Neutral Citation Number: [2025] EWCA Civ 1618

Case No: CA-2025-002359

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE FAMILY COURT SITTING AT MEDWAY
HHJ THOMAS
ME25C50105

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/12/2025

Before :

LORD JUSTICE ARNOLD
LORD JUSTICE ZACAROLI
and
LORD JUSTICE COBB

- -

Re C (A child)(Interim Separation: Residential Care)

- -

Paul Froud (who did not appear in the court below) (instructed by **Local Authority Solicitor**) for the **Appellant (Local Authority)**
Michael Batt (instructed by **Stilwell & Singleton**) for the **Respondent (Mother)**
Catherine Ellis (who did not appear in the court below) (instructed by **GT Stewart Ltd** on behalf of the **Official Solicitor, as litigation friend**) for the **Respondent (Father)**
Zoe McGrath (instructed by **Kingsfords**) for the **Respondent (Child, C, by her Children's Guardian)**

Hearing dates : 9 December 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 15 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

Lord Justice Cobb :

Introduction

1. This appeal concerns an infant girl, C. She was born in early-April 2025 and is now eight months old. C is currently in the care of her parents, and they are all residing together at a residential unit which I shall call, for present purposes, Oak Lodge.

2. C has been the subject of an interim care order in favour of the Appellant local authority ('the Local Authority') under section 38 of the Children Act 1989 ('CA 1989') since the day after her birth. She spent the first three weeks of her life in a mother and baby foster placement before moving with both of her parents to Oak Lodge.

3. On 14 August 2025, the Local Authority sought to separate C from her parents and effectively bring the placement at Oak Lodge to an end; it applied to court for that authorisation. The application was heard by HHJ Thomas ('the Judge') at the Family Court sitting at Medway on 16 September 2025. After hearing submissions, and to some degree considering the documents (as to which see §28 below), the Judge refused that application. He gave a short *ex tempore* judgment.

4. It is against that decision that the Local Authority now appeals. When granting permission to appeal last month, I recorded my disquiet at the length of time it had taken to reach that stage, particularly given that the appeal arises in relation to an application for the removal of a baby who is said to be at risk from her parents at an interim stage of ongoing care proceedings. I expedited the hearing of the appeal. It now transpires that the delays arose in relation to obtaining transcripts of the hearing and judgment, although I am satisfied from what we have been told, that no criticism lies at the door of any of the parties in this regard. The delay is nonetheless regrettable; waiting for this appeal to be heard will undoubtedly have been agonisingly stressful for these parents.

5. Within the last few days, the Official Solicitor has issued a Respondent's Notice on behalf of the father, and has further applied to admit fresh evidence under Rule 52.21(2)(b) CPR 1998, namely the weekly placement logs from Oak Lodge which have been prepared since the decision under appeal. No party opposes the introduction of this new material which we have read. I describe this a little further below (see §20).

6. At the conclusion of the hearing of the appeal we informed the parties that we would allow the appeal, with reasons to follow. We further indicated that we would remit the Local Authority's application for the removal of C from her parents' care for re-hearing by another circuit judge in the locality. Counsel helpfully agreed case management directions to prepare for that hearing and we were happy to make that order.

7. These are my reasons for allowing the appeal.

Background

8. Both parents are 30 years old. They both have learning difficulties. The mother has been previously assessed (2021) to have a full scale IQ of 72, and the father (who was more recently assessed in April 2025) a full scale IQ of 55 or 57. The mother suffers mental ill-health, in particular depression and anxiety. The father presents with a long-standing history of neuro-developmental conditions, including autism and ADHD; he too suffers significant mental ill-health including anxiety, depression, and paranoia. He is said to be easily influenced by others; he has been observed to display sexually inappropriate behaviour, and is known to abuse alcohol and cannabis. He is said to have perpetrated domestic abuse. At the hearing before the Judge both the parents were assisted by intermediaries. The father was, and is on this appeal, represented by the Official Solicitor as his litigation friend.

9. Longstanding and serious concerns about the parenting ability of both the mother and the father provide an unhappy backdrop for the issues under consideration in this appeal. The parents have had nine children between them, all of whom have been removed from their care following findings of neglect, emotional harm, and physical abuse. The father has a conviction for hitting one of his older children in 2021. Neither parent has any meaningful family support. The parents' older children have been placed permanently with substitute families, some through adoption; care and placement orders were made in relation to C's two older siblings in March 2023.

10. It is the Local Authority's evidence that despite targeted interventions and sustained professional input, neither parent has demonstrated meaningful or sustained improvement in their parenting ability.

11. The Local Authority issued its application for a care order in respect of C under Part IV CA 1989 on the day after her birth; when she was six days old, an interim care order was made. It was the Local Authority's plan to place C in foster care; the parents opposed that application. On 8 April 2025, HHJ Scarratt ordered a residential assessment of the parents and C under section 38(6) CA 1989 ("directions … with regard to… assessment of the child": emphasis added). The proposed placement of C with her parents in a residential unit for assessment was supported by the Children's Guardian. Within a few days of that order a placement (Oak Lodge) was identified as suitable. At a further hearing before DJ Whitfield on 22 April 2025 the court gave final directions for the placement under section 38(6) CA 1989. The family moved on 23 April 2025.

12. Reports of the parents' care of C at Oak Lodge have been mixed. The parents have been intensely supervised at all times with CCTV monitoring 24/7, and significant levels of 1-1 supervision. In June 2025, after a reduction in the level of supervision around feeding, C was admitted to hospital on two occasions with weight-loss.

13. In mid-June 2025, Oak Lodge prepared an interim report; it spelled out both the positives and the negatives of the placement, but cautiously supported the continuation of the placement.

14. On 12 August 2025 Oak Lodge prepared a 'Final Parenting Capacity Assessment Report' as directed by the court. The author of the report deployed the ParentAssess Framework (2016) in the assessment of both parents. The ParentAssess Framework has been developed as an assessment tool for parents with learning disabilities and

uses a traffic light system to represent the parent's level of parenting capacity over five domains. This final report was to signal the end of the assessment.

15. The report reflects several 'Green' areas where the parents have "demonstrated skills, knowledge, and confidence". Its 'Amber' areas (beginning at para.12 of the report: see the Judge's reference to this paragraph at [4] of the judgment, cited at §28 below) reflect "areas of concern" but where it is felt that the parents, with support, "are likely to continue improving their parenting skills". The report then sets out the 'Red' areas "where there are serious concerns and where the parent has not shown enough insight or ability to change". There are many key 'Red' areas identified in the report. Illustrative of the 'Red' areas are:

> "[24] I have significant concerns about the parents' ability to meet [C]'s health needs. [C]'s hospital admission on 27th June 2025 showed that the parents were struggling to meet her needs when she was unsettled, and staff had to provide support to regulate and soothe her. The parents' capacity to respond to her health needs is compromised when they are stressed and fatigued. Their compliance with feeding protocols and medical advice diminishes when they are dysregulated….
>
> [25] I have serious concerns about the parents' ability to establish a routine for [C] and manage her diet. [The mother] and [the father] have been supported by staff to create a routine for [C]; however, they have not been sticking to it. … The parents' ability to manage [C]'s behaviour is a concern. … The parents, especially [the mother], have struggled to handle [C] when she refuses to feed or is unwell. Mother's frustrations and anxiety becomes noticeable. Their identified mental health needs and emotional regulation difficulties mean they are likely to struggle to manage behaviour".

16. The author of this final assessment report concluded that they did not believe that, in light of all of the evidence which had been collected at Oak Lodge, the parents would be able to care for C in the long-term. The recommendation section reads as follows:

> "[35] I have carefully weighed the positives and negatives highlighted in this assessment. I have considered whether any creative solutions could be proposed to alter the parents' approach to raising their children. Sadly, given the concerns outlined throughout this assessment, I do not recommend that [the mother] and [the father] take on long-term care of [C] at this time. Ongoing staff supervision within a structured and protective environment remains necessary to ensure [C]'s welfare and support her developmental needs.
>
> …

> [37] It is important to note that, in my professional judgement, [the mother] and [the father] do not present as intentionally harmful or malicious in their parenting. Nonetheless, their individual needs alongside the factors explored in this assessment substantially impair their capacity to meet [C]'s holistic needs and to provide safe, consistent care".
>
> And later:
>
> "[113] In my professional view, both parents' learning needs, emotional vulnerabilities, and mental health difficulties impact their capacity to safeguard [C] and provide emotionally attuned care. They are likely to struggle to hold [C]'s holistic needs in mind consistently…
>
> [114] The overall pattern of care raises significant concerns. Inconsistencies in feeding, lapses in supervision, emotional dysregulation, and lack of coordinated parenting suggest that the parents are currently unable to provide safe and nurturing care without intensive support. Their reliance on staff prompts to meet basic care standards, coupled with limited insight into [C]'s developmental and emotional needs, presents a safeguarding risk".

17. Given the contents of this assessment report, on 14 August the Local Authority issued its application for the court's authorisation to separate C from her parents and effectively bring the assessment at Oak Lodge to an end. That application was supported by a witness statement which included the following passage:

> "While there are moments of warmth and engagement, particularly from [the father], the overall pattern of care is inconsistent, reactive, and reliant on staff intervention. [C]'s safety, emotional wellbeing, and developmental needs are not being met reliably".

18. The application was listed for hearing on 16 September 2025 before the Judge. At the hearing, the Local Authority's application was supported by the Children's Guardian; it was opposed by the mother. The mother's legal team had filed a position statement on her behalf in which she had indicated that she and the father: "… had, at times, struggled, and that the mother was unhappy at the placement and had felt bullied by staff." The mother confirmed in that document that she wished to leave Oak Lodge. The Official Solicitor on behalf of the father was recorded (on the face of the order following the hearing) to have been "neutral" on the application to remove C from her parents' care.

19. We were told by Ms McGrath, who represented the Children's Guardian at the hearing, that in the pre-court discussions all the advocates had worked on the assumption that the assessment (and accordingly the placement) at Oak Lodge would imminently come to an end, whatever the outcome of the Local Authority's application for authorisation to separate C from her parents. She advised us that the

parties were therefore somewhat wrong-footed to learn during the hearing that Oak Lodge was content for the placement to continue. Although Oak Lodge has prepared its 'final' report on the assessment, in fact the placement continues.

Further evidence

20. As mentioned above, the Official Solicitor sought leave to adduce further evidence in this appeal in the form of weekly logs from Oak Lodge which post-date the hearing. No party opposed that application. We read them. The logs are marked up 'Assessment Completed'. The logs are merely recordings of observations; they are not annotated or analysed to any degree nor do they categorise the behaviours described according to the ParentAssess Framework (see §14 above). The logs reflect high levels of supervision and monitoring by Oak Lodge staff; the logs show a mixed picture of parental ability to care, but C is observed to be generally happy.

Law

21. The interim care order had been made in April 2025 under section 38 CA 1989 on a care plan which, in its second iteration, contemplated that C would remain with her parents. Although the Local Authority at all material times had 'senior' parental responsibility for C, it appropriately made the application to separate C from her parents given the significant proposed change to the arrangements under the interim care plan. In this regard, it doubtless had in mind the guidance offered by *Re DE (A Child) (Child under Care Order: Injunction under Human Rights Act 1998)* [2014] EWFC 6; [2015] 1 FLR 1001 and the decision of this court in *Re JW (Child at Home under Care Order)* [2023] EWCA Civ 944 (at [26]/[27]).

22. Undoubtedly, the question before the court at the hearing on 16 September 2025 concerned "the upbringing of [C]", therefore, in accordance with section 1 CA 1989, C's welfare was the court's paramount consideration, and the section 1(3) welfare checklist criteria applied.

23. Two cases decided in short order in 2019/2020 provide a useful reference point to an application of this kind. The first, to which the Judge made repeated reference is *Re C (A Child)(Interim Separation)* [2019] EWCA Civ 1998; [2020] 1 FLR 853 (hereafter '*Re C 2019*'), and the second is *Re C* [2020] EWCA Civ 257 ('*Re C 2020*'). In *Re C 2019* Peter Jackson LJ said this at [2]:

> "[2] The ability to make interim care orders under section 38 Children Act 1989 is one of the family court's most significant powers and it is not surprising that it has been considered by this court on many occasions. A consistent series of propositions can be found in these decisions:
>
> > (1) An interim order is inevitably made at a stage when the evidence is incomplete. It should therefore only be made in order to regulate matters that cannot await the final hearing and it is not intended to place any party to the proceedings at an advantage or a disadvantage.

> (2) The removal of a child from a parent is an interference with their right to respect for family life under Article 8. Removal at an interim stage is a particularly sharp interference, which is compounded in the case of a baby when removal will affect the formation and development of the parent-child bond.
>
> (3) Accordingly, in all cases an order for separation under an interim care order will only be justified where it is both necessary and proportionate. The lower ('reasonable grounds') threshold for an interim care order is not an invitation to make an order that does not satisfy these exacting criteria.
>
> (4) A plan for immediate separation is therefore only to be sanctioned by the court where the child's physical safety or psychological or emotional welfare demands it and where the length and likely consequences of the separation are a proportionate response to the risks that would arise if it did not occur.
>
> (5) The high standard of justification that must be shown by a local authority seeking an order for separation requires it to inform the court of all available resources that might remove the need for separation."

24. This paragraph has oft been cited when the court is determining applications of this kind. That said, while the *Re C 2019* test sets the 'justification' and 'proportionality' requirements appropriately high, it does not, it seems to me, relieve the court of its duty to undertake a balancing exercise (looking at the risks and options) which is essentially and closely focused on the welfare of the subject child. In the later decision of *Re C 2020* Peter Jackson LJ returned to this issue adding these important points at [12] and [13]:

> "[12] A decision of this kind calls for the evaluation and balancing up of factors relevant to the child's welfare…"
>
> "[13] Decisions about the removal of a baby from parents are among the most anxious decisions taken by the family court, indeed by any court. The separation may prove irreversible and set the course for the child's life. The fact that the decision often has to be taken urgently and at a relatively brief hearing does not diminish the prerogative of a judge who has assessed the evidence coherently and applied the law to reach a rational decision." (Emphasis by underlining in each extract has been added).

25. Going back a little further in time, Black LJ in *Re L (Interim Care Order: Prison Mother and Baby Unit)* [2013] EWCA Civ 489; [2014] 1 FLR 807 said this at [37]:

> "… the course that the court has to take on an interim care application may sometimes unavoidably have long-term consequences. However, this does not, in my view, detract from the court's duty to do its best to make decisions which respect the 'purpose and bounds of an interim hearing' and not to 'usurp or substitute for [the] trial' (*Re H (A Child) (Interim Care Order)* [2002] EWCA Civ 1932, para [38]).

Later she said this at [47]:

> "A court considering what is in a child's best interests must take account of all the circumstances and will concern itself with the reality of the child's situation… It is important to remember in this regard, as I reminded myself in para [42] of *GR (Care Order), Re* [2010] EWCA Civ 871, [2011] 1 FLR 669, that the paramount consideration in the court's decision as to whether to grant an interim care order is the child's welfare, as required by s 1 of the Children Act 1989, the court having particular regard to the matters set out in section 1(2), section 1(3) and section 1(5) of the Act". (Emphasis by underlining added).

Hearing and Judgment

26. The hearing of the Local Authority's application for removal of C from Oak Lodge and the care of her parents was listed for one hour. It proceeded on the basis of oral submissions from the advocates, and (by reference to the timings on the transcript) in fact took only a fraction of that time.

27. As soon as the introductions had been made, the Judge challenged the Local Authority's advocate to address the five-point test in *Re C 2019*. He made clear that if the parents were not planning to leave Oak Lodge then the *Re C 2019* test would not be made out, and that the application would therefore fail. The Judge proved to be unshakeable in this view through the hearing, repeating it several times.

28. Having heard submissions from the parties (though he required little by way of submission from counsel for the mother or father) the Judge gave a short *ex tempore* judgment. It runs to just nine paragraphs over 1½ pages. In the opening paragraph he expresses a little uncertainty about the legal status of C ("I think there is an interim care order actually"); he makes clear that he has not read the application ("the application, I understand, I have not seen the application but I understand it was a C2 application"), and then embarks on his reasoning for the decision itself. The key passages of the judgment are these (reproduced in full):

> "[4] As far as the [Oak Lodge] report is concerned there are some positives noted by the author of the report. The parents can ensure [C]'s hygiene, by way of regularly changing nappies and keeping the chalet clean. They are

also able to multitask some household chores. There are no current substance and alcohol misuse issues, no gambling or offending problems. But there are concerns and these concerns, as far as [the mother] and [the father] are concerned, are set out in paragraph 12. The author of the report is of the view that with support [the mother] and [the father] are likely to continue to improve their parenting skills.

[5] I remind myself that if this was a final hearing one of the factors that the Court must take into consideration is whether or not parents with cognitive limitations are capable of providing good enough care, subject to support provided by the Local Authority.

[6] The report confirms that the parents show emotional warmth, but it is said at times they have not responded promptly to cues. There are concerns about the parents' health. [The mother] is experiencing seizures and [the father] says he cannot work because of a collapsed lung and having suffered a minor heart attack. Further support is needed for self-care and daily tasks and, again, it is stated that both parents would need support with complex tasks such as budgeting and managing money. Again, these are final hearing issues. They also would need support in managing relationships with friends and family.

[7] As far as the areas identified as red in the report there are serious concerns about the ability of the parents to meet [C]'s health needs. There are also concerns about routine, sleeping and feeding, etc. The report is negative in terms of the parents ability to care for [C] in the community. What the author says is this:

> "I do not recommend that [the mother] and [the father] take on long term care of [C] at this time. Ongoing staff supervision within a structured and protected environment remains necessary to ensure [C]'s welfare and support her developmental needs."

It seems to me that this is the flaw in this application because the parents are remaining in this structured and protected environment.

[8] When I look at the law it is clearly *Re C*. The Court has to be mindful of a number of factors. Interim threshold is not a matter for the Court to be troubled with. There is an Interim Care Order. As far as the five factors identified in *Re C* I remind myself, and this is important in this case, and it seems to me that the Local Authority and, with respect, the Guardian, may well have fallen into the trap of

> evaluating the long term future for this child. That is not a factor for the Court to consider at an application for interim removal. I am mindful of the parents' Article 8 rights and, indeed, the Article 8 rights of [C]. Separation can only be justified if it is necessary and proportionate, and the court must consider whether there are other options? The Court has to also consider the balance of harm.
>
> [9] But the fact that really seems to me undermines this application is that the Court has to be satisfied that the child's physical safety, or psychological or emotional welfare, demands separation. There are clearly concerns about the parenting that has been provided, even with support, but I have seen no evidence from [Oak Lodge] that the child is not safe in that environment, either physically, psychologically or emotionally, so I dismiss the application".

Grounds of Appeal

29. There are three Grounds of Appeal as follows:

    i) *Ground 1*: The Judge has failed to fully consider the evidence filed by the Local Authority in support of the application to separate the child from her parents, only focusing on the final parenting report of Oak Lodge, a report that focused on the long-term issues for the parents.

    ii) *Ground 2*: The Judge failed to undertake a careful and considered welfare analysis of the options before the court for the interim care of the child, with a final hearing listed on 27 April 2026.

    iii) *Ground 3*: The Judge was wrong to focus on whether the child would be at risk of only physical harm if she remained in her parent's care in the residential placement and not considering potential emotional and psychological harm.

Arguments on appeal

30. The Local Authority maintains that there was ample in the final report of Oak Lodge on which the Judge could and should have found the "high standard of justification that must be shown by a local authority seeking an order for separation" (*Re C 2019*). Although the Judge had referenced the 'Red' areas of the final assessment report (see [7] quoted at §28 above) he had not, or not sufficiently, analysed them or taken them into account in his decision-making. Mr Froud observed that the Judge had not considered all of the relevant documents prior to making his decision; for instance, he admitted to having not read the application form, and he made no reference at all to the social worker's statement filed in support. He argues that in refusing the application, the Judge failed to undertake any "evaluation or balancing up of factors" (*Re C 2020*) relevant to C's welfare, having stuck rigidly to the five points listed in *Re C 2019*. The Judge further failed to have regard to the prospective length of time prior to the final hearing (listed for 5 days at the end of April 2026), and the overall inconsistent care currently being offered by the parents to C. Mr Froud argued that

the Judge failed to consider the emotional and psychological impact on C of receiving the poor standard of care afforded by the parents over a prolonged period going forward, evidenced in the social workers statement and the placement logs.

31. At the hearing before us, Mr Froud raised for the first time a new and discrete argument, namely that the placement at Oak Lodge must effectively be deemed to have ceased at the point of the final report (12 August 2025) as this marked the end of the court authorised 'assessment' under section 38(6) CA 1989. As I have already mentioned (§20 above) the weekly logs prepared following the hearing clearly record that the assessment has been completed; we were told that Oak Lodge has been (since 12 August) and is now simply providing observation, supervision and monitoring. Mr Froud argued that the duty on the Local Authority to fund this assessment has effectively ended, and he reminded us of Baroness Hale's comments in this regard in *Re G (Minor)(Interim Care Order: Residential Assessment)* [2006] 1 AC 576 at [65]-[68] to this effect:

> "[65] The purpose of section 38(6) cannot be to ensure the provision of services either for the child or his family. There is nothing in the 1989 Act which empowers the court hearing care proceedings to order the provision of specific services for anyone. To imply such a power into section 38(6) would be quite contrary to the division of responsibility which was the "cardinal principle" of the 1989 Act…
>
> [68]… It cannot have been contemplated that the examination or assessment ordered under section 38(6) would take many months to complete. It would be surprising if it were to last more than two or three months at most."

32. To be clear, this argument had *not* been raised before the Judge, *nor* had it featured in the Grounds of Appeal before us. While there is, superficially it seems to me, some force in Mr Froud's submission, we heard limited argument on it in this appeal. It is a point which the Local Authority may well wish to take either on a free-standing application in the Family Court or (more pertinently, as we propose to remit the earlier application) on the re-hearing.

33. Ms McGrath pointed out that while the Children's Guardian had initially (in April 2025) supported the parents' placement in a residential unit, by the hearing in September 2025, and in light of the evidence, she was supporting the Local Authority's case for separation of C from her parents. It was the Guardian's view that at the time of the hearing C was suffering and will continue to suffer from psychological and emotional harm, and was at risk of suffering physical harm, even though she is being supervised by placement staff. Moreover, she contended that C had indeed suffered physical harm in the placement when she was twice admitted to hospital because of problems with the parent's ability to feed her appropriately. Ms McGrath had argued at the hearing before the Judge that the care being offered to C was "not good enough", that the parents could not meet her needs, and that she was being "parented" by the supervisors at Oak Lodge not her parents. On this appeal she argued that the Judge failed in his judgment to analyse the 'Red' section of the final

report, and had (in [4] of his judgment) treated a comment in paragraph 12 (from the 'Amber' section of the final report: "with support [the mother] and [the father] are likely to continue to improve their parenting skills") as reflective of the whole tenor of the report when it plainly was not. She argued that the Judge failed to consider at all the welfare impact on C of her primary caregiver's inability to keep her emotionally and psychologically safe for a further seven months until the final hearing.

34. The mother and father make common cause in this appeal; their arguments can I believe be faithfully distilled into the following six points:

    i) The interim and final assessments from Oak Lodge contained much which was positive about the placement of C with her parents;

    ii) There was no indication in the Oak Lodge assessments of any *immediate* risk of harm to C in her parents' care;

    iii) The Judge rightly approached the case on the basis that a high level of justification was required to remove a child (especially a new born baby) from its parents in the interim phase of proceedings under the CA 1989, following *Re C 2019*;

    iv) The Judge undertook a proper "balancing exercise" in reaching his conclusions;

    v) That insofar as the Judge did not explicitly address the welfare checklist, it was plainly in his mind; he is an experienced family judge;

    vi) That the weekly logs for the period since the 16 September show a happy and contented baby, proving that the Judge was right to refuse the application.

35. In the event that the appeal were to be allowed, each counsel made representation as to disposal. Mr Froud argued that the application should be remitted for re-hearing; he did not invite us to substitute our own decision on the basis that the additional placement records provided an incomplete picture on which to reach any concluded or truly informed welfare view at this point. Mr. Batt, without prejudice to his primary position that the appeal should be dismissed, confirmed that he was not inviting the court to substitute its own decision in the event that the order below was set aside, and did not oppose the application being remitted for re-hearing. Ms Ellis preferred that we should rely on those records to substitute our own decision. Ms McGrath was neutral on the issue of disposal.

Discussion and Conclusion

36. C is indisputably a vulnerable infant. At the time of the hearing on 16 September 2025 she was merely five months old; she was then as now in the primary care (albeit closely supervised and monitored at Oak Lodge) of parents with significant learning difficulties who both carry a sad history of neglectful and inadequate parenting of their older children. It is not in issue that Oak Lodge had for some considerable time prior to 12 August 2025 expressed material concerns about C's welfare, and the parents' ability to meet her needs.

37. The question for the Judge was whether those concerns, taken together and attaching paramount consideration to her welfare, met the 'high standard of justification required' to render 'necessary and proportionate' the separation of C from her parents, with the obvious interference with their Article 8 rights.

38. I regret that I do not find in the judgment (or in the transcript of the hearing which preceded it) the sort of "anxious consideration" of the issues in this case which Peter Jackson LJ had contemplated and spoken of in *Re C 2020* at [13]. Nor do I find a "coherent" assessment of the evidence which had been filed; as Mr Froud rightly argued, there was in fact no mention of the social work statement in the hearing or the judgment and limited, if any, analysis of the Oak Lodge final assessment report in the judgment. The Judge was right to observe that he was not charged with looking at the long-term arrangements, and further was correct (as earlier indicated) that a high level of justification was required before removal of C from her parents' care could be sanctioned. But other than observing that the "court has to also consider the balance of harm", there are no indicators in the judgment as to what matters the Judge had taken into account in performing that "balance". His short judgment contains no reference to the matters set out in the section 1(3) CA 1989 welfare checklist by name, nor its ingredient characteristics. Focus on the child's 'emotional needs' (section 1(3)(b) CA 1989), for example, might usefully have prompted the Judge to take a closer look at the 'Red' section of the report. There is no explicit reference to the paramountcy test; there is only passing oblique reference in the judgment to the fact that the mother was unhappy at Oak Lodge and would in fact prefer to leave.

39. The Judge makes no reference to the context in which these parents come to be at Oak Lodge (chronic history of poor parenting: relevant "background": section 1(3)(d) CA 1989) and the particular challenges presented by the father which I have summarised from the April 2025 psychological report at §8 above. I cannot accept Ms Ellis' submission that the Judge undertook any kind of 'balanced' appraisal of the difficult issue which he was charged with deciding. There is limited if any indication of this in the short judgment (or in the hearing) at all.

40. On the contrary, it is clear that from an early point in the hearing the Judge had reached a firm, and in the end unshakeable, view that the five point test in *Re C 2019* (see §23 above) was not made out on these facts, and in his view that was dispositive of the application. In his opening remarks to the advocates he appeared to attach significant – perhaps conclusive – weight to the fact that Oak Lodge was not itself requiring the parents to leave: he said: "if [Oak Lodge] haven't given notice the parents can remain, [the Local Authority] can't bring [itself] within *Re C*" (emphasis added). This led him to describe the application as "flawed" (a description of the application which he repeated in the judgment). His remarks later in the hearing: "I'm not convinced it meets the test… I'm just not convinced it meets *Re C*" strongly indicates that the Judge saw paragraph [2] of the judgment in *Re C 2019* as his sole point of reference in determining the application.

41. Judges in the Family Court work under significant pressure; they are rightly conscious of the need for every hearing to count. There is accordingly much to be said for robust case management, and focused consideration of issues arising in family court process; in his endeavour to cut to the core of the case, I am not critical of the Judge. But when the short hearing is looked at as a whole, together with the judgment, I cannot but conclude that the Judge proceeded too quickly and cursorily to a firm

decision that the application must fail, from which (without consideration of the wider issues, and the clear written and oral submissions from the Children's Guardian about the ongoing poor parenting of C and the harm she was suffering) he did not deviate.

42. The arguments contained within the three Grounds of Appeal (see again §29 above) are largely interwoven. There is some merit in each individually, but I find the greatest force in Ground 2 (i.e., the Judge's failure to undertake a careful and considered welfare analysis of the options before the court for the interim care of the child) which is amply demonstrated on these facts. As I have earlier discussed, the Judge undertook no or no meaningful 'balance' of the many potentially relevant factors which obtained to the facts of this application.

43. For these reasons I would allow the appeal.

44. We have had the chance to discuss with counsel a set of proposed case management directions which we very much hope will steer this remitted application to a further hearing in the week of 19 January 2026 in the Family Court in Kent before a different judge. I have alerted the Family Presider for the South Eastern Circuit (Henke J), and the Designated Family Judge for Kent (HHJ Sarah Davies) to this outcome and these directions, in the hope that they may be able to assist in identifying a convenient hearing date. The parents and C all deserve resolution of this application as soon as possible.

Lord Justice Zacaroli

45. I agree.

Lord Justice Arnold

46. I also agree.