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IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

[2018] EWHC 1473 (Fam)



Nos. FD17P00392
FD17C00561

Royal Courts of Justice

Thursday, 26 April 2018

Before:

MR JUSTICE NEWTON

(In Private)

B E T W E E N:

A BOROUGH OF LONDON

Applicant

- and -

- (1) AB
- (2) CD
- (3) EF
- (4) GH

Respondents

MS H. MARKHAM QC and MS K. TOMPKINS (instructed by HB Public Law) appeared on behalf of the Applicant.

MR C. LARIZADEH QC and MS C. PERRY (instructed by Eskinazi & Co.) appeared on behalf of the First Respondent.

MS HUGHES (instructed by Dowse & Co. Solicitors) appeared on behalf of the Second Respondent.

MR F. FEEHAN QC and DR PROUDMAN (instructed by Duncan Lewis Solicitors) appeared on behalf of the Third and Fourth Respondents.

MR OSBORNE (instructed by CAF/CASS Legal) appeared on behalf of the Children's Guardian.

J U D G M E N T

MR JUSTICE NEWTON:

- 1 These proceedings concern HP born in 2013. In a few weeks' time, he will be 5 years old. For the whole of his life, bar the first 8 weeks, he has been cared for by the second cousin of the father and his partner ("the carers"). He has had not contact with his mother for four years. He has had no contact with his father except for, it appeared in the evidence, some brief telephone contact last year and the year before.
- 2 In August 2017, LA2 issued a without notice application before the court since when HP has been a ward. The authority subsequently issued care proceedings in November 2017. This inquiry, spread over six days, has investigated how HP came to be placed in the custody of the carers, and how or why he has remained there, and why neither parent has any relationship with him. That enquiry has principally involved the four main adults, the parents and the carers, but it has also involved the statutory agencies of the local authorities who have been involved more or less continuously since HP's birth.
- 3 There is an avowed acceptance on behalf of each party that each has contributed, and bears a responsibility for, the current situation as indeed I find they have, but there is considerably less agreement on precisely how and where that responsibility falls. HP believes his carers are his parents. He believes that their children are his siblings. He has absolutely no knowledge at all of, and therefore obviously no relationship with either of his parents.
- 4 My first involvement with the case was on 6 October 2017. There had previously been some debate about the correct application before a number of Judges of the Division. There was enquiry about the parents whose whereabouts were unknown. At that time, the local authority and the guardian were represented and the male carer appeared in person, unrepresented. Happily, because of the issue of the care proceedings, shortly after that and despite my exhortations to the Legal Aid Board in the wardship proceedings, the issue of representation became academic, representation being resolved by the local authority's application, their stance now set out more fully in the care application was that the carers had unlawfully refused to return HP to the care of his mother and had actively taken steps to prevent her from maintaining contact with her son. These are strong allegations.
- 5 The physical manifestation of that perspective was that having never apparently questioned the care provided by the carers (it is not now questioned either), the local authority, having for many months, indeed over a year in one instance, effectively left the carers to their own devices (at least in 2015), started making visits again to check on the welfare of HP. The relationship between the carers and the applicant local authority plummeted, it was already poor, but by that stage clearly reached rock bottom. There was not just a lack of mutual trust but I am sorry to say there was some relatively unbridled hostility. It manifested itself in the approach and actions of the LA2 which was tunnel visioned, intent apparently on immediately establishing direct contact with the mother, and disregarding any other view to the contrary, including that of the courts. It led to some fairly difficult exchanges in those early direction hearings between the bench and counsel. It is a long time since I have encountered such an unhappy, blinkered and partisan approach. Of course, the reaction of the male carer who was the person who at that time was attending court, who like his partner is something of a force to be reckoned with, was predictably challenging and uncompromising, and understandably hostile. It was, on every level, an unhelpful development.
- 6 Very fortunately, by 2018, the legal representation of all the parties had been clarified and the issues for the hearing have been approached in a much more sophisticated way. It has been less partisan, although inevitably there are divisions, and the issues, there are many

between the parties, were distilled so that the court could evaluate the factual basis before ultimately turning to welfare decisions. I wish to record that I have been enormously assisted by the approach of all counsel in this case. It has been a difficult case in many respects and their ability to concentrate on the core issues and to avoid others has been of great benefit.

- 7 Before turning to the background and the evidence, I wish simply to record the legal principles. The applicant applies both in wardship and in care. This is a fact finding hearing. It is not now suggested, as I understand it, that the threshold triggers are not met. I apply the principles set out by Baker J, as he then was, in *Re L and M (Children)* [2013] EWHC 1569 (Fam). I shall, however, at the conclusion of this judgment give further consideration to the issue private fostering.
- 8 The situation for HP is unusual and the ultimate welfare decision is going to be a difficult one. It might, depending on the factual matrix, be difficult to justify on welfare grounds nuclear changes to his care arrangements. The simple fact remains that both authorities who were involved with HP right at the outset could have avoided the process which the parents and the carers have had to go through now. A number of possibilities arise. It is correct that the first local authority, LA1, was suggesting to the mother effectively a section 20 accommodation but what, I ask myself, of section 17 of the Children Act?
- 9 Had the proper principles been applied and followed either local authority could have considered, in relation to LA2, probably should have issued an application under section 38 of the Children Act. Not one but two authorities at least failed to apply their minds to the provisions and guidance with regard to private fostering. They seemed, indeed notwithstanding the issue of proceedings, having regard to the witnesses I have heard in evidence, possibly still seem, unaware of the extent of their responsibilities that are placed upon them. Had they done so, HP's circumstances would have been investigated and established in the first few months of his life. He would not now be facing the very difficult path which, inevitably, results from this dispute. It would have established for him a clear future. It would have maintained the parties' relationships, and the lost opportunities, and there have been many, all occurred because neither local authority applied the principles which are straightforward and easily understood.

The Background

- 10 HP's parents are from Eastern Europe. They arrived in England when the mother was just 18 seeking work in March 2013. It was understood by the mother that the father had work, but that was not borne out. Their early time in this country was unsuccessful and by the time of HP's birth, they had failed to establish themselves. They had no money, they had no effective work, they were homeless. HP and his mother were discharged from hospital in June 2013 they having been kept there a little longer because of their destitute circumstances. They sought refuge in various places. Their applications for temporary and emergency housing sometimes were granted, but ultimately it failed.
- 11 By July 2013, when HP was only 5 weeks old, the local authority offered an emergency foster placement for that night. HP and his mother spent the night in a refuge and throughout that period, the parents, the mother in particular, sought help on a number of occasions. They were, in short, quite destitute. There is no suggestion other than HP was properly and well cared for by his mother, but it is difficult to imagine a more desperate situation.

- 12 Ultimately, LA1 deeply anxious about the circumstances being provided for HP, made rather more assertive suggestions about accommodation into care. That precipitated, or appears to have done, the father contacting his second cousin, who also lived in the United Kingdom to care with his partner for their very young baby. So it was I think the very same day in July 2013, that HP, together with a very few possessions, was handed over to the care of the cousin and his partner on the pavement in Westminster. The two women were strangers. They had not previously met. Since that time, HP has been cared for ever since by the female carer.
- 13 The evidence suggests that the mother saw HP on a couple of occasions before the fateful meeting in August 2013. On that day, the four adults attended Social Services at LA1, and there entered into a private fostering agreement. The parents confirmed that HP's living arrangements would extend beyond 28 days but could not say how long. It is clear that the intention was that they would look after HP until the parents had sorted out their financial and housing situation. That arrangement was notified on to LA2, the applicant in this case, where the carers resided. I say immediately that it is self-evident from what occurred that day and since that almost none of the necessary requirements and regulations were complied with.
- 14 Almost immediately, and in my view a sign of things to come, the parents, no doubt particularly swamped by their practical and other arrangements, had very little to do with HP at all. The mother, as I say, had seen HP on a couple of occasions before August (and had had some help from the female carer in preparing a CV). However, after HP was handed over, she saw HP on no more than a handful of occasions. There is some dispute, though it is not heavily contested, as to how many, but the evidence suggests that the mother saw HP on five occasions over the next year. After the summer of the following year, she never saw him again, nor sought to do so.
- 15 In any event, importantly, the parents failed to attend the absolutely vital meeting arranged by LA1 and the carers in August. By mid August, although this has become a criticism of the carers, it is evident that both they and the authority itself were giving thought to consideration of the long-term, since it appeared that the mother had simply abandoned her baby to the cousin.
- 16 In late August, it is said that the father called the carers, but they say he did not ask about HP, and indeed refused to disclose his whereabouts. The evidence suggests that there was a meeting when the mother saw HP and the carers in early September. It was on that occasion, it seems to me, that the allegation of the sum of £250,000 arose.
- 17 In late September 2013, solicitors instructed by the mother wrote not to the carers, but to the LA2, indicating that the mother was now in a position to care for HP, and that she no longer consented to him being cared for by them, she contended they were refusing to hand over his care to her. There are a number of peculiar things about that. The LA2 did not set about seeing the carers immediately, but only went to see them in early October coinciding with the social worker's appointment to the case, and whatever the local authority's position now (alleging that the carers deliberately were avoiding disclosure of the mother's details), the bald fact is that on that date in September, the mother's solicitors explicitly sent the local authority her address. For reasons which will always remain a mystery to me, the social worker did absolutely nothing about it until seven months later by which time the mother unsurprisingly had clearly moved on. It is evident that the social work recordings demonstrate requests to the carers, but ultimately, I see that as further evidence of a failure

to take real responsibility for the case and an unfortunate corollary, exercising really basic common sense. She had the address, why bother ask the carers for it?

- 18 The other unusual aspect of it is that when the LA2 replied to the mother's solicitors, it indicated that the mother had parental responsibility, that she could remove the child at any time and, if necessary, with police support. What is curious is that at the important meeting in October 2013, whilst the social worker did not show the carers the email, she told them that the mother wished to resume HP's care and no longer consented but, bizarrely, indicated to them that they, the carers, should set about obtaining further agreement for the care of HP. That meeting was a seminal moment in what has happened to HP from that time until now.
- 19 Events in October 2013 are now somewhat opaque. During the latter part of that period, the parents separated. The LA2 reports the carers as saying that they had not heard from the parents for several weeks. Examination of the detail suggests that that is not exactly so. The father and the male carer were it seems in some contact and it is evident, having regard to the correspondence and the case notes, that there was a line of communication at least to the father, and quite possibly to the mother also.
- 20 In any event, there is no dispute that in November 2013, the male carer phoned the social worker to say that the father was with him. The father was about to return to Poland. He consented to there being a special guardianship order and he wished to bring him to meet the social worker; such a meeting could have taken just moments. The social worker's response, she after all maintained consistently that she was concerned, interested and urgently needed to speak to the parents, was surprising and unhelpful. She simply batted off the enquiry. She had, I think, some meetings that day and told them to make an appointment. Thus, another opportunity was lost. As predicated, the father returned to country of origin in the middle of November 2013, which is where he remains.
- 21 A theme and a question for the court to resolve is the degree to which the mother kept in touch or whether, as it is alleged, the carers deliberately failed to tell the local authority what limited information they had about her. What is evident is that there was another meeting between the mother and HP in December 2013. That, it seems to me, is the only explanation for the content of the emails that occurred in December, January, and February 2014 in relation to contact. The relationship between the mother and the female carer seemed relaxed and easy. Those friendly emails suggest that there had been something of an acquiescence to the situation and of the care being provided to HP. The last communication from the mother in February 2014 was not responded to by the female carer. On the other hand, the mother did nothing to pursue it either.
- 22 In June 2014, the father emailed the LA2 relinquishing all parental rights to HP. The authority seemed to think that that email was bogus though clearly it was not, and a day earlier the mother and her partner, it is accepted, turned up, unannounced, at the home of the carers and a short visit occurred between the mother and HP. There is some factual dispute about what occurred, but what is not in contest is that that was the last occasion that the mother had any contact with HP at all.
- 23 For the mother, her life developed. She subsequently started a new relationship with a different man, fell pregnant, and gave birth to her second son. In January, during the process of a short child protection enquiry and indeed the day before a child protection conference, the mother, who by now as I say had another child and was subject to a section

47 investigation, left the United Kingdom without notice and returned to Eastern Europe where, until these proceedings, she too has remained.

24 I have endeavoured to record the background facts from events which I believe to be agreed (they are not all agreed) in order to try and paint the background to disputes between the parties and, importantly, put them in context in relation to the contact that the parties have had with HP.

25 At the outset, the LA1 did not set about their enquiries correctly, or if they did, not with an analytical focus. As I have made clear, the private fostering report which only materialised during the course of the social worker's evidence, was not completed. There was a special guardian assessment (by LA2) which recommended a child arrangements order to the carers and an incomplete adoption assessment. Indeed, it was as a result of the adoption assessment that a number of concerns were highlighted that ultimately catapulted the authority into finally instituting the proceedings. As I said at the outset, the way forward has been a matter of some debate, but since early August 2017, there has been a child arrangements order in favour of the carers. The birth parents were eventually located in October 2017.

THE PARTIES' POSITIONS

26 The carers, supported by the father, wish that the care provided by them for HP should continue. They maintain that the mother effectively abandoned her son. The mother seeks the return of HP to her care. She argues that the carers have unlawfully retained HP. She wishes the family to be reunified. What has become blindingly obvious is that the parents, the carers, and the local authority each bear some responsibility to the situation which now pertains to HP. There are fundamental issues at large which will require later determination. In broad terms, the factual dispute is, firstly, did the mother abandon HP to the care of the carers? Secondly, what role had the carers taken in relation to the mother and, thirdly, what if any responsibility does this or other local authorities have in respect of permitting this unusual situation first to develop and, secondly, to continue?

27 A really positive feature is that HP is well cared for by the carers. Whatever else may be said about them, no one could wish for stronger advocates for a child. They clearly care deeply for him. They clearly are strongly committed to him and they care for him well.

The Evidence

28 I have heard from a number of social workers. I shall not refer to all of them in evidence. The first social worker (from LA1) was the person responsible for the signing of the private fostering agreement in early August 2013. She became aware that the arrangements that she was endorsing had already come about some days before, in fact, I think, in late July. This was the first of a number of occasions when the statutory authorities, perhaps understandably reacting to circumstances that were presented to them, failed to engage in any sensible enquiry. There was none in respect of both the carers or of the mother's circumstances. I do not understand why there was not some exploration, for example, about their statutory duties under section 17 to assist the mother and the father. They could have done significantly more. Not for the only time was the authority passive, even supine. They acted as little more than a facilitator and then, as far as I can tell, passed the case over to the current authority.

- 29 The most vital document, the incomplete fostering report, inexplicably, only surfaced during the evidence of the next witness, the social worker (from LA2), allocated the case in September 2013 and who held case responsibility until March 2015. She, like the previous witness, seemed unaware of the extent of her statutory duties. It was not, after all, until 2017 that, realising the true impact of the situation, that proceedings were finally instituted. I am afraid I have concluded that much of her recorded activity was little more than “going through the motions”. I highlight four areas which, because I am critical, I have now received further submissions on this point from the authority, which I take into account.
- 30 When the social worker first gave evidence, she appeared to be confident, clear, and in control of the factual matrix. She was after all, an experienced social worker, based in the kinship team, and responsible for supervising both care and special guardianship assessments, but I became increasingly troubled by the content of her evidence. Her first visit to the carers was, as I have recorded, in October 2013 by which time she had received the communication from the solicitors instructed by the mother withdrawing her consent. All the warning lights should have been flashing. She says that she was “uncomfortable” about the private fostering arrangement. She did not show the carers the email, but did tell them that the mother no longer consented.
- 31 Why, I ask myself, did she therefore, if she was uncomfortable about the arrangements and, in any event, as the authority had comprehensively failed effectively to comply with any of the regulations, did she then suggest to the carers that they should go about trying to obtain the mother’s further consent? She says that the carers claimed that they did not know the whereabouts of the parents. That may or may not have been the case since the parents moved from place to place but the fact remains, and this is the second matter which I am concerned about, that if the social worker was so interested in locating the mother as she said she was, why on earth, having received the communication from the solicitors in late September where the details of the mother’s address are so plainly set out, did she not do something about it? It was only the following year, seven months later, did she finally attempt to write to the mother in late April 2014. It is a total mystery to me why months and months elapsed in a process about which I simply do not have a clear understanding. Unsurprisingly, when she did write several months later, the mother was no longer there and therefore the opportunity had been lost.
- 32 Those two failures of themselves are ones which, in my judgment, may well have affected, even determined possibly, the direction for the rest of HP’s life. She said that she had made repeated efforts to try and locate the parents but despite her protestations to the contrary, the evidence shows that when she was presented with a powerful opportunity to identify their whereabouts, she failed to take it. Such efforts as she did make were half-hearted and inevitably too late. Of course, she subsequently made many efforts to learn their whereabouts, but lost each and every opportunity to do so. There was I am afraid, no sense of focus, no sense of urgency. She was evidently given various numbers in respect of the father and an address, and finally spoke to the father’s mother, the grandmother; but even that inexplicably took her 6 weeks. She also received the email in June 2014 purporting to be from “the father” relinquishing all rights to HP.
- 33 She told me that she had consistently sought detail but had been told by the carers that they did not know where the parents were and that they had no way of contacting her. The recordings certainly demonstrate that she did so, and received no information: I do not absolve them of responsibility, but on the ground the position may well have been that the carers took the view that they had done whatever they could and their perspective seemed to

be that the mother had abandoned HP and that the social worker, the professional, was now “in charge” of official investigations.

- 34 The carers maintained that they had handed over, or at least shown to the social worker copies of emails which had been sent to them, they were in the carers’ language, and the female carer said the social worker was simply not interested. The social worker’s evidence was, I noted, particularly and surprisingly firm about this. She claimed to be extremely worried about the situation, she said she had never been handed and never seen the emails. Stepping back, I am unconvinced about that evidence. Having regard to her approach in relation to other aspects of what occurred, I take the view that the female carer, who does not always have the easiest manner, as part no doubt of the discussions that took place, did proffer the emails but actually the social worker, rather in line with her curious conduct generally when she was presented with golden opportunities, often first hand, to discover addresses (ibid), failed again to note the address, took the view that as they were in the carers’ mother tongue (and therefore unintelligible to her), she was not prepared to receive them. I am well aware that the female carer (whether it be the early part of 2014 or later) failed to comply with the early orders for disclosure. It is an unsatisfactory part of the evidence. By February 2014 the carers had learned how to brush off the social worker and did so.
- 35 The social worker told me in evidence that she was trying to escalate the case for the issue of care proceedings. That really obviously would have been, should have been, the correct course, and yet for reasons which I do not understand, she went on to recommend a child arrangements order to the carers.
- 36 Thirdly, and equally incomprehensibly if she was so anxious about the situation, was why, when she visited in October 2013 when the carers were at home, and the father’s sister was also present, did she not simply ask for the details of the parents? The social worker replied, astonishingly, “Well, I hadn’t got an interpreter there”. It was like Alice in Wonderland. It was, frankly, ridiculous. Both the carers speak perfectly reasonable English, the female carer especially so. It would have been a simple enquiry to try to identify where the father and possibly the mother was, but she failed to do so.
- 37 Fourthly, another opportunity presented itself in November 2013. The father was with the male carer who had called the social worker claiming, as I have already recorded, that he was leaving the jurisdiction, “I have him here. I can bring him immediately he wishes to consent”. The social worker was busy with meetings. She said to me, “Anyway, I had no way of establishing his authenticity” despite the fact that presumably he would be in possession of an identity card. It was another opportunity when she would have been able to have garnered useful information and made significant strides forward.
- 38 At each stage of her evidence, she reverted to the refrain of, “I was guided by my manager”. That may have been true, I cannot tell, but here the very fundamental statutory principles were not applied. Indeed, I am really sorry to say that she failed even to apply basic common sense.
- 39 Overall, the social worker’s approach was most surprising. It lacked depth of thought or analysis. It was disengaged in a way which was unhelpful, apparently complying with her statutory functions but failing to focus on the really basic issues that were right in front of her. If, as she now claims, she was anxious and increasingly so about the issue of private fostering which on analysis by that stage bore no examination, that anxiety did not enable her to exercise basic, sensible, professional care in trying to elicit the information which she

says she was so keen on acquiring (and always in default to issue proceedings). On many occasions her approach was disengaged, lackadaisical, as I have said, supine. The visit in October 2013 was on every level a watershed. These are harsh words but, if the social worker had acted with a reasonable focus and precision at that point, this situation for HP, and the many accusations and difficulties between the carers and the parents would not have arisen or would have been resolved long ago.

- 40 The mother gave evidence. She was in the witness box for a long time, it was an understandably difficult experience. Even now she is young and I take full account of the strain of the proceedings and the fact that she no doubt feels at a very considerable disadvantage, and by the sense, which was palpable from the bench, of her being almost overwhelmed. I take into account also that whilst she does speak a little English, it is not her first language and she had to speak through an interpreter.
- 41 Her evidence throughout retained a childlike quality. She acknowledged at the outset that she had made some serious mistakes in relation to her son for which she abjectly apologised, both to me but more importantly to him. Clearly, in 2013, her circumstances in England were difficult. The father had no job as he had claimed to have. Her family disapproved very strongly of him. It appears that he has a serious criminal history. Her own father was here in the United Kingdom but her relationship with him seems distant and the physical circumstances that she had to endure after the birth of HP were pretty desperate.
- 42 The agencies were trying to help the mother but she did not help herself either. She was inconsistent. There are recordings of her failing to respond to messages or calls, sometimes for good reason, but others for no reason at all. If she kept appointments, she would often arrive late. All that evidence points to the mother, life being in every sense chaotic. It is, looking back, difficult to imagine a sadder, more desperate state of affairs. Handing over her small baby in the street to a total stranger.
- 43 I confess I found the mother's evidence over the instruction of and indeed her knowledge of what she could and could not do in September 2013 very muddled. She did not have a clear recollection of what had occurred. The involvement of the social worker clearly followed a visit to the carers, possibly the visit where both parties had exchanged or endeavoured to exchange their views in September. The mother emailed the carers on 16 October asking for photographs. The female carer replied in October, her reply was forceful and, in the circumstances, not unjustified, as to her perspective at that time. Having regard to those communications, and the two that followed later that month, the carers, whilst already really fond of HP, were exhorting the mother to grow up and take responsibility. The solicitors had written but the mother had failed to follow it through. The mother's recollection of that period was unclear. She self-evidently felt powerless and useless. It may well be that the carers' approach to her did not do much to engender any self-confidence either, keen that she should take responsibility for HP.
- 44 A number of assertions have been made as to the mother's circumstances and activities at that time but none has been put to her in evidence, and I make no findings about the situation of the mother during that period. It seems to me quite simply that the mother was lost for a period of time, and time passed. The mother said ultimately, I have no doubt genuinely and truthfully, that she bitterly regretted decisions that she had taken. Now, she says, she would take different decisions. I have little doubt that is true.
- 45 The mother commented on the rather curious exchange of emails at the end of 2013 and early 2014 when she was seeking contact. It seems to me that the very different tenor of

those emails is such that it must have followed a meeting between the two women, where there was a general acceptance of the physical care being provided to HP because the exchanges are far more moderate than those which had occurred in October. So when the mother describes the atmosphere within the family home, although in reply to a leading question, as “not nice”, I do not accept her description of that. It seems to me the relationship between the two women was as comfortable as it was ever likely to be. All the contemporary evidence suggests an acquiescence of the arrangements. In due course, the mother told me that she had started a new relationship. She still is in daily contact with the father of their child and her second son.

- 46 Overall, I have considerable sympathy for the mother. She seems a decent woman. She is still very young. Her position is not an easy one. At times, she was not a good nor in my view an accurate reporter and, even now, has very obvious vulnerabilities.
- 47 I heard from the father by video link. It was not without some difficulty. There were, I am afraid to say, moments when the father appeared to verge on the surly although I suspect that was, at least in part, because of the medium for his evidence and I make due allowance for that. His evidence was not particularly persuasive. He confirmed that he had been in trouble, that he had been to prison, and had been involved in a number of serious matters thus supporting the evidence both of the mother and of the carers.
- 48 He volunteered, certainly for my part, for the first time that he had spoken to HP on some occasions on the telephone in the summer of 2016 and in the summer of 2017. He also told me that the male carer had his details from 2017 both telephone and email and the evidence, such as exists, would support that contention. Much of the contact appears to have been through his mother with whom he was living at that time. The evidence, in any event, demonstrates and I accept it, that there was some conduit of communication between the two men for most of the time even when the father moved, as he frequently did, or changed numbers or addresses. The father was completely clear that he supports HP remaining with his carers. He does not support, for a number of reasons, a return to the care of the mother.
- 49 The female carer is a forceful, intelligent, and articulate woman. She described the scene when HP was handed over. The two women, as I have said, were strangers. She said both the parents looked very poorly. They were distressed. It was obviously not an easy decision for anyone. She knew that they might be providing care for more than 28 days, and was clear in the view that the long-term arrangements were first raised by the authority and not by her. She disputed many of the contentions which were put to her in evidence, correcting even counsel when she considered that a statement had not been put to her accurately.
- 50 She was unrepentant about the tone and the content of the October emails from herself to the mother. She said:

“I was raising her child. The mother had made no progress. The mother did not even visit her child.”

However, understanding the court might be, indeed is, to the plight of the mother at that time, it is difficult also not to be sympathetic to the views of the female carer so clearly expressed both then and now. As she said:

“The mother was a fellow mother. I expected her to behave like a mother. Why should I make the effort? I would expect her to do so.”

Indeed, she developed her thesis by saying that she was glad that the mother was fighting. In my view, whilst that might seem odd, it was a genuine expression. It gave some explanation to her own perspectives and motives, as well as that of the mother.

- 51 She was asked why she had not invited the mother to HP's first birthday, she said, "The mother could not even remember HP's first birthday" and had not sent anything. She said that the mother excluded HP from her life. She reflected that maybe she could have made a greater effort as no doubt she could. She did not accept that she had misled the social worker but having regard to the way in which she approaches things, and particularly the social worker in this context, even though it was in fact to her advantage (in order to obtain legal security), she was at least dismissive and unhelpful. As I have said, the social worker's engagement was not consistent and the carer took the view that the social worker's job was to track down the parents and she could see no particular reason why she should assist her.
- 52 She was vigorously challenged about the change of forename but, in my view, there really is nothing in that. It is clear that this child is known by his proper name by all the authorities, even by the children's centre about which the court has heard so much evidence. The carer was completely clear and consistent about that. She said that she was open about it, in my judgment it is one of a number of examples where it is easy for things to be distorted. It is nonetheless an example which evidences the carers' own view which is, that she does not have much opinion of anybody else's point of view if it conflicts with her own.
- 53 When asked about her own conviction, she said that the conviction did not define her. There was clearly a period of ill health. She acknowledged that she possibly should have done something about telling the mother when HP was injured but at the time and even more recently did not think so. She said if communications were insensitive, that was part of her personality and she was proud to call herself HP's mother.
- 54 This was one of a number of examples when whilst I am impressed by much of her evidence, and in particular, by her loyalty and devotion to HP, nonetheless, I was not impressed by some of her replies in relation to the detailed and careful questions put to her particularly on behalf of the mother. She was, for example, asked about the disclosure orders made by the court. She was, it seemed to me, characteristically dismissive when she said that she had "forgotten about the emails". I was unimpressed by that; I do not think it was actually true. She did have information to hand which may, or may not have borne any fruit but she could have produced it. Where I differ is that I do not think those criticisms of the carer are as corrosive as is maintained. The female carer is a complex, dynamic person overtaken by events, certainly overtaken by her impatience either with an individual or, in this case, the parents and subsequently the local authority in particular reflecting her anger and reflected also in the anger which I witnessed and heard at first hand from the male carer at the early court hearings. As I say, I do not necessarily criticise him or her for that, but it was unhelpful.
- 55 Some aspects of the female carer are less than helpful but they do need to be put in context. She clearly loves this child. She clearly takes the view that he has been abandoned by his parents. She is a fierce defender of his best interests as she sees them, and has had to put up with, if I may say so, some pretty ineffectual and to her irritating and even perverse input from the statutory authorities. Of course, the advent of the proceedings effectively pitted the two parties against each other. I do not think she has always been entirely straight. For example, quite obviously, when she alleged that the parents consented to the current arrangements for special guardianship, that was simply untrue, it is all part of the carer's

personality. She is able to assert things if she thinks it will assist her cause at that time. I put the claim for £250,000 in the same category, as a matter of fact, but nonetheless I think her stance is understandable. She has, as I have said, cared for this child since he was tiny and was in fact abandoned by the mother. She is a complex and somewhat irascible woman, dynamic, but she certainly has cared for HP well.

- 56 The male carer demonstrates many similar qualities to this partner. He is, if he does not mind me saying so, a bit rough around the edges, he is brisk and articulate, and confirms his support of the evidence given by his partner with whom he is clearly completely committed. I was equally anxious about his evidence in relation to some aspects of, for example, the disclosure in relation to the father. I do not accept what he says about that. It seems to me when the court made early orders either, they deliberately did not engage or they were so wrapped up in their own irritation and hostility with the authority and the proceedings that they failed to be truthful. It was unhelpful but looking at the canvass overall not terminally so.
- 57 I was, however, very impressed by his evidence about his partner's condition when their first child was born. He is instinctively and obviously loyal. He is a complex character and had a complex and empathetic understanding of her conduct and behaviours at that time. He seemed to me to be a very impressive, mature man with a very rounded perspective readily accepting that he could have done things better as clearly was the case including calling HP by a different name or, for example, when HP was injured in 2014.
- 58 He was criticised for not accepting the gift that was brought by the mother on the first day of the hearing. HP of course was not there. It was described by his own counsel, I think, as "a bit tense" which was the reason for not accepting it but, in my view, it was a most ill-judged maladroit moment to attempt such a thing. It might even be thought by some to be something of a stunt. It was something which was later remedied, but the timing was most unfortunate, it was unhelpful.
- 59 He was uncompromising in his views about the social worker (from LA2), which I judge were not without foundation. He did not express himself so vehemently about the mother but, nonetheless, the strength of his personality and of his protective instincts to HP were obvious.
- 60 These two individuals, both individually and together, are a powerful duo. I do not conclude that the way in which they have conducted themselves amounts to what has been submitted to me as alienation. I do not think that they sought to make the mother a stranger. In my judgment, the mother did that herself. On the evidence, I consider that there was a jigsaw of ineffectual social work, of the carers not being particularly keen on locating the mother, and the mother herself, who had, in any event, disappeared and was out of the way, the carers saw no reason why they should do anything about it. I do not think that that amounts to poor or, even as it is submitted, Machiavellian conduct. I have little doubt, having regard to their focus and personalities, that they did nothing to encourage it, but they saw no reason why they should, and it is understandable, in a way, as to why they should act in that way.
- 61 So, turning shortly to the schedule which I shall attach as an appendix to the judgment:
- (1) Whether at the end of August 2013 the mother informed the carers that she wished HP to be returned to her care, the carers refusing stating she must pay £250,000? - it is worth looking at the primary document. The primary document says that the mother

must pay £250,000 for the return, that being the cost of adopting a child. The carers said that did not occur. The mother has consistently held on to that allegation. It is child-like in a way and, in my view, what she said about it had some force. I think that a conversation occurred. I do not think it has the import that is attributed to it now, but was part of the colour of the carers' irritation that the mother had disappeared, and then appeared again. It should be remembered, after all, that on that occasion, as far as I can tell, she had had no contact with her son from the date of the agreement in early August until this meeting. So some weeks had passed, it needs to be looked at in that context;

- (2) Whether in October the carers advised the mother to secure stable employment and suitable accommodation so as to be able to resume his care as soon as possible? - clearly, they did;
- (3) Whether the private fostering arrangement was unlawful at the outset - I am going to return to that at the end of this judgment I have more to say about it;
- (4) Whether the carers improperly refused to provide photographs of HP to the mother? - it is clear that there was a dispute about a photograph appearing on Facebook. I found none of the evidence especially illuminating. It is clear that a photograph was sent later and there is no dispute about photographs now. There was a difference of view about the appropriateness of posting a photo. I do not think, as it happens, the female carer's view was unreasonable about it this being their child as opposed to a photograph of a child which appears generally to be in circulation on the internet;
- (5) Whether in or around November 2013 to June 2014 the carer informed the mother that Social Services had formed the view that any contact between 'M' and HP should be supervised? - that is not borne out by the evidence;
- (6) Whether the mother had contact to HP at the carers' home at any other time than as accepted by them? - I have done my best to identify the occasions when it appears that contact occurred. In fact, it accords with neither the carer's nor the mother's memories but the difference is small and may not in the end matter;
- (7) Whether the mother attended the home of the carers and was denied contact with HP and, if so, on how many occasions? - that allegation was not persisted with;
- (8) Whether during the mother's visit to the carers' home in July 2014: (a) the mother did not seek contact but instead sought the birth certificate and applied for benefits on behalf of HP; (b) the mother was allowed contact initially and was allowed contact for the extent of that contact; (c) the mother was told by the carers that LA2 had been trying to trace her; and (d) whether on the occasion the mother refused to provide her contact details to the carer? - this was a very odd occasion. The mother turned up, unannounced after several months absence with her new partner. She had made, as far as I can tell, no contact at all previously. She knew the local authority was involved, but had failed to herself get in touch with them even though her solicitors had done so the previous September. The last contact that she had had was a reasonable visit, but she had effectively dropped out of her son's life, she was busy and engaged in her new life. In my view, having listened to the evidence of the carers and the mother, the mother's recollection of this was very less clear. I prefer the carers' evidence, the mother turned up, unannounced. She was seeking the birth certificate in order to assist her financially. She did have contact with HP and, in my view, having regard to

everything else and particularly because the carers were rather keen to establish that they should have their relationship with HP affirmed, in my view, it is more likely than not that there was some discussion that she should get in touch with the authorities which she could have done in any event;

- (9) Whether the mother was informed by the carers they were seeking a legal order for HP to live permanently in their care and they were being assessed? - it is evident from all the evidence that they said that that is what they were going to do in October;
- (10) Whether the carers informed the mother of the father's wish for HP to remain with them - there is no evidence that they did. As far as I know, the mother was not aware of the father's view until some time much later;
- (11) Whether the carers had the mother's email address throughout and failed to contact or allow others to do so? - as I have made clear, each bears a responsibility for this. I think with a little bit more openness the carers could have given the email to the local authority which they did have. They of course had no idea whether it was still used or not, but they could have had it and indeed that is something which they took the view in line with their personalities was a matter that the local authority should deal with;
- (12) Whether the carers did not provide this email address to the local authority and deliberately withheld information? - having regard to the emails which, in my judgment, were proffered to the social worker, they simply took the view that it was for the authority to do something about it. I do not think they actively tried to pursue the mother or the father but then, rhetorically, why would they?
- (13) Whether the carers provided an email from the mother in hard copy form? - as I have made clear, having regard to my assessment of the witnesses, I think the emails were available but not ever properly looked at by the social worker;
- (14) Whether the mother failed to respond to the carers' email of October? - clearly, she did not. There was no response until she attended the house in December;
- (15) Whether the carers advised the assessing social worker in December that both parents had consented to caring for them in the long-term? - this is denied by the carers but, in my judgment, they gave that impression because they, after all, had the care of HP and the mother had dropped out of his life;
- (16) Whether the carers knowingly registered HP at the Children's Centre under a different name? - as I have made clear, the allegation is that that was done in order to conceal his identity, the evidence suggests otherwise, I simply do not accept that. It is evident from the documents that there was no attempt on behalf of the carers to disguise his identity. His identity is evident from the forms, it seems to me a good example of reading far too much into something which, in fact, has an innocent explanation;
- (17) Whether the father told the mother that she, the carer, drank heavily and engaged with escorts - I have not been asked to deal with that matter and I have not done so;
- (18) Whether the mother was in an abusive and unstable relationship with her new partner - I have not dealt with that matter. There has been no real evidence about it. The mother is in contact with him and possibly entertains a reconciliation. Clearly as part of the ongoing process, there will have to be some enquiry about the position of Mr N;

- (19) This was the occasion when the mother fled the UK the day before the child protection conference. The mother says it was unconnected. I conclude that it was connected albeit that the mother was by that stage herself homeless, and again destitute, but also the subject of statutory enquiry. In my view, her approach to things was such that she thought that her best interests would be solved by her returning to Eastern Europe and that is what she did. What I am clear about is that she told no one.
- 62 Those findings, albeit in tabulated form, should not disguise what are, in my view, some rather harsh realities of the facts of this case, harsh because of the time which has elapsed. When HP was 8 weeks old, he was handed over by his young mother to strangers and since 2014 has had no relationship with her at all. She did not persist in maintaining that bond. The mother's visits to see HP were few. As far as I can calculate, there were possibly five in all.
- 63 The mother, who is well aware of her deficiencies and her conduct, no doubt also struggled with the powerful personalities of the carers. She sought to regain the care of her son by the letter in September 2013 but did not follow it through. The only communication subsequently was in October when she asked for a meeting and a photograph of HP. That no doubt precipitated the 3 emails in October. Those communications are pretty forceful but I do not agree are insensitive. They are very direct, but in my view, they needed to be.
- 64 One of the October emails particularly reflects a specific timeframe and a need for contingent plans. It is, as I say, flavoured by the carers' frustration, but it is clear by then that the mother was dropping out of HP's life and continued to remain out of HP's life. None of the communications that were made by the carers were responded to by the mother in any shape or form. By the end of the year, the two women were apparently on reasonable terms. Something must have led to that, an acquiescence of the current situation. The mother, as I have indicated, last visited in July 2014. I prefer the carers' accounts of that.
- 65 I do not find that any of the conduct on behalf of the carers amounts to alienation in a real sense, that is to say a deliberate plan to set apart this child from his mother. The mother did it herself. She returned to country of origin in January 2017 and she was, even when her whereabouts were known, somewhat difficult to pin down. The mother recently has gained more strength, she registered HP's birth in country of origin and indeed has got nationality in that country for him in January of this year notwithstanding the fact that he was subject to a wardship order, and also a child arrangements order in favour of the carers.
- 66 In my judgment, far too much has been read into HP being known by a different name. I have already commented on it in my findings.
- 67 After July 2014, the mother made no effort at all to contact the carers. They of course made no effort to contact her either, but the mother made no effort additionally to contact those that might have assisted her, whether it be the police or, more particularly, the local authorities. A situation has been allowed to develop for which, as I have said at the outset, each party is responsible from a welfare perspective. The mother has effectively faded from her son's life and now for four years has had no contact with him at all.
- 68 Each local authority bears a responsibility. That responsibility is that it should have addressed its mind to the statutory principles and criteria which are not difficult to understand. Had it done so, this situation would not have arisen. LA1 could have accommodated HP under section 20. It should, in my view, probably have assisted the mother under section 17 and, in any event, subsequently the proper course for LA2 having

regard to the situation in which this child found himself would have been the issue of care proceedings. That is what it should have done way back in September or October 2013.

- 69 I am especially grateful to Mr Larizadeh QC and Ms Perry who have provided some very helpful information in relation to private fostering. As there has appeared to be a lack of understanding about the principles for social workers to apply, I propose to set out the statutory guidance framework here.

A The Legal Framework

The legal guidance to this complex area is readily available and written in plain English.

- (a) The statutory provision regarding privately fostered children is contained in the *Part IX of the Children Act 1989 (CA 1989)*.
- (b) The regulatory provision is contained in the *Children (Private Arrangements for Fostering) Regulations 2005 (C(PAF)R 2005), SI 2005/1533*.
- (c) The statutory guidance is set out in two documents published by the Department for Education and Skills:
 - (i) Replacement Children Act 1989 Guidance on Private Fostering and
 - (ii) National Minimum Standards for Private Fostering.

B 2a) A privately fostered child is defined in s66. Children Act 1989:

- (i) a child under the age of 16 (under the age of 18 if the child is disabled)
- (ii) who is cared for by a person who is not a parent or relative of the child (as defined by CA1989), and
- (iii) that person is not someone who has parental responsibility for the child, and
- (iv) the private foster carer looks after the child in their own home

b) A child is not privately fostered if:

- (i) the care and accommodation has been provided for less than 28 days and that person does not intend to care for the child for any longer period.
- (iii) the child is cared for in premises where the child's parent, a relative who has assumed responsibility for the child's care, or someone who is not a parent but has parental responsibility, is also living for the time being. A child placed for adoption by an adoption agency is not privately fostered.
- (iv) Normally, a child is not privately fostered while in a person's care in certain institutions, e.g. hospitals, care homes, schools etc., but they will be if the person caring for them does so outside the scope of their duties in such an institution. In some circumstances a child will be privately fostered if they live at a school during school holidays for more than two weeks.
- (v) If a person privately fosters more than three children, they are normally to be treated as carrying on a children's home (thereby requiring registration) rather than as a private foster carer, but a person can privately foster more than three children if they are all siblings. In certain circumstances, even if they are not all siblings, the local authority for the area where they live with the children may grant an exemption, so that the private foster carer is still treated as such rather than as a person operating a children's home.

c) The importance of conducting a full assessment:

- (i) Those entering into a Private Fostering Arrangement (PFA) have a duty to notify the Local Authority (LA).

- (ii) Once notified, the LA has a duty to assess and a duty towards the welfare of the privately fostered child; the LA must ensure that the welfare is being satisfactorily safeguarded and promoted (s67 CA 1989, also see p5 of the guidance, summary below).
- (iii) If a LA is notified of a proposed private fostering arrangement, before brokering that arrangement and/or signing it off, that LA has a duty to assess the arrangement, not simply transfer to the LA where the foster carers may be living as here for example for the assessment to be done later. Valuable information can be lost without an immediate assessment. Risk factors can be missed.
- (iv) What is essential is that, before a PFA commences, all parties involved are clear about how long the placement will last, how the child's welfare needs will be met, how the placement will be funded, how contact will take place and how to contact those with parental responsibility.

D Notification and Assessment:

The key aspects of the Regulations which clearly set out the scope of an PFA are as follows:

Reg. 3 - A person proposing to privately foster a child must notify the appropriate local authority at least six weeks in advance of placement or if the placement is to commence sooner, immediately as must any person involved in such arrangement including a parent.

Regs. 4 and 7 - Once the local authority receives notification of (a) a proposal to privately foster) OR (b) the existence of a private fostering arrangement they must arrange for a social worker to carry out the following checks within seven days to establish whether the arrangement is suitable:

- (a) visit the premises where it is proposed that the child will be cared for and accommodated
- (b) visit and speak to the proposed private foster carer and people living with the foster carer
- (c) visit and speak to the child alone to ascertain the child's wishes and feelings unless the officer considers it inappropriate
- (d) speak to and, if it is practicable to do so, visit the parent or person with parental responsibility for the child
- (e) establish the matters listed in Schedule 2 to the regulations as appear to the officer to be relevant –
 - (i) that the intended duration of the placement is agreed
 - (ii) wishes and feelings of the child
 - (iii) suitability of the proposed private foster carer
 - (iv) capacity of the proposed carer to look after the child;
 - (v) suitability of other members of the household.
 - (vi) That arrangements for contact are agreed and understood and that those arrangements will be satisfactory for the child.
 - (vii) That financial arrangements have been agreed.
 - (viii) Consideration has been given to the child's education
 - (ix) How decisions about day to day care will be taken
 - (x) Whether any parent or carer has been given any such advice as it seems to the local authority might be needed (please see the guidance generally at chapter 2).
- (f) investigate any other matters the social worker believes to be relevant such as whether an agreement for financial arrangements and for the care and maintenance of the child have been reached, arrangements for the child's education etc.

- (g) The social worker must ensure that the intended duration of the fostering arrangement is understood and agreed by both the parents of the child and the proposed private foster carer.
- (h) Having completed these functions, the officer must then make a written report.

Reg 8 - The local authority must then visit the placement at least six weekly for the first year and thereafter every 12 weeks.

Reg 10(4) – Any person with PR for a child who has given notification to the LA of the ending of a private fostering arrangement must include in the notification the name and address of the person into whose care the child is to be received and the person’s relationship with the child.

Schedule 1 to the Regulations clarifies the information to be included in the notification, including, importantly, all contact information for carers and parents, the intended duration of the placement and any offence for which a prospective carer has been convicted. (The notification provision of the Regulations also place a duty on carers to update this information. [Reg. 9.]

Schedules 2 and 3 to the Regulations contain a checklist of matters that ought to be included in the private fostering report, including an assessment of whether contact arrangements are satisfactory and have been agreed and understood and that financial arrangements have been agreed for the care and maintenance of the child.

E Overview

In summary, once the social worker has undertaken enquiries they must prepare a written report to the local authority detailing their recommendations. The social worker will offer advice on how to claim benefits, as well as parenting support and assistance in bringing families closer together. If the arrangement is ongoing, the local authority must arrange to visit the child as set out above. The social worker must complete a report after every visit and can also visit the child if the child requests this, or if the parents request a visit.

Central to the assessment of any proposed private fostering arrangement is the ability of the prospective carers to meet the child’s welfare needs that self-evidently include contact.

The carer will have to make the Local Authority aware of certain changes in circumstances, such as change of address, any criminal convictions they acquire or anyone living at the address acquires, loss of employment etc.

There is clearly no obligation to complete a positive assessment and such assessment is far from a rubberstamping exercise. In fact it is incumbent on a local authority that assesses an arrangement as unsuitable, where the child cannot be returned to his or her parents, to decide what action to take in order to safeguard the child’s welfare. This may mean providing support to the carer or, in some circumstances, finding alternative local authority accommodation, or more likely the issuing of proceedings..

Where a local authority is not satisfied that a child’s welfare is being satisfactorily safeguarded and promoted, the local authority is required by section 67(5) of CA 1989 to take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by a legal parent, a person who has parental responsibility or a relative, so long as it is considered to be in the best interests of the child to do so.

The final issue upon which guidance can only assist is the purpose of PFA visits by the local authority. One of the key issues for each visit is a review of the progress of the placement to include contact.

F Key points from the Guidance

1. The purpose of the CA 2004 amendments and associated regulations was to strengthen and enhance the private fostering notification scheme. Along with the national minimum standards they are intended to focus local authorities' attention on private fostering by requiring them to take a more proactive approach to identifying arrangements in their area.
2. There is a need for local authorities to take a much broader approach to private fostering by engaging with local communities and private foster carers and developing a much better understanding of private fostering arrangements and good practice in this complex area.
3. Page 5 of the guidance draws a contrast between the carer providing day-to-day care and the overarching responsibility which remains with those who have PR. It is the duty of LAs to satisfy themselves that the welfare of the children who are privately fostered is being satisfactorily safeguarded (by the children's parents).
4. Page 21 of the guidance [3.12] states that when parents with PR fail to exercise their responsibilities, e.g. by failing to keep in touch, the social worker should try to locate them and find out if there is a problem and take action if necessary. Where parents cannot be contacted over a sustained period of time, the LA should consider the extent (if at all) they should exercise their functions under the CA 1989.
5. Page 8 of the guidance [2.9] states that LAs are under a duty to ensure advice and guidance is provided to private foster carers throughout the arrangement. Furthermore, when a placement is no longer viable or prohibited, parents may need advice on what alternative arrangements can be made for the care of their child.
6. Page 24 of the guidance [4.7] the duration of the arrangement should be reviewed with the private foster carers on every visit thus preventing drift. The intended duration of the arrangements needs to be understood and agreed between the parents and the carers ideally in writing.
7. Page 34 of the guidance [4.51] the LA should continue to assess its duty to provide financial assistance.
8. Local Authorities must appoint an officer to monitor the discharge of functions under Part 9 of the CA 1989.
9. Chapter 4 of the guidance places a duty on local authorities to complete an assessment of the suitability of all aspects of an arrangement 42 working days from notification or as soon as the outcome of CRB checks are known whichever is the sooner. The Framework for the Assessment of Children in Need and the Families (2000) is to be used as a guide.
10. The local authority enquiry process should provide opportunities to enable a parent or prospective carer to decide that a private fostering arrangement may not be the best way to meet the child's needs.
11. All aspects of child care require planning and scrutiny by the relevant local authority. In particular there must be enhanced CRB checks conducted in respect of the carers.

12. Local authorities may need to give advice and support to parents to enable them to make alternative arrangements where in all the circumstances of the case the LA considers that it is not appropriate for the child to be privately fostered.
13. The child should be seen alone on each visit.
14. There is an obligation upon the local authority to keep records that record the basis for a clear and common understanding of the plan for the child, agreements reached, decisions taken and the reasons for the and arrangements made.
15. International aspects are dealt with in Chapter 8 of the guidance. A parent of a child who is privately fostered can arrange for his return to his own country from the UK even in those instances where this is in opposition to the wishes of the child himself or in opposition to the wishes of the private foster carer. It is therefore advisable for local authorities at the outset of the arrangement to clarify the plan for reunification with a parent outside of the UK. ¹ The LA is also under a duty to ascertain the child's immigration status.

G Alternate ways of providing emergency or other accommodation:

1. Section 20(1) CA 1989 creates a duty for local authorities to accommodate a child if they appear to require accommodation as a result of one of the four sets of circumstances outlined in s 20(1)(a)–(c).
2. Section 17 CA 1989 provides another route.
3. Section 38 CA 1989 provides the obvious alternative route of an interim care order.

Section 17: 'Provision of services for children in need, their families and others.

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) –

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part I of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

...

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or, in exceptional circumstances, in cash.

...

(10) For the purposes of this Part a child shall be taken to be in need if –

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled.'

3. Section 17(6) addresses the issue of accommodation. I note the guidance set out by the Department of Health in the Local Authority Circular No 13 of 2003, addressing the issue of accommodation:

'The power to provide accommodation under s 17 will almost always concern children needing to be accommodated with their families. However, there may be cases where a lone child who needs help with accommodation, but does not need to be looked after, might appropriately be assisted under s 17.'

- 4. A child accommodated under s 20 is regarded as a looked after child whereas a child accommodated under s 17 is a child in need.
- 5. Local Authorities also have the statutory guidance set out in s23 CA 1989.

70 Fundamentally the failure of the authorities in this case were such that they simply did not assess the real situation. They did not make sure that the parties were clear. They did not visit the home. They did not visit the carers or the parents. They did not, for example, make sure that there were contact details and addresses. They did not make sure that the proposed contact that should have occurred between HP and his parents was clear so that everybody knew about it. They did not establish that the arrangements were agreed. I doubt very much that each party was clear about their rights and their duties. There was no clear decision, no clarity about the day to day arrangements, and the assessment which eventually came to light was of itself incomplete. There were sometimes gaps (often big ones) when visits were not made. There were many lost opportunities. The first, it might be thought, was on 2 August 2013 and the second, most glaringly, on 4 October 2013.

71 I do not need to decide, in fact, whether the initial placement was lawful or not. Actually, it may well have been, but it became evident that by the time that 28 days had elapsed and, in any event, by the time the mother was withdrawing her consent in September, it clearly became unlawful and the outcome for HP might well have been very different had the authorities applied themselves properly to the statutory framework, regulation, and procedures which are easy to understand, as I say, and could have been applied and implemented properly at that time.

CERTIFICATE

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