Case No: FB11C00308

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
A DISTRICT REGISTRY

Before:

HIS HONOUR JUDGE CLEARY

- -

Between:

A City Council	**Applicant**
- and -	
M	**1st Respondent**
-and-	
F	**2nd Respondent**
-and-	
C	**3rd Respondent**
(acting by her children's guardian)	

Approved Judgment

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the child and the adult members of her family must be strictly preserved

1. The application brought by A City Council concerns C who is now 13, having been born on the 30 April 1999.

2. Her father is F. He lives alone in A. Her mother is M. She resides with her long-term partner, T, in the same city although not quite so close to the centre.

3. C is in foster care, with the agreement of her parents, under s20 of the Children Act, accommodation in which she has remained, subject to one early change, since January 2011. Proceedings for a care order were issued by the local authority in July 2011. It will be seen therefore that the case is almost exactly a year old and that C has been living away from either of her parents for some 18 months.

4. Before analysing my task and seeking to respond to the application, I will endeavour to set out the background of the case.

5. C and both her parents hail from South Africa. The family moved to the UK in April 2001. The marriage to F was the mother's second. Her first had broken down in unhappy circumstances, and the end of the relationship had been accompanied by her then husband removing her first child, a little boy, from South Africa, abducting him to an unknown location, and denying the mother any opportunity to have any relationship whatsoever with her son.

6. It is not possible to imagine the devastating effect that this must have had on the mother, and it appears to be the case that perhaps understandably, she devoted a good deal of her physical resources, and the greater part of her emotional resources in both grieving for and searching for her son.

7. It is entirely likely, since the mother acknowledged that she moved with the father to the United Kingdom in the belief that her son might have been abducted to this country, that her anxiety and her concentration on finding her son had not lessened at the time that her daughter was conceived, and indeed when she was brought to England.

8. In 2002, the mother and father separated, and in the following year, the mother moved to A and began to live with T who himself had two teenage daughters. Circumstances in that home were not ideal, and conflict arose between those girls and the mother, culminating in the summer of 2003 when as a result of an unpleasant altercation, the two girls left their father's home.

9. For his part, T was diagnosed as suffering from bipolar affective disorder, a condition which in general terms causes the sufferer to have very severe mood swings, accompanied by emotional and irrational outbursts. His condition required him to be admitted for in patient psychiatric treatment from time to time. The police were called to the family home on frequent occasions, and the atmosphere in the home resulted in the overall emotional care which C required to continue to deteriorate.

10. There was a suggestion that, upon the mother finding that her son appeared not to be in the United Kingdom, she might return to her native country, but

whether that was or was not realistic or indeed likely, the father made an application to the court for a prohibited steps order and a residence order, concerned as he was for the emotional welfare of his daughter.

11. The father's application was finally determined on the 26 October 2004. Mr Recorder Scott QC passed the residence of the child to her father, notwithstanding that hitherto, although F had had contact with the child, she had never spent more than a week with him. The Judge made a number of important and critical findings of the mother both as a witness and as a parent and indeed of T both as to his behaviour in the legal community generally (in which he professed to play an important part), and as a witness.

12. The learned Recorder delivered a Judgement which extended to more than 45 pages (unfortunately the copy with my papers is incomplete), and amongst the many clear findings which appear in that Judgement, to which I will be obliged to return in due course, he found that the little girl was already exhibiting signs of extreme distress, crying and slamming doors within the family home. The Judge found, in terms, that the child was already suffering from emotional harm. It will be realised of course that C was then just 5 ½ years old.

13. Litigation was not concluded by that Judgement. To the contrary, that ruling was to be the first of, by my calculation, no less than seven Judgements of the court, delivered by the Recorder whom I have identified, two circuit Judges, a District Judge, and finally, the Court of Appeal. Judgements by His Honour Judge Bellamy were delivered on 16 July, 2006, 4 April 2008, and 11 September 2008. District Judge Jones, again at the A County Court, delivered his Judgement on 29 May 2009, and His Honour Judge Cardinal, on appeal from District Judge Jones, delivered Judgement on 5 November 2009. On 1 March 2010, Lord Justice Ward heard, and granted, an application for permission to appeal. That appeal came before a full Court of Appeal sometime later, on a date which, like the Judgement itself, is not before me. At irregular intervals throughout that depressing journey, which accompanied that which the child was, as she grew older, taking towards her teenage years, the court instructed the local authority to prepare reports pursuant to section 37 of the children act. Again, by my calculation, and including the report which was prepared in readiness for the hearing before Mr Recorder Scott, there have been no less than four such reports.

14. Each report, and each Judgement, recorded the turmoil being suffered by this little girl. The local authority commissioned reports by a number of experts, seeking to assess the child, but those endeavours were hindered by C herself, since the child presented with great reluctance to talk about her home life. What was becoming increasingly obvious, however, was that C's emotional state was becoming increasingly fragile. I will return to the report of Dr Gillett in due course, but I remark at this stage that it seems to be generally accepted that the child had lost her primary attachment figure (that is, her mother) and had been unable to replace it with another.

15. Her ability to bond with her father was undermined from the moment of the October 2004 order, which neither she nor T have ever accepted. While none of the Judges of whom I speak have ever doubted the love of the mother (or for that matter, the father), adverse findings have been made by the earlier decisions set out earlier in this Judgement, being critical of the mother and her persistent attempts to fracture any relationship between C and F.

16. For his part, the father has faced increasing difficulties with caring for his daughter. Not only has he been involved in the litigation of which I speak, but he has experienced increasingly confrontational behaviour from C which he has found extremely difficult to address, sometimes overstepping the mark and exercising his parental responsibility inappropriately.

17. This has resulted in C being accommodated by the local authority on three separate occasions. First for 2 days, when she was removed from her father's care by the police on what transpired to be entirely spurious grounds, encouraged by the mother. The second period was for longer, from 7 November 2009 until 20 January 2010. Finally, she was received into section 20 accommodation, as I have said, in January 2011.

18. Throughout the years since October 2004, and while she remained in her father's care, there have been difficulties with contact. Whereas, initially, contact was to be arranged between the parents, the mother's misbehaviour, and callouts to the police, made it quite plain that she simply could not be trusted to allow C to settle in a placement with her father, who was driven to bringing the issue of contact before the Court in 2005. Arising out of that application, the local authority extended its assistance to the child by agreeing to supervise contact with the mother for what became, in the experience both of Dr Gillett and of His Honour Judge Bellamy, the longest period of supervision that they had ever come across in private law proceedings.

19. Indeed, from 2005 through to the present day, contact between C and her mother has remained supervised, and that contact has been limited to as little as four visits a year. It is currently seven visits a year.

20. After the child was accommodated in January 2011, F continued to have significantly greater contact with his daughter, seeing her fortnightly. That contact came to an abrupt halt in March of this year when following a request by the then children's Guardian, Paul Healy, that contact between C and her father should be observed, to enable him to complete his analysis of the quality of that contact, F, resenting what he took to be the sudden, hitherto unannounced, and unjustified move to supervised contact, refused to have any contact whatsoever for the following three months, a decision which bewildered and distressed his daughter. Contact since then, for the father, has itself, likewise, been supervised, and now only takes place for one and a half hours each fortnight.

21. The issues before the court are these:

(i) The local authority seeks a final care order. Within the terms of that order the authority proposes to arrange contact between C and her parents for six or possibly seven visits a year, each, thus enabling C to see one parent or the other, for one visit each month. That contact is to be supervised and is to be reviewed at LAC review meetings in either six or 12 months time.

(ii) Both parents oppose the making of a care order, and although the father acknowledges that he is not in a position to care for his daughter, he suggests that there should be no order and that the s20 regime should continue. In the case of the mother, she likewise suggests that the s20 regime should continue, but she seeks a swift return of C to her care.

(iii) The local authority also makes application for an order under s91 (14), preventing the parents from making further application to the court until C reaches her 16th birthday. The father opposes that order, although the mother accedes to that part of the application. The Guardian supports both applications by the local authority.

22. I turn to the law which I must apply when I undertake my task. That is found both in the Children Act and in the Human Rights legislation. I concern myself with section 31 and section 1(3) of the former legislation and article 8 of the latter. I am also conscious of the United Nations Convention on the Rights of the Child.

23. I have undertaken a considerable amount of reading of the very many papers lodged in this case. Disappointingly, the local authority did not supply me with any reading material at all until the morning of the first day of this case. On that morning, this last Monday, I was presented with an essential reading bundle, a bundle which I specifically requested at an earlier hearing. That bundle contains more than 300 pages which it was clear I had to read and digest before commencing the case.

24. I have, by that exercise, read the entirety of the Judgements of which I have spoken. I have also read the 58 page report of Dr Gillett, her subsequent responses to the questions put by the advocates (in accordance with my directions that question should be put to her prior to the hearing), the three statements of the mother, the two of the father, the four of Mr Pitcher, the allocated caseworker, the section 37 reports, a statement by T, the present and a previous care plan, a report to the child protection conference, and a significant amount of other material within the 4 lever arch files which are before me, to which I might not refer specifically in this Judgement, but which remain on my radar, having been referred to during the five days of this hearing. Finally, I have before me the 38 pages of closely typed notes of evidence which I have taken during the case.

25. Given that this case was concluded well after 5 PM on the fifth day, I took a case management decision that counsel should submit their written submissions to me so that I could complete my Judgement over the weekend.

As a consequence, I have also read no less than 20 pages of submissions from the mother, and some 30 pages of submissions from the remaining parties.

26. Finally, before I review the evidence in the case, I set out my view of the witnesses who came to the stand. I have heard from three witnesses called on behalf of the local authority, Rachel Eaves and Wendy Taylor, both of whom observed contact, (and the latter of whom was also the allocated social worker the 12 months from 2009 to 2010), and Stephen Pitcher, the current social worker who took over from Wendy Taylor.

27. The latter two witnesses came under a significant amount of criticism from one or other and sometimes both of the parents and I have to say that some of the answers were unsatisfactory insofar as they were sometimes inconsistent and equivocal. However, I found that both of those witnesses were witnesses of truth, upon whom I could rely and I took the view that although the local authority could be criticised for delaying its decision to engage statutory machinery for this little girl, my task has not been to conduct a forensic history of the last nine years, or to examine the failure of the local authority to recognise the increasing alarm being expressed by a number of professionals and Judges over this little girl's presentation. While I am satisfied that the alerts of 'harm' or 'significant harm' or 'emotional harm' should have been heard and acted upon by this local authority when this girl was an infant and not as she approached her teens, it is important now that I attempt to outline the issues before the court earlier in this Judgement, that we concentrate on a careful analysis of the local authority view of the present situation with regard to contact between C and her parents, and its justification for the view it takes. Some history has, inevitably, been relevant when undertaking that exercise, and where that history has concerned the observation by social workers of contact between C and her mother, and engagement with the father, I do not take the view that those witnesses were seeking to mislead me or were themselves either exaggerating or imagining their evidence.

28. I found Dr Gillett to be not only unshaken under cross examination in respect of her report, but also persuasive and knowledgeable. As will be clear from my analysis of her evidence, I have no reason to doubt not only her clinical expertise, but her particular opinion in this case.

29. I found the mother to be less than persuasive. She called T as a witness on her behalf, as she was obliged to do, given that she seeks the return of C to her care, and given that her relationship with T is ongoing. Their own evidence was, in places, inconsistent and contradictory. I was left with significant unease that they were not telling me the truth. I will deal shortly with specifics, but for the present, I share the anxiety expressed by both the local authority and in particular the Guardian, both of whom satisfy me that the mother continues to lack insight into her daughter's condition and in particular her daughter's needs, and her own ability to see to those needs.

30. Neither she nor T satisfied me that either of them were telling the truth over the receipt and transmission of text messages between T's phone and C, sent at

a time when contact by telephone was prohibited. Nor was one or other – or possibly either of them - telling the truth (for they contradicted each other) when they were individually challenged about the late disclosure to the local authority of the apparent responsibility for those texts, and the mother in particular was oblivious to the distress caused to C when she pretended or asserted that she knew nothing of the texts at the LAC review two months later.

31. It was remarkable to hear the mother say, at the stand, that T was giving wrong evidence or was suffering from a lapse of memory because of the stress that he was under on the previous day. It was equally unsatisfactory to find that the mother then asserted that T was prepared to undertake to leave the house for a while during any rehabilitation with her daughter (evidence which was absent from T's assertions).

32. If the Christmas card produced to the court is genuine, neither she nor T was prepared to consider that C's unlikely protestations of love for T were designed to comfort the mother (given that the solicitor for C, in discussions with her, had established that C has no memory of him at all, and given also that Dr Gillett was quite unable to extract any memory or even comment from C about T in her sessions with the child).

33. I consider that T was pretending when he asserted that he had not read any of the court documents (particularly since he was able to identify very clearly what it was that F had said in his position statement which had been submitted to the court only days ago). It is wholly unlikely that neither mother nor T, as they protested, had not reminded themselves of the Judgements to which I have referred and to which they took exception. It is remarkable that T feigned ignorance when challenged about his extraordinary behaviour towards witnesses and indeed the Judge in earlier proceedings when he made significant and worrying threats of physical harm against them. It is troubling that for his part, T, when questioned, accepted that he was quite unable to accept the October 2004 Judgement, and remained firmly of that view at the present time.

34. I received contradictory evidence from the Mother and T upon their proposed move of house. Their evidence did not agree on the reason why, having agreed a purchase price of their proposed home in the approximate vicinity of the foster placement, they had then pulled out of that transaction. They were not being open with the court. In the scheme of things, either version might have withstood scrutiny after careful analysis, but neither agreed with the other, and the issue was one of credibility, with which I was dissatisfied.

35. There is no doubt that the mother loves her daughter deeply and remains quite unable to comprehend why it is that contact between her and the child has been strictly supervised for all these years. Almost without breaking stride, she accepts quite openly that she remains unable, to this day, to accept the ruling of the court in October 2004. She quite clearly bitterly resents it and has no insight at all into the reasons why, first, the order was made, and secondly why it is that she is now in the position in which he finds herself. That question, in

terms, was put by counsel for the Guardian. It received no answer that I could understand.

36. For his part, the father, appears equally bewildered as to the criticisms levelled at him by the local authority. He, like his wife, is clearly an intelligent man, and he, too, loves his daughter deeply. He does recognise that there have been shortfalls in his care, and that his daughter has been exposed to the risk of significant harm. There are, however, areas within the threshold presented by the local authority with which he takes issue, and the nature and length of his evidence upon those issues makes it plain that he is a man who will not find it easy to accept advice or guidance from professionals unless every last justification is spelt out.

37. Where that has not been provided for him, I am quite satisfied that he has turned his back on the local authority and has withdrawn his cooperation. More than that, he has complained to the local authority, criticising the number of and identity of personnel seeking to assist him. In my Judgement, and from his demeanour in court, it is plain that he does not take criticism easily and, to the contrary, is quick to criticise others. He finds it difficult to respond to questions without dissecting them and then within his answer, presenting the question in an entirely different form, and much to his dissatisfaction, translated as a response which is easily and sometimes justifiably, seen as uncooperative.

38. Both he and the mother have engaging qualities, which were visible when they came to the stand and as they answered questions, but as I say, as witnesses, I found them to poor historians and unreliable.

39. For the purpose of this Judgement I consider that it is appropriate to traverse the schedule of findings which the local authority has put before the court in its final position statement .

40. *Since their separation in 2002, the parents have been involved in a constant battle against one another about the role they should each play in C's life.*

    In my Judgement, neither parent can deny the existence of this battle; nor do I sense that they seek to do so. It would appear that the conflict became most noticeable in 2003 (rather than 2002) during the proceedings brought by the father for residence and for a prohibited steps order to prevent C from leaving the country. The latter application was probably an over reaction, since it transpired that the mother did not intend to leave the United Kingdom. Their communication was, however, so poor that one can understand why the father made his application. His application for a residence order, however, had a firmer foundation. Recorder Scott had a positive view of the father. At paragraph 42 of his Judgement, the Judge had this to say:

    'He has found himself in a situation which has been difficult for him and which he recognises is difficult for everybody else. He is now seeking an order that C should live with him. I suspect, although it was not put to him directly and has not emerged directly from his statements, that if it were not for the

fact that T has become centrally involved in the mother's life, and I should perhaps already have said that they have been engaged for many months, although they have no marriage dates in view, but were it not for T's involvement I doubt whether the father would ever have contemplated making an application for residence of C'.

41. I reminded the mother of this passage when she was at the stand. She rejected it. The mother was also reminded under cross examination of her comment to Dr Gillett, that she would rather that her daughter were put in care than live with her father. She denied that. Dr Gillett, to the contrary, recalled her words precisely. I do not believe the Mother.

42. The mother is fixed with the Judgement of Judge Bellamy, given in July 2006, when the Judge found that she had engaged in unjustified and malicious behaviour in her attempts to undermine the placement with F. The Judge also found that for his part, the father had ' behaved unwisely' in losing his temper on occasion in response to the mother's provocation.

43. *As time has passed C has become increasingly aware of the conflict between her parents and that she is the focus of that conflict.*
    In his Judgement of 16 July 2006, Judge Bellamy quoted from the report of the then Child(ren)'s Guardian, Mr Croft dated 30 June 2006:

    'It is my opinion that the change of residence has done little to protect C from emotional harm. M still maintains T as a significant person in C's life, She is openly critical of F's care of C. She apparently influences what C says to professionals. C witnesses both disputes between [her] parents and between M and Social Services staff. T and M allegedly follow C and her father from Contact and make scenes at bus stops and M makes promises to C of holidays and where she is going to live. The emotional impact on C of all thee behaviours are ignored by M. I am of the opinion therefore that the removal of C from her mother's care at best has only partially protected her emotional wellbeing'

44. As Dr Gillett reports, when C was only five years old, it was reported by the CAFCASS officer that she was unusually reluctant to talk about her home life… and when the subject was offered she messed around by resorting to high-pitched laughing… and the social worker further reported that C couldn't cope with her questions. Two years later, a psychological assessment of the child found that she was very defended emotionally, unwilling to reveal her feelings and thoughts. The author of the report, Julie Reid, again signalled that the child was showing signs of 'having suffered some degree of emotional harm'. In April 2008, following a further section 37 report, and in his third Judgement, Judge Bellamy found that C was constantly trying to have a reasons to leave the room in order to avoid any conversation regarding her parents. When, in 2012, Doctor Gillett sought to examine C's view of her family and her position within it, the child again resorted to childish and child like avoidance strategies.

45. *Following the transfer of residence from the mother to the father in 2004:*

(i) *there were times when the mother deliberately undermined the placement with her father, thereby preventing or at the very least making it difficult for the father to establish an authoritative role as C's resident parent*

In his Judgement of the 16 July 2006, Judge Bellamy found at paragraph 95: 'I have found that the mother has placed pressure on C over issues such as where they should live, what she should say to professionals and how she should behave when at home with the father. She has also continued to promote the possibility of T resuming an active involvement in C's life even though C has shown resistance to that possibility and professionals have counselled against it'

Extracts from the same Judge's Judgement of 4 April 2008 reveal the consistent and damaging behaviour of the mother. Thus, she had approached C on four separate occasions in A, a decision which was inappropriate. 'There is an underlying concern in this case about the mother's lack of insight into the inappropriateness of some of her behaviour'. Inappropriate contact with the police (and there were, as recorded in the Judge's third Judgement, no less than five police interventions in this little girls life either as a result of Mother's behaviour or at her behest or that of T) demonstrated 'the mother's impulsivity and her inability to anticipate the consequences of her behaviour and in particular her inability to foresee the potential for C suffering emotional harm as a result of these emergency police interventions'.
At paragraph 23 of the Judgement, the Judge recorded that the mother ' gave the impression that she would do whatever C wanted her to do no matter what the court may order'. She said ' I don't have any understanding of why any of this is happening.' She described the restrictions on her contact as heinous. She said 'I don't know why I ever needed to be supervised'

(ii) *the father, at times, has been unwilling or unable to address or cope with C's increasingly challenging behaviour and has not been open to working with professionals to assist him in doing so*

The statement put before the court by Mr Pitcher dated 14th of July 2011 contains a chronology of the behaviour of this, by now, very troubled little girl, and the responses of the local authority and the father. This chronology reveals, for example, interference by T (at paragraph 23), by way of a complaint to the NSPCC, and at paragraph 47, again, contact by T to the police and social workers which resulted, on 10 September 2007, in C being removed for two nights from her father's care. Meanwhile, however, C was displaying the most difficult behaviour. By way only of example, she increasingly refused to go to school; she called her father a paedophile; she ran away from home more than once, on one occasion, while her father was in the shower and on another after she locked him in the house; she indulged in some shoplifting, made allegations of physical abuse against him and began associating with inappropriate youngsters. She began behaving very badly at school and spoke of another young boy at school with whom she appeared to be indulging in some form of sexual play.

The father accepted, before Judge Bellamy, that he had physically chastised C. He also admitted that he had made a significant error in failing to alert professionals when it appeared that C herself had complained of sexual abuse from a family member .

46. The situation cannot have been at all easy for the father, but as I have already remarked, he found it difficult to accept the advice of the Local Authority or co-operate with personnel whom he did not like. Instead, I am satisfied that he did make himself unavailable for social workers with whom he found it difficult to strike up a rapport. Indeed a complaint lodged by him and recorded in October 2010 contains a telling description of that which he assumed identified fault in the approach of the local authority:

47. *F wants the number of people involved in the work with him and his daughter to be reduced. He is unhappy that the social worker has insisted on making unannounced visits to the home. He does not want to work with Wendy Taylor. He wants better communication from social care and to be given the opportunity to resolve issues that may be of concern to social care in a more informal way rather than these being "hyped up".*

48. In simple terms, he did not care for and indeed rejected the methodology of the local authority. I am satisfied that he did, as the local authority complains, make himself unavailable on occasion. And that Wendy Taylor is right when she describes his behaviour towards her, on occasion, as hostile. Where he did not think that the local authority approach was correct he simply disengaged. Where, as a matter of principle, he required better explanation and justification which in his view was not forthcoming, he refused to co-operate.

49. A particular example of this latter behaviour is found in his refusal to exercise any contact whatsoever with his daughter between March and June of 2012. He took exception to the fact that the local authority and the Guardian and indeed all advocates present at the management hearing before Judge Plunkett in Birmingham in February 2012 concluded that he should permit an observer to supervise contact on four separate occasions between him and his daughter. He took immediate exception to this suggestion and insisted first that there should be, rather than a social worker , an independent observer (which in the event was arranged) and that second he should be able to have the issue tried before the Judge.

50. The case management decision was already made, since it appeared to everyone but F to have forensic value. He, however, refused to cooperate even though it meant that C did not see him. He became aware that C was particularly upset that he had refused to see her, and she made her distress quite plain to him at an LAC review, begging him to stop being so stubborn (her words), and agree to see her. He still refused. Since then, despite being offered contact for a duration of three hours, he has refused to spend any more than one and a half hours with his daughter at each visit, despite having time on his hands (he is not employed) and despite the clear distress that his

rejection is causing his daughter.

51. *C is loyal to both of her parents and consequently her exposure to the high level of animosity between them, centred upon her and conducted over a number of years, has caused her to suffer significant emotional harm over a prolonged period of time.*
    The conclusions reached by Dr Gillett are compelling and unavoidable. At paragraph 5.2.4, she writes:

    "whenever the conversation turned to her family and current circumstances C started to behaviourally dys-regulate with her becoming visibly unsettled and her physical behaviour resembling that of a much younger child"

52. At paragraph 7.2.1 Dr Gillett confirms that the documents quite plainly show 'that C has experienced emotional harm as a consequence of her experience of being parented against the backdrop of ongoing private law proceedings… M has demonstrably engaged in behaviour and placed her daughter in positions which have compromised C's emotional development and prioritised her own substantial emotional needs with little regard for the potential impact…' and at paragraph 7.2.3: 'I am of the view that C experienced a range of significantly harmful experiences whilst in the care of her parents that over time have built up to represent risk factors not only to an impending adolescence but also likely to continue into her adulthood.'

53. So damaged is this little girl that (at paragraph 7.4.2) '… the ongoing difficulty enacted via the private law proceedings in my opinion has had a profound impact on C's development and places her not only at risk as a child but also significantly increase her vulnerability to adverse experiences into adulthood.' and (paragraph 7.7.2) '… C has a need for exceptional, rather than good enough parenting…'

54. *C now faces adolescence and adulthood with insecure attachments to her parents and … problems which are likely to expand into risky behaviours such as sexual encounters, substance misuse and antisocial behaviour and criminality.*
    The threshold is quoting directly from the report of Dr Gillett at paragraph 7.1.7 and 7.3.1. Her findings were repeated at the stand

55. To be fair to the parents, both of them accept that the threshold is passed. The father, however, is unhappy that 'blame' is attached to him. I have already indicated how I am satisfied that the father cannot avoid the conclusions I have reached, that the threshold is passed and that part of the difficulties are of his own making. Without wishing to inflame passions, I have to say that the papers are clear. In addition to that which I have already remarked upon, the father did allow himself on occasions, to chastise his daughter inappropriately. That was observed by others.

56. For her part, the mother either overlooks or ignores or even asserts that she has not read the Judgements for some time and therefore cannot recall the findings

already made against her.

57. I turn to the need for an order. Both the Guardian and the local authority insist that, contrary to the assertion by the parents that a continuation of an agreement under section 20 is adequate, it is important that the local authority share parental responsibility for C. Either parent could, as a matter of law, remove her from her accommodation in the absence of a care order. Although the father does not at the moment present himself as a carer for his daughter, he might change his mind. Equally, the mother does already assert that C should return to her care, with T, and her intentions are perfectly plain. Not only would it be extremely damaging for C to be removed from her accommodation by one or other of the parents, but such a move would immediately spark conflict between them and of course with the local authority. The resumption of small-arms fire within C's hearing would cause yet more damage to the child.

58. Neither parent is capable of providing exceptional parenting of the kind so desperately needed by C. In the case of the mother, she did accept at the stand that she is in fact the carer for T. He, she insisted, is stable and, given the regular medication which he is taking, the need for her care is minimal. Yet on the final day of the hearing, the day following T coming to the stand, the mother reported that she had thought it wise to call the doctor to visit him, given that he was particularly stressed by his giving evidence the day before. It is perfectly plain that she either hides from or does not understand the likely impact of her vulnerable and confused daughter on the household and upon T. If the experience of some two hours in the witness box is enough to cause T to require medical attention, one can only imagine that he would experience similar and probably worse stress if, within the house, not receiving the exceptional parenting which is now required, C behaves as one can only imagine. Mother's attention will of necessity be diverted from one or other of her charges. She appeared, under cross-examination, not have considered that likelihood. I am satisfied that that is an indication that the mother is unable to place her daughter's needs before her own. In the case of the father, he accepts, no doubt with regret, that he cannot provide the exceptional parenting described by Dr Gillett.

59. As Dr Gillett writes at paragraph 7.7.3, "… she has a deep seated (and largely hidden) need for nurture and dependency that needs to be recognised and encouraged, a task that is very difficult in the face of C's challenges and/or emotional withdrawal…"

60. She is, in my Judgement, in an emotional vacuum. She suffers from a reactive attachment disorder, and finds herself loyal and indeed loving (as far as she can make any sense of it) towards and for each of her parents. However, as has become plain from the report of the Guardian and from Doctor Gillett, she places her parents' needs and anxieties above her own and strives as a result to avoid upsetting either of them. She desperately needs a nurturing environment which shelters her from conflict and takes from her shoulders the responsibility of placing her parents needs before her own. She cannot achieve

that in the care of one or other of them. The need for an order is plain.

61. I remind the court that I have considered the Sec1(3) menu. I am sure that the parents would want me to pay particular attention to and articulate my response to the expressed wishes and feelings of this little girl. That issue has, of course, been raised also with Dr Gillett who has formed the view that the child is articulating a wish for equality between her parents, not for her own benefit but for theirs. She is articulating a wish for contact at a level which in Dr Gillett's view is incompatible with her welfare and with the need to form a primary attachment. Of course, she knows that her parents in particular her mother wish to see more of her, and again, therefore, this is an invalid response.

62. Under cross examination, the clinician said this: 'I have found that she can't give separate instructions. It is very clear that she has engaged with acquiescent behaviour – wanting to please – not wanting to upset the parents – quashing her own internal feelings – she has a significant tendency to avoid emotionally laden material and she has strategies to avoid it – so she will always give unbalanced responses – she can't conceptualise the consequences of each decision.' In short. she does not understand the consequences to her of her articulated desire to be fair to both parents.

63. What is valid is the child's plea that the Judge makes a sensible decision for her. That is what I shall strive to do

64. Contact, both past and future, was one of the two major issues before me (the other being section 91(14)) and took up a significant part of the examination of all the witnesses. Dr Gillett is perfectly plain in her view. That C must be allowed to identify a placement where she is given unconditional love, support, and boundaries, and a nurture which he has missed, now, for some nine years, if not longer. This witness considers it is likely that the child was already showing signs of instability when she was a toddler, having experienced the mother's distress even when she was being carried in her womb. It is entirely likely that the child will have detected that her mother's attention was elsewhere and that she was experiencing significant distress and anxiety over the loss of her son (and the documents confirm that the mother was a leading campaigner and participant in attempts to have greater attention paid to the plight of abducted children and their parents).

65. When, at the age of five, she was removed quite abruptly from her mother's care into that of her father, who was, in the event, ill-equipped to nurture her as a single parent, while fighting off the depredations of the mother, her ability to form an attachment with the primary caregiver suffered damage which escalated to the present day when, as we hear her almost beg the Guardian, as will be seen in his report, to reassure her that these proceedings are concluded by 'a final final order', the articulation of a desperate wish by a child who can hardly believe that such a thing exists.

66. The justification for this discussion is found in the evidence of Dr Gillett and indeed in the cross-examination of mother and by counsel for the Guardian.

67. C desperately needs a placement to be permanent and to be free of the conflict to which she has been exposed over the last nine years. She is ‘ over professionalised’, not, as mother complains, by the observation of contact but by the host of different clinicians, therapists and experts to whom she has been exposed over the last nine years, and by that I mean no less than three psychologists, a play therapist, the authors of the four section 37 reports, those of the core assessment, and no less than three successive children's guardians.

68. There has to be a transition upon the making of this order, that being a transition into the permanence of long-term foster care. It has to be acknowledged by these parents that that is a transition which must not be accompanied by mixed messages. She must not be confused by substantial contact with either parent. She must not be diverted from the path of establishing a nurturing attachment to her caregiver. Dr Gillett considers that if she is to have the kind of contact that mother promotes, and if she senses that mother is embarking, again, on a wish to remove her into her care, she will withdraw from what appears, from the evidence which I have heard, to be a budding and loving relationship with her foster carer. I extract these crucial comments from her evidence: ‘The child is on the cusp of adolescence and her anxieties and concerns are such that she shouldn't be presented with some sort of transitional plan… It is important that she be told that the Court has made a decision on contact and the cessation of proceedings – she needs a genuine understanding that this is now how it is going to be… If C identifies a desire by Mother to seek a rapid return that will undermine any attempt by C to invest … she would withdraw from any emerging connection with the foster carer – and [this] would likely be the last time she risks that engagement. The messages from the Court must be clear and unambiguous and supported by everyone… this is a long haul and C needs to know that it is worth the effort … There needs to be a noticeable difference – which is time associated – and stability.’

69. Each parent suggests that contact should take place either fortnightly or monthly with each of them. That would have two consequences, first of interfering with the foster carer family and their attempts to maintain a normal family life with this troubled girl and secondly, it would send out the wrong message, identified by Doctor Gillett.

70. Neither parent agrees that contact should be supervised. They both ignore their recent behaviour. In the case of the mother, I am perfectly satisfied that the evidence of Wendy Taylor, who observed contact in September 2011, was to be believed. The mother had behaved badly, yet again, and had distressed C thoroughly. I am quite satisfied that she made nasty remarks to Wendy Taylor and that she made wholly unjustified complaints about the social worker “ breathing down her neck”. She has, in terms, called Wendy Taylor a liar and that Wendy Taylor has fabricated her evidence. I am not only satisfied their Wendy Taylor was a witness of truth but I am fortified in that belief by the father, whose evidence supported rather than contradicted that of the Social Worker. The mother's behaviour was unsatisfactory and indeed damaging to

her daughter. She needs to show consistency not only in her love for her child but also in her ability to have insight into her daughter's needs rather to feed her own dissatisfaction with the local authority.

71. I accept the evidence of Doctor Gillett: Contact should remain supervised to avoid assertions by Mother that she is to return home or have overnight contact.

72. For his part, the father himself has acted unwisely. On the 5th September, when, during one of her limited, supervised, contact sessions, Mother confronted the Social Worker in C's presence, and the father, who found himself in the vicinity, should have moved away, even though he protested that he was simply sitting in the sun, and his daughter and the social worker came upon him. It was, given the mothers misbehaviour, a recipe for disaster. Only now, in hindsight, is he prepared to accept that remaining in the vicinity, and smiling, would be, at best, misinterpreted.

73. But of course there is more than that - there is the most unfortunate and self-centred issue of principle to which father still clings in his refusal to exercise more than 1 ½ hours of contact, and his rejection of his daughters pleas to see her, even if under observation. Under cross-examination from counsel for the Guardian and indeed for the local authority, the father was quite unable to see the point and spoke at great length about his own dissatisfaction.

74. As Doctor Gillett said in evidence: '… his frustration, around the supervision, out of which contact stopped is concerning. That was a decision on principle, but he tolerated the distress that he must have known the child must have experienced. For a period of months. I conclude that at times he cannot empathise with her needs. This would in the future potentially undermine the placement – that can be very subtle – even if not consciously intended.' Gillett also reported in her evidence that the child has been observed to stutter in her Father 's company – a response which is often noted as a consequence of anxiety – an unconscious avoidance mechanism – wanting the subject to go away but being stuck – a strategy as well as a consequence.

75. The foregoing, in my Judgement reveals that it is entirely appropriate and for the time being to have the parents' contact supervised.

76. I have used the term 'for the time being' advisedly. For I would hope that having made what must be recognised not only by the parents but also by C that there is finality in this order, the parents can concentrate on the need to reassure C first as to her placement and secondly as to the regularity of their contact and thirdly the need, which I find is justified, to reassure the local authority that they will put her needs before their own, something which they have been quite spectacularly unable to do either recently, in the case of the father, or over the last nine years, in the case of the mother.

77. The frequency of contact has been discussed by Dr Gillett. Given the developments since her report, she has considered that contact should be exercised at the same frequency by each parent. She puts that at six times a

year. It seems to me that that requires a regularity which would be upset by the suggestion that contact takes place during school holidays. In my view it is necessary for C to know that once a month she will see one of her parents either mother or father. In my Judgement it would be confusing for her, for example, to have a contact at half term (which is just a week long) with each parent followed by a significant gap before she then sees one or other parent again.

78. Mr Pitcher found himself in the uncomfortable position of having to acknowledge that contact at Christmas is important, just as it is on birthdays. Then, as he was questioned further, he was to admit that contact on Father's Day and Mother's Day is also important. All these things, of course, are true, just as it is important that a child should be able to have contact on special school occasions, such as plays or assemblies or galas.

79. But that exchange misses the point. Father's and Mother's day celebrate the parents, not the child. And whereas school functions and events celebrate the achievements of the child, these two parents are hostile to each other. There are examples of the mother identifying gaps in the previous court orders and in prohibitions, leading to her attending at a school assembly and at a school swimming lesson, endeavours for which in my Judgement she had no excuse, for it is perfectly plain that she knew very well that she was circumventing the intention of the court. So also did she know that when Mr Pitcher was persuaded to allow her to have unsupervised contact in her home, this was specifically against a court order that required her and the local authority and the father to agree all developments of contact.

80. Nothing of this nature must happen again and if necessary the local authority must undertake a working agreement or the court must make a defined contact order. I am certainly persuaded that an order under section 34 should be made, given the depth of feeling expressed both in evidence and by the nature of cross-examination and it is my view that contact should be six times per year for each parent and that that contact should be reviewed at each LAC review. It is not in my view too early to undertake the first review after six months, since by then, each parent will have exercised three visits.

81. I consider however, that is most unwise to expose C to discussions about contact at the LAC review, so deep-seated is her wish to protect her parents and to somehow play fair with each of them. I also wish the local authority to remember what it is that Dr Gillett has said about contact. She does not see it progressing in the way the local authority does, at least until C has been able to form the attachment which she so desperately needs. To move on to frequent and indeed overnight contact will not be appropriate until it is perfectly plain that this little girl has been able to identify her own needs and identify the difficulties presented by each of her parents, difficulties which according to Dr Gillett she does not understand or, in the case of the mother, identify.

82. I am aware of the argument on behalf of the mother, that contact would by this restriction, become ‘supercharged’. That would be an argument against any

parent being restricted in contact when a long-term foster placement is identified and undertaken and it is an argument which I reject, save that it underlines the need for supervision.

83. I move on to section 91 (14). I am, of course, I aware of, and indebted to counsel for reminding me of, the case law relating to this section. I also quite understand that it is only the father who objects to such an order being made. The mother acknowledges that it is important that C have respite from the conflict which has caused her so much damage in so many of her formative years.

84. I remind myself of the comment in the report of Dr Gillett at paragraph 7.4.2 - of the profound impact on this child's development by the private law proceedings - in which there has already been one prohibition for a period of two years, immediately followed by a further application lodged, on that occasion, by the mother.

85. I remind myself of course that s91(14) does not prohibit any application - it does, however, require the court's leave before such an application can proceed. Thus there is a safety valve, the protection being that C need not be informed of an application until it is to be made with the approval of the court, and only when the Court gives leave for that to be done.

86. The father has protested that the bulk of the litigation has not been at his insistence. That is no answer. I propose to make the order in accordance with the mother's cooperation that there should be no further application without the leave of the court until C has attained the age of 16 years.

87. Finally, I take the view that this case should not remain in the High Court. There are no issues which require the attention of a High Court Judge, nor that, as has been the case before me, of a Judge authorised under s9 to sit in that capacity. Unless I am persuaded otherwise, therefore, I propose that the case be returned to the A County Court.