 20 agreement is usually for assessment purposes, and where children remain in care in the short term.
46. The guardian suggests that as the risks are dynamic for R, and her home and staff need to be able to respond and manage her day-to-day care, and the home cannot be expected to revert to her parents for every decision about her care. The guardian does point out that as R becomes older, issues such as restricting her access to the internet begins to stray into the realms of deprivation of liberty measures if there is a care order in place for her, and she balances the difficulties for the home in managing that either with or without an order.
47. Ms McGowan stressed for me the complex dynamics of R and that she has unpredictable needs and behaviours.

48. The guardian also considers that the prospect of further court involvement for R in her life would be difficult, and may resurrect difficult historical issues for her. The guardian therefore suggests it would not be in R's best interests for care proceedings to be started again in the future for her, and that also added to her view as the necessity of a care order now.
49. In considering the application for a care order, the welfare of R is my paramount consideration. I have given particular attention to the matters contained in the welfare checklist at **s1 (3) of the Children Act 1989**,

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

- vii. R has not expressed a view in relation to whether there should be a care order or not.
- viii. There can be no doubt that R needs and would wish to have stability and security. Her wishes as far as we know at the moment are that she does not wish to return home, and expresses current satisfaction with where she lives.
- ix. Although she has had to move in the past, she did not want to, and in fact that move has caused her sadness. It is clear she would have wished to stay.

**(b) their physical, emotional and educational needs;**

- i. I have set out above and it is apparent within the papers that R has a wide range of particular physical, emotional and educational needs. It appears to be accepted that in general her needs are being met within her current accommodation, but perhaps inevitably there are some issues which still needs to be addressed. She is not accessing a full range of education, but it appears to me that that is not necessarily something that is lacking, rather potentially it is thought there is a need to tackle and calm one issue at a time at the moment. She has only been placed there since March of this year, certainly they appear to be managing well most of her other needs, although she still presents with a high level of complex issues.

- ii. One of the matters which the local authority and guardian place great weight upon, is the implications for R if there are future court applications needed. They suggest that would impact upon her if that was necessary in a couple of years time, and it would be better for her to know now that she is the subject of a care order for the remainder of her childhood. I accept there are benefits to that approach, particularly in relation to proceedings in relation to R being settled, being able to be explained to her, and a greater certainty that there would not need to be more proceedings.
- iii. However, I must weigh that against that the need to be sure that such an order is in reality necessary now. It also seems to me that whilst in general we would not want there to be further proceedings, if in the future if the local authority decided there did need to be a care order, R would then be of an age to be very involved in that process, she would have the benefit of her own guardian, and the situation could be looked at properly at that time. Her needs and wishes may be such that it was appropriate for there to be court scrutiny of that aspect.
- iv. I note that in *Re W* the child was older than R, and therefore that possibility was coming closer, and yet a care order was not considered necessary in that case, and that was despite the local authority in that case having argued at first instance that there were likely to be challenging times ahead in her teenage years, which they had asserted would require the ongoing exercise of the local authority sharing parental responsibility.
- v. I must also assess the risk of it occurring that this local authority will need a care order in case R does not accept her s20 status at 16. Currently there seems to be no evidence which would point to that likelihood, other than the overall difficulties that R has.
- vi. The other aspect of course as the guardian points out, would be quite possibly before very long the issue of Deprivation of Liberty raising its head in relation to R if she is subject to a care order. Although the guardian does query whether that might be due to matters such as mobile phones, it seems to me more likely to be a concern in relation to R's ability to go out alone etc. That certainly raises the prospect however potentially of more litigation. That will not be the case if she remains accommodated and if her parents are imposing boundaries in discussion with the home that would be expected for a child with her level of understanding

and risk. To that extent therefore there is less likelihood of litigation with no care order of course.

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

- i. It is not proposed but there is a change in where R should live, and it seems to me unlikely that for R the imposition of a care order or not for the next few years would make any difference to her.

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

- i) R has of course a significant background and significant characteristics which are relevant for this decision. I have borne those clearly in mind.

**(e) any harm which they have suffered or are at risk of suffering;**

- i. It is accepted of course that R has suffered from various forms of harm through her life, and she is certainly at risk of that into the future. Although the essential plan is agreed, the question here is whether on a welfare analysis there being a care order in place helps to protect her from further harm, or whether such an order being imposed does not assist or indeed causes more harm.
- ii. I have read carefully the statements from the local authority, and all of the documents provided by the parents. It is a difficult balance in this case, which is slightly different from Re W, in that it does seem to me that there is more prospect in this case of there being disagreements between the parents and the local authority as to the best way that R's needs are met. It could of course be argued that would support a care order being made, as it would be clear that the local authority could take steps with their increased parental responsibility. It seems to me however it could also be argued that the need for the local authority to agree matters with the parents, potentially promoting greater collaborative working, may be better for R's welfare. It does seem to me I should place great weight upon the knowledge and skills of these parents, who know their daughter very well, and who have looked after her for many years.

- iii. It is right to say that at times there is an undercurrent from the local authority initial statements that the parents do not always act appropriately in relation to R's difficulties. I note however that one of the issues for example was that the parents were very concerned as to the level of supervision in relation to R, suggesting that she was a risk to herself and to others. It transpires they were of course right, as shown by the significant injury R imposed upon one of her workers.
- iv. These are parents who advocate strongly for their daughter, and have the skills and ability to do that. It appears to be accepted that R is not entitled to any greater support and assistance through a care order than if she is simply accommodated pursuant to section 20. It seems to me there is a reality that if her parents are able to be driving issues forwards by using their parental responsibility, to ensure for example appropriate educational provisions are in place, and they are capable and committed to do that, it would be counter intuitive to pass that greater responsibility onto the local authority with the pressures upon their social workers. There is a risk that R is therefore not always the first thing that a social worker can deal with, considering the many pressures on a social workers time. It seems to me she will be always be a top priority for her parents.
- v. I accept of course that from either of the scenarios there is the potential for conflict between the local authority and the parents. However, on balance it seems to me that a situation where the parents need to respect the views of the unit where R is living, and where they must accept they have delegated day to day responsibility; but they must also respect the units' views and wishes, then that potentially creates in fact less room for conflict than the wider sharing of parental responsibility, with the LA having a trump card. This is of course discussed in detail in the Re W judgment in terms of the parents delegating their parental responsibility to the local authority voluntarily, whilst maintaining the partnership approach.

**(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 R's needs;**

- i) I have to an extent discussed this above. Since March 2022 the parents and the local authority have met R's needs. There have been disagreements, but I consider that to be inevitable in such a case. Some challenge and

disagreement both ways can be healthy, to ensure the cross check of R's needs, as long as there is some respect for differing viewpoints. That is easier when the people caring for R are on a more equal footing with her parents, and less easy in my mind when the local authority are simply able to overrule the parents, particularly when I see no evidence that there is a need for these committed parents to be overruled.

- ii) I should add, that although there are some criticisms by the parents of the local authority and some aspects of R's care, it seems to me that this social worker is committed as well to working with the parents, within the constraints that she has. I make no criticism of this social worker.

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

Again, I have discussed this elsewhere.

**Conclusion:**

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50. Finally, the court must carry out a proportionality cross check before making a care order. When I consider proportionality in this context, factoring in all of those different matters I have set out, it seems to me the proportionality cross check mitigates heavily against there being a care order in place. The local authority and the guardian can only point to their being a potential need for it in the future. I am satisfied that the far more draconian order could in fact create greater conflict and problems for R. The current situation has enabled her needs to be met over the last year and a half, so the proportionality argument in my view falls clearly to the least interventionist order that is necessary, and that is no order.
51. Therefore, for all of the reasons above, I dismiss the LA application for a care order.
52. I make no order as to costs, save for detailed public funding assessment of the publicly funded parties.

END OF JUDGMENT