BT13C00031

IN THE FAMILY COURT

Monday, 23rd June 2014

Before:

HER HONOUR JUDGE VENABLES

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(In Private)
In the matter of child A

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MISS J. YOULL appeared on behalf of the Applicant Local Authority.

MISS S. DENT appeared on behalf of the Respondent Mother.

MR. D. MARCUS appeared on behalf of the Guardian.

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J U D G M E N T

JUDGE VENABLES:

1 I am concerned today with the final hearing in care proceedings brought by the London Borough of Haringey in respect of a young boy named A age 11. A is the second child born to his mother, S. Her eldest son, T, lives in her home country with his maternal grandfather. A's father was deported after being convicted of a number of drug related offences. He does not have PR and he has played no part in these proceedings and no role in A's life since he was very young.

2 Rather unusually, A has been the subject of two earlier sets of proceedings, the first resolved with a supervision order and support package on 23rd October 2007; the second concluded with a supervision order on 10th December 2010.

3 Today the Local Authority invite the court to make a third supervision order for 12 months with an enhanced package of support and tailored educational provision. S does not oppose the Local Authority's application.

4 A's Guardian, Miss Dorothy Pottinger, has known A since he was 4, when proceedings were first issued. Miss Pottinger initially invited the court to make a care order to the Local Authority with a plan for A to attend a 38-week residential school. The court has not been required to consider the jurisdictional issues arising from such a course however as the Guardian has now revised her position, having heard the evidence of the experts. The Guardian now invites the court to endorse the current support package and educational provision with A's continued placement at home under a care order, albeit that she does seek some refinement of the plan. S and the Local Authority do not accept that a care order is either necessary or proportionate.

5 All parties are ably represented by their advocates, with Miss Youll for the Local Authority; Miss Dent for mother, and Mr. Marcus for the Children's Guardian.

6 I have read the three court bundles, which bundles include a selection of documents from the earlier proceedings. I have heard evidence from S; the Guardian, and a number of experts, including Dr. Carcani-Rathwell, a consultant child and adolescent psychiatrist, and Dr. Angel Adams, clinical psychologist.

7 All agree that A is a child with a high level of complex needs. Whilst Social Care has worked diligently, sensitively and in an entirely child-focused fashion within the proceedings, it is agreed the Local Education Authority, the Local Authority and local CAMHS failed to provide the services identified as necessary for him in the context of the earlier proceedings in timely fashion or at all.

8 The chronology, [C1-18] records A's very troubled history. He was the subject of a child protection plan under the category of physical and emotional harm on 27th June 2013. This is the fifth child protection plan. He has been the subject of four earlier plans under the category of neglect in four separate authorities. He has been accommodated under s.20 on two occasions and has been taken into police protection.

9 The chronology identifies the historic concerns of the Local Authority around mother's mental health; her ability to regulate her own emotions; allegations of physical harm; exposure to unsafe and risky situations; poor school attendance; sexualised behaviour; lack of insight, and difficulties in working cooperatively with the agencies. It also records an allegation that A was sexually abused whilst in foster care in 2009 with the results of the child protection medical strongly suggesting that A was abused. It is clear this issue has not been satisfactorily resolved. A was unable to effectively participate in the ABE interviews and S was unable to fully engage in the investigation, as identified by Dr. Carcani-Rathwell at J43 para.10. The s.47 enquiry concluded there was no evidence of sexual abuse in foster care. Both A and his mother firmly hold the belief that A was sexually abused in care. The fact that A defecates and smears in public places when under stress is seen by both Dr. Adams and Dr. Carcani-Rathwell as consistent with a possible stress response to unresolved sexual abuse. Thus the unresolved allegation of abuse casts a long shadow over the lives of S and A and is a relevant factor when looking at issues of parental engagement and cooperation, factors which I remain ever mindful of.

10 S is from the West Indies. She spent her formative years in adverse circumstances, including extreme poverty, deprivation and suffered the loss of her own mother when she was about 3 years old. The emotional, social and physical vulnerabilities arising from her childhood experiences were exacerbated by the extended period of uncertainty around her immigration status on her arrival in the UK and the consequent financial and practical difficulties that flowed therefrom.

11 The first set of care proceedings concluded on 23rd October 2007. Within those proceedings a threshold was agreed, as set out at A40. In essence, S accepted that A had suffered emotional harm and was at risk of significant emotional harm in consequence of his exposure to risky situations, multiplicity of care givers and to his mother's vulnerable and distressed emotional state demonstrated by her expressed suicidal thoughts.

12 A number of assessments were conducted within those proceedings. Dr. Warren, a psychologist, assessed Mother’s overall intellectual functioning to be in the "extremely low" range with delayed memory recall that would impact on her

ability to retain information. Whilst not identified as learning disabled, Dr. Warren recommended strategies for working with mother to enable her to safely parent A. Dr. Phelan completed a psychiatrist assessment of mother and considered her vulnerable to developing a significant mental illness due to her disruptive upbringing and limited intellectual capacity. Dr. Yates, consultant child and adolescent psychiatrist, observed that A may have ADHD which would need to be observed over time. Dr. Yates was concerned for A's emotional development and his exposure to mother's low mood and emotional state.

13 Within the first set of proceedings A was already noted to present difficulties for those managing his care. His attention span was limited. His integration into mainstream school was closely monitored because of his problems in concentrating, sitting, engaging with teachers and socialising with other children. He was subject to an educational statement in September 2007 at just 4 years 6 months because of concerns as to his emotional presentation.

14 Miss Pottinger, A's Guardian, said in her final report in those proceedings that mother had made great progress in working with the agencies during the course of the proceedings and that mother's relationship and close bond with A was noted. The Local Authority recognised the progress S had made and considered the mother's care of A was good enough.

15 In supporting the Local Authority's application for the first supervision order, the Guardian said [H33A]

> "It is the Guardian's view that any foreseeable risk to A in his mother's care can be manageable providing there is structured comprehensive long term support package that involves family support, robust inter-agency working together. A is a child in need under section 17 and section 31 of the Children Act 1989. Without this package of support and S's engagement in working in partnership with the Local Authority A is likely to suffer further harm. The Guardian understands that the Local Authority [is] commit[ed] to maintain the current level of support for the duration of the supervision order they seek. However, there remains uncertainty as to their commitment beyond 12 months. No statement has been filed by the service manager as directed. This is a case where it is likely that both support and monitoring will be needed beyond 12 months and where this can be clearly identified at this time. I am advised that there is no bar to the court making a consecutive supervision order. This may be necessary in the absence of a clear commitment of the Local Authority to maintain the support that they acknowledge is needed beyond 12 months".

16 In late 2008 the Local Authority began a fresh set of care proceedings, seeking an interim care order, after the home situation deteriorated. On 23rd December 2008 that application was refused by District Judge Stephenson, the same District Judge who dealt with the first set of proceedings. She noted that the Local Authority had not sought to extend the earlier supervision order. The Guardian gave evidence at the interim hearing and supported A's placement with mother whilst further assessments were undertaken as to mother's mental health and the child's presentation and need. The threshold was again agreed in this second set of proceedings. The agreed threshold can be seen at J84-85 of my bundle, and records *inter alia;*

(i) A has demonstrated concerning behaviour and has presented as out of control and distressed over an extended period of time;

(ii) A has missed significant amounts of school over an extended period of time.

17 The court ordered further assessments. Dr. Carcani-Rathwell, who reports in these current proceedings, prepared her first report on 10th August 2009 [J1-46]. Dr. Angel Adams, who has also reported in the current proceedings, provided a report dated 15th December 2009 [J47-83]. In 2009 Dr. Carcani-Rathwell said this of A [J22, para.4.2]:

> "A is a young boy who has spent most of the first six years of his life being subjected to adverse psycho-social circumstances characterised by severe disruption in his caring circumstances; neglect and possibly abuse whilst in the care of his father; possible sexual abuse is alleged by A's mother on behalf of A, as well as exposure to parental psychological instability, difficult living circumstances and ineffective parenting. A has had significant disrupted childhood as a result of frequent changes in his carers and placements, particularly during the first five years, as well as family moves due to S's unstable living circumstances".

She goes on to describe his behaviour at school and at home as consistent with early onset conduct disorder. She also observed that A's presentation could be consistent with ADHD hyperkinetic disorder and says [J25 4.11] the following:

> "While the presence of hyperkinetic disorder does not predict the occurrence with CD on its own, the HD symptomology influences the trajectory of CD. Untreated HD is a recognised risk factor for a less positive behavioural and personality outcome in a young person with conduct problems. A large percentage of children and young people with a combination of these disorders continue to have significant interpersonal relationships and to engage in behaviours that violate the rights of others in

their adulthood. Many receive a diagnosis of anti-social personality disorder. It is therefore crucial in a young person with conduct disorder not to miss a neuropsychiatric disorder such as hyperkinetic disorder which can be treated".

18 Dr. Adams says in her report of that year (J74 6.18) the following:

> "We concur with concern that A is at risk of developing a conduct disorder given his early care history and the paternal anti-social behaviour. Research suggests that the prevalence for children with untreated ADHD to develop a conduct disorder is high especially if their conduct problems start early, are more severe and reflect more persistent anti-social behaviour. Hence the importance of preventing a conduct disorder via evidence-based treatment for both ADHD and conduct problems, e.g. psychopharmacology, family interventions and school interventions".

She continues at 6.20:

> "The evidence-based treatment for A's ADHD and prevention plan for conduct disorder is a multi-modal approach which includes psycho-education, ADHD parent training for A's mother and for anyone else that has a significant adult carer role, social skill groups, classroom strategies, psychopharmacology and regular exercise for his hyperactivity".

She goes on to conclude:

> "In conclusion, the severity of A's ADHD requires that he receives treatment at an early age as possible. Barclays Research 2006 gives empirical evidence that severe impairment is likely when ADHD is undiagnosed and untreated, especially when confronted with the learning challenges and other … Based on the interventions that will be implemented, it is too early to tell when and if A can be reintegrated into mainstream school. A's educational needs require more provisions than a mainstream school can supply currently and therefore he needs to continue being educated at Excel Faith Academy. S would very much like to see that he has a productive and happy future. She would like to see A reach is potential and become a contributing member of the community".

19 Within the second set of proceedings the Local Authority and the Children's Guardian expressed a continuing concern about mother's ability to understand A's significant and increasingly high level of complex needs. Dr. Carcani-Rathwell noted that mother's level of insight into A's developmental, behavioural and emotional health seemed to improve during the 2008/10 proceedings, but was

concerned it was superficial. Dr. Carcani-Rathwell felt mother would need continued support from services for A as he grew older.

20 A positive ISW report within the 2008/10 proceedings led the Local Authority to review the need for a care or supervision order. Indeed, it would appear that for a period the Local Authority sought no order at all on the basis that they were content with S's level of increased cooperation. Both the Children's Guardian and S were opposed to such an outcome; S on the basis that she wished the Local Authority to commit to a package of support under a supervision order and the Children's Guardian on the basis that A's high level of need and mother's limitations required such an order. In the event the order was made by consent with a revised care plan lodged and dated 16th December 2010.

21 The amended care plan set out a range of services. They included the following:

(i) Support with re-housing. In the event mother and A did not move to their current accommodation until January 2013;

(ii) Mentoring for A. The Local Authority discontinued this service after two weeks. S asserts that A needed a mentor and continues to need a mentor;

(iii) Respite. The Local Authority did not arrange respite post proceedings;

(iv) Continued placement at the Excel School. Post proceedings the Local Authority withdrew funding for the school because of concerns about governance before identifying suitable educational provision consistent with A's educational statement. He was moved to a pupil referral unit, a resource that Dr. Adams and Dr. Carcani-Rathwell had expressly stated would not meet the needs of A and could well exacerbate conduct disorder;

(v) Referral to the learning disability team to see whether S suffered from a disability. Post proceedings an assessment was conducted and it was found that she fell outside the Local Authority's criteria;

(vi) Medication for A's ADHD. The referral to CAMHS for an assessment and consideration of a pharmacological response to his condition was not actioned by CAMHS and not proactively sought by S;

(vii) Therapeutic interventions to address the allegations of sexual abuse. This was again not progressed.

22 Thus in the period after the second set of care proceedings the carefully crafted support plan fell apart. S's cooperation with the Local Authority, CAMHS and school reduced as her frustration with the services increased. In July 2011, just seven months after the second supervision order, S called the police for help with A. She says that she felt she was at her wit's end and she thought she might get some help if she told the police that she feared she would kill A. As a consequence of that call the police removed A into police protection for a period, and he was placed temporarily in the home of his former foster carer who had worked well with S. He returned to his mother's care under a child in need plan in September 2011, but it would appear that the Local Authority home visits were frustrated and the Local Authority did not gain access.

23 In September 2012 the police reported being called to S's address. A was reported to have left the home carrying two kitchen knives. Over subsequent months there was little, if any, effective dialogue between S and the Local Authority. It is apparent that S was and is very angry at the way in which the Local Authority's education department had addressed A's educational needs. Indeed it has come to light within these proceedings that the very detailed, informative and directive reports of Dr. Adams and Dr. Carcani-Rathwell were not provided to the education department by Social Care and mother's efforts to get them to read the report of Dr. Adams was treated as an example of her aggressive behaviour.

24 At the time of mother's disengagement from Social Services the work with CAMHS also fell away. Mother says that she went to all CAMHS sessions of which she received notice. I make no finding as to whether the breakdown in communications with CAMHS was deliberate or an unfortunate coincidence, but it is clear that the services of CAMHS, however limited the service on offer, was not utilised.

25 In April 2013 S removed A from the pupil referral unit. The removal was a decision with which both Drs. Adams and Carcani-Rathwell approved. However, it was partly in consequence of that decision that the Local Authority issued the current proceedings as A remained out of education from April 2013 until November 2013.

26 This third set of proceedings was issued on 5th August 2013. The Local Authority sought an interim care order with immediate removal to foster care. The matter was compromised with a written agreement on 8th August pending time being found for a contested interim care application. It was that which came before me for the first time on 14th and 15th October 2013. The Local Authority asserted that S had disengaged, was once again displaying angry and aggressive behaviour in front of A and was not progressing work with CAMHS. The Local Authority

said they could no longer manage the risk to A of him remaining in his mother's care.

27 Between 8th August 2013 and 15th October 2013 the Local Authority approached 91 different fostering agencies to see if they could take A under an interim care order. In the event the Local Authority could not find a suitable placement for A. The court refused the Local Authority's application for an interim care order and instead made an interim supervision order with conditions. The Children's Guardian did not support the making of an interim care order with removal. The difficulty the Local Authority experienced in identifying a foster placement is indicative of A's high level of need and the challenges he presents to his carers. The difficulties A has experienced in his mother's care is evident from the papers. It is also evident that during the currency of these proceedings she has worked well with the agencies, as she did indeed during the currency of the earlier proceedings, but the fact that this is the third set of proceedings concerning A makes it imperative that the care plan for him is the right one.

28 From the outset of these proceedings the Children's Guardian has advocated that the Local Authority should explore alternative long-term plans for A that would enable him to maintain and nurture his relationship with his mother but be placed in a residential school where his therapeutic, emotional and behavioural needs could be met. The Guardian's views were echoed by both of the independently instructed experts, Drs. Adams and Carcani-Rathwell, who agreed that the placement of A in a residential school would not only best meet his needs but that leaving him in the care of his mother carries significant risks for his future welfare.

29 In October of last year it seemed possible that A and his mother might be prepared to work with that arrangement if A was unable to remain at home. The situation has now moved on. After extraordinary efforts from the Local Authority's children team, supported by the education department, A receives education through TCES on a one-to-one basis for 24 hours a week. There is a clear plan for educational integration with a school tailored to A's individual needs. Both mother and A are content with the plan and strongly oppose the proposal that he be moved to a residential school.

30 In the Guardian's final written analysis she recommends a care order with a requirement that A attends a residential school on a 38-week year basis with holidays and weekends at home. Her default position was, and is, that if he does not go to a residential school he should remain at home under a care order. She expressed herself as largely content with the terms of the proposed package, although suggested that some elements require refinement as I will turn to later.

31 In addition to hearing evidence from Drs. Adams and Carcani-Rathwell, the court also heard from Mr. Paul McCarthy, who chaired the complex children's panel on 3rd June 2014. Mr. McCarthy was a very impressive witness who has had many years' experience as a social worker and senior manager. He gave clear evidence regarding the reasons behind the complex children's panel decision to support educational provision through TCES and reject the residential option. The Local Authority assert the decision was rational and reasonable in the light of the clear progress A has made by TCES. In my view, Mr. McCarthy demonstrated a wealth of experience and knowledge of various educational provisions for challenging children. He was mindful, as was the panel, of the policy and approach of the Local Authority that it is incumbent wherever possible to keep children within their families to avoid the dislocation and the negative impact that occurs when children are placed in residential or institutional care out of borough. Financial considerations have not been determinative in any way regarding his recommendation and, indeed, he made clear that a residential school would very possibly be rather less expensive to the Authority than the current costing of £2,600 per week for TCES Tier 4 services.

32 The Guardian's preference for a residential school was predicated on the school's cohort being of a sufficiently wide spectrum of need to dilute the impact of children like A with behavioural disorders. She, and Dr. Adams, were particularly concerned that the TCES educational package would result in A ultimately being placed in a school with a significant population of children with conduct disorders that would undermine his progress and increase the risk of A exhibiting similar disordered conduct.

33 Mr. McCarthy expressed the view that there was no significant difference between the children at TCES and High Close and that at all EBD schools there was the potential risk for children to be exposed to disruptive students. He highlighted the benefits of TCES offering one-to-one tuition which lessened the negative influence of other children. He stated that in residential school the classes would be about 6 to 7 pupils and a lot of association with other pupils would be inevitable. Mr. McCarthy was concerned that A's resistance to attending a residential school risked undermining such a place and that if he remained resistant to attending the only practical way of getting him to attend would be by interim foster placement from where he would then be moved. He went on that in the face of extreme and hostile attitude by a parent and child that many schools would be reluctant to admit such a child. He concluded by saying that an escort or guard could be engaged to forcibly take him to the residential school, a process he did not in any way support.

34 The social worker, Miss Kitchen, has a good relationship with S and made clear that the Local Authority would seek to work with her and that for the Local Authority they would only look at residential school for A if the current plan failed.

35 Dr. Adams familiarised herself with the detail from TCES during the course of her evidence as it became clear she had little knowledge of what TCES could provide. Reading the information, she declared herself impressed with the package of support provided by TCES. Dr. Adams conceded that the mother had been a good enough parent. She was very clear that if a plan for residential school were forced upon A and his mother this would be a huge problem and that to do so would be to set him up for failure.

36 Dr. Carcani-Rathwell re-confirmed that in her view the key to successfully planning for A was gaining the support and cooperation of his mother. She confirmed that in the current context of mother and A being against residential schooling that the recommendation is unlikely to be successful now; that to force A to attend a residential school would be traumatic for him and unachievable. She agreed that to do so would be to set him up to fail. Dr. Carcani-Rathwell accepted that the placement with the mother had not broken down and that all avenues should be explored in order to support the placement.

37 During the course of the hearing, the Children's Guardian having heard the evidence of Dr. Adams and Dr. Carcani-Rathwell, came to the view that a plan for A's enforced move to a residential school is not workable at this time. Nevertheless, it is clear that the Guardian remains of the view that an agreed placement at a residential school would be the optimum placement. Absent such an agreement, the Guardian now invites the court to make a care order with A at home. Thus the court is left with two realistic options: (a) accept the Local Authority's proposal for a 12 month supervision order and associated care plan (S and the Local Authority support this approach); (b) reject the Local Authority's proposal for a 12 month supervision order and make a care order adopting the same plan (the Guardian advocates this approach).

38 Miss Kitchen, the current social worker, is new to the Authority and was allocated as the social worker for A in the summer of last year. It is clear she has worked extraordinarily hard to identify and obtain funding for the resources to support A. She has established a good relationship with A and his mother. She is to be commended for the very good work she has done to date. Miss Kitchen recommends that A remain at home under a supervision order, but her written evidence does not critically examine the option of placement under a care order at home. She considered this option at greater length in her oral evidence, where she asserted that the Local Authority does not need to share parental

responsibility for A and that the mother can provide good enough care and support for him. She stated that there is no suggestion that the mother does not keep A safe. She considered that a care order at home would create unnecessary intrusion into the family life of A and his mother. Miss Kitchen accepted that mother has disengaged following the making of the last two supervision orders. Whilst she expressed the view that the making of a care order with A at home could give mixed messages, she acknowledged that it would depend in part on how the message was relayed. She will remain the social worker and it is she who enjoys positive relationships with mother and son.

39 Miss Kitchen was asked what would be the next step for A if the TCES package broke down. She indicated that the Local Authority would then look at term time residential school but would, as ever, seek to work with mother. If there was no agreement, however, then the Local Authority would have to issue a fourth set of proceedings. It is noteworthy that these proceedings have been on foot for ten months and even with the advent of the new Children and Families Act 2014 it is unlikely that any future proceedings would conclude in less than 26 weeks.

40 The Children's Guardian has serious concerns that the plans before the court will not sustain to ensure that A receives all of the help and support that he so obviously needs and deserves. Many aspects of the current care plan repeats the plan that was before the court in 2010. The reality is that essential services have not been delivered. A has suffered as a result of not receiving the help that the experts and the Guardian have assessed he desperately needs. There are many reasons why essential services and support have not been provided to A and his mother.

41 I accept the Guardian's analysis that the fault lies not just with the Local Authority council and external services but also with S herself, even if not always as a result of any deliberate obstruction. It is clear from the evidence of Dr. Dowd that S struggles to have insight into her own difficulties and at times lacks both the will and potentially the capacity to access services for herself. A is caught up within his mother's world and her functioning and pathology. S's ability to engage with services and ensure as a parent that A's needs are met are entirely dependent upon her feelings. A is reliant on S exercising her parental responsibility in his best interests, but it is clear from the evidence before the court that S has struggled, and will continue to struggle, to consistently place A's needs before her own and ensure that his needs are met without support. S's previous reluctance to consider ADHD medication for A over a long period of time, notwithstanding clear recommendations, has contributed to A not being treated. She has not been helped sufficiently to understand the need for such treatment.

42 The risks for A of not receiving ADHD medication, as well as ADHD support, are clearly highlighted within the reports of Drs. Adams and Carcani-Rathwell from 2009 and in the current proceedings. Dr. Adams states that A is at risk of developing conduct disorder with this risk being high, hence the importance of preventing such a disorder. It is also concerning for the Guardian and all the experts that A has not received therapeutic help regarding disclosure of sexual abuse.

43 The multi-disciplinary support package offered by the Local Authority is of a quality and nature rarely seen in support of a supervision order. There is a heavy branch of support from TCES; a therapeutic package; an allocated social worker, who will remain allocated for at least the next 12 months; child in need reviews; a legal planning meeting in 9 months' time; family intervention plan; MENCAP involvement; the possible involvement of LDT; pharmacological support for A's ADHD; further assessment of the possibility of autism or autism spectrum disorder. Both Dr. Carcani-Rathwell and Dr. Adams consider the support plan to be appropriate for A. There is, however, concern that the pharmacological support he requires will be further delayed because of changes within local CAMHS. Whilst S's relationship with CAMHS fell away after the making of the last supervision order, there has been considerable difficulty in securing the assistance of CAMHS to update the local service assessment of A and his current need for medication.

44 The need for medication and his prescription was considered important to the timing and implementation of social care plans for A and his mother. In consequence of these difficulties a further expert was required to report. Dr. Pereira, a child and adolescent psychiatrist, was asked for identify what medication would be required to help address A's ADHD; timescales for measuring the impact of the medication; how such medication could be trialled. The assessment confirmed the most desirable pharmacological treatment plan. Dr. Pereira felt that this should be dealt with through the GP in view of mother's positive and longstanding relationship with him. A heart murmur was also mooted. The cardiologist has now given A the all clear but the general practitioner has declined to take on responsibility for prescribing the medication. Local CAMHS have no consultant available to see A until at least July. Thus this child, who has been identified as suffering from ADHD, has been without the desired pharmacological treatment since first diagnosed in 2009.

45 Dr. Kennedy will take on the role under the provision of services proposed through TCES, who can see A on 15th July 2014, report and prescribe. As a consequence A will have the benefit of a medicated programme before the beginning of the next school year. Dr. Kennedy will also examine the possibility

of autism and spectrum disorder which in turn will be relevant to A's long-term needs.

46 Both Dr. Adams and Dr. Carcani-Rathwell are of the view that A will need extensive support for the foreseeable future. In oral evidence Dr. Carcani-Rathwell acknowledged the strengths of the support plan in the short to medium term but was clear that it does not expressly address the risk factors in the long term in the light of A's high level of special needs; the trajectory of those needs, and mother's engagement in the longer term. She stated that the history to date raises concern about S's level of engagement and her ability to sustain engagement in the long term, which presents a risk factor that could impact on positive change. She was very clear that the best and most productive way forward for Awould be with the cooperation of S and that work should be done to enable that to be sustained. Dr. Carcani-Rathwell was mindful of the challenges that adolescence poses and the potential for conflict between S and A as he begins to separate and assert his independence. The potential for conduct disorder as adolescence approaches is a significant risk for A and Dr. Carcani-Rathwell said that there was a high risk of placement breakdown within the next two years. Dr. Carcani-Rathwell stressed that mother can provide good enough parenting when things are contained.

47 Dr. Adams also acknowledged that mother had worked very hard within these proceedings and engaged positively with the Local Authority. Dr. Adams was disappointed that mother had not felt able to visit the residential school to see what benefits and resources might be on offer to him, and felt that with time she might come to see the benefits. She noted that mother can become a bit paranoid which distorts her view of what is best for A. She shares Dr. Carcani-Rathwell's view that A and his mother have an enmeshed relationship. She said that such enmeshment prohibits her from having a wider view that could be helpful and productive for A. She expressed concern about mother's ability to safely manage A's behaviour in adolescence, when he will be stronger and physically more challenging. It is evident that he is a strong child who has the capacity to behave aggressively, and who has been treated aggressively. She made known her admiration for S, who had cared for A 24/7 from the time she removed him from the PRU in April 2013 until some respite care was provided for him in November. He is a challenging child but her love for him, coupled with the support provided through the good works of Miss Kitchen, enabled her to keep him safe.

48 The Guardian has known A and his mother for a very long time. It is extraordinary to think that this child has been the subject of proceedings on and off since 2006. Miss Pottinger is mindful of mother's love for, pride in and attachment to A. She is aware of the challenges that A's behaviour has presented for his mother and professional carers alike. She observes that his social isolation and enmeshed relationship with his mother makes the challenges of successful therapy for him all the greater because if S is not enabled to understand the basis of therapeutic work, and is unprepared for the likely sequelae , she may struggle to manage her own emotional impulses and responses. This in turn could undermine the progress of therapy and other support. The Guardian noted S's wish to see respite care for A set up every weekend. She said that this was indicative of the demands A makes of his mother's internal resources. The Guardian strongly advocates a care order for placement at home as the only effective mechanism to manage risk. She does not consider the Local Authority can rely on sustained cooperation in light of the history of disengagement.

49 Dr. Carcani-Rathwell said that the risk of mother being alienated by the making of a care order with placement at home had to be balanced against the benefits of sharing parental responsibility. It is largely a matter of ensuring how the message is delivered rather than the message itself. The Guardian had no doubt that the balance tips in favour of shared parental responsibility.

50 The issue of the mother trusting the Local Authority is important in ensuring that she can work with them under whatever order the court makes and, indeed, whatever care plan were approved. The mother's trust has been eroded by a failure of the Local Authority to acknowledge the trauma A has suffered, by the failure of the Local Authority to communicate internally to ensure a joined up approach to A's needs, and a failure by the Local Authority to provide the services they committed to providing. The provision of services by CAMHS has been patchy and their liaison with the Local Authority has failed to ensure that the mother understood the plans for A and what was to be provided. It is to be hoped that now mother has the advantage of Miss Floyd from MENCAP that these understandings can be minimised and trust built up. The mother enjoys a good relationship with the current social worker as she did previously. S is open about her mistrust of the Local Authority but has nonetheless shown herself able to work with them. Whilst she would not wish to share parental responsibility for A, the issue for her appeared much more to do with the way in which they would share that parental responsibility.

51 Turning then to the law, the recent case of *Re W* [2013] EWCA Civ. 1227 encapsulates the very significant differences between supervision order and care order. Paragraph 35:

> "The jurisdictional facts which have to be satisfied before an order can be made are set out in section 31(2):
>
> > 's31(2) A court may only make a care order or supervision order if it is satisfied –
> > (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
> > (b) that the harm, or likelihood of harm, is attributable to –
> > (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> > (ii) the child's being beyond parental control."

Paragraph 47:

> "The difference between the duties imposed upon and the powers available to the local authority under the different orders is of more than academic interest, including on the facts of this case. The effect of a care order is set out in section 33:
>
> 's33 Effect of care order
>
> (1) Where a care order is made with respect to a child it shall be the duty of the local authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force.
> (2) […]
> (3) Where a care order is in force with respect to a child, the local authority designated by the order shall-
> > (a) Have parental responsibility for the child; and
> > (b) Have the power (subject to the following provisions of this section) to determine the extent to which-
> > (i) a parent, guardian or special guardian of the child; or
> > (ii) a person who by virtue of section 4A has parental responsibility for the child,
>
> may meet his parental responsibility for him.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare."

Paragraph 49:

"The effect of a supervision order made under section 31(1)(b) CA 1989 is set out in section 35:

's35 Supervision orders

(1) While a supervision order is in force it shall be the duty of the supervisor-

(a) to advise, assist and befriend the supervised child;
(b) to take such steps as are reasonably necessary to give effect to the order; and
(c) where -
(i) the order is not wholly complied with; or
(ii) the supervisor considers that the order may no longer be necessary,
to consider whether or not to apply to the court for its variation or discharge.

Paragraph 50:

"Schedule 3 gives very limited powers to a court to impose requirements (for example on the person with parental responsibility or with whom the child is living but only if that person consents) and grants powers to supervisors to give directions to the supervised child. A supervision order does not confer parental responsibility on a local authority. Paragraph 11(1) of Schedule 3 confers a power in the Secretary of State to make regulations relating to the exercise by a local authority of their functions under a supervision order but these have never been made. Paragraph 6 of Part II of Schedule 3 provides that a supervision order shall cease to have effect after one year unless an application is made to extend the order up to the end of a maximum period of three years."

Paragraph 51:

"Children who are the subject of supervision orders are not looked after children (unless they are for some reason provided with accommodation by the local authority under section 22(1)(b) CA 1989). They do not benefit

from the duties imposed on local authorities by section 22 or Part II of Schedule 2 of the Act. The regulatory scheme for care planning, placement and review does not apply to them. In the absence of supervision order regulations, there is no equivalent regulatory safety net for the exercise of the local authority functions in relation to them including those exercised by "Independent Reviewing Officers" (IROs). By section 35(1)(b) CA 1989 the duty that is imposed upon the supervisor is "to take such steps as are reasonably necessary to give effect to the order"."

Paragraph 56:

"The IRO has an important independent role in the governance of the local authority's implementation of the care plan and decisions made at looked after children reviews. By regulations 5(d), 6(3)(c) and 37(b) of the 2010 Regulations in England the local authority is required to name the IRO on each child's care plan, give a copy of the care plan to the IRO and inform the IRO of any significant failure to make arrangements to implement decisions made at reviews and of any significant change in circumstances occurring after the review that affects those arrangements. In Wales, and by regulation 3(1) of the 2007 Review Regulations, the local authority is required to appoint an IRO for each case who by regulation 9(1) has to be informed of significant failures to make or carry out arrangements and significant changes of circumstance.

Paragraph57

It is now a statutory requirement that an IRO be appointed for each looked after child's case (section 25A CA 1989) and by section 25B the functions of an IRO include monitoring the performance by the local authority of their functions in relation to the child's case and referring the child's case to a Welsh family proceedings officer or an officer of Cafcass where the IRO considers it appropriate to do so for the officer to consider whether steps are necessary to safeguard and promote the welfare of the child, for example by instituting proceedings on behalf of the child (see regulation 45 of the 2010 Regulations for the position in respect of England and regulation 3 of the 2007 Review Regulations in respect of Wales). The role of the IRO is critical to the independent scrutiny of a local authority's actions once a care order has been made."

52 It is clear from the evidence of the social worker that S is currently working well with the Local Authority and motivated to engage with CAMHS,TCES and the therapeutic services. I think it is important to commend her, as I did at the outset of this afternoon's business, for the hard work she has done in maintaining a safe place for A over the last 14 months since his removal from the PRU. Her life experiences have undoubtedly impacted on her functioning and her intellectual limitations and her emotional presentation, and difficulties that she experiences in regulating her emotional responses are understandable. She wants what is best for A and will do what she can within the limits of her abilities to achieve that for him. Her insight and capacity to meet his emotional, social and behavioural needs is, however, necessarily limited by her difficulties and require significant and enduring support. I consider it noteworthy that S has worked so well with the Local Authority and the Guardian and the court during the course of three sets of care proceedings. Whilst court proceedings are stressful, she has succeeded in managing that stress and engaged. Problems of disengagement with the services have followed the end of proceedings. Dr. Carcani-Rathwell and Dr. Adams and the Guardian consider there is a high risk of placement breakdown. To ameliorate that risk it is imperative that S remains engaged and the Local Authority provide the services they are committed and required to.

53 Whilst there is a risk of alienation and withdrawal, I am satisfied that it is the manner in which the relationship between the Local Authority and Miss Green is managed that will determine its success. In my view, the sharing of parental responsibility will enable the Local Authority to bring about a supported compliance in areas where S may struggle. The challenges of adolescence are many and enduring and, for A, increase the risk of developing conduct disorder behaviour. It is probable that S will need intensive support, encouragement and gentle coercion to manage A’s behaviours. It may also be necessary for the Local Authority to implement alternative plans for A, ideally with S's cooperation and agreement. It is imperative that the current care plan is the right one. If a supervision order is made it will expire as A reaches 12. It does not endure. History in this case suggests that engagement has not been maintained. The Local Authority and S ask the court to accept that things will be different this time around, but the challenges ahead are greater looking forward than they have been in the past.

54 It is trite law that the court should adopt the least interventionist approach when considering whether to make an order and, if so, what order. It is also clear that the court can go on to make a care order instead of a supervision order against the wishes of a Local Authority where it is necessary and proportionate. The court has been referred to the case of *Oxfordshire CC v L* [1998] 1 FLR 70, where Hale J. considered the reasons required to force upon a local authority a more draconian order than it seeks where it was held that strong and cogent reasons were required. The three possible reasons that might be advanced were these:

(1) where a local authority might need to make long term plans for placement;

(2) where there was evidence of unwillingness on the part of a parent to exercise PR in cooperation with the local authority;

(3) where it was necessary to place duties on the local authority, although this would not be a good enough reason of itself.

55 The threshold in this case has been conceded. S's Article 6 and Article 8 rights are engaged. A's welfare is paramount and the pertinent elements of the welfare check list considered. I accept the Guardian's analysis of risk and I accept the view of both Dr. Carcani-Rathwell and Dr. Adam that the risk of placement breakdown is high, but absent agreement for placement at residential school he should remain at home with an intensive support package. I am mindful of the guidance approved by the President, provided by Mr. Justice Baker in the recent case of *Re;DE(A Child) EWFC 6* which sets out the preferred process to be adopted in the event of a fundamental disagreement between a parent and a local authority where a child is placed at home under a care order when the local authority review placement. This is a very helpful authority and provides a clearly defined mechanism to protect against a local authority effecting an inappropriate pre-emptory removal. In this case it is my view that the advent of the enhanced independent reviewing officer's role will be essential to ensuring that the package of care and support that this child needs will be delivered.

56 I consider that on balance the benefits of A remaining at home under a care order outweigh the disadvantages of imposing such a structure when considered against the option of a supervision order, and I reach that conclusion because of S's historic disengagement; the high level of structure and support services required; the requirement for the Local Authority to ensure that those services are provided in the longer term; the need for the Local Authority to make alternative plans for A consistent with his needs if placement breaks down. However it is essential that the Local Authority ensure they do not seek to exercise such PR unless it is necessary and consistent with the child's welfare needs.

57 I take the view that the only order that will meet A's welfare is a care order where the Local Authority can share PR, determining how much or how little they need to exercise it for themselves and, conversely, how much it can be exercised by S. It is thus, in my view, the least interventionist approach consistent with his needs and I consider that in all the circumstances such an order would be a proportionate intervention in family life.

58 I will, of course, require the Local Authority to confirm its commitment to the delivery of the care plan under the alternative legal structure of a care order. I will also require them to ensure that they address the issue of the pharmacological assessment; the assessment of autism; and provide confirmation as to the nature of the educational provision to be tailored into the next academic year.