Neutral Citation Number: [2019] EWHC 1855 (Fam)

Case No: WR18C00144

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/07/2019

Before :

MR JUSTICE KEEHAN

- -

Between :

Worcestershire County Council	**Applicant**
- and -	
AA	**Respondent**
(A Child through his Children's Guardian)	

- -
- -

Ms A Collinson Counsel (instructed by **the Local Authority**) for the **Applicant**
Ms L Hughes Solicitor (instructed by **Wace Morgan Solicitors**) for the **Respondent**

Hearing date: 11th June 2019,

- -

Approved Judgment

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

.....

MR JUSTICE KEEHAN

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

Mr Justice Keehan :

Introduction

1. On 2nd November 2010 AA, who was born in January 2005, was accommodated by Worcestershire County Council pursuant to the provisions of s.20 Children Act 1989. He was then 5 years of age.

2. On 13th July 2018 the local authority issued these care proceedings in respect of AA when he was 13 years of age. Accordingly AA had spent nearly 8 years of his life living in foster care pursuant to s.20. Neither the local authority nor, of course, the foster carers held parental responsibility in respect of him.

3. AA was made the subject of an interim care order in favour of the local authority on 27th July 2018.

4. AA's mother was BB. She died in January 2017. AA's father is unknown.

5. Since November 2010 AA has lived with the same foster carers, Mr and Mrs C. They have provided him with loving, stable and consistent care of a very high standard. The local authority proposed that AA should remain in their care for the remainder of his minority subject to a special guardianship order made in favour of Mr and Mrs C. This plan was supported by the foster carers and the children's guardian. AA is very keen to remain living with them.

6. I was minded to approve this plan and to make a special guardianship order in favour of Mr and Mrs C. The purpose of this judgment is to set out the history of this matter, to understand why AA remained subject to s.20 accommodation for so very many years and to identify how and when the local authority failed to promote, still less, meet the welfare best interests of AA.

7. By 13th February 2019 and in light of then recent events, which I shall set out a little later in this judgment, Mr and Mrs C changed their minds and invited the court to make AA the subject of a care order. Similarly in her final analysis the guardian had changed her provisional view in favour of a special guardianship order. She advised the court there were clear child welfare reasons for not making a special guardianship order and there were powerful reasons in AA's best interests for the court to make him subject of a care order.

8. At the final hearing on 11th June 2019, however, the terms of an appropriate and comprehensive Special Guardianship Support Plan ('SGSP') had been agreed by all parties. The disagreements about the way forward in the welfare best interests of AA between Mr and Mrs C and the guardian, on the one hand, and the local authority, on the other, had been resolved. The foster carers were content for a SGO to be made in their favour and the guardian now considered this order, underpinned by the agreed SGSP, was in AA's best interest. I agreed and made the SGO.

The Law

9. The duty of a local authority to provide accommodation for a child is set out in s.20 Children Act 1989 which provides as follows:

"Provision of accommodation for children: general.

(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

(a) there being no person who has parental responsibility for him;

(b) his being lost or having been abandoned; or

(c)the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b)such other longer period as may be prescribed in regulations made by the Secretary of State.

(2A) Where a local authority in Wales provide accommodation under section 76(1) of the Social Services and Well-being (Wales) Act 2014 (accommodation for children without parents or who are lost or abandoned etc.) for a child who is ordinarily resident in the area of a local authority in England, that local authority in England may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b) such other longer period as may be prescribed in regulations made by the Secretary of State.

(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with

accommodation) if they consider that to do so would safeguard or promote the child's welfare.

(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a)ascertain the child's wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(7) A local authority may not provide accommodation under this section for any child if any person who—

(a) has parental responsibility for him; and

(b) is willing and able to—

(i) provide accommodation for him; or

(ii) arrange for accommodation to be provided for him,

objects.

(8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.

(9) Subsections (7) and (8) do not apply while any person—

(a) who is named in a child arrangements order as a person with whom the child is to live;

(aa) who is a special guardian of the child; or

(b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the local authority.

> (10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.
>
> (11) Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section."

10. The provisions of s.20 Children Act 1989 enable local authorities to provide accommodation to children and young people in a wide range of circumstances. The use and abuse of s.20 accommodation was recently considered by the Supreme Court in the case of *Williams & Anor v. London Borough of Hackney (Rev 1)* [2018] UKSC 37. Lady Hale began the judgment of the court as follows:

> "In March 2017 local authorities in England were looking after 72,670 children, a figure which has been rising steadily for the past nine years. They do so either as part of a range of services provided for children in need or under a variety of powers to intervene compulsorily in the family to protect children from harm. 50,470 of those 72,670 children were the subject of care orders, up 10% from the previous year; 16,470 were accommodated without any court order; the balance were subject to various other compulsory powers. In practice, the distinction between these categories is not always clear cut. Some accommodated children in need may also be at risk of harm if they are left at or returned home. In law, however, the distinction is clear. Compulsory intervention in the lives of children and their families requires the sanction of a court process. Providing them with a service does not. This case is about the limits of a local authority's powers and duties to provide accommodation for children in need under section 20 of the Children Act 1989 ("the 1989 Act") without the sanction of a court order…."

11. Later, at paragraph 34, she considered the misuse of s.20:

> "[The] cases illustrate a number of problems with the use of section 20: separation of a baby from the mother at or shortly after birth without police protection or a court order, where she has not delegated the exercise of her parental responsibility to the local authority or been given in circumstances where it is questionable whether the delegation was truly voluntary; retention of a child in local authority accommodation after one or both parents have indicated a desire to care for the child or even formally asked for his return; and a lack of action where the perception is that the parents do not object to the accommodation, even though this means that no constructive planning for the child's future takes place. They also illustrate the dilemma posed to the local authority: something has to be done to look after the child but there are serious doubts about whether the parent can validly delegate the exercise of her responsibility. Equally, they illustrate the dangers if the local

> authority proceed without such delegation or obtain it in circumstances where the parents feel that they have little choice. There are none of the safeguards and protections for both the child and the parents which attend the compulsory procedures under the Act. Yet, rushing unnecessarily into compulsory procedures when there is still scope for a partnership approach may escalate matters in a way which makes reuniting the family more rather than less difficult."

12. As observed by Lady Hale in Williams there are many circumstances in which children and young people may be appropriately accommodated by a local authority. It is a useful tool available to local authorities. I offer the following as examples of the *appropriate* use of s.20 (but I emphasise these are examples only and not an exhaustive list):

    i) a young person where his/her parents have requested their child's accommodation because of behavioural problems and where the parents and social services are working co-operatively together to resolve the issues and to secure a return home in early course;

    ii) children or young people where the parent or parents have suffered an unexpected domestic crisis and require support from social services to accommodate the children or young people for a short period of time;

    iii) an unaccompanied asylum-seeking child or young person requires accommodation in circumstances where there are no grounds to believe the threshold criteria of s.31 CA 1989 are satisfied;

    iv) children or young people who suffer from a medical condition or disability and the parent or parents seek(s) respite care for a short period of time; or

    v) a shared care arrangement between the family and the local authority where the threshold for s31 care is not met, yet where support at this intensive level is needed periodically through a childhood or part of a childhood.

13. In all of the foregoing it is likely that the threshold criteria of s.31 CA 1989 are not or would not be satisfied and/or it would be either disproportionate or unnecessary to issue public law proceedings. It is, however, wholly inappropriate and an *abuse* of s.20 to accommodate children or young people as an *alternative* to the issue of public law proceedings or to provide accommodation and to *delay* the issue of public law proceedings.

14. In *Northamptonshire County Council v. AS & Ors (Rev 1)* [2015] EWHC 199 (Fam) the child was removed from his mother's care when he was just 15 days old and accommodated pursuant to s.20 with foster carers: the mother had purportedly given her consent to her son being cared for by the local authority. It took the local authority, for no good reason, 3 months to decide to issue care proceedings and 5 months thereafter to in fact issue the proceedings. The local authority had allocated the case to an inexperienced social worker who was not familiar with care proceedings: delay and a lack of planning followed. Court orders were ignored and court ordered assessments were not undertaken. The case was not concluded until the

child was nearly 2 years old. In making a final care order and awarding the child damages for breaches of his human rights, I said at paras 35-37:

> "The catalogue of errors, omissions, delays and serial breaches of court orders in this matter is truly lamentable. They would be serious enough in respect of an older child but they are appalling in respect of a 15 day old baby. Each day, each week and each month in his young life is exceedingly precious. Where so young a child is removed from the care of his mother or father his case must be afforded the highest priority by the local authority.
>
> The use of the provisions of s.20 Children Act 1989 to accommodate was, in my judgment, seriously abused by the local authority in this case. I cannot conceive of circumstances where it would be appropriate to use those provisions to remove a very young baby from the care of its mother, save in the most exceptional of circumstances and where the removal is intended to be for a matter of days at most.
>
> The accommodation of DS under a s.20 agreement deprived him of the benefit of having an independent children's guardian to represent and safeguard his interests. Further, it deprived the court of the ability to control the planning for the child and to prevent or reduce unnecessary and avoidable delay in securing a permanent placement for the child at the earliest possible time."

15. In the case of *Re: N (Children) (Adoption: Jurisdiction)* [2016] 1 FLR, 621, the former President, Sir James Munby, said at paragraphs 157 to 160 and 171 as follows:

> "The first issue relates to the use by the local authority, in my judgment the misuse by the local authority, of the procedure under section 20 of the 1989 Act. As we have seen, the children were placed in accordance with section 20 in May 2013. Yet it was not until January 2014, over eight months later, that the local authority eventually issued care proceedings. Section 20 may, in an appropriate case, have a proper role to play as a short-term measure pending the commencement of care proceedings but the use of section 20, as a prelude to care proceedings for a period as long as here, is wholly unacceptable. It is, in my judgment, and I use the phrase advisedly and deliberately, a misuse by the local authority of its statutory powers."

As I said in Re: A (a Child) in Darlington Borough Council v M [2015] EWFC 11, paragraph 100:

> "There is, I feared, far too much misuse and abuse of section 20 and this can no longer be tolerated."

16. The potential benefits of care proceedings as opposed to a child remaining in s.20 accommodation, were considered by Lady Hale in *Williams* at paras 50-52:

> "Thus, although the object of section 20 accommodation is partnership with the parents, the local authority have also to be thinking of the longer term. There are bound to be cases where that should include consideration of whether or not the authority should seek to take parental responsibility for an accommodated child by applying for a care order. Good examples are *Medway Council v M and T* (para 31 above), where the mother suffered from long term mental health problems and was not meeting her parental responsibility, so it was necessary for someone to do so; and *Herefordshire Council v EF and GH* (above, para 33), where it was recognised as soon as the mother and baby foster placement of GH and his 14-year-old mother broke down that care proceedings should be brought, but this did not happen until he was nine years old.
>
> Care proceedings have obvious advantages for the child. They involve a rigorous scrutiny of the risk of harm to her health and development if an order is not made, of the assessment of her needs and of the plans for her future. Her interests are safeguarded by an expert children's guardian. If an order is made, it means that the local authority have parental responsibility for her and can put their plans into effect. But, as pointed out by Judge Rowe QC in *In re AS* (para 30 above) there are also advantages for the parents and for the wider family. The parents are entitled to legal aid. Their rights are safeguarded in the proceedings. Even if a care order is made, the court may make orders about their continued contact with the child. Hence it is scarcely surprising that the President and other judges have deplored the delay in bringing care proceedings in cases where it was obvious that they should have been brought. Section 20 must not be used in a coercive way: if the state is to intervene compulsorily in family life, it must seek legal authority to do so.
>
> Thus although it is not a breach of section 20 to keep a child in accommodation for a long period without bringing care proceedings, it may well be a breach of other duties under the Act and Regulations or unreasonable in public law terms to do so. In some cases there may also be breaches of the child's or the parents' rights under article 8 of ECHR."

17. In the case of *Herefordshire Council v AB* [2018] EWFC 10, I observed:

> "In respect of both EF and GH, there were repeated occasions over very many years when it was accepted that legal advice should be sought and/or that care proceedings should be issued. Notwithstanding the close scrutiny which has been undertaken

> by senior managers of the local authority and by the director, it has still not been possible to explain why these decisions were not put into action. It is extremely concerning that when this local authority recognised, as it did on repeated occasions, that it was not acting in the welfare best interests of either these children, it did nothing. The complete inertia is inexplicable. Such gross failings by a local authority are intolerable. EF and GH were denied a voice in the determination of their future care. The same may be said about their parents. The boys were both denied the opportunity for clear and focussed planning about their respective futures to be undertaken and for the same to be endorsed by a court. The early issue of care proceedings would have enabled a decision to be made about their legal status and their future in a structured and time-limited manner."

Background

18. AA's mother was BB. She died in January 2017. The identity of his father is unknown to the local authority. AA has an older half brother and two older brothers.

19. AA was born in 2005 and lived with birth family until 2010.

20. AA and his siblings have been known to the Local authority since 2006 in relation to concerns around physical and emotional abuse and neglect. In 2007 AA, DD and EE were made subject to a Child protection plan under the category of neglect. The family were referred for support to Home Start. It was reported that the family did not engage with the service fully and only attended 2 out of 5 sessions and Home Start withdrew their involvement because of this to lack of engagement.

21. AA experienced poor and frightening parenting and he experienced physical and emotional neglect.

22. In 2009 it was felt that the family had made significant change. It was reported that the house was kept in a better state and things were generally improving. The school and the local authority were happier with the general level of care that was provided for the children. It was decided that the children should be placed on to a Child in Need Plan.

23. The family engaged in extensive family support under the Child In Need Plan. It was agreed that the family support service would offer the mother 12 weeks of support with ongoing review of progress. The mother engaged at times but on occasions would not answer the door stating she had fallen asleep. She made some progress in respect of cooking, health and safety and positive parenting. However, it was felt that when the support/intervention stopped concerns around neglectful parenting once again arose.

24. In 2007 the mother disclosed to the local authority her history of poor health, namely her being diabetic. She stated she had been suffering from blackouts and felt this may have affected her ability to parent the children. In December 2008, the mother had a hospital admission as she needed to have her toe removed. Her health continued to

deteriorate and in 2010 she advised the allocated social worker she had been prescribed medication because her kidneys were failing. The mother was concerned that she could not provide the level of care to the children that they required on her own. She had to undergo kidney dialysis.

25. Throughout this time the mother had two relationships; in July 2007 mother reported she was in a relationship with FF. From almost the beginning of their relationship, there were complaints from neighbours regarding loud music and the general upkeep of the house.

26. The mother married FF on the 16th February 2008. In July 2009, DD told his school that his step father hits him under instructions of his mother. This was explored and concluded that no evidence was found to support the allegation.

27. On 19th May 2010, the mother informed the local authority that herself and FF had separated. She said that the children had been much better since he had left the property. The relationship had been marked by episodes of domestic abuse.

28. On 25th August 2010, mother told a family support worker that AA had been beaten up by his siblings and they had held his head under water. Mother disclosed that AA had two black eyes, bruised testicles and bruises on his bottom. She later confirmed that DD and EE had hit AA and are generally nasty to him. AA was examined by a doctor who confirmed the bruises were consistent with the account of him being hit by his siblings.

29. It was agreed between the local authority and the mother that AA live with a family friend, GG given the concerns around the sibling relationships. On 28th August 2010, three days after AA had been staying with GG, she reported that she could not deal with his behaviour. He had been aggressive and spat on her. GG was supported by family support services and given some strategies of how to cope with AA.

30. On 2nd November 2010, AA told a social worker that he had fallen down the stairs and had bruising on his ribs, elbows, and marks to his head in GG's home. AA underwent a child protection medical which confirmed the injuries were consistent with falling down stairs. However, the consultant was unable to rule out non-accidental injury. Accordingly AA was accommodated under s20 of the Children Act 1989 with approved foster carers, Mr and Mrs C.

31. During this period, an updated parenting assessment was completed in respect of his mother. The assessment was dated 23rd November 2010 recommended that AA remain in foster care.

32. On the 17th February 2011 mother advised that she wished to withdraw her s.20 consent. The local authority was so concerned about AA returning to the care of his mother that they advised that proceedings would be issued. Subsequently the mother agreed to AA remaining accommodated under s20 and living with his current carers.

33. AA settled well with his carers. Although he had contact with the family it was not always positive. For most of the time the mother ignored A and he felt different from his siblings. AA said he did not like contact with his family.

34. In April 2014, BB moved to Norfolk, along with DD and EE.

35. AA refused to have contact with his brothers. AA did not want to have contact with his mother but agreed to try and have telephone contact. This came to an end after two telephone contacts when AA refused to talk to them.

36. On 20th March 2014, Mr and Mrs C considered applying for an Special Guardianship Order and approached the local authority to gain information about making an application. At this time AA had settled well and saw himself as part of their family.

37. The SGO application was not made because Mr and Mrs C were not in agreement with the support package offered by the local authority.

38. In January 2016, the social worker attempted to contact mother by way of telephone, however after three attempts a letter was sent to her address. The social worker wanted to update the mother on AA's progress and to enquire if she would agree to the Special Guardianship Order being made in respect of his foster carers. There was no response to the letter or phone calls.

39. On 17th June 2016, further attempts were made to contact birth mother. However there was no response from mother.

40. AA's mother died in January 2017.

41. AA was visited and told of his mother's death.

42. AA did not appear to be interested and stated that he didn't want anything to do with his family. AA looked to the carers for support. The carers spoke to AA to ensure he felt supported. AA appeared to have remained settled since his mother's death.

43. In late 2013 Mr and Mrs C had moved from Worcestershire to Cheshire with AA. Prior to this move it had been agreed by the local authority's Integrated Service for Looked After Children on 29th September 2013 that parenting support would be provided to Mr and Mrs C. It was but this support ceased upon the foster carers moving to Cheshire. The local authority failed to make any other service or support available to Mr and Mrs C.

44. By the time they and AA moved to Cheshire, no therapeutic support had been provided by the local authority for AA. There was then an unseemly standoff between this local authority and the relevant children's services department in Cheshire, as to which body was responsible for providing AA with therapeutic support. This 'standoff' was permitted to continue for over 5 years. The consequence is that a desperately damaged, vulnerable and needy child/young person has received no therapy, no treatment and no professional support for the whole of his time being 'looked after' by this local authority.

Evidence

45. The following explanation of the local authority's actions in respect of AA is given by Adam Benkalai and Hannah Whittall, both team managers, and Selina Rawicz, a group manager,

> "[AA] has been a looked after child within Worcestershire since November 2010 and has been in his current placement for the duration of this time. We are pleased to inform that despite the drift and delay [AA] is happy and settled and having all of his needs met within this placement. His carers present as committed to him and have been throughout his placement and the current Social Worker has been [AA]'s Social Worker for the past 4 years which provides [AA] with further consistency. However we do acknowledge that there has been a significant delay in securing permanence for [AA]. As a local authority we have reviewed many of our processes and now there is Group Management oversight with all legal decisions. As part of our improvement plan we have employed Court Progression Officers and a key part of this has been reviewing the children who placed are under Section 20 of the Children Act in respect of their plans for permanency and this has highlighted a number of cases where there has been drift and delay, we are progressing these on a case by case basis and have processes in place to ensure that we are not in this situation again.
>
> Myself, Selina Rawicz, Adam Benkalai the current Team Manager, and Hannah Whittall the previous team manager acknowledge that a period of 8 years of being accommodated under s20 is completely unacceptable."

46. In a statement by Sally Branchflower, the practice manager of the Independent Reviewing Officer Team, she set out an account of the actions of the two IROs allocated to AA. The substance of this account is as follows:

> "[AA] became accommodated under section 20 arrangement on the 2nd of November 2010.
>
> Prior to him being accommodated he was made subject of a child protection plan. He has had 2 IROs during his care Journey; Gordon Robertson was AA's IRO from November 2010 – October 2011. Jenny Peel became AA's IRO in 2011 until the present date.
>
> [AA] has had approximately 22 social workers and several Team managers throughout his period in care.
>
> Initially the care plan was that [AA] be placed in foster care short term for 4 weeks with a care plan for reunification subject to the social worker completing an assessment. As outlined in his review Chaired by Gordon Robertson
>
> In February 2011 the IRO noted the assessment by the social worker was still not complete and no care proceedings had been initiated, this remained the position in July 2011.

At the next Looked after review in January 2012 he had a change in IRO to Jenny Peel where it was recorded "threshold for proceedings not met" and confirmed section 20 was the appropriate care plan for [AA]. Then recommendations were detailed but set a time scale until the next review 6 months later for the Social worker to compete her assessment, there is no evidence on the file of IRO footprint between reviews.

At the subsequent review in June 2012 [AA] had been placed with his carers for 19 months and was thriving and was very happy and well cared for, there was discussion around the care plan changing from short term to long term fostering still under a sect 20 arrangement

The next review in December 2012 the IRO endorsed the care plan that [AA] remain in long term foster under a section 20 arrangement and the contact with his Mother and brothers had lapsed.

In April 2013 Mother became ill and was in hospital and the carers wanted to apply for an SGO, legal raised concerns that Mother was the only PR holder and the Local authority may need to consider making an application for a care order.

In June 2013 at [AA]'s next review it is noted that contact has not been re-established with his Mother or siblings and [AA] remains cared for under a section 20 arrangement. Mothers health is significantly deteriorating.

In October 2013 the IRO Jenny Peel did send an email highlighting her significant concerns re drift and delay in initiating care proceedings and it was noted that the carers for [AA] wanted to move to Cheshire with him, Jenny again requested an urgent legal planning meeting be convened.

In March 2014 Mother reluctantly signed a written agreement for [AA] and his foster carers to move to Cheshire and he moved to Cheshire in June 2014 still subject to section 20.

Each subsequent 6 x monthly looked after review stated legal status and care plan remain unchanged SGO issue remains unresolved.

January 2017 [AA]'s Mother died.

The looked After Review In May 2017 regarding the issue of obtaining PR for [AA] was escalated but the advice from senior managers in November 2011 was that the threshold for a care order was not met as he wasn't suffering significant harm and foster carers were applying for an SGO.

> Reviewing this file it is evident there has been significant drift and delay in progressing [AA]'s care plan from all involved in [AA]'s case. The use of section 20 agreement with [AA]'s Mother remained in place throughout the whole of his journey in care even after her death which is clearly unacceptable. Contact with his birth family ended in 2015 and I can see no clear rationale as to why.
>
> There has been significant learning for the IRO service regarding this matter as outlined below.
>
> - There was no evidence of the IRO foot print on the file, between 6 monthly reviews, there was no escalation regarding the significant drift and delay in this matter.
>
> - No monitoring and tracking evident from the IRO between reviews.
>
> - SGO matter not progressed
>
> - No evidence of the independence of the IRO
>
> - No challenge regarding the care plan.
>
> - Overreliance on working agreements"

47. Thereafter Ms Branchflower set out the actions implemented by her team to ensure such drift in the planning for a 'looked after' child does not occur in the future. The key provision is a revised and more robust Dispute Resolution Process to ensure cases are appropriately escalated to senior managers in children's services.

48. The assistant director of children services, Tina Russell, provided me with a frank and coherent account of the failures of this local authority in relation to this young man, AA. She said in her statement:

> "My analysis of the case decision making identifies five key areas of concern that have impacted on effective good quality and timely care planning for [AA].
>
> **Child Led Assessments :** I believe that mother's ill health and personal needs impacted on the social work thinking and that this led assessments to be parent-led and not child-led. Mother had not "harmed" [AA] and had significant needs herself. She continued to care for two children when [AA] left the household and she maintained throughout her emotional attachment to [AA] and wish to care for him. This combination of factors I believe influenced the Social Worker's thinking when planning for permanency.
>
> **Start Again syndrome**. The changes of social worker and transition between teams led to repeated assessments of what was the best long term care arrangement for [AA].

Reactive Case Management . It is clear that any real action in the case has been a "reaction" to an event rather than any planned pro action. Events include Mother's challenge to withdraw her S20 consent, Mother deterioration of health and subsequent death, Foster Carer challenge / request for SGO and House move.

[AA] was seen as "safe and well". This had been monitored regularly through his LAC reviews. Whilst I acknowledge that this fails to recognise the emotional impact on [AA] and his need for emotional security and stability in a permanent legal status with parents acting with Parental responsibility, this fact will have impacted on the prioritisation of his case within the priorities of other cases held in the team.

Non Reflective Learning Organisation. As an organisation we have been delayed in reflecting and learning from advice and instruction on the appropriateness of S20 as a care status. This has been addressed through legal training for social workers, IROs and legal services and through new management and leadership.

Whole service failure. The case was held from 2010 until the present date. The poor quality of service through this time period is well evidenced by the Ofsted Safeguarding Inspection of October 2016. The "widespread and serious failures" identified not only led to an “inadequate” judgment but to the appointment of a Commissioner and a direction for an Alternative Delivery Model to be established. This latter action has been implemented against authorities identified to have had poor services for five years or more. Whilst a comprehensive service improvement plan has been in place since Ofsted’s report there was no "quick fix" to the longstanding and entrenched problems within the service. High caseloads, poor quality leadership and management and significant challenges in staff recruitment and retention all being key factors of concern.

In conclusion, I am sorry to say the case of [AA] reflects practice at the time. Whilst I am satisfied the service assured itself of [AA]'s safety and quality of care it appears that these assurances led to a de-prioritisation of proactive action by the LA to secure any permanency plan for [AA]. There was a lack of understanding about the use of S20 and most importantly about the negative impact for [AA] in not having his long term care arrangement assured.

The case has been subject to internal review, review through court proceedings and review through the Local Government Ombudsman. All these process have identified learning for my

> service and will be shared and incorporated into our continued service improvement work."

49. I ordered the local authority to file and serve a statement dealing with the issue of whether, on reflection, AA should have been removed from the care of his family and have been placed with foster carers long before November 2010. Ms Russell in her statement dealing with this case, asserted that no error was made by the local authority in not removing AA into care before November 2010. She set out persuasive facts and reasons in support of her assertion. Without hearing evidence on the issue and submissions, which would have been disproportionate and unnecessary, I have come to no concluded view nor make any findings on this issue.

50. Furthermore I do not wish to be diverted from the two central issues for this judgment:

    i) the failures of the local authority in looking after AA since November 2010; and

    ii) what is the most appropriate legal framework for his future care.

    There is no question but that AA, for the remainder of his minority and almost certainly into early adulthood, will remain in the care of Mr and Mrs C.

51. The Official Solicitor agreed to act as AA's litigation friend in proposed civil proceedings against the local authority for breaches of AA's human rights. Solicitors were instructed on AA's behalf to prosecute the claim. I expressed the view at an early directions hearing that I hoped that the local authority would, in light of the history I have outlined above and the acceptance of failings by this local authority, compromise and settle this proposed claim on favourable terms to AA.

52. I have received a number of statements and letters from Mr and Mrs C. They are wholly committed to AA as they have been for the last eight plus years. They were ready and willing to be special guardians for AA and are willing to commit themselves to caring for him, loving him and providing for him until he attains his majority and well beyond that time.

Expert Evidence

53. The parties agreed and I approved the instruction of an eminent psychologist, Professor Billington to assess AA's complex needs. I am extremely grateful to the professor for his comprehensive and helpful report which runs to a commendable 28 pages.

54. He summarised the damage AA has suffered in his life to date, the consequences of the same and of his current needs as follows:

> "During this assessment [AA] presented as a complex but polite young man, eager to please, who is slowly recovering from an horrendous start to life.
>
> While the precise nature of the experiences and circumstances of his first five years will not be known, there is strong

evidence to indicate that [AA] was either exposed to, or in close proximity to many conditions and factors which are harmful to children and which are associated with negative life outcomes:

- variable availability of his principal attachment figure at the time (his birth mother) – material, psychological, emotional
- developmental delays (e.g. speech and language; motor skills)
- parental mental health difficulties
- destructive family dynamics
- family history of learning difficulties
- adult drug use
- domestic violence
- severe physical / emotional abuse.

Eight years since being taken into care there continue to be signs of the trauma [AA] will have experienced in those early years. He can regress quickly from a state in which he presents one minute as functioning in a broadly age-appropriate manner, to the next minute in which he can behave in an almost infantile state.

[AA] continues to be a very frightened young man whose functioning can deteriorate by several years, more specifically when encountering:

- separation from his carers – his parents – Mr. and Mrs. [C]
- change from established routine
- threatening or even just boisterous behaviour
- toileting
- loud noises
- washing machines
- stairs.

[AA] is now exhibiting many fine qualities, however, for example, during individual work he demonstrated a lovely

sense of humour, an enjoyment of interaction and a potential for learning. His progress in these respects is due largely to the almost heroic commitment of Mr. and Mrs. [C] who have dedicated their lives to [AA] without consideration for their own wellbeing.

Throughout his eight years with the [C]s, [AA] has become accustomed to a total parental involvement in his life that far exceeds the usual expectations of most 13 year olds.

For example, the parents still have to assist [AA] in meeting a range of his most basic needs, such as crossing the road, going to the toilet and a range of other self-help and self-care activities. [AA] is by choice often house-bound and currently unable to function in the world without support.

Whenever anything is demanded which takes him out of a very limited comfort zone (even simple changes) [AA] can resort to various emotional holding behaviours such as rocking or humming although thankfully there is no evidence to suggest that he is currently self-harming in the manner described previously in documentation i.e. by banging his head on the floor.

So, while there has been significant progress across virtually all areas, [AA]'s functioning is context-specific and he will need a coordinated programme of support and development activities in order to help him safely and ethically to achieve the next stage of development.

The strategy of educating [AA] in a mainstream school with support has worked but there are a number of areas in which progress needs to be made, for example, relating to his self-help skills and preparation for independent living.

[AA] has become emotionally reliant solely upon his parents and while he is capable of being social in school he has not been able to extend that sociality into the community. This is not the parents' 'fault' but testimony to their total and humane commitment to a young boy who has been severely abused and traumatized.

The [C]s have provided the conditions in which [AA] has been able to develop strong attachments with them while at the same time ensuring that he complies with the compulsory demands of schooling. School attendance, however, is also an example of [AA]'s tendency to be overly compliant in the face of power and authority.

[AA]'s progress – educational, emotional, social - was not inevitable and far worse outcomes could have been predicted.

> Having made such good progress, however, it is now time for [AA] to make yet another 'leap' – a word used by Mrs. [C] - for that is what is required.
>
> [AA] remains a highly vulnerable and often frightened young man who will need protection and support as he negotiates biological and psychological changes, potentially up to the age of 25."

Discussion

55. AA suffered a huge amount of physical, emotional and psychological harm in his early years. He has yet to receive any professional support to assist him in his everyday life, still less to attempt to assist him to recover from his early life experiences.

56. From a woeful start in his life he has been incredibly lucky to have found himself in the care of Mr and Mrs C. I have nothing but the greatest admiration and praise for the loving, dedicated and selfless care they have given to A since he first came into their care.

57. As Professor Billington observed, their care of AA has been heroic. In the main they have done it without any help or support from this local authority. AA is a delightful young person with many fine and positive qualities but, as Professor Billington highlighted, AA has presented and continues to present immensely challenging behaviours. The harm he suffered in his early life is such that the demands of his daily needs on his carers are highly in excess of what the average 13 year old child would demand or require.

58. When AA first learnt his case was coming before a new judge, he wrote me a letter and drew two pictures for me. His letter was heart rending – why, he asked, can I not be a normal boy?

59. When he knew his case was reaching a final hearing he told his guardian he would like to meet me. I readily agreed. AA was very excited at the prospect of a visit to London with Mr and Mrs C to meet me at the Royal Courts of Justice. Even this event was blighted for the foster carers, by the local authority's mind numbingly sanctimonious quibble about the C's cost of their hotel accommodation in London. In making this observation I have well in mind a local authority's duty to protect against the unnecessary expenditure of public funds. This approach by the local authority merely caused the C's sense of frustration to increase and their trust in the local authority to work with them in an open manner to diminish. I focus on two recent matters which preceded the issue of hotel accommodation.

60. As a result of his abuse prior to being looked after by the local authority, AA has a very great fear of baths and staircases. The Cs asked the local authority to fund modest alterations to their home to provide AA with a ground floor shower room. After a great deal of lengthy prevarication the local authority agreed but refused to release any funds until Mr and Mrs C had signed the final version of the special guardianship support plan. The children's guardian described the last minute requirement of this condition as outrageous. I respectfully agree.

61. The Cs are very concerned about the provision of and financing of services once AA attains the age of 18. They have asserted that assurances they have been given in meetings with the local authority, were not included in nor referred to in the draft of the special guardianship support plan filed for the February hearing which surprised them and dismayed them in equal measure.

62. The adverse impact of these matters on Mr and Mrs C is admirably summarised in the children's guardian's final analysis of 6th February 2019:

> "It is noted there is some delay over the downstairs shower and toileting facilities being agreed. It has been suggested to Mr and Mrs [C] that agreement for the downstairs facilities will not be passed unless they sign the Special Guardianship Plan which is outrageous. [AA] is a child who has a deep-rooted fear of the bath owing to his early life experiences. Having to use the bath causes [AA] to become distressed to the point he requires his carers to be with him, which given his age is not something they are comfortable with and they desperately seek for him to gain independence within this area.
>
> The current Special Guardianship Support Plan only provides support up to the age of eighteen or while he remains in education. In the event [AA] does not engage with educational provisions post eighteen it is suggested by the Local Authority that financial support and services he may require will need to be paid for by the sum of money he is likely to be awarded from his 'Human Rights Claim'. This is unacceptable, [AA] is a child who has significant difficulties as a consequence of the Local Authority failing him. The notion of suggesting he should use any compensation money to top up his care between eighteen and twenty-five is improper and raises question to the true empathy and responsibility this Local Authority hold for this particular child
>
> [AA] has been placed with Mr and Mrs [C] since 2010, living longer with them, then he has with any of his birth family. [AA] and his carers share a very special bond, the love and admiration they have for one another is just heart-warming. [AA] is an integral part of Mr and Mrs [C]'s extended family and is regarded as an established family member (particularly by their sons who view [AA] as their brother) which bodes well for his future support needs in the absence of Mr and Mrs [C].
>
> The commitment Mr and Mrs [C] have for [AA] is exceptional. They have gone above and beyond in their role as foster carers to try and gain the best outcomes for him and whilst most people would have been exhausted by such process, Mr and Mrs [C] have just gathered more and more strength in their midst to get matters finalised correctly.

> I have had the benefit of reading Mr and Mrs [C]'s position statement and I fully adopt the concerns they raise which I highlight below;
>
> *Funding 18-25. [AA]'s needs will not suddenly alter when he reaches 18. We are aware that there has been correspondence passing between the professionals on this point but the Local Authority are adamant that their position will not alter.*
>
> *On the making of an SGO [AA] may lose much of what he could have been entitled to in the future as a Looked after Child or a Child Leaving Care. We need this to be considered within the Support Plan. We can't be expected to sign a plan that takes entitlement away from [AA], especially when considering his considerable needs. We cannot justify that risk for [AA].*
>
> *Lack of inclusion of the recommendations found within interim report of therapist.*
>
> Based upon speaking with Mr and Mrs [C], is clear that they are becoming more frustrated with this process and are now questioning the Special Guardianship application. Their ultimate wish is to create a future for [AA] which fully reflects, supports his needs and which enhances his quality of life. These are simple wishes which the Local Authority don't appear to either acknowledge or indeed make provisions to support."

63. The children's guardian entirely agreed with Mr and Mrs C's position which is to question whether in all the circumstances of this case a special guardianship order is suitable to fulfil all of AA's future needs. She had then concluded it would not and that a care order would provide a more appropriate legal framework for AA's future care.

64. Against this background I gave directions and listed the matter for a final hearing. As I mentioned earlier in the judgment intensive discussions between the Cs, the local authority and the guardian followed this directions hearing. Ultimately these resulted in an appropriate and comprehensive SGSP being agreed. Professor Billington had given an insightful but harrowing account of AA's current and future needs. These are now recognised by the local authority. The SGSP provides for these needs to be met now and in the longer term.

65. On the basis of this agreed support plan Mr and Mrs C were content to be appointed AA's special guardians and the guardian was of the firm opinion that an SGO in favour of the Cs with the agreed support plan was in AA's welfare best interests. I agreed and endorsed this proposed way forward.

66. I met with AA and Mr and Mrs C before the directions hearing on 13th February 2019 and on the morning of the final hearing. It was a real privilege and pleasure to meet all three of them. I was particularly impressed with AA's level of insight to and understanding of his life and his huge love for and commitment to Mr and Mrs C.

Similarly it was plain to see the very great love they had for him and their unconditional commitment to AA.

67. I interject to observe that I am usually reluctant to permit the instruction of a psychologist in public law proceedings. Professor Billington's report was however, the model of what a family court judge requires of an expert witness: namely a pithy and insightful analysis of the child's or young person's emotional or psychological needs and an opinion on how those needs can be met and addressed.

Conclusion

68. This local authority has serially and seriously failed to meet the needs of AA over a very prolonged period of time. Belatedly, albeit now readily, these failures have been recognised and accepted. I accept that this case has caused this local authority to undertake a root and branch review of its practices and procedures for the benefit of the children and young people who are or will be looked after by the local authority.

69. In the case of *A & B (Care Orders and Placement Orders - Failures)* [2018] EWFC 72, I expressed my very grave concerns about the effective functioning of the IRO service in Herefordshire Council. This case has raised similar concerns about the function of the IRO team in this local authority. The two IROs allocated to AA's case, as it appears to me, did nothing of any substance or effect to right the wrongs of the failings of this local authority in respect of its prolonged care of AA. No satisfactory explanation has been given for the same. If an IRO does not protect the interests of a child looked after by a local authority or cared for by a local authority, it is most likely a child or young person will have no one else with a responsible and effective voice to protect them or to promote their welfare. This is why the IRO system is so vital to the protection of children and young people in public care.

70. I accept the failings of the local authority in its care of AA from November 2010 are now recognised. I express no view on whether AA should have been removed from the care of his family at an earlier date.

71. Nevertheless, the failure of this local authority to

    i) provide AA with therapeutic support;

    ii) provide adequate or effective support to his foster carers;

    iii) provide a stable and clear plan for his care, especially to ensure a responsible person or body had effective parental responsibility for him;

    iv) institute public law proceedings in respect of him and to provide him with the protection of a judge led process and the protection avoided to him by giving him a voice via a children's guardian;

    is egregious in the extreme.

72. Whilst by happenchance, being provided with the best of practical care by his wonderful foster carers, AA was, thereby, left adrift in the care system. There was no consistent planning for him through a succession of 22 social workers. His future

settled and stable care should have been arranged and approved many years ago. There is no excuse that this was not done.

73. This young person, who had the most awful start to his early years of life, has been failed by this local authority. The one who has been most damaged, I hope not beyond repair, is AA, but, sadly, there may not be a happy outcome. I also recognise and accept that Mr and Mrs C have been adversely affected by these failures.

74. As noted above, in consequence of failings of the local authority, a separate claim was made on behalf of AA by the Official Solicitor, as his litigation friend, seeking damages for breaches of his human rights. The local authority has admitted liability and the focus is now on seeking to settle the quantum of damages. For this purpose I am told that the Official Solicitor is seeking expert evidence. I very much hope the quantum of damages can, subject to court approval, be agreed between the local authority and the Official Solicitor in due course.

75. I readily recognise that all children's services departments are under great pressure as a result of increasing demands on their services and the economic climate. Neither, however, to my satisfaction, explain the local authority's past failings in this case.

76. I have been roundly critical of this local authority. It is only right to recognise that it has acknowledged its past failings and has sought to ensure the same does not happen to other children and young people who in the future are cared for by this local authority.

77. The sea change in the approach of the local authority towards AA and the Cs and in deciding how best his complex needs can be met was led by the positive and proactive stance adopted by the assistant director, Tina Russell. The Cs now have trust in the local authority that it will maintain its commitment to support them in the care of AA and to ensure he receives the support, treatment and therapy he needs now and will need in his future life.

78. Once more I wish to pay tribute to Mr and Mrs C, and their family members for the loving, dedicated and selfless care they have given and, I do not doubt, will continue to give to AA throughout the whole of his life.

79. I bear in mind that AA's welfare best interests are my paramount consideration: s.1(1) of Children Act 1989 and that in reaching a decision I should have regard to the welfare checklist in s.1(3) of Children Act 1989.

80. I have no doubt that a SGO is the only and the best order to secure the future welfare of AA and which, happily, is entirely in accordance with AA's wishes, and I make a SGO in favour of Mr and Mrs C.

81. I wish AA and Mr and Mrs C the very best for the future. I hope AA is enabled and will now, with appropriate professional support, achieve the very best in his life.