Neutral Citation Number: [2015] EWFC 11

Case No: MB14C01592

IN THE FAMILY COURT
Sitting at MIDDLESBROUGH

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 February 2015

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of A (A Child)

Between :

DARLINGTON BOROUGH COUNCIL **Applicant**
- and -
(1) M
(2) F
(3) GM and GF
(4) A (by his children's guardian) **Respondents**

- -
- -

Mr Crispin Oliver (instructed by the local authority) for the applicant (local authority)
Mr Alan D Green (of Hewitts) for the first respondent (mother)
Mr Martin Todd (instructed by Freeman Johnson) for the second respondent (father)
Mr Keith Leigh (of Teesside Law Limited) for the fourth respondent (child)
The third respondents (the paternal grandmother and step-grandfather) appeared in person

Hearing dates: 26-28 November 2014

- -

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 open court

Sir James Munby, President of the Family Division :

1. I have before me two applications by Darlington Borough Council, the first, issued on 16 September 2014, for a care order in relation to a little boy, A, who was born on 11 January 2014, the second, issued on 14 November 2014, for a placement order. Various aspects of the case have caused me great concern and, unhappily, require to be explored in some detail.

2. In the event I have come to the clear conclusion that both applications should be dismissed. A should be returned to the care of his father (the mother does not put herself forward as a carer for A and supports the father's position).

The law

3. There was no dispute as to the legal principles I have to apply.

4. It is for the local authority to prove, on a balance of probabilities, the facts upon which it seeks to rely. It is for the local authority, since it is seeking to have A adopted, to establish that "nothing else will do": see *In re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, [2013] 1 WLR 1911, [2013] 2 FLR 1075, and *Re B-S (Adoption: Application of s 47(5))* [2013] EWCA Civ 1146, [2014] 1 FLR 1035. See also *Re R (A Child)* [2014] EWCA Civ 1625. As Baroness Hale of Richmond said in *In re B*, para 198:

> "the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."

This echoes what the Strasbourg court said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

> "family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."

5. In considering the local authority's application for a care order I must have regard to the 'welfare checklist' in section 1(3) of the Children Act 1989 and, since the plan is for adoption, also to the 'welfare checklist' in section 1(4) of the Adoption and Children Act 2002: see *In re C (A Child) (Placement for Adoption: Judicial Approach)* [2013] EWCA Civ 1257, [2014] 1 WLR 2247, [2014] 2 FLR 131, paras 29-31, *Re R (A Child)* [2014] EWCA Civ 1625, para 51. Likewise I must treat as my paramount consideration, in accordance with section 1(2) of the 2002 Act, A's welfare "throughout his life." In deciding whether or not to dispense with the parents' consent I must apply section 52(1)(b) of the 2002 Act as explained in *Re P (Placement Orders: Parental Consent)* [2008] EWCA Civ 535, [2008] 2 FLR 625.

6. I add two important points which I draw from the judgment of Baker J in *Devon County Council v EB & Ors (Minors)* [2013] EWHC 968 (Fam), paras 56, 59. First, I must take into account all the evidence and, furthermore, consider each piece of evidence in the context of all the other evidence. I have to survey a wide canvas. Secondly, the evidence of the father is of the utmost importance. Is he credible and reliable? What is my impression of him?

Some fundamental principles

7. In the light of the way in which this case has been presented and some of the submissions I have heard, it is important always to bear in mind in these cases, and too often, I fear, they are overlooked, three fundamentally important points. The present case is an object lesson in, almost a textbook example of, how not to embark upon and pursue a care case.

8. The first fundamentally important point relates to the matter of fact-finding and proof. I emphasise, as I have already said, that it is for the local authority to prove, on a balance of probabilities, the facts upon which it seeks to rely. I draw attention to what, in *Re A (A Child)* (No 2) [2011] EWCA Civ 12, [2011] 1 FCR 141, para 26, I described as:

> "the elementary proposition that findings of fact must be based on evidence (including inferences that can properly be drawn from the evidence) and not on suspicion or speculation."

This carries with it two important practical and procedural consequences.

9. The first is that the local authority, if its case is challenged on some factual point, must adduce proper evidence to establish what it seeks to prove. Much material to be found in local authority case records or social work chronologies is hearsay, often second- or third-hand hearsay. Hearsay evidence is, of course, admissible in family proceedings. But, and as the present case so vividly demonstrates, a local authority which is unwilling or unable to produce the witnesses who can speak of such matters first-hand, may find itself in great, or indeed insuperable, difficulties if a parent not merely puts the matter in issue but goes into the witness-box to deny it. As I remarked in my second *View from the President's Chambers*, [2013] Fam Law 680:

> "Of course the court can act on the basis of evidence that is hearsay. But direct evidence from those who can speak to what they have themselves seen and heard is more compelling and less open to cross-examination. Too often far too much time is taken up by cross-examination directed to little more than demonstrating that no-one giving evidence in court is able to speak of their own knowledge, and that all are dependent on the assumed accuracy of what is recorded, sometimes at third or fourth hand, in the local authority's files."

It is a common feature of care cases that a local authority asserts that a parent does not admit, recognise or acknowledge something or does not recognise or acknowledge the local authority's concern about something. If the 'thing' is put in issue, the local

authority must both prove the 'thing' and establish that it has the significance attributed to it by the local authority.

10. The second practical and procedural point goes to the formulation of threshold and proposed findings of fact. The schedule of findings in the present case contains, as we shall see, allegations in relation to the father that "he appears to have" lied or colluded, that various people have "stated" or "reported" things, and that "there is an allegation". With all respect to counsel, this form of allegation, which one sees far too often in such documents, is wrong and should never be used. It confuses the crucial distinction, once upon a time, though no longer, spelt out in the rules of pleading and well understood, between an assertion of fact and the evidence needed to prove the assertion. What do the words "he appears to have lied" or "X reports that he did Y" mean? More important, where does it take one? The relevant allegation is not that "he appears to have lied" or "X reports"; the relevant allegation, if there is evidence to support it, is surely that "he lied" or "he did Y".

11. Failure to understand these principles and to analyse the case accordingly can lead, as here, to the unwelcome realisation that a seemingly impressive case is, in truth, a tottering edifice built on inadequate foundations.

12. The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate *why*, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance". May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise. The local authority's evidence and submissions must set out the argument and explain explicitly why it is said that, in the particular case, the conclusion indeed follows from the facts. Here, as we shall see, the local authority conspicuously failed to do so.

13. In the light of the local authority's presentation of this case, it is important always to bear in mind, and again, I fear, it is too often misunderstood or overlooked, the point made by Macur LJ in *Re Y (A Child)* [2013] EWCA Civ 1337, para 7, in a judgment agreed by both Arden and Ryder LJJ:

> "(3) In upholding the criticism made of the judgment as to inadequate identification of risk and consequent evaluation of likelihood of that risk in subsequent analysis of measures which mitigate that risk, that is articulation of the proportionality of the order sought and subsequently made, the judge was not assisted by the dearth of relevant evidence which should have supplied, in particular by the local authority. Relevant evidence in this respect is not and should not be restricted to that supportive of the local authority's preferred outcome.

> (4) I regret that quite apart from a lamentable lack of evidence which would have enabled the judge to conduct a rigorous analysis of options objectively compliant with the twins' Convention rights, whether favoured by the local authority and/or Children's Guardian or not, I consider *the case appears to have been hijacked by the issue of the mother's dishonesty*. Much of the local authority's evidence is devoted to it. The Children's Guardian adopts much the same perspective. It cannot be the sole issue in a case devoid of context. There was very little attention given to context in this case. *No analysis appears to have been made by any of the professionals as to why the mother's particular lies created the likelihood of significant harm to these children and what weight should reasonably be afforded to the fact of her deceit in the overall balance* (emphasis added)"

14. The third fundamentally important point is even more crucial. It is vital always to bear in mind in these cases, and too often they are overlooked, the wise and powerful words of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

> "society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done."

15. That approach was endorsed by the Supreme Court in *In re B*. There are two passages in the judgments of the Justices which develop the point and to which I need to draw particular attention. The first is in the judgment of Lord Wilson of Culworth JSC where he said (para 28):

> "[Counsel] seeks to develop Hedley J's point. He submits that:
>
> > 'many parents are hypochondriacs, many parents are criminals or benefit cheats, many parents discriminate against ethnic or sexual minorities, many parents support vile political parties or belong to unusual or militant religions. All of these follies are visited upon their children, who may well adopt or "model" them in their own lives but those children could not be removed for those reasons.'
>
> I agree with [counsel]'s submission".

The other is the observation of Baroness Hale of Richmond JSC (para 143):

> "We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse antisocial political or religious beliefs."

16. I respectfully agree with all of that. It follows that I also agree with what His Honour Judge Jack said in *North East Lincolnshire Council v G & L* [2014] EWCC B77 (Fam), a judgment that attracted some attention even whilst I was hearing this case:

> "I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink. But so far as Mr and Mrs C are concerned there is no evidence that I am aware of that any domestic violence between them or any drinking has had an adverse effect on any children who were in their care at the time when it took place. The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence (now very widely defined) and where parents on occasion drink more than they should, I am not condoning that for a moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts."

17. There is a powerful message in these judgments which needs always to be borne in mind by local authorities, by social workers, by children's guardians and by family judges.

The family background

18. A's father was born in 1989. The father has not had contact with his own father for some years. He was brought up by his mother and, from an early age, by his mother's partner, now her husband. So far as material for present purposes, A has had three relationships. The first, which began in 2008, was with H. They have two children, girls born in 2009 and 2012. They separated on Christmas Day 2012 in circumstances which are in dispute and which there is no need for me to resolve. The father issued an application for contact in March 2013. H issued an application for a prohibited steps order in March 2014. Various orders have been made but the proceedings have not reached a conclusion.

19. The father's second partner was A's mother. The relationship began, according to them, in early 2013. By Spring 2013 the mother was pregnant. The relationship came to an end in Summer 2013 when the mother was sent to prison for offences of dishonesty and, more seriously, sexual offences relating to a minor.

20. The father's third partner was J. According to the father the relationship began in the autumn of 2013 and they were together, he says, for about 5 months. They decided to live together in December 2013 but the relationship, he says, terminated in March 2014.

Pre-proceedings

21. A was born while his mother was serving her prison sentence. On 18 September 2013, the local authority was alerted by the prison authorities to the fact that she was pregnant and promptly began considering what steps it should take. On 25 September 2013, following a Strategy Discussion, it was decided to undertake a pre-birth assessment. I shall refer to the allocated social worker as SW1. Given what I was subsequently told, SW1 was plainly both inexperienced and too inexperienced for a case of this complexity. I shall refer to her team manager as TM.

22. The precise course of events is not altogether clear from the documents which the local authority was able to produce, but it seems that on 30 October 2013 SW1 had her first assessment session with the father, followed by another on 6 November 2013, a telephone conversation with him on 16 December 2013, and a further session with him on 17 December 2013, this one attended also by his mother, his step-father, and his partner, J. At this session the father was told that his assessment as an *interim* carer was negative. A De-brief Strategy Discussion took place on 23 December 2013. It was decided that SW1 would continue assessing the mother, the father and extended family members but that whilst these assessments were ongoing a foster placement and consent under section 20 of the 1989 Act would be sought. This was followed by a Legal Gateway Meeting on 7 January 2014. It was decided that there was threshold justifying the commencement of proceedings and that accordingly a letter before proceedings was to be issued. (It never was in relation to the father.) It was decided that a six week assessment of the father and J was to take place – "however it is noted that there are significant concerns identified" – and also a viability assessment of the paternal grandmother and a further risk assessment of the mother.

23. A was born on 11 January 2014 and accommodated in local authority foster care in accordance with section 20 of the 1989 Act.

24. On 17 February 2014 there was a further Legal Gateway meeting. So far as the local authority was concerned all assessments had now been completed. It was decided that care proceedings should be issued with a plan for adoption.

25. What then happened is, even now, a matter of considerable obscurity. In due course, two viability assessments, one of the father and the other of the paternal grandmother and step-grandfather, were prepared. Each was, seemingly, prepared by SW1 and "endorsed" by TM but neither assessment was either signed or dated. All I know is that, according to what TM told me in her oral evidence, the draft assessments prepared by SW1 were sent to the local authority's legal department for review on 19

May 2014 and received back on 10 July 2014, after which they were finally endorsed by TM.

26. The care application was issued on 16 September 2014 – 8 months after A's birth! The application was supported by a witness statement by SW1 dated 15 September 2014 and accompanied by, amongst other documents, the two assessments and a final care plan also dated 15 September 2014. This purports to have been prepared by SW1 and "endorsed" by TM but is unsigned.

27. I must return in due course to a more detailed analysis of the assessments and the local authority's evidence but there are various aspects of the assessment of and the evidence relating to the father which I need to draw attention to at this point.

28. First, there was very little analysis, let alone any very rigorous analysis, of the factual underpinning of the local authority's case. The truth is that the local authority's case was a tottering edifice built on inadequate foundations.

29. Secondly, and flowing from this, the local authority was too willing to believe the worst of the father. A striking example of this is to be found in SW1's assessment of him. Referring to his relationship with the mother, SW1 said this:

> "when addressing his relationship with [her] and the decision to have a child with one another despite the offence she was awaiting to be charged for, [he] denies that he had any knowledge of the offence she committed. This is however, evidently untrue as [he] recalls attending with [her] to 'sign a sheet of paper everyday' and also attended solicitors meetings and Court hearings in support of [her]. It is highly probable therefore that [he] had an extensive knowledge of the offences she was awaiting trial for however, this did not effect his decision to remain in a relationship with her, nor did it effect his decision making process in relation to conceiving a child with her."

Leaving on one side the important difference between "evidently untrue" and "highly probable", the simple fact, as the father asserts, and I believe him, is that, although he was aware of the various non-sexual offences the mother was charged with, it was not until he was at court, *after A was conceived*, that he first learned that she had been charged with, and indeed convicted of, sexual offences.

30. Thirdly, this led to the local authority being dismissive of what the father was saying. This is well exemplified by a comment made by SW2 in her first witness statement (see below):

> "Unfortunately due to [his] previous inability to work openly and honestly with the Local Authority it makes it very difficult to accept what [he] states as truth."

There is, unhappily, more than a whiff here of 'give a dog a bad name'.

31. Fourthly, there is repeated reference to the "immoral" nature of some of the father's behaviour, a characterisation that is neither appropriate nor relevant. There is other language (see below) which it might be thought is also inappropriate.

32. Fifthly, the local authority, as I have said, conspicuously failed to link the facts it relied upon with its assertions that A was at risk of suffering neglect and that adoption was the appropriate outcome. An important element of the local authority's case was that the father "lacks honesty with professionals", "minimises matters of importance" and "is immature and lacks insight of issues of importance", but the local authority's presentation failed to explain, let alone to explain in any convincing fashion, why the conclusions it would have me reach indeed follow from the asserted facts.

33. Finally, the local authority, which had been entirely justified in reacting as it did before and immediately after A's birth, failed adequately to address the very changed landscape once the father's relationships with the mother and with J had terminated (as I am satisfied they have), after the mother had abandoned any claim to look after A and when the father was putting himself forward as a *sole* carer.

The proceedings

34. By orders of the court dated 16 September 2014 the case was allocated for case management to lay magistrates and legal adviser and a children's guardian was appointed.

35. On 18 September 2014 the mother was released from prison.

36. Within a few days, as she subsequently told me, CG, as I shall refer to her, had been nominated as the guardian. She instructed a solicitor, Mr Keith Leigh of Teesside Law Limited. On 23 September 2014 Mr Leigh wrote to the Designated Family Judge, His Honour Judge Taylor:

> "The Guardian is most concerned at the social work exhibited in this case. The child is now 9 months of age and unless proper judicial scrutiny is undertaken there is a possibility of further delay which is likely to materially affect the prospects of the child's successful placement outside the family. The local authority have ruled out all potential family placements although it is clear that this could have been achieved pre-birth."

The matter came before Judge Taylor on 25 September 2014. He directed that the father be joined as a party, directed that the case was to remain before a Circuit Judge, fixed the CMH for hearing before himself on 6 October 2014 and directed that the final hearing on 24 November 2014 was to be before me.

37. On 2 October 2014 the father issued an application seeking permission to instruct an independent social worker.

38. SW1 went away for a period of maternity leave on 22 October 2014. In her place, SW2 had been appointed the social worker in the case on 6 October 2014.

39. On 6 October 2014 CG completed her initial case analysis. It is striking for what it did *not* say. In her oral evidence to me, CG described herself as being "extremely concerned" by the assessments. She was, she said, and this was her own, unprompted, word, "appalled", not merely because of the local authority's delay in issuing the proceedings but also because of the poor quality of the assessments, both the assessment of the father and the assessment of the paternal grandmother and step-grandfather. Nothing of this is to be found, however, in her initial case analysis. Having summarised what was reported by the local authority, she turned to the assessment of the father, which she described as "negative" and as highlighting various concerns, which she then enumerated. She said:

> "Taking into consideration all of the information contained within the documentation filed with the Court by the Local Authority I do not consider that any further assessment of either parent will assist in determining the long term plans for A."

Having expressed concerns about the local authority's delay from 17 February 2014 to 16 September 2014 in issuing proceedings, she identified the need for any other potential kinship carers to be identified and assessed and recommended the making of an interim care order.

40. The letter from Mr Leigh had, as we have seen, referred to the guardian being "most concerned at the social work exhibited in this case" but it focused on the issue of delay. In her oral evidence to me, CG said that she had brought her concerns about the quality of the assessments to the attention of the local authority's representatives when the matter was back at court on 6 October 2014. No doubt she did, but what is far from clear is the extent to which, if at all, her concerns were articulated, either to the other parties or to Judge Taylor. I am driven to the unhappy conclusion that whatever may have been said was wholly inadequate to bring home, either to this very experienced family judge or to the parties, the guardian's real views about the inadequacy of the assessments. The order made following the hearing recorded the guardian only as having "significant concerns regarding the delay" and as wishing matters to be concluded "swiftly".

41. Judge Taylor refused the father's application for permission to instruct an independent social worker. He directed that assessments of the father's older brother and his husband be completed by 21 October 2014. He directed that if the plan was for adoption the application for a placement order was to be filed by 4 November 2014 (later extended to 10 November 2014 by an order he made on 4 November 2014). He fixed the IRH for 20 November 2014 and directed that the final hearing before me was to start on 26 rather than 24 November 2014. Otherwise the only direction I need mention was for "updating assessments" of the father and of the paternal grandmother and step-grandfather to be served by 4 November 2014.

42. The local authority undertook a viability assessment of the father's older brother and his husband, visiting them on 17 October 2014. The assessment, which is unsigned and undated, was positive. At a planning meeting held on 21 October 2014 the local authority decided to support A's placement in their care and to undertake an adoption assessment. However, on 27 October 2014 the father's older brother telephoned the

local authority to say that, having reflected on their position, he and his husband had decided to withdraw from the assessment process.

43. On 29 October 2014 SW2 had meetings with the father and paternal grandparents "to update assessment". On her own account, this was her only meeting with the father. It lasted, she said, for about 75-80 minutes. The father says it was much shorter. I am content to proceed on the basis that SW2's recollection is correct.

44. There are no formal updating assessments of either the father or of the paternal grandmother and step-grandfather. The relevant materials are to be found in the witness statement of SW2 dated 4 November 2014, supplemented by her further witness statement dated 19 November 2014 (another statement dated 18 November 2014 relates only to the father's elder brother). Her conclusion was that "there have been no changes to their circumstances to change the Local Authority plan and as there are no alternative viable carers for the baby the plan will remain adoption." It is also of note that, in addition to what she said in the passage to which I have already referred in paragraph 30 above, SW2's first witness statement contains this revealing comment:

> "[The father] raised concerns regarding the Local Authority assessment having been concluded in February 2014. However the chief concerns identified within the assessment, inability to work openly and honestly with the Local Authority and minimisation of Local Authority concerns were issues that time would not have altered."

SW2 seems not to have analysed in any detail the underlying factual basis of the local authority's case. In large part she simply accepted SW1's factual assumptions.

45. Further directions were given by Judge Taylor at the IRH on 20 November 2014, including for disclosure of various documents by the local authority and for the police to disclose various records by 24 November 2014.

The hearing

46. The hearing before me commenced on 26 November 2014. The local authority was represented by Mr Crispin Oliver, the mother by Mr Alan D Green, the father by Mr Martin Todd and the guardian by Mr Keith Leigh. The paternal grandmother and step-grandfather appeared in person.

47. The local authority's plan was for adoption. The substance of its case was set out in the documents I have already referred to, supplemented by a schedule of findings sought dated 24 November 2014 prepared by counsel and by two chronologies of significant events, the first, ending at 20 July 2014, prepared by SW1 and the second, running from 18 September 2014 to 29 October 2014, prepared by SW2. Its final care plan dated 4 November 2014 is an anodyne document which adds nothing of significance to what is said by the local authority elsewhere.

48. The mother does not put herself forward as a carer for A and supports the father's position. Her witness statements are dated 23 September 2014 and 19 November 2014. The father puts himself forward as carer for A. His witness statements are dated

2 October 2014, 13 October 2014, 13 November 2014 and 26 November 2014. In this ambition he is supported by his mother and step-father. They each provided a witness statement dated 10 October 2014. Their joint witness statements are dated 17 and 25 (two) November 2014. CG supports the local authority's case. I have already referred to her initial case analysis dated 6 October 2014. Her final report in the care proceedings is dated 14 November 2014, her report in the placement order application is dated 19 November 2014.

49. On her own account, CG met the father only once, for about 45 minutes. Her final report contains little exploration of the underlying factual basis for the local authority's case. In large part CG seems to have been content to proceed on the basis of the local authority's materials. Thus she said (para 27):

> "For the sake of brevity it is not my intention to repeat the history in respect of this case here as it is well documented within the Local Authority's evidence".

Elsewhere she referred to matters being "well documented" or supported by "ample evidence", without embarking upon any analysis or even summary of the materials in question. It is apparent that CG accepted the local authority's view that the father had "minimised" or "played down" matters which were of concern to the local authority and that he had not always been "honest with professionals". Her assessment of the father was that he "appears very immature and has very little insight regarding A's needs" and that he "appears to take no responsibility for his actions/behaviours". She describes the risks posed by the father and the mother as "unmanageable".

50. I heard oral evidence from (in this order) TM, SW2, the mother, the father, the paternal grandmother and CG. The paternal step-grandfather did not give oral evidence. The hearing finished on 28 November 2014. I reserved judgment.

The local authority's concerns

51. The local authority's case is set out in the schedule of findings. The schedule is divided into two parts, "Threshold" and "Welfare Issues". The case was explicitly put on the basis that the significant harm or likelihood of significant harm "is neglect attributable to the care likely to be given to A by his parents." It is important to appreciate that, by the time the case came on for final hearing, the mother was *not* putting herself forward as a carer and that, as I find, accepting the father's evidence, the relationship between the mother and the father was over, as also the relationship between the father and J.

52. The local authority's case in relation to threshold was put under seven headings. Items 1, 2 and 4 relate solely to the mother and in the circumstances were not explored further. Those relating to the father are items 3, 5, 6 and 7. The allegations are that:

i) He minimises the risks he and his partners present to A (3);

ii) He "has numerous convictions", "has engaged in physical altercations with family members in recent times" and "does not have insight into the risks to a child where physical violence occurs" (5);

iii) He "has continued in a relationship with J despite being aware of the risks posed by her and their continued relationship" and "has therefore prioritized his needs over and above those of A" (6);

iv) He "has 2 older children who are cared for permanently outside of his care with H. There have been allegations made that the children have suffered injuries [bruising] whilst in [his] care" (7).

53. The local authority's case in relation to welfare issues was that A should not be placed with his father because "He lacks honesty with professionals; he minimises matters of importance; he is immature and lacks insight of issues of importance; his relationships with family members and his former partner are acrimonious and characterized by violence." Particulars of this are then given under twelve numbered paragraphs, though the schedule notes that the local authority would "primarily concentrate", whatever that means, on paragraphs 1-3, 6-8 and 11-12.

The local authority's concerns in relation to the father

54. The local authority has articulated numerous concerns in relation to the father. Some are relied upon as such. Others are relied upon in addition as demonstrating the father's failure to work openly and honestly with the local authority and his unwillingness and inability to accept the concerns of the local authority. Some are said to go to threshold, others to welfare. I take the various allegations in turn, following a roughly chronological sequence. They fall under nine headings, which I have labelled (A) to (I). I cross-reference them as appropriate to both threshold (T) and welfare (W).

(A): The local authority's concerns in relation to the father [W4]

55. The first relates to a fatal railway accident whilst the father was still at school in which two of his friends were killed, a matter which the father raised with SW1 in their first assessment session on 30 October 2013. A subsequent entry in the chronology prepared by SW1 contains, against the date 30 October 2013:

> "Telephone call to Durham Constabulary of whom [sic] advised that there was no evidence to support that [he] had been present during this incident and therefore appears to have fabricated his presence."

The illogical leap from the premise to the conclusion is astonishing, and worrying. It is quite unclear whether the conclusion ("therefore …") was one expressed by the police or inferred by the social worker. The other documentary reference, seemingly referring to the same telephone call, is in a case note also dated 30 October 2013 made by SW1:

> "Information received to advise [father] has fabricated the information in relation to the incident … it has been confirmed that [he] was not present during this incident. Thus causing concern to the Local Authority as to why he would fabricate his presence."

The difference between the two records is apparent. One has to question whether SW1 understood the significance of the distinction – crucial if it was to be said that the father was lying – between "there was no evidence to support that [he] had been present" and "it has been confirmed that [he] was not present". Be that as it may, which statement is correct? I do not know and the local authority was unable to enlighten me.

56. In the schedule of findings the allegation (paragraph 4) is that:

> "He appears to have lied in an assessment about being present at a fatal accident during his childhood."

I have already criticised this form of allegation. Very properly, by the end of the hearing, Mr Oliver had abandoned the allegation. Given the inadequacy of the evidence available to the local authority to make good its case it is surprising that it was ever raised and concerning that it was still being pursued well into the final hearing.

(B): The local authority's concerns in relation to the father [W1]

57. It is fact, never disputed by the father, that when he was 17 he had sexual intercourse on one occasion with a girl who was 13 and that he accepted a formal caution from the police in relation to this offence (penetrative sexual activity with a girl aged 13 contrary to the Sexual Offences Act 2003) on 14 November 2006. It is said by the local authority, though clear documentation is lacking, that at the same time he was also warned for detaining the girl without lawful authority so as to remove her from lawful control, contrary to the Child Abduction Act 1984. I am prepared to assume that this was so, though without making any finding. This information reached the local authority on 12 November 2013. According to SW1's undated assessment of the father:

> "The officer who the assessing social worker discussed the offences with advised that the information held within their database suggests that [he] was aware of the girl's age and spent the weekend with her as oppose to the one night."

58. SW1's case note of a discussion she had on the telephone with the father on 16 December 2013 records the following:

> "[He] stated he feels I am 'throwing his offences in his face about his past' from this [he] was referring to his previous offence listed on his PNC whereby he had sexual intercourse with a minor. [He] advised that this offence is irrelevant as he did not receive a criminal conviction for this offence. I informed [him] that it was about his ability to accept and acknowledge that this was criminal offence and that his behaviour on this occasion was inappropriate. [He] advised 'social services are wankers' and stated 'I don't bat for the other team you know … , do you really think I'm going to sit and do something to my son, touch him or something'. To which I informed [him] I would be terminating the phone call

> as that comment was inappropriate and I am unwilling to continue this discussion when he is in this frame of mind. [He] was advised to call me back when he had calmed down."

Her assessment of him continues:

> "The offences above were discussed with [him] within the assessment process. [He] advised he met the girl at a local football match and went back to his friend's house with her whereby they had consensual sexual intercourse with one another. [He] advised at the football match, the girl was purchasing alcohol and therefore he was under the impression she was eighteen years of age. [He] did not see the relevance of discussing the offence and appeared to minimise the severity of the incident. [He] advised he and the girl had sexual intercourse with one another once however, upon discussing the offence with Durham Constabulary, further information in respect of the incident has been obtained.
>
> The conflicting information provided from the police and [the father] in relation to the offence was discussed with [him] however, his view point regarding the details of the offence remained the same. [He] remains consistent in that he and the victim had consensual intercourse with one another once, and did not spend the weekend together. [He] was unwilling to accept the facts held on the police national database in relation to the offence and continues to oppose the appropriateness of the caution received.
>
> [He] continues to advise the assessing social worker that he feels 'Social Services are chucking his history back in his face'. [He] further states that 'The police didn't charge me with it so why does it matter to you, I wasn't charged with anything'. Comments like such indicate to the assessing social worker that [he] fails to acknowledge the immoral nature of the offences he committed. This is not to say that [he] poses a risk to adolescent girls/children in light of his offence as the assessing social worker acknowledges [he] was 17 at the time and some, eight years have passed since the offences were committed and there has not been any further issues raised by professionals. What is of concern however, is although [he] admits that he committed the offence he evidently distorts the inappropriateness of this behaviour. [He] is unable to recognise that the offence was in effect, sexually abuse of a child nor is he able to recognise the impact of his actions upon the victim. This is concerning as [he] does not feel change is required and therefore he has a limited capacity to change his attitude, and in effect, his behaviours toward vulnerable young women. His non acceptance of the concerns ultimately makes it difficult to assess the current risk he poses and although [he] advises he

> was unaware of the girls chronological age, on reflection he continues to minimise the concerns in relation to the offence."

59. In her witness statement SW1 said much the same. I need not set it all out. Two passages suffice:

> "[He] has failed to work openly and honestly with the Local Authority, as has his mother and her partner. [His] acceptance and understanding of the severity of the offence … continues to cause the Local Authority significant concern …
>
> Despite several attempts of advising [him] that the Local Authority acknowledge that this offence was committed a significant period of time ago, he was unable to acknowledge the significance of this. A requires appropriate role models within his life whereby he is given the opportunity to learn socially acceptable behaviours. It appears [the father] fails to acknowledge the immoral nature of this offence, and as he did not receive a criminal conviction, feels this incident is not significant, nor is it in the interests of A for this to be explored further."

60. There are two things about this which, to speak plainly, are quite extraordinary. First, what is the relevance of the assertion that the offence he committed was "immoral"? The city fathers of Darlington and Darlington's Director of Social Services are not guardians of morality. Nor is this court. The justification for State intervention is harm to children, not parental immorality. Secondly, how does any of this translate through to an anticipation of harm *to A*? The social worker ruminates on the "current risk he poses" to "vulnerable young women"? What has that got to do with care proceedings in relation to the father's one year old *son*? It is not suggested that there is any risk of the father abusing A. The social worker's analysis is incoherent.

61. The schedule of findings asserts (W1) that the father "minimises the significance of these events". Perhaps he does. But where does this take the local authority? I sought elucidation from both TM and SW2. Their answer was two-fold. First, that the father's trivialisation of what he had done would inhibit his ability to protect A were A to be at risk of future sexual abuse by others. Secondly, that it would prevent him instilling in A a proper understanding of society's values. With all respect to those propounding such views, the first is far too speculative to justify care proceedings and the second falls foul of the fundamental principle referred to in paragraphs 14-17 above.

62. It is an undoubted fact of life that many youths and young men have sexual intercourse with under-age girls. But if such behaviour were to be treated without more as grounds for care proceedings years later, the system would be overwhelmed. Some 17 year old men who have sexual intercourse with 13 year old girls may have significantly distorted views about sex and children, and therefore pose a risk to their own children of whatever age or gender, but that is not automatically true of all such men. The local authority must prove that the facts as proved give rise to a risk of significant harm to this child A. It has failed to do so, proceeding on an assumption

that is not supported by evidence. The father has not helped himself by his behaviour towards the social workers, but the burden of proof is on the local authority, not on him. The fact that he was rude to the social workers does not absolve the local authority of the obligation to prove that there is a risk of significant harm. It has failed to do so.

63. Many children, unhappily, have parents who are far from being good role models. But being an inadequate or even a bad role model is not a ground for making care orders, let alone adoption orders.

(C): The local authority's concerns in relation to the father [W5]

64. In 2013 the father had some involvement with the English Defence League (EDL). The first reference to this in the local authority's records is an entry in the chronology dated 1 November 2013 recording information communicated by DL, the prison officer who was the mother's key worker in prison:

> "[Mother] has expressed that she no longer wishes for [father] to care for their unborn child as he has links to the EDL and arranges EDL protests. [She] has informed [DL] that she is aware people are threatening to burn down [father's] house and she would not feel that her child is safe within his care."

65. SW1 discussed the matter with the father on 6 November 2013, her case note recording:

> "[He] advised he was previously an active member of the English Defence League however, that this was through naïvity and not having a comprehensive knowledge of the beliefs of the EDL. [He] advised he left the EDL shortly after becoming involved when he realised this group was racist. I challenged [his] understanding of the EDL to which he evidently minimised, [he] advised before the 'new leaders took over there was nothing wrong with the EDL."

66. The matter is dealt with at some length in her assessment of the father:

> "Despite her desire for [him] to care for A now, [the mother] previously withdrew this wish advising that [he] is an active member in the English Defence League and that his involvement in such a violent protest group makes her feel as though [he] would be unable to protect his child and provide him with a safe home environment. The assessing social worker challenged [him] about his involvement in the EDL to which he evidently minimised this, advising he joined the 'group' if you like through simply curiosity and that he was oblivious to the level of racism fuelled within this group. [He] advises to his knowledge he was in this group for a couple of weeks, he then became aware of the violence and inappropriateness of this group and made the immediate decision to 'cut all ties' with this group. The English Defence League is a racist organisation

> whose main activity is violent street demonstrations against the Muslim community. Although it claims to only oppose Islamic extremism, the EDL appears to target the whole Muslim community and its actions deliberately seek to create and practice tensions and violence between Muslim and non-Muslim communities. It is therefore highly debatable that [he] naively joined such a group out of curiosity and perhaps he follows those beliefs of his fellow, EDL members. Naturally, individuals are entitled to their own views and beliefs, including views regarding other religions however, the distorted thinking of those within the EDL is barbaric and their actions inappropriate. Therefore the mentality of those involved has to be brought into question. Equally, A requires positive role models within his life in order to ensure he is able to make a positive contribution to the world, one that does not promote crime and violence."

67. SW1 apparently discussed this with the father's new partner J, for the assessment continues:

> "J advised that she and [he] met one another via their involvement within the English Defence League. In addition she stated they were no longer members of the EDL as they began getting abused on some of the social media network sites in respect of the EDL and this provoked their desire to no longer partake in such group. This a contradictory version of events to those provided by [him]. It is unclear if [he] was an active or passive member within the English Defence League due to his inability to work openly and honestly in respect of his involvement within the protest group. [The mother] advised the assessing social worker however that [he] was an active member within the group and participated within arranging protests previously and attended these protests. Although this information is unsubstantiated, and [he] continues to deny this, it is probable there is some element of truth within the information provided. If [he] was an active member within the protests of the English Defence League this could severely impact upon a child resident within [his] and J's care. It is important children are brought up in an environment whereby they are taught appropriate behaviours within society and appropriate conduct is practiced. A should not be resident within an environment whereby he is exposed to his main care givers involvement in violent and aggressive protests. Witnessing behaviour like this as a normal occurrence in his life is not in his best interests due to the risk of potential retaliation / repercussions of his main care givers involvement within such organisation and the risk him becoming directly involved within this is heightened. In addition to the information received from [the mother] and [his] minimisation of the information, the assessing social worker received

> information from Sefton Children's Social Care advising that J herself is an active member within the organisation and that they feel this is a concern. They advised that 'there is evidence that has been seen by the assessing social worker in Sefton Children's Social Care that is suggestive that J is an active member within the EDL, she has incredibly racist comments on her social networking page Facebook that is indicative of her active involvement within the organisation'."

68. I specifically asked to be provided with any case notes supporting what was set out in the schedule and the witness statements, in particular in relation to what J was alleged to have said at an assessment meeting at which the father was also present. I was provided with one note but it did not seem to be of an assessment meeting when both were present.

69. In her statement SW1 returned to the same theme. I need set out only the key passages:

> "the immoral nature of the values and beliefs of members of the EDL and the violence within the protests EDL members engage in is inappropriate and supports inflicting violence injury to innocent members of the Muslim heritage …
>
> … it is commonly known that this barbaric protestor group promote ignorance and violence in respect of the muslim community … By all means, the assessing social worker supports equality, difference of opinion and that not all races and cultures agree with one another's beliefs and views. What cannot be condoned however is expressing these beliefs through violence, irrational behaviour and inflicting physical and psychological pain against others due to their religion, the core beliefs and subfocus of the English Defence League. A should reside within an environment that supports difference, equality and independence. He needs to be taught how to express his views systematically and in a socially acceptable way. A should not reside within an environment whereby violence is openly condoned, supported and practiced. [The father] and J need to appreciate this is the twenty first century, the world is a diverse place whereby all individuals should feel accepted, regardless of their ethnic background, race and origin."

70. In the schedule of findings the allegation (paragraph 5) is that the father "has been a member of the English Defence League" and that the mother "has previously stated that he has been the target of serious threats to his person and home."

71. As in relation to what is said about the father's previous sexual activity, I find much of this quite extraordinary. The mere fact, if fact it be, that the father was a member, probably only for a short time, of the EDL is neither here nor there, whatever one may think of its beliefs and policies. It is concerning to see the local authority again

harping on about the allegedly "immoral" aspects of the father's behaviour. I refer again to what was said in *In re B,* both by Lord Wilson of Culworth JSC and by Baroness Hale of Richmond JSC. Membership of an extremist group such as the EDL is not, without more, any basis for care proceedings. Very properly, by the end of the hearing Mr Oliver had abandoned this part of the local authority's case. Not before time: it should never have been part of its case. That the local authority should have thought that it could, and that its case should have been expressed in the language used by SW1, much of it endorsed by TM, is concerning.

72. If it really were the case that the father was at risk of serious threats to his person and home, that might be a very different matter, though it is not easy to see why the appropriate remedy for such threats should be the adoption of A rather than the provision of suitable security arrangements. Be that as it may, the local authority has in my judgment failed to establish that such threats were ever uttered with any serious intent, that, if they were, there remains any continuing risk to either the father or his family, or that the risk, if any, is such as to justify its concerns. It is, after all, noteworthy that there is no suggestion that there has been any actual attempt either to harm the father or to damage his home.

(D): The local authority's concerns in relation to the father [T5]

73. The local authority alleges, as we have seen, that that father "has numerous convictions. This reflects SW1's witness statement, which refers to "offences on his record of a concerning nature", though the assessment more accurately refers to them as "two non-convictions … on his record", which is a reference to the cautions I have referred to already under (A).

74. The cautions apart, there is simply no basis for this allegation. It therefore adds nothing. It was abandoned by Mr Oliver. It should never have been made.

(E): The local authority's concerns in relation to the father [W11]

75. It is further said that the father "has a history of use of illegal drugs", that "alcohol played a part in an incident on 3 December 2014", that his mother "says that it [alcohol] affects his temper" and that he "failed to disclose that there was a police search of the property … where he was a tenant during which there was discovered 4 cannabis plants and 18 buds on 24 April 2014".

76. I have no doubt that the father on occasion drinks to excess, but not to such an extent as to justify care proceedings. He may have taken cannabis on occasions, but the reality is that many parents smoke cannabis on occasions without their children coming to any harm. The police search was of a property which at the time was tenanted and there is nothing to suggest that the father was in any way complicit. These allegations take the local authority nowhere. Parental abuse of alcohol or drugs of itself and without more is no basis for taking children into care.

(F): The local authority's concerns in relation to the father [T7, W8, W9, W10]

77. These allegations all relate to the father's first partner, H, and their two children. There are three allegations:

i) His relations with H are acrimonious and have involved police intervention and arguments have occurred in front of the children [W8].

ii) There have been allegations that the children have suffered bruising whilst in his care [T7, W9].

iii) Within the private law proceedings he has revealed "concerning conduct" as reported by the Cafcass officer (recording self-serving conversations with one of the children, lacking insight into how his behaviour impacts on the children, undermining H and inability to deal with both children simultaneously) [W10].

78. These allegations were not much explored in either evidence or submissions. The second one was abandoned by Mr Oliver. Whatever the truth in relation to the other matters, they seem to me to be largely tangential to anything I have to decide and not such, even if substantiated, as to carry much weight in the context of the present proceedings. These are matters properly to be explored in the ongoing private law proceedings. I make no findings in relation to them.

(G): The local authority's concerns in relation to the father [T3, W2]

79. These allegations relate to the father's relationship with A's mother. There are two allegations:

i) He minimises the risks he and A's mother present to A [T3].

ii) He "lied about not knowing about mother's pending criminal charges at the time she became pregnant with A" and "minimises the significance of this" [W2].

80. The short answer to the first point is that he and the mother are no longer presenting as a couple, that she is not going to be caring for A and that, as I find, having heard both of them and evaluated their evidence, the father, supported by his own mother, will be able to protect A from the risk, if any, that the mother might present during contact. Both the father and his mother have A's interests at heart, neither would want to see him come to any harm and any tendency the father might otherwise have to put his relationship with a partner first can safely be discounted since, as I am satisfied having heard their evidence, the father and the mother are no longer in and are not going to resume their relationship. So far as the alleged risk to A from the father himself is concerned, the father no doubt minimises some aspects of his character and behaviours which present him in a somewhat unfavourable light and may bear adversely on A. But, not least given the flaws in the local authority's case and having had the advantage of hearing the father and his mother give evidence, I cannot accept that the father presents the kind of risk to A which gives rise to a real possibility of A suffering significant harm, let alone the degree of risk which would have to be demonstrated to justify a plan for adoption.

81. So far as concerns the second point, I have touched on this already (paragraph 29 above). Furthermore, the allegation that the father lied has now, very properly, been abandoned by Mr Oliver. All that is now said is that the father "knew" about the non-sexual charges. That he admits, but where does it take the local authority? Nowhere.

(H): The local authority's concerns in relation to the father [T3, W3, W12]

82. These allegations relate to the father's relationship with J. There are five allegations:

i) He minimises the risks he and J present to A [T3].

ii) He did not reveal his relationship with J during the initial assessment, saying he wished to be assessed as a sole carer, when in fact he had applied to be re-housed with her. She initially refused to be assessed and, when she was, failed to reveal that she had previously had a child placed outside her care due to concerns about her parenting [W3(a)].

iii) He and his family "appear to have colluded with J" in "attempting to hide [this] information from the social worker" [W3(b)].

iv) He "failed to appreciate the significance of his actions in relation to J" [W3(c)].

v) His actions in relation to J show that he cannot be trusted to put A's needs over his own. He is immature and has little insight into A's needs [W12].

83. In relation to (ii), reliance is also placed on what the father said to SW2 on 29 October 2014, as recorded by her in her statement dated 5 November 2014:

> "[He] failed to work openly and honestly with the Local Authority in respect of his relationship with J. He failed to inform the Local Authority he had commenced a relationship and was planning on residing with J. Furthermore, once Darlington Children's Social Care became aware of the concerns regarding J's parenting and risks she would pose to A, when discussed with [him] and J, [he] failed to understand the relevance of this and express any concerns regarding her having care of A. During the visit on 29 October 2014, this was discussed with [him] who stated that given he had not previously worked with Children's Social Care, he did not know he had to share information such as his relationship status. The Local Authority does not accept this as a valid excuse. [He] was aware a thorough parenting assessment was being undertaken in respect of his ability to care for A and therefore, if he was in a relationship and had intentions of residing with his new partner that would clearly form part of the assessment. Furthermore, he accepts that SW1 did discuss the concerns regarding J's parenting in his presence however, he states he has a 'weird imagination' and 'if interested will listen' if not he will 'blank everything out' around him. When asked on 29 October 2014 by the Social Worker what the concerns were in relation to J, [he] stated he did not remember the concerns. This continues to raise significant concerns with the Local Authority regarding his continued minimisation of the concerns of the Local Authority and understanding the

> importance of listening to the Local Authority concerns and sharing all relevant information."

84. I readily accept that were the father and J presenting as a couple the local authority's numerous and justified concerns about J, and the potential impact on A, would require very careful consideration. But the key point here is, as I find, that the father's relationship with J is over and that there is no prospect of it resuming. And in this context I repeat what I have already said in paragraph 80 above. So far as concerns allegation (ii), I accept that, whilst still in a relationship with J, the father was not as open about it with the local authority as he should have been, though accepting on the other hand, as the father asserts, that he was not at the time aware of J's dismal record as a mother. Mr Oliver has rightly abandoned allegation (iii). I accept there is some substance in relation to allegation (iv). I accept, not least having seen him in the witness box that the father is immature and lacking in insight. These are matters I return to below.

(I): The local authority's concerns in relation to the father's family [T5, W6, W7]

85. The final group of allegations relate to the father's relationship with his mother and step-father. There are three allegations:

    i) He is alleged to have engaged in physical altercations with family members in recent times [T5]. Specifically, on 3 December 2013 the father and his step-father were in a physical confrontation with violence, which led to the police being called [W6].

    ii) His relations with his mother and step-father can be volatile and involve threats and violence. In addition to the incident on 3 December 2013, reference is made to incidents on 28 September 2006, 9 November 2007 and 19 August 2012 [W6].

    iii) He and his mother attempted to mislead the local authority about the seriousness of the incident on 3 December 2013 and that it resulted in him being effectively homeless and requiring re-housing [W7].

86. I accept, and find, that there have on occasions been episodes of domestic discord between the father, his mother and more particularly his step-father, that drink has played a significant part in this, that the police have on occasions been called out, and that there was a particularly physical confrontation with violence on 3 December 2013. I accept also that there was some lack of frankness on the part of both the father and his mother in relation to the accounts they gave the local authority of that incident. This history, however, needs to be kept in perspective. Neither the number nor the frequency nor the gravity of these incidents is such, in my judgment, as to cause any major concern. Moreover, it is clear to me, having heard their evidence and watched them carefully throughout the hearing, that, despite their differences and notwithstanding these incidents, the relationship between the father and his mother is, overall, positive and mutually supportive.

Positives

87. In her assessment, SW1 was positive about father:

> "The assessing social worker has no doubt that [he] loves his son dearly. This was apparent prior to and following his birth, and continues to be evidenced through the quality of supervised contact [he] and A have with one another to date. This case however, evidences that love alone is not enough to provide a child with the level of safe, stable and nurturing care they need in order to thrive and be parented in a safe, stable, home environment. [The father] has attended all assessment sessions with the assessing social worker and has been generally cooperative throughout the assessment process however, was not present at the home address for two sessions and refused to engage during one session whereby he decided to take a bath during the arranged session. During the sessions whereby A has attended, he has been pleasant, polite and willing to engage."

Working together

88. In her assessment SW1 said this:

> "It is not felt [the father] has always engaged appropriately within the assessment sessions and although has always been polite, courtesy and well presented, it is not felt he has demonstrated his ability to willingness to work openly and honestly with the assessing social worker … The assessing social worker acknowledges that having social work involvement within your family life is an intrusive process and is often difficult for the family involvement. Having said this however, working openly and honestly is important in order to ensure that in partnership, the Local Authority and the family are able to cooperate with one another in order to achieve the best possible outcome for the child. [His] unwillingness to engage openly and honestly however not only has implications for the current assessment process, however may also impact upon the future decisions made in respect of the child if he is unwilling to access the appropriate support services available to the family in order to assist within the decision making process."

89. She went on to make specific reference to the fact that:

> "[He] is able to advise how he would meet A's basic care needs. He recognises that children require a stable, safe home environment however, his ability to provide this to his son is questionable. Within the assessment process the assessing social worker has not only explored [his] ability to parent his child alongside J but also as a sole carer. [His] continual inability to work openly and honestly with the assessing social worker and his continued minimisation of all identified concerns however has led the conclusion of the assessment process to be negative in respect of himself."

The local authority's conclusions

90. SW1's conclusion as set out in her witness statement was as follows:

> "The Local Authority is of the opinion that if A was returned to either parents joint/sole care at this stage or within the future that he would be at risk of suffering significant harm alongside the risk of his needs being neglected through the inappropriate care that would be provided by [the father] and/or [the mother]. It is evident both … are often immature in their attitudes toward society acceptable behaviours within society. Both parents have offences detailing concerns of a sexual nature, both with minors. Although these offences differ in severity, neither parent has demonstrated their acceptance of the immoral nature of their actions, their willingness to change, nor their ability to protect a child from sexual risks and dangers within the future. It is therefore felt that should A reside within the care of his mother or father, he may be at risk of sexual harm."

That is not, as we have seen, quite how the case was put in the schedule of findings.

91. SW1 continues:

> "The assessing social worker is not concerned by [the father's] ability to meet his son's basic care needs. What is a continuing concern however is [his] unwillingness and inability to accept the concerns of the Local Authority nor is it felt he has engaged proactively within assessment sessions. [He] considered attending a parenting course to enhance his parenting ability under the recommendation of his solicitor however, has failed to access and engage within such a provision to date.
>
> If A were to reside within the care of either [the father], as a single parent or accompanied by J the Local Authority are of the opinion that he would be at significant risk of harm from possibly emotional harm, potentially physical abuse, a lack of stability and neglect … The Local Authority do not feel able to implement any measures to reduce the risks posed by [him] and/or J due to the adults concerned being unable to accept the concerns and being unwilling to engage within assessments honestly."

92. In her first witness statement, SW2 summarised her conclusions as follows:

> "A needs to be safeguarded from the risk of significant harm on a permanent and long term basis. It is the opinion of the Local Authority that [the mother] and [the father] are unable to protect A from significant harm. The Local Authority are of the firm opinion that [they] have shown a lack of honesty and insight into the Local Authorities concerns … [He] has

> prioritised his relationship with J, despite the evident risks she poses to children and continued to be dishonest with to the Local Authority regarding his relationship with J. [He] shows no insight or understanding into the risks J posed to A and initially remained in a relationship with [the mother] despite being fully aware of her then, impending charges. [The father] and [the mother] would be unable to provide A with safe, stable and nurturing care and it is felt he would be at risk of significant harm should he be parented by either parent."

Discussion

93. I have gone through the local authority's various concerns in some detail. As I have explained, many of the local authority's allegations have been abandoned or cannot, for the reasons I have given, be substantiated. What is left? I can summarise it as follows:

    i) The father is immature and can sometimes act irresponsibly. As the history of his relationships with both the mother and J illustrate all too clearly, he seems to have a tendency to fall very quickly into unsatisfactory and short-lived relationships.

    ii) In some instances, though not to the extent alleged by the local authority, the father has minimised or played down matters which were properly of concern to the local authority. He has not always been open and honest with professionals. He failed to appreciate the significance of his actions in relation to J.

    iii) To an extent the father is lacking in insight regarding A's needs and minimises some aspects of his character and behaviours which may bear adversely on A.

    iv) On occasions the father drinks to excess. On occasions he has taken cannabis. There have been episodes of domestic discord between the father, his mother and his step-father, involving the police and, on occasions, actual violence.

    As against that, I should record that on matters of fact I found the father to be a truthful and, for the most part, reliable historian.

94. What does this amount to? Does it suffice to establish a real possibility that A will suffer significant harm? Even if it does, has the local authority established that A's welfare requires that he be adopted, that "nothing else will do"?

95. In my judgment, the answer to each of these latter two questions is No. My essential reasoning is two-fold. First, the many flaws in the local authority's case to which I have already referred go a very long way to weakening its case. Taking account of all the evidence, and surveying the wide canvass, the real picture is very different from that which the local authority would have had me accept. Secondly, and having had the advantage of hearing the father and his mother give evidence, I cannot accept that the father presents the kind of risk to A which gives rise to a real possibility of A suffering significant harm, let alone the degree of risk which would have to be demonstrated to justify a plan for adoption. I say that taking full account of all the

father's faults but also factoring in the positives identified by SW1 and giving appropriate weight to the degree of commitment to A the father has demonstrated in contact.

96. I can accept that the father may not be the best of parents, he may be a less than suitable role model, but that is not enough to justify a care order let alone adoption. We must guard against the risk of social engineering, and that, in my judgment is what, in truth, I would be doing if I was to remove A permanently from his father's care.

97. I am very conscious that in coming to this conclusion I am departing from the views and recommendations not merely of the local authority (that is, of SW1, SW2 and TM) but also of A's guardian, CG. But I have to have regard to a number of factors to which I have already draw attention:

i) In a significant number of very material respects the local authority has simply failed to prove the factual underpinning of its case.

ii) SW1's work was seriously flawed. Neither SW2 nor CG seems to have explored or analysed in any detail the underlying factual basis of the local authority's case. In large part they simply accepted SW1's factual assumptions. Insofar as they conducted independent investigations with the father, each met him only once, SW2 for about 75-80 minutes, CG for only 45 minutes.

iii) The local authority was too willing to believe the worst of the father, which led to it being unduly dismissive of what he was saying.

iv) The local authority failed to link the facts it relied upon with its assertions that A was at risk. Nor did CG.

v) The local authority and CG did not sufficiently reappraise the case once it had become clear that the father was no longer in a relationship with either the mother or J.

For all these reasons I am entitled, in my judgment, to come to a different conclusion. My duty is to come to my own decision having regard to *all* the evidence, and, for reasons which will by now be apparent, I am driven to conclusions other than those shared by the local authority and CG.

Criticisms

98. As will be apparent from what I have already said, I am very critical of the local authority's analysis, its handling of the case and its conduct of the litigation. I draw attention to but need not repeat the various points made in paragraphs 10, 12, 21-22, 25-26, 28-33, 44, 55-56, 60, 71, 74 and 97 above. They demonstrate significant failings in social work practice, in case analysis and in case management. There are lessons here to be learned, not just by this local authority and its staff but also by practitioners more generally.

99. Quite apart from all the other serious failures, the delay in this case was shocking. A was born on 11 January 2014. There had – appropriately and commendably – been much pre-birth planning. Yet it was not until 16 September 2014 that the care proceedings were issued. This delay is, to all intents and purposes, unexplained. The gap was covered by the local authority's use of section 20 in a way which was a misuse, indeed, in my judgment, an abuse, of the provision.

100. There is, I fear, far too much misuse and abuse of section 20 and this can no longer be tolerated. I draw attention to the extremely critical comments of the Court of Appeal in *Re W (Children)* [2014] EWCA Civ 1065, as also to the recent decision of Keehan J in *Northamptonshire County Council v AS and Ors* [2015] EWHC 199 (Fam).

101. In that case, a child, then aged 15 days old, was on 30 January 2013 placed with foster carers by the local authority, his mother having agreed to him being accommodated pursuant to section 20. It was not until 23 May 2013 that the local authority made the decision to initiate care proceedings and not until 5 November 2013, some nine months after he had been taken into care, that the local authority issued care proceedings. Keehan J described the delay (para 3) as astonishing and extraordinary. He said (paras 36-37):

> "36 The use of the provisions of s.20 Children Act 1989 to accommodate was, in my judgment, seriously abused by the local authority in this case. I cannot conceive of circumstances where it would be appropriate to use those provisions to remove a very young baby from the care of its mother, save in the most exceptional of circumstances and where the removal is intended to be for a matter of days at most.
>
> 37 The accommodation of DS under a s.20 agreement deprived him of the benefit of having an independent children's guardian to represent and safeguard his interests. Further, it deprived the court of the ability to control the planning for the child and to prevent or reduce unnecessary and avoidable delay in securing a permanent placement for the child at the earliest possible time."

I respectfully agree.

102. It will be noticed that I have, quite deliberately, not identified either SW1 or SW2 or TM, though their employer has, equally deliberately, been named. There is, in principle, every reason why public authorities and their employees should be named, not least when there have been failings as serious as those chronicled here. But in the case of local authorities there is a problem which has to be acknowledged.

103. Ultimate responsibility for such failings often lies much higher up the hierarchy, with those who, if experience is anything to go by, are almost invariably completely invisible in court. The present case is a good example. Only SW1, SW2 and TM were exposed to the forensic process, although much of the responsibility for what I have had to catalogue undoubtedly lies with other, more senior, figures. Why, to take her as an example, should the hapless SW1 be exposed to public criticism and run the risk of being scapegoated when, as it might be thought, anonymous and unidentified senior

management should never have put someone so inexperienced in charge of such a demanding case. And why should the social workers SW1, SW2 and TM be pilloried when the legal department, which reviewed and presumably passed the exceedingly unsatisfactory assessments, remains, like senior management, anonymous beneath the radar? It is Darlington Borough Council and its senior management that are to blame, not only SW1, SW2 and TM. It would be unjust to SW1, SW2 and TM to name and shame them when others are not similarly exposed.

104. CG stands in a rather different position. I have expressed various criticisms of her: see paragraphs 39-40, 49 and 97 above. But it would be unfair and unjust to identify her if others are not.