Case No: DO13C00782

IN THE BOURNEMOUTH AND POOLE COUNTY COURT
(In Private)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 April 2014

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of S (A Child)

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- -

Mr Anthony Hand (instructed by Tanya Hall, Bournemouth Borough Council legal services) for the local authority
Mr Andy Pitt (of Aldridge Brownlee Solicitors LLP) for the mother
Ms Nicola Preston (of Dutton Gregory) for the father
Mr Steven Howard (instructed by Pengillys) for the children's guardian

Hearing date: 25 March 2014

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Approved Judgment

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

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Sir James Munby, President of the Family Division :

1. I have been sitting at Bournemouth in the Bournemouth and Poole County Court hearing a care case. It is a very typical County Court case but, as it happens, it raises a point on which it is desirable that I should give a judgment directed to a wider audience.

The background facts

2. S, the child with whom I am concerned, was born in October 2013. She is the youngest of her mother's four children. The three older children have all been taken into care. The mother, as is common ground, has a history of street prostitution and drug taking. Her third child was born with drug withdrawal symptoms.

3. The proceedings in relation to S began in October 2013. An emergency protection order was granted on 21 October 2013, followed by an interim care order on 28 October 2013. The case was transferred to the County Court. It came before His Honour Judge Bond on 14 January 2014 for a further case management hearing. There was a formal application by the local authority for permission to instruct an expert, a psychiatrist, and an informal application by the mother for an assessment in accordance with section 38(6) of the Children Act 1989. Amongst the papers before Judge Bond was a parenting assessment by the local authority dated 20 December 2013, a further report from the local authority dated 6 January 2014, and reports dated 3, 4 and 30 December 2013 from Dr Menzies Schrader, a specialist psychiatrist with the local Mental Health Team who had been treating the mother. Judge Bond directed the filing by 14 February 2014 of a report by a consultant forensic psychiatrist, Dr Jane Ewbank. He adjourned the mother's application pending receipt of Dr Ewbank's report.

4. The mother's adjourned application came before me on 25 March 2014. By then Dr Ewbank had reported. Her report is dated 18 February 2014. Mr Andy Pitt on behalf of the mother renewed her application for an assessment under section 38(6). As refined before me, the proposal was that I should direct a residential assessment of S and her mother at Orchard House, a Family Assessment and Intervention Centre in Taunton, initially for a weekend and, if that proved successful, for a period of between six and twelve weeks. This residential assessment might then (see below) be followed by a further period of assessment in the community. The application was opposed both by Mr Anthony Hand on behalf of the local authority and by Mr Steven Howard appearing for S's guardian, as well as by Ms Nicola Preston representing S's father. There were reports from Orchard House dated 15 December 2013 and 20 March 2014 setting out what they could offer. There was also a report dated 20 March 2014 from the Dorset Working Women's Project, a sexual health project working with women who sell sex, particularly those who misuse drugs and/or alcohol.

5. I also had the results of various hair-strand drug tests which the mother had recently undergone. These results were not easy to interpret, though they showed at worst very low levels of drugs in the mother's hair. Mr Pitt did not invite me to hear evidence from the mother, so on this point I cannot come to any conclusion. Nor do I express any views. There is in the event no need for me to do so. I am content for present

purposes to proceed on the assumption, though without deciding, that the mother was 'clean' during the periods covered by the tests.

6. Having reflected on the matter overnight, I informed the parties the following day that I had decided, for reasons which would be given in due course in a written judgment, to refuse the application. It was accordingly dismissed.

The mother's problems

7. There are various strands to the mother's problems. For present purposes they can be summarised as follows. The mother is a vulnerable woman who struggles to care for herself. She has mental health problems, an anxiety disorder (exemplified by fears of travelling on public transport and at times elective mutism) with intermittent depressive episodes and borderline low IQ. She has a long history of polysubstance drug misuse and street prostitution.

8. In relation to this, Mr Howard took me to the notes of the mother's supervised contact sessions with S. Two themes emerge. The first relates to the mother's personal appearance and presentation. There is frequent reference to the mother arriving for contact unkempt, with dirty clothes and smelling of tobacco smoke and unpleasant body odour. She is recorded as being shaky, swaying and shuffling (though apparently not smelling of alcohol). The relevance of this, I assume, is that the mother's inability to look after herself throws light on her ability to look after S. More important are the recordings of the interaction between S and her mother. There is quite frequent reference to the fact that S rarely makes eye contact with her mother but does with the workers, that the mother "has her vacant expression throughout contact" – what on one occasion is described as her "dreamy frozen stare" – and that there is very little interaction between S and her mother. The note of contact on 3 March 2014 comments that S "does not get much stimulation during her contacts." The note of contact the following day records that when her foster carer arrived to collect her, S was "very happy and smiled at the foster carer." The comment is added that "S is a very different child when she is with the foster carer S is a happy laughing child."

The expert evidence

9. The local authority's parenting assessment dated 20 December 2013 contains an analysis of which the following are the most significant passages:

> "[A report] evidenced some positives in the basic case of S provided by [the mother] during the parenting assessment sessions. [She] has also evidenced a high level of motivation during the assessment, and has engaged to a high level
>
> [She] has remained stable on her methadone prescription as proven by her hair strand test. This is a positive step forward and indicates a desire and ability to remain clean even at times of stress such as current proceedings
>
> …

The child protection risks are of concern and there are still considerable risks potentially posed to S.

However [the mother] has showed some positive insight into parenting and has showed potential for further growth and change.

[Her] mental health difficulties are complex and difficult to understand and I feel we require in depth support from her mental health professionals, to ascertain if there is further support that could be provided with regards to her mental health that may improve [her] position as good parent.

There is a possibility that a short term mother and baby placement tailored to [her] additional needs may be appropriate dependent on other professionals reports and professional opinions. This would be to further determine if she can parent in the whole when responsible for her child, or whether or not, she can merely manage basic parenting in a controlled environment such as FRC for 1½ hours.

It should be noted that since completion of the report, I have had access to case recordings from recent contacts from the start of December and there has been deterioration in [her] parenting skills and presentation.

There have been concerns raised by the contact worker regarding her physical support of S, her hygiene and nappy changing. It is unclear why this change in [her] skills has changed.

[She] has also expressed to contact workers she is experiencing panic attacks and cannot cope with the short journey by taxi to FRC. This contradicts the information she provided to me, and is concerning she is mentioning this now the assessment is complete.

The fundamental concern this raises is that since completion of the parenting assessment, [she] has been unable to sustain the level of parenting she previously was providing S. This could be due to instability in her mental health or an inability to maintain good level of parenting.

S requires a safe, nurturing and consistent upbringing to ensure she has the best possible opportunity for a health and happy life.

If [the mother] is unable to provide this in the confines of the FRC, it is questionable whether or not she could long term."

10. The further report dated 6 January 2014, which records a visit to the mother's home on 4 December 2013, contains this comment:

> "It was very evident during my visit that [the mother] is fully dependent on her sister … to fulfil her day to day needs which concerns me in respect of [her] ability to parent S independently."

11. The mother's key worker at the Dorset Working Women's Project describes working with the mother from 2001 until 2008, when "she appeared to have settled down and was stable." She next saw the mother in December 2012, describing her then as being "clearly mentally unwell and extremely vulnerable." She continues:

> "[She] appeared to be making progress until she was befriended by a known perpetrator who has a history of violence and abuse towards vulnerable women … Unfortunately once the relationship began [he] had complete control over [her] … and she appeared to be working more."

That man is S's father. He has been in prison again since July 2013. Of the mother's subsequent re-engagement with the Project and more recent presentation the key worker says that the mother's presentation has "improved greatly" and that she "continues to make good progress".

12. Dr Schrader was supportive of a residential assessment to assess the mother's parenting abilities. In his report dated 30 December 2013 he said that "Her presentation currently is vastly improved from how she presented in 2012 and in January of this year and I believe is primarily as she is having input and been abstinent from substances. This is the first time she has engaged to this extent". On the other hand, he noted that she "continues to have difficulties with anxiety" and described her as "a complex lady who desperately would like to raise her daughter, but who has numerous issues which could impede this process." He added, "Improvement in these areas of difficulty is going to take time."

13. Dr Ewbank accepted that the mother "appears to be demonstrating an increased capacity to engage in treatment with both the drug services and the CMHT". Commenting that "Historically she has been a very poor engager, missing multiple mental health appointments and repeatedly disengaging from drugs services either by not attending or by using illicit drugs on top of her Methadone prescription," Dr Ewbank continued, "There does appear to be evidence over recent months of sustained engagement with both services and she has clearly benefited from the support of … the Dorset Working Women's Project." Asked to indicate the prognosis for change, Dr Ewbank said:

> "Given [her] long standing drug problems, dating back almost 20 years, it is likely that achieving and sustaining first stability and subsequently abstinence from illicit drugs may take some time and is likely to require on-going treatment and support for many years."

She added, "there is still a very real risk that she may resort to buying other medication to help her sleep … and thus exacerbate her problems again."

Orchard House

14. Having reviewed the papers in the case, Dr Freda Gardner, a consultant clinical psychologist and the clinical director of Orchard House, expressed the view in her report dated 15 December 2013 that a residential assessment was appropriate and indicated. She described the regime:

> "The high level of monitoring, 24-hours a day, afforded by a residential assessment would allow a thorough assessment of parenting to be undertaken whilst concurrently ensuring the safeguarding of S. This would include [the mother's] parenting ability, and capacity for further change, and a consistent period of assessment regarding her current drug use."

She continued:

> "During assessment at Orchard House [she] would be provided with a tailored package of support and intervention to develop her capacity / potential capacity to meet the full range of S's needs, including 'Keep Safe' work around prostitution, appropriate adults, and ongoing drug use.
>
> The Social Work led Assessment Team and the Family Support Workers at Orchard House are highly experienced in working with a wide range of parents, and benefit from full integration of Clinical Psychologists experienced in a wide range of clinical presentations including personality disorder presentations and selective mutism. The staff support parents in developing skills and provide immediate verbal feedback, as well as written / pictorial feedback to improve parenting skills, which are based on research evidence. All staff at Orchard House aim to ensure that each family receives appropriate and consistent information The staff use a variety of techniques and specialist materials designed to help parents learn new skills, which may include formal instruction, modeling, breaking tasks down into small chunks, and giving lots of opportunities for rehearsal and repetition.
>
> …
>
> I am aware that any assessment will need to be within S's timescales, and would therefore recommend that the residential assessment be kept as brief as possible, with regular reviews held to ensure the progression of the assessment. Typically, residential assessments are 6-12 weeks in length, though this depends on the specific needs of the family and the key issues of the assessment. Following a successful period of residential assessment, it may be appropriate for the assessment to move to

> the community or to the Orchard House community base. Orchard House are able and willing to provide carefully considered plans for transition."

15. In her further report dated 20 March 2014 Dr Gardner confirmed her opinion that Dr Ewbank's report did not change her view.

Section 38(6) – the legal framework

16. Section 38(6) of the Children Act 1989 provides so far as material that:

> "Where the court makes an interim care order ... , it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child …"

17. The meaning of this provision is authoritatively explained by the House of Lords in two cases: *In re C (A Minor) (Interim Care Order: Residential Assessment)* [1997] AC 489, [1997] 1 FLR 1, and *In re G (A Minor) (Interim Care Order: Residential Assessment)* [2005] UKHL 68, [2006] 1 AC 576, [2006] 1 FLR 601. It suffices for present purposes to cite two brief passages from the speech of Baroness Hale of Richmond in *In re G*. In the first (para 69) she said:

> "In short, what is directed under section 38(6) must clearly be an examination or assessment of the child, including where appropriate her relationship with her parents, the risk that her parents may present to her, and the ways in which those risks may be avoided or managed, all with a view to enabling the court to make the decisions which it has to make under the Act with the minimum of delay. Any services which are provided for the child and his family must be ancillary to that end. They must not be an end in themselves."

Referring to the *Protocol for Judicial Case Management in Public Law Children Act Cases* [2003] 2 FLR 719, the precursor to the revised *Public Law Outline* (PLO), due to come into force in its final form later this month, she added (para 71):

> "if the aims of the protocol are to be realised, it will always be necessary to think early and clearly about what assessments are indeed necessary to decide the case. In many cases, the local authority should be able to make its own core assessment and the child's guardian to make an independent assessment in the interests of the child. Further or other assessments should only be commissioned if they can bring something important to the case which neither the local authority nor the guardian is able to bring."

I draw attention to Lady Hale's use of the word "necessary".

18. Two other authorities cited to me require brief mention. In *Re J (Residential Assessment: Rights of Audience)* [2009] EWCA Civ 1210, [2010] 1 FLR 1290, para 10, Wall LJ, as he then was, said:

> "I think it important to remember when one is looking either at the independent assessments by social workers or at applications under section 38(6) of the Act that one needs to be child focused. It is not a question of the mother's right to have a further assessment, it is: would the assessment assist the judge in reaching a conclusion or the right conclusion in relation to the child in question?"

Referring to this in *Re T (Residential Parenting Assessment)* [2011] EWCA Civ 812, [2012] 2 FLR 308, para 93, Black LJ rejected the proposition that "a parent facing the permanent removal of their child has *a right in all cases* to an assessment of their choice rather than one carried out or commissioned by the local authority." She continued:

> "Still less is there a principle such as that for which [counsel] contends, namely that parents must be given the chance to put forward a positive case to the judge determining the issue of whether a care order should be made'."

Sir Nicholas Wall P, para 53, identified the "critical questions" as being:

> "(1) does this child's welfare warrant an assessment under section 38(6) of the Act? And (2) in looking at the timetable for the child, is there evidence that this mother will be able to care adequately for the child within the child's timetable?"

19. Later this month, the amendments to section 38 of the 1989 Act effected by the Children and Families Act 2014 will be brought into force. Sections 38(7A) and (7B), inserted by section 13(11) of the 2014 Act, provide as follows:

> "(7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly.
>
> (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to –
>
> (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
>
> (b) the issues with which the examination or other assessment would assist the court,

> (c) the questions which the examination or other assessment would enable the court to answer,
>
> (d) the evidence otherwise available,
>
> (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
>
> (f) the cost of the examination or other assessment, and
>
> (g) any matters prescribed by Family Procedure Rules."

20. The language of section 38(7A) replicates, in all material respects verbatim, the more general provision in section 13(6) of the 2014 Act which applies to the calling of expert evidence (and which in turn replicates, with the addition of the word "justly", the language of FPR 25.1). Likewise, the language of section 38(7B) is very similar to that of section 13(7) of the 2014 Act.

21. For present purposes the key point is the use in common in section 38(7A) of the 1989 Act, section 13(6) of the 2014 Act and FPR 25.1 of the qualifying requirement that the court may direct the assessment or expert evidence only if it is "necessary" to assist the court to resolve the proceedings. This phrase must have the same meaning in both contexts. The addition of the word "justly" only makes explicit what was necessarily implicit, for it goes without saying that any court must always act justly rather than unjustly. So "necessary" in section 38(7A) has the same meaning as the same word in section 13(6), as to which see *Re TG (Care Proceedings: Case Management: Expert Evidence)* [2013] EWCA Civ 5, [2013] 1 FLR 1250, para 30, and *In re H-L (A Child) (Care Proceedings: Expert Evidence)* [2013] EWCA Civ 655, [2014] 1 WLR 1160, [2013] 2 FLR 1434, para 3.

The wider context

22. By the time the case came before me on 25 March 2014, the proceedings had already been on foot for a little over five months. What was being proposed by Orchard House envisaged a process that might extend the proceedings well beyond six months, indeed possibly for as long as eight months or even longer. This requires consideration of the principle set out in the interim PLO – which applies to this case – and shortly to be reinforced by section 14 of the 2014 Act.

23. Section 14 of the 2014 Act amends section 32 of the Children Act 1989 so that from later this month section 32 will in material part read as follows:

> "(1) A court hearing an application for an order under this Part shall …
>
> (a) draw up a timetable with a view to disposing of the application –
>
> (i) without delay, and

> (ii) in any event within twenty-six weeks beginning with the day on which the application was issued; and
>
> (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
>
> …
>
> (5) A court in which an application under this Part is proceeding may extend the period that is for the time being allowed under subsection (1)(a)(ii) in the case of the application, but may do so only if the court considers that the extension is necessary to enable the court to resolve the proceedings justly.
>
> (6) When deciding whether to grant an extension under subsection (5), a court must in particular have regard to –
>
> (a) the impact which any ensuing timetable revision would have on the welfare of the child to whom the application relates, and
>
> (b) the impact which any ensuing timetable revision would have on the duration and conduct of the proceedings;
>
> and here "ensuing timetable revision" means any revision, of the timetable under subsection (1)(a) for the proceedings, which the court considers may ensue from the extension.
>
> (7) When deciding whether to grant an extension under subsection (5), a court is to take account of the following guidance: extensions are not to be granted routinely and are to be seen as requiring specific justification.
>
> …
>
> (10) Rules of court may provide that a court –
>
> (a) when deciding whether to exercise the power under subsection (5), or
>
> (b) when deciding how to exercise that power,
>
> must, or may or may not, have regard to matters specified in the rules, or must take account of any guidance set out in the rules."

No rules have been made pursuant to section 32(10) and none are proposed to be made for the time being.

24. 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) and (7), a mandatory limit which applies to all cases. It follows that there will be many cases that can, and therefore should, be concluded well within the 26 week limit. I repeat what I said in my first 'View from the President's Chambers: The process of reform', [2013] Fam Law 548:

> "My message is clear and uncompromising: this deadline can be met, it must be met, it will be met. And remember, 26 weeks is a deadline, not a target; it is a maximum, not an average or a mean. So many cases will need to be finished in less than 26 weeks."

25. What then of the qualification in section 32(5)?

26. In *In re B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, [2014] 1 WLR 563, paras 32-46, the Court of Appeal spelt out the essentials which the law and good practice demand in all cases when the court is being asked to approve a care plan for adoption or being asked to make a non-consensual placement order or adoption order. Giving the judgment of the court, I said this (para 49):

> "We do not envisage that proper compliance with what we are demanding, which may well impose a more onerous burden on practitioners and judges, will conflict with the requirement, soon to be imposed by statute, that care cases are to be concluded within a maximum of 26 weeks. Critical to the success of the reforms is robust judicial case management from the outset of every care case. Case management judges must be astute to ensure that the directions they give are apt to the task and also to ensure that their directions are complied with. Never is this more important than in cases where the local authority's plan envisages adoption."

I continued:

> "If, despite all, the court does not have the kind of evidence we have identified, and is therefore not properly equipped to decide these issues, then an adjournment must be directed, even if this takes the case over 26 weeks. Where the proposal before the court is for non-consensual adoption, the issues are too grave, the stakes for all are too high, for the outcome to be determined by rigorous adherence to an inflexible timetable and justice thereby potentially denied."

27. That approach, which is entirely compatible with the requirements of section 32, applies not just in the particular context under consideration in *In re B-S* but more generally.

28. In my seventh 'View', [2013] Fam Law 1394, I described the remarkable work being done by the Family Drug and Alcohol Court (FDAC) under the inspirational leadership of District Judge (Magistrates' Court) Nicholas Crichton. I touched on the

question of how the FDAC model was to meet the challenge of the 26 week time limit and fit with the PLO. I said:

> " … we must see how best the PLO can accommodate the FDAC model (I put it this way, rather than the other way round). We must always remember that the PLO is a means of achieving justice and the best outcomes for children and, wherever possible, their families. It is not, and must never be allowed to become, a straightjacket, least of all if rigorous adherence to an inflexible timetable risks putting justice in jeopardy."

29. More recently, in *Re NL (A child) (Appeal: Interim Care Order: Facts and Reasons)* [2014] EWHC 270 (Fam), para 40, Pauffley J has expressed the point in words which I cannot improve upon and which I wholeheartedly endorse:

> "Justice must never be sacrificed upon the altar of speed."

30. So despite the imperative demand of section 32(1)(a)(ii), there can be exceptions. But before going further it is vital to recall the equally imperative language of sections 32(5) and 32(7). An extension beyond 26 weeks is to be permitted only if it is "necessary to enable the court to resolve the proceedings justly". This is precisely the same language as appears in section 38(7A) of the 1989 Act and section 13(6) of the 2014 Act, so it must mean the same. Specifically, the learning in *Re TG* and in *In re H-L* must, in my judgment, apply as much to section 32(5) of the 1989 Act as it does to section 38(7A) of the 1989 Act and section 13(6) of the 2014 Act. Moreover, extensions are "not to be granted routinely" and require "specific justification."

31. In what circumstances may the qualification in section 32(5) apply?

32. This is not the occasion for any elaborate discussion of a question which, in the final analysis, can be determined only on a case by case basis. But some preliminary and necessarily tentative observations are appropriate.

33. There will, as it seems to me, be three different forensic contexts in which an extension of the 26 week time limit in accordance with section 32(5) may be "necessary":

    i) The first is where the case can be identified from the outset, or at least very early on, as one which it may not be possible to resolve justly within 26 weeks. Experience will no doubt identify the kind of cases that may fall within this category. Four examples which readily spring to mind (no doubt others will emerge) are (a) very heavy cases involving the most complex medical evidence where a separate fact finding hearing is directed in accordance with *Re S (Split Hearing)* [2014] EWCA Civ 25, [2014] 2 FLR (forthcoming), para 29, (b) FDAC type cases (see further below), (c) cases with an international element where investigations or assessments have to be carried out abroad and (d) cases where the parent's disabilities require recourse to special assessments or measures (as to which see *Re C (A Child)* [2014] EWCA Civ 128, para 34).

ii) The second is where, despite appropriately robust and vigorous judicial case management, something unexpectedly emerges to change the nature of the proceedings too late in the day to enable the case to be concluded justly within 26 weeks. Examples which come to mind are (a) cases proceeding on allegations of neglect or emotional harm where allegations of sexual abuse subsequently surface, (b) cases which are unexpectedly 'derailed' because of the death, serious illness or imprisonment of the proposed carer, and (c) cases where a realistic alternative family carer emerges late in the day.

iii) The third is where litigation failure on the part of one or more of the parties makes it impossible to complete the case justly within 26 weeks (the type of situation addressed in *In re B-S*, para 49).

34. I repeat, because the point is so important, that in no case can an extension beyond 26 weeks be authorised unless it is "necessary" to enable the court to resolve the proceedings "justly". Only the imperative demands of justice – fair process – or of the child's welfare will suffice.

35. I referred above to FDAC type cases. I have in mind cases of the type that might benefit from what I will call the FDAC approach. The approach (see the description in my seventh View, [2013] Fam Law 1394) is based on problem solving by a specialist, multi-disciplinary team supporting the parents in overcoming their problems where children have been put at risk, for example by parental substance misuse. The aim is to help to keep the family together, where possible. The team formulates an intervention plan to test whether the parents can overcome their problems and meet their child's needs *within the child's timescale*. Expectations are clear. The progress made by the parents is monitored regularly. If the parents cannot maintain the necessary progress the process is brought to an end.

36. Originally, the FDAC approach was pioneered in the FDAC court created by DJ(MC) Crichton at Wells Street in London. Another FDAC is now running at Gloucester and others are planned elsewhere. But the FDAC approach does not necessarily require a FDAC. Similar principles are being applied, for example, in Plymouth, pre-proceedings in a community based model pioneered by Bath and North East Somerset Council, in Liverpool by the use of a pre-proceedings protocol and in a small number of specialist domestic abuse survivors' projects. No doubt other models will emerge. Typically, a multi-disciplinary team approach is agreed with the designated family judge or judge in charge of the specialist court, so that the support network and assessment team are available and funded in accordance with an agreed model. Decisions in principle about the capability of the parents to care for their child are usually made within 26 weeks, leaving such longer implementation as may be within the child's timescale to be achieved within an extended timetable for the proceedings.

37. The FDAC approach is crucially important. The simple reality is that FDAC works. DJ(MC) Crichton has shown what can be achieved for children and their parents even in the most unpromising circumstances. FDAC is, it must be, a vital component in the new Family Court.

38. Viewed from a judicial perspective a vital component of the FDAC approach has to be a robust and realistic appraisal at the outset of what is possible *within the child's*

timescale and an equally robust and realistic ongoing appraisal throughout of whether what is needed is indeed being achieved (or not) *within the child's timescale*. These appraisals must be evidence based, with a solid foundation, not driven by sentiment or a hope that 'something may turn up'. Typically three questions will have to be addressed. First, is there some solid, evidence based, reason to believe that the parent is committed to making the necessary changes? If so, secondly, is there some solid, evidence based, reason to believe that the parent will be able to maintain that commitment? If so, thirdly, is there some solid, evidence based, reason to believe that the parent will be able to make the necessary changes *within the child's timescale*?

Discussion

39. On behalf of the mother, Mr Pitt submits that she has complied with everything asked of her, is no longer taking drugs, has made progress in relation to her mental health – she is now talking freely – and continues to engage with the agencies and professionals who are in place to support and assist her.

40. Mr Hand on behalf of the local authority accepts that, to her credit, the mother has been making improvements. But, he submits, she has a long way to go. There is, he says, no realistic way in which she could care, or be supported long term to care, for S. Given the range of expert material already before the court, further assessment will not, he submits, assist the court in discharging its responsibilities. The combined effect of all the material is, he says, that the mother will not be able to care for S long term. Moreover, given the poor quality of the mother's contact with S he questions whether it is compatible with S's welfare to expose her to a residential assessment with the mother in the absence of it having a good chance of success. On top of all that, he questions whether the inevitable delay can be justified unless there is a good chance of success.

41. Mr Howard, for S, makes much the same points as Mr Hand. While the mother has made improvements they are insufficient and too late to indicate that she would be able to care for S within the child's timescale. The assessment is not necessary. The guardian, moreover, is particularly concerned about the impact on S of the proposed assessment. The mother's parenting of S during the assessment could undermine the secure attachment S currently has. Given the extensive assessments already undertaken, the mother's poor prospects of success do not justify the "experiment" she is proposing, nor is it within the child's timescale.

42. After careful reflection I concluded that Mr Hand and Mr Howard were right, and essentially for the reasons they gave. I can summarise my conclusions quite shortly.

43. In the first place I agree with them that the proposed assessment is not necessary, either in the sense described by Lady Hale in *In re G* or in the sense (the same sense) in which the word is used in FPR 25.1 and in section 38(7A) of the 1989 Act. There are two aspects to this. Further assessment is not going to add significantly to what the court already knows. Moreover, the kind of assessment proposed by Orchard House, although it may tell us something about the mother's ability to parent S in a practical sense (though nothing important we do not already know) is not going to be able to tell us very much about the mother's ability to address her many other difficulties, let alone her ability to sustain in the long term in the community whatever improvements

may be noted in the short term in the supportive and controlled environment of Orchard House.

44. Secondly, there is no adequate justification, let alone the necessity which section 32(5) of the 1989 Act will shortly require, for an extension of the case so significantly beyond 26 weeks. Again, there are two aspects to this. Looking to the mother, there is, sadly, at present no solid, evidence based, reason to believe that she will be able to make the necessary changes *within S's timescale*. Even assuming that there is some solid, evidence based, reason to believe that she is committed to making the necessary changes, there is, sadly, not enough reason to believe that she will be able to maintain that commitment. In the light of her history, and all the evidence to hand, the assertion that she will seems to me to be founded more on hope than solid expectation, just as does any assertion that she will be able to make the necessary changes *within S's timescale*. Secondly, I have to have regard to the detrimental effects on S of further delay. Far from this being a case where the child's welfare demands an extension of the 26 weeks time limit, S's needs point if anything in the other direction. I accept the guardian's analysis.