Neutral Citation Number: [2020] EWFC 4 (Fam)

Case No: ZE19C00253

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/01/2020

Before :

THE HONOURABLE MR JUSTICE HAYDEN

- -

Between :

London Borough of Tower Hamlets	**Applicant**
- and -	
M	**1st Respondent**
- and -	
F	**2nd Respondent**
- and –	
T (a child)	**3rd Respondent**
(by the Child's Guardian)	

- -
- -

Mr Chris Barnes and **Mr Harry Langford** (instructed by **London Borough of Tower Hamlets**) for the **Applicant**
Ms Deborah Seitler (instructed by **Lillywhite Williams & Co**) for the **Mother**
Father acting in person
Mr Rob Littlewood on behalf of the child's guardian (instructed by **Freemans Solicitors**)

Hearing dates: 11, 12, 18,19,20, 21,22, 25 & 28 November 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.

.....

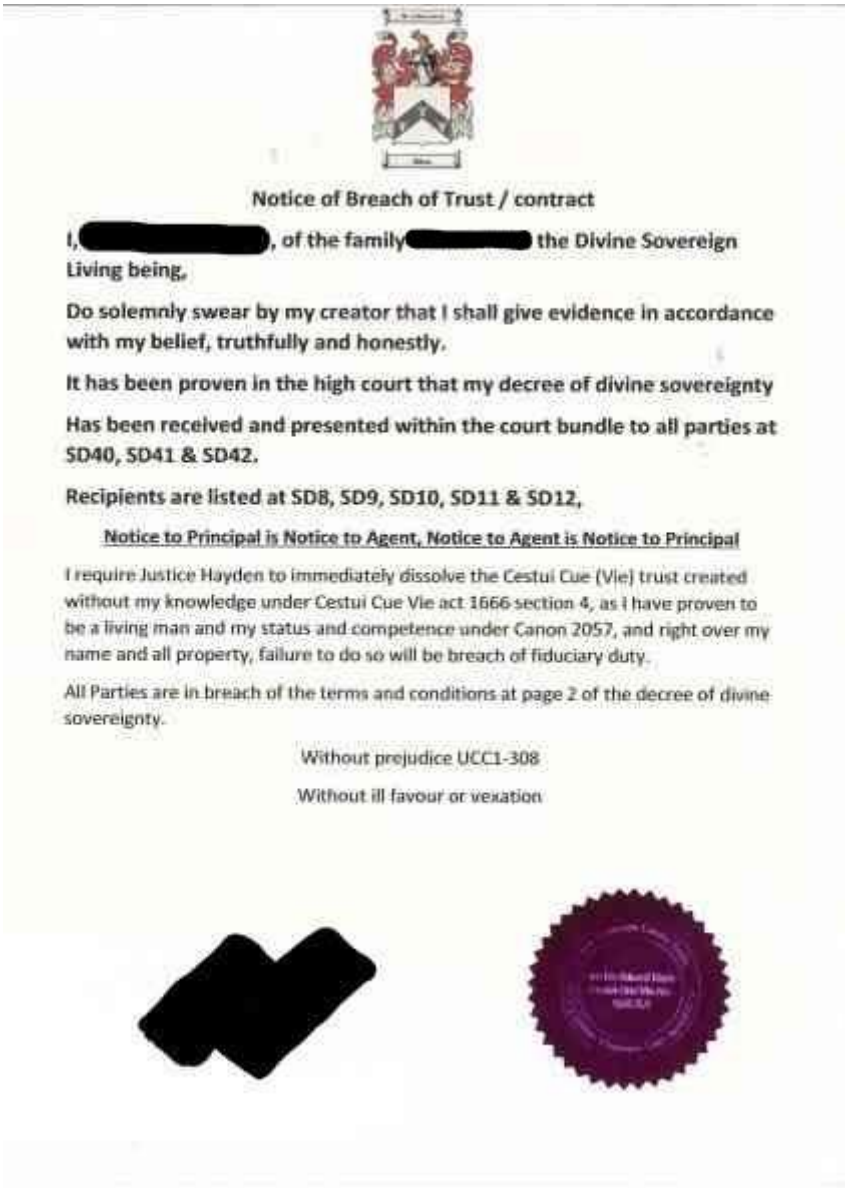
THE HONOURABLE MR JUSTICE HAYDEN

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 Hayden :

1. I am concerned here with T, a male child born in the Spring of 2019. The mother (M) is represented by Counsel and solicitor. The father (F) has elected at this final hearing, as he has done throughout the proceedings, to act as a litigant in person. This decision is driven by his fundamental belief that neither the Court nor the State, through the arm of the Local Authority, has any jurisdiction to take decisions in relation to his children. He invests great belief in the scope and ambit of The Cestui Cue Vie Act 1666. I have addressed this in an earlier judgment [2019] EWHC 1572 (Fam). However, when F came into the witness box to give evidence, he requested that he take his oath based on an embossed document, which he had prepared, emphasising his "decree of divine sovereignty". I permitted him to do so, for entirely pragmatic reasons. He has requested that I determine as a preliminary issue whether he, as a "Sovereign being" can be required to answer questions in these proceedings and, if not, he seeks an immediate order for the return of all his children.

2. Whilst I recognise that F's beliefs are strongly held and, I believe, genuinely so, I have little hesitation in concluding that he is required to engage as fully as possible in these proceedings, brought by this Local Authority to protect T from what they contend is 'significant harm', as contemplated by Section 31 (2) Children Act 1989 ('the Act'). Parliament has enacted the legal framework by which vulnerable children are protected and provided scope for parental rights and responsibilities to be evaluated in the application of the criteria within Sec 1 (2) of the Act, 'the welfare check list'. In that process it is in the parent's interest to give evidence and to advance their case. Inferences may be drawn from any failure to do so. It requires to be stated that this is also and manifestly in the best interests of the child subject to the proceedings. The embossed oath, which I have redacted in order to protect the privacy of T, reads as follows:



Notice of Breach of Trust / contract

I, [redacted], of the family [redacted] the Divine Sovereign Living being,

Do solemnly swear by my creator that I shall give evidence in accordance with my belief, truthfully and honestly.

It has been proven in the high court that my decree of divine sovereignty

Has been received and presented within the court bundle to all parties at SD40, SD41 & SD42.

Recipients are listed at SD8, SD9, SD10, SD11 & SD12,

Notice to Principal is Notice to Agent, Notice to Agent is Notice to Principal

I require Justice Hayden to immediately dissolve the Cestui Cue (Vie) trust created without my knowledge under Cestui Cue Vie act 1666 section 4, as I have proven to be a living man and my status and competence under Canon 2057, and right over my name and all property, failure to do so will be breach of fiduciary duty.

All Parties are in breach of the terms and conditions at page 2 of the decree of divine sovereignty.

Without prejudice UCC1-308

Without ill favour or vexation

[redacted]

3. It is unnecessary to review the extensive history in this case but it does require to be identified that M has three children to previous partners whom the Courts have removed from her care. F has also had five children to his previous partner also removed from his care. T's older full sibling P is presently placed with carers who seek to adopt her. P was made the subject of both Care and Placement Orders in November 2016.

4. Following a protracted hearing in June and July 2016, and in her judgment, dated 31st August 2016, HHJ Atkinson made a number of serious findings against F, which included rape and domestic violence. Both parents believe F to have been wrongly traduced and that the finding of rape, in particular, represented a miscarriage of justice. Parallel proceedings emanating from the same facts resulted in F's acquittal in the Criminal Courts. The parents sought to appeal the findings but they were unsuccessful. HHJ Atkinson's findings were, as is now good practice, summarised in a concise document appended to her judgment. It is important that the gravity and extent of them is not lost and so I set them out:

"FINDINGS MADE ON ALLEGATIONS IN DISPUTE

A. Allegations of rape and assault made by X against [F]

1. Against a background of controlling behaviour on 6/7 May 2014 [F] raped X and on 10 May 2014 he assaulted her by punching her and hitting her with a rolling pin and then he raped her for a second time.

B. Other volatile and unpredictable behaviour to which the children have been exposed

1. On 22.03.2015, [M] slapped [F] round the face.
2. On 04.05.2015, [M] inflicted red marks to [F]'s face by punching and scratching him.
3. On 04.05.2015, [F] bit [M]'s finger, smashed her phone, pushed her and sat on her holding her down by her neck. She sustained bruising.
4. [M] and [F] were under the influence of alcohol and fighting in the street on 04.07.2015. [M] accepted a caution for common assault. She had a black eye.
5. On or around 01.08.2015, there was an aggressive incident between [M], [F] and [the father of one of M's children]. The children were exposed to this.
6. There was a physical altercation between [M] and [F] between 21-30.08.2015. [F] broke down a door and grabbed [M] by her neck.
7. [M] and [F] would argue, shout and swear at each other which caused [Y] to have nightmares and he could not sleep.
8. [F] and [M] exposed the children to inappropriate public arguments on Facebook. [M] referred to [W] as "evil" and tagged him in a post describing him as a "little prick".
9. On 19.12.2015, [M] alleged to police and hospital staff that [F] had raped and assaulted her.

C. Exposure of [Y] and [Z] to a lack of stability and chaotic lifestyle

1. Despite findings made on 30.10.2012 in the Hertfordshire proceedings that the children had been frequently disrupted by sudden relocations that lack of stability and chaotic lifestyle has continued since the conclusion of those proceedings.
2. In April 2014, [M] and the children moved to an Hotel in Kilburn from Brent.
3. In September 2014, [M] states she was considering moving in with [the father of one of her children].
4. In February 2015 the family moves suddenly to live in another part of London to live with [F] and his 5 children.
5. On a number of occasions in the lead up to the issue of proceedings the children were moved out of the H home following an incident only to return some time later.

D. [M's] and [F's] prioritisation of their relationship with each other over their respective children and their inability to work openly and honestly with professionals

1. [M] was given alternative accommodation to protect the children from witnessing incidents of aggression after 05.05.2015 and on 07.09.2015 but returned to [F] with [Y] and [Z] on each occasion.
2. [F] and [M] have each prioritised their relationship over the needs of their children, choosing to remain together even though this has meant the removal of their children.

3. [F] and [M] have not worked openly and honestly with professionals. They breached the written agreement of 03.11.2015 when [M] returned to the family home on 05.11.2015 and leading to the removal of [Y] and [Z] to foster care.

E. [M's] alcohol dependence

1. On 18.12.2014, [the father of Y] left [Y] and [Z] in the care of [M] after an argument between them when she was drunk.
2. On 16.12.2015, [M] was intoxicated and self-harmed in the home by hitting herself with the kettle. [F] pulled her to the floor. Police found [M] to be aggressive, uncooperative, incapacitated through alcohol and had wet herself.
3. On 19.12.2015, police found [M] to be heavily intoxicated in the home. The children were present. She threatened self-harm.

F. Neglect of the children in F's household.

1. [F] failed to care adequately for the family dog, resulting in him urinating in the home and on beds.
2. On 16.12.2015 and 19.12.2015, police found the [F's] home to be dirty and unkempt."

5. The parents sought leave to apply to revoke the Placement Order in respect of P, with leave being granted by Holman J on 29th January 2018. In June 2018 the final hearing took place before Baker J, as he then was, to revoke the Placement Order. That application, reported as **Re P (A Child) (Application to Revoke Placement Order) [2018] EWHC 3854 (Fam)**, was refused. The parents applied to the Court of Appeal for permission to appeal but this was refused.

6. In August 2018 F applied for judicial review focused broadly on the contention that the fact-finding hearing before HHJ Atkinson was fundamentally flawed in consequence of alleged lack of disclosure of documentation. This was refused on the papers and F subsequently sought an oral permission hearing. It is, of course, a fundamental principle of judicial review that it is not an appropriate course of action where there is an alternative remedy available. Lieven J, who heard the application for permission, considered that an application to reopen the findings, in family proceedings, was a potential alternative remedy which had not been pursued. The application for judicial review was, accordingly, dismissed. F sought to appeal the order of Lieven J, permission being refused on the papers by way of an order dated 17th October 2019.

7. Thus, in June 2019 F applied, within these proceedings, to reopen the findings made by HHJ Atkinson. I heard the application and refused it for the reasons set out in my judgment of 11th June 2019. On the 12th June 2019 I heard a further application for leave to apply to revoke the Placement Order relating to P, in respect of which I delivered a judgment dismissing the application. On the same day I heard and gave a judgment permitting the Local Authority to register T's birth in the face of his parent's opposition on ideological grounds, the basis of which are set out in my ex tempore judgment (reported as **Re T (A Child) [2019] EWHC 1572 (Fam)**) and do not need to be revisited. Each of these judgments was appealed and each appeal was dismissed by the Court of Appeal on the papers on 18th September 2019.

8. It is of relevance that both M and F were sentenced to a period of 16 weeks' imprisonment following a campaign of harassment against HHJ Atkinson. That campaign extended not only to a personal attack on the judge, published on social media but also included references to her own children. In the course of this hearing both parents but particularly M, have recognised that their actions caused real distress and alarm to an experienced Circuit Judge. This did not prevent F from seeking to discredit the judge, in these proceedings, on the contention that she "fell short of the Nolan standards in public life". That argument was entirely baseless.

9. On 28th June 2019, following difficulties in the residential placement (to which I will return below) Moor J approved the continued accommodation of M and T at Jamma Umoja ('the unit'). The unit were not prepared to countenance F remaining with them. M made an application to be assessed, jointly, with F in the community but that application was refused by Holman J on the 26th July 2019.

10. On 20th September 2019 the unit gave notice to terminate M's placement for reasons which, again, have been the subject of much dispute. The proceedings were restored by the local authority prior to the mother leaving the placement. At a hearing before Mostyn J on 23rd September 2019 an application was made by both parents for the Interim Care Order to be revoked and for injunctive relief, pursuant to the Human Rights Act 1998. The applications were refused. A further hearing before Mostyn J on 27th September 2019 considered renewed applications for discharge of the ICO and an injunction pursuant to the HRA 1998, the applications were, again, refused. By this stage, following the breakdown of the placement, T had been placed with foster carers, where he remains.

11. It will be strikingly obvious from the above chronology that F and M have never accepted HHJ Atkinson's findings. F has pursued every conceivable route available to him to seek to overturn them. He spends many hours putting documents together to pursue his wide raft of applications. It has become a full- time occupation for him. I must also observe that he organises his paperwork with meticulous and almost obsessive care. He prefers to use his own bundles and, during the course of his arguments, he is able to refer to the documentation quickly and with remarkable accuracy. He prepares careful and, it must be said, lengthy notes for cross examination of witnesses. He chooses to be a litigant in person, notwithstanding that legal aid is available to him, sufficient to permit the instruction of experienced counsel and solicitors. His preference for the regime of the Cestui Cue Vie has made it difficult for him to identify counsel who he feels can advance his case in the way he wishes. Before HHJ Atkinson, F had legal representation. He is very critical of his former lawyers.

12. The diligence of F's legal research has extended to reading a significant number of judgments that I have given. These judgments have been read carefully and thoroughly. Occasionally, F has offered his own critique. During the course of the hearing, when M came into the witness box to give evidence, I was acutely conscious that she too had made an allegation of rape against F, from which she had subsequently resiled. Although the couple live together and very much wish to continue to do so, I nonetheless felt some disquiet about F cross examining M in person against this background. I approached this issue with M whilst she was in the witness box and before she began her evidence. She had anticipated my questions and reassured me that she was perfectly happy to be questioned by her partner. She told me that she understood and, I sensed, to some degree appreciated my concern. *"you gave a*

judgment about this", she volunteered. *"I understand your concern but I am fine"*. M was referring to **PS v BP [2018] EWHC 1987 (Fam)**. Though I would have expected F to have made this kind of remark, I was slightly surprised by M's knowledge. I have no doubt that it would have been drawn to her attention by F and it signals to me a further facet of the intensity of F's focus on the legal process. The couple has carefully studied their judge.

13. On the third day of this hearing F, strenuously supported by M, made a yet further oral application to revisit the findings of fact made by HHJ Atkinson. F had not foreshadowed his application, nor had M's legal team. It was not on notice to the Local Authority or to the Guardian. There was no supportive documentation presented in advance. It therefore took Mr Barnes, who appears on behalf of the Local Authority and Mr Littlewood, who appears on T's behalf, entirely by surprise. In any other sphere of law this application would not have been permitted to proceed. It would have been regarded as fundamentally unfair to the other parties and, given that it has been made, in various guises, on at least three previous occasions, would likely have been considered to be an abuse of process.

14. In the Family Court however, there are wider considerations. Any adjournment, necessitating delay, would be entirely inimical to T's welfare. He is now in foster care. T's needs must direct the timescales and not the exigencies of the litigation. I have not the slightest doubt that F took a conscious decision, in effect, to ambush the Local Authority with a surprise application. It placed the Local Authority, in particular, at serious disadvantage. It is axiomatic that the Court was also placed in a difficult situation. F advanced his argument with, in my assessment, more than usual care and skill. He flitted dextrously through his bundle and sought to persuade me that there was significant information that had now come to light which rendered Judge Atkinson's findings unsafe. He now presented his argument on the basis that he had wrongly criticised the judge and that he owed her an apology. The full evidence, he contended, had not been placed before her. F insinuated that this was likely to have been deliberate and that the judge had herself been duped. Whilst aspects of this argument displayed a paranoia about the integrity of various public bodies which has been fretted throughout his reasoning generally, it was nonetheless advanced with sufficient eloquence and force as to cause me, once again, to revisit the application. This is my obligation to T, not to the parents. His interests remain paramount throughout and even this late in the day against a backdrop of, what I find to be, conscious manipulation of procedure, I considered it necessary to address the argument in full.

15. I proceeded to hear F's extensive submissions, once again aiming to set Judge Atkinson's findings aside. I gave Mr Barnes sufficient opportunity to garner his material and to respond. I indicated that I would reserve my judgment on the application to be given at the end of the case, along with the substantive applications. It was then possible to return to hearing the evidence. One of the consequences of this un-foreshadowed application was that Ms Jo Duncombe, who had undertaken a risk assessment of F, attended two days at court without being heard. It was necessary, ultimately, to take her evidence by telephone link. Both F and each of the parties has now had the opportunity to address me in full and in writing on the further application to reopen HHJ Atkinson's fact-finding.

16. The applicable legal framework has already been set out on the previous occasions in which the argument has been advanced, most recently in my judgment of the 11th June

2019. Nonetheless, the essential law requires, once again, to be identified. The first iteration of the applicable principles was established in re **B (Minors) (Care Proceedings: Issue Estoppel) [1997] Fam 117.** There Hale J, as she then was, stated:

> *"Above all, the court is bound to want to consider whether there is any reason to think that a rehearing of the issue will result in any different finding from that in the earlier trial. By this I mean something more than the mere fact that different judges might on occasions reach different conclusions upon the same evidence. No doubt we would all be reluctant to allow a matter to be relitigated on that basis alone."*

17. Sir James Munby (P) amplified the approach in re **ZZ [2014] EWFC 9** emphasising, in summary that the Court must: be persuaded that it should permit any review of or challenge to the earlier findings by concluding that there are *"solid grounds"* for challenging the findings; consider the extent of the investigation and evidence concerning that review or challenge; and determine the extent to which the previous findings stand.

18. My attention has also been drawn to: **McInnes (Appellant) v Her Majesty's Advocate (Respondent) (Scotland) [2010] UKSC7**. This case arises in respect of the duty of disclosure. I note that Lord Hope describes the law in this area as *"reasonably well settled"*. The appeal was made in the context of the Criminal Law and emanates from the Scottish Courts. F submits that these two features undermine its authority and relevance to his case. I record his submission simply to indicate to him that I have absorbed it and understood it. On this occasion, however, F's generally sound forensic instincts have deserted him. The ratio of the case is entirely supportive of the approach F pursues in advancing his argument. I think F has assumed that because it was placed before me by Mr Barnes, it must therefore be inconsistent with his own case. On the contrary, it is an illustration of the independent Bar elucidating the application of the law from an entirely neutral perspective to preserve the integrity of the hearing. The following passages from the judgment of Lord Hope need to be identified:

> *"19. Two questions arise in a case of this kind to which a test must be applied. The tests in each case are different, and they must be considered and applied separately. The first question is whether the material which has been withheld from the defence was material which ought to have been disclosed. The test here is whether the material might have materially weakened the Crown case or materially strengthened the case for the defence: HM Advocate v Murtagh, para 11. The Lord Advocate's failure to disclose material that satisfies this test is incompatible with the accused's article 6 Convention rights. In the case of police statements, the position is clear. Applying the materiality test, all police statements of any witnesses on the Crown list must be disclosed to the defence before the trial: McDonald v HM Advocate, para 51.*
>
> *20. The second question is directed to the consequences of the violation. This is the question that arises at the stage of an appeal when consideration is given to the appropriate remedy: see Spiers v Ruddy 2009 SC (PC) 1. In that case it was the reasonable time guarantee that was in issue, but I think that the ratio of that case applies generally.*

> *As Lord Bingham of Cornhill put it in para 17, the Lord Advocate does not act incompatibly with a person's Convention right by continuing to prosecute after the breach has occurred. A trial is not to be taken to have been unfair just because of the non-disclosure. The significance and consequences of the non-disclosure must be assessed. The question at the stage of an appeal is whether, given that there was a failure to disclose and having regard to what actually happened at the trial, the trial was nevertheless fair and, as Lady Cosgrove said in Kelly v HM Advocate, para 35, as a consequence there was no miscarriage of justice: see section 106(3) of the Criminal Procedure (Scotland) Act 1995. The test that should be applied is whether, taking all the circumstances of the trial into account, there is a real possibility that the jury would have arrived at a different verdict."*

19. To address F's jurisdictional point, I include the following passages from the judgment of Lord Brown:

> *"36. This, I apprehend, would be the position in English law (both as to the test to be applied – in England as to whether the conviction under appeal is unsafe – and as to the decision being one for the appeal court itself) and I can see no good reason why it should be any different under Scottish law. In Bain v The Queen 72 JCL 34, BC ([2007] UKPC 33) (cited at para 7-51 of Archbold 2009) Lord Bingham of Cornhill, giving the opinion of the Privy Council, put the matter thus (at para 103):*
>
> *"A substantial miscarriage of justice will actually occur if fresh, admissible and apparently credible evidence is admitted which the jury convicting a defendant had no opportunity to consider but which might have led it, acting reasonably, to reach a different verdict if it had had the opportunity to consider it."*
>
> *37. True, that was a case of fresh evidence rather than an undisclosed statement but, as a member of that Board, I did not regard the opinion there as inconsistent with an earlier opinion I myself had given in Dial and Dottin v The State [2005] UKPC 4, para 31, in the context of fresh evidence which showed the main prosecution witness to have lied during his evidence at trial:*
>
> *"In the Board's view the law is now clearly established and can be simply stated as follows. Where fresh evidence is adduced on a criminal appeal it is for the Court of Appeal, assuming always that it accepts it, to evaluate its importance in the context of the remainder of the evidence in the case. If the Court concludes that the fresh evidence raises no reasonable doubt as to the guilt of the accused it will dismiss the appeal. The primary question is for the Court itself and is not what effect the fresh evidence would have had on the mind of the jury. That said, if the Court regards the case as a difficult one, it may find it helpful to test its view 'by asking whether the evidence, if given at the trial, might reasonably have affected the decision of the*

> *trial jury to convict' (Pendleton at p83, para 19 [R v Pendleton [2002 1 WLR 72]). The guiding principle nevertheless remains that stated by Viscount Dilhorne in Stafford (at p906 [Stafford v Director of Public Prosecutions 1974 AC 878]) and affirmed by the House in Pendleton: 'While . . . the Court of Appeal and this House may find it a convenient approach to consider what a jury might have done if they had heard the fresh evidence, the ultimate responsibility rests with them and them alone for deciding the question [whether or not the verdict is unsafe].'"*
>
> *38. That being the correct approach, is there any reason for concluding that the Lord Justice General adopted some different (and, from the appellant's point of view, less favourable) test in the present case? In my judgment there is not."*

20. As I understand Mr Barnes's submission, he does not accept that there has been any significant or relevant non-disclosure here (to Judge Atkinson) but alternatively, if there has he contends that it is not such as, in the context of the totality of the evidence before her, would have created a real possibility of a different conclusion.

21. In his argument, F relies upon the CRIS report (CR:4213163/12). This document might be better known as the crime report. It is dated 9th May 2012. It became disclosed into these proceedings by my order, dated 12th June 2019. F highlights the following entries, the objective of which is to cast doubt on the credibility of his former partner, whose complaint of rape the judge found to be reliable.

i. **The allegation of sexual assault made by V** (F's son by his former partner) that:

> "It was felt that V had been coached by his mother into making the allegation and there were a number of inconsistencies in his account. No further action was taken."

ii. **The allegation made by V and in relation to an allegation of arson made against F** that it had been the view of the investigating police officer that:

> "[he] felt that V appeared to have been coached by his mother prior to the interview. DC HUGHES added that the incident of the arson attack on [partner's] car which she alleged that her ex-partner [F] was responsible for has been investigated and he has been completely eliminated as a suspect as he had a solid alibi verified by two Met police officers and the prime suspect is in fact [the partner]"

iii. **An allegation of assault made against an unknown male**:

> "…during the subsequent investigation it was discovered that the apparent bruises to [previous partner's] face were in fact not bruises but make up applied by [previous partner] in attempt to support her allegation of assault"; and

iv. **False allegations made by F's former partner [X]**. F highlights the view of the supervising Detective Sergeant that:

> "[X] is continuing to make allegations which are false as detailed by her applying make up to look like bruises…I am concerned that the false allegations are having an adverse effect on the child"

22. Whilst I can fully appreciate that these CRIS reports are working documents designed to help share information between different officers on a particular team and therefore will reflect perceptions at varying stages of an investigation, it does not strike me as helpful for them to be littered with opinions as to the credibility of a particular individual without, at least, attempting to identify the basis upon which that opinion has been founded. The above extracts demonstrate, it seems to me, both helpful and unhelpful practices. The real danger is that unsubstantiated opinion, perhaps predicated on nothing more than an unfavourable impression, might quickly become the prevailing orthodoxy, thus leading the investigation in, potentially, an entirely wrong direction. Additionally, these reports will invariably be disclosed within legal proceedings and thus have the potential for further and perhaps unhelpful consequences. When expressing opinions, police officers might do well to remember that these documents may have a wider audience.

23. In these submissions F leads the charge but Ms Seitler, counsel on behalf of M, follows closely behind him. I hope Ms Seitler will not take it as a criticism when I say that it is F who has undertaken all the forensic groundwork. The parents submit that the entries highlighted consist of material which was not before HHJ Atkinson. It is contended that had it been it would have fatally undermined or at least cast significant doubt on X's credibility and, accordingly, would, on the application of the civil standard of proof, have prevented the Judge from making the findings she did.

24. F, as I have indicated, does not consider these disclosures issues to arise in consequence of omission or even incompetence. He perceives a deliberate and rather elaborate conspiracy to supress information. The following provides a flavour of his views:

> *"114. We requested the trial bundles from the LA which they refused to provide information under a subject access request, under the excuse we might misuse the information, that we were legally entitled to.*
>
> *115. In the LA's reply to the pre action protocol letter dated 8th October 2018, the LA assert **[JR126]** (iii) re: Essex Police disclosure '[X's] numerous allegations against [F]' "there was a separate bundle of 995 pages of police disclosure, including allegations by [X] from 2011 and 2014"*
>
> *116. This is untrue and the LA have misled the court, essential police disclosure from Essex Police involving allegations of child abuse & arson has obviously been omitted or not provided in the bundle, I can not see why the police would not provide full disclosure."*

25. F also makes the following comments:

> *"117. Justice Hayden correctly identified that HHJ Atkinson could not have overlooked such a serious allegation as arson, this crime someone could be sentenced up Life, although the average sentence is 10 years, as it involves a risk to life, this would have also proven that [X] made serious false allegations that could result in a long custodial sentence.*
> *118.HHJ Atkinson made her findings prior to my acquittal in crown court, the LA could have also requested finding to be made of being a sexual risk to a child in 2015/16, but this would have needed the Police disclosure that destroys [X's] credibility to be included, this is why it was not presented.*
> *119.The index for bundle J was added to the separate bundle on the 20.05.2016, and not fully indexed for the judge to be able to identify any particular report, there are just 3 headings 'Colchester Private Law Proceedings 1,2 & 3'*
> *120. With regards to this essential missing evidence, and the gross miscarriage of justice I perceive we have suffered, I also have the option to apply to the court of appeal to reopen all our appeals since 2016 on the basis of the new evidence that has been disclosed."*

26. It is undoubtedly true that the CRIS report that F places reliance on was not before HHJ Atkinson in 2016. F is entirely correct to highlight the concern I expressed in the course of his submissions, regarding the arson. As I have said above, F's application in relation to this material, arrived without notice and without written argument. However, as I have detailed, I provided Mr Barnes with an opportunity to address the issue and to evaluate the evidence. He responded by providing an unedited extract from the note of evidence before HHJ Atkinson and a copy of the written submissions presented by F's counsel, Ms Julia Gasparro. F had told me that his counsel had not put his instructions, particularly concerning [X's] credibility. I have to say that Ms Gasparro's written closing submissions on F's behalf reveal a very different picture. It is illustrative to note the following submissions *"when considering [X's] credibility, the learned judge must consider that [X] has willing lied and sought to mislead a number of professionals over the years"*. The attack on X's credibility goes further *"[X] has a documented history of mental health problems… she has been observed to be irrational… incoherent… Dr [J] and Dr [K] have diagnosed [X] as having an emotionally unstable border line personality disorder and recurrent depressive disorder.*"

27. Ms Gasparro, in her submissions, unambiguously contended that these diagnoses could explain why X's allegations against F were false. By way of illustration she cites an example of what was considered to be an unreliable allegation that a social worker had sexually assaulted X, as illustrative of her general unreliability as a witness. I also note that Ms Gasparro is critical of the opinions of a Dr Van Velson, who provided an independent assessment in earlier private law proceedings. They entirely reflect the criticisms made of her by F during the course of this case.

28. The following also require to be stated:

> *"[X] conceded in her evidence that she has lied to numerous professionals over the years including housing officers, social workers and guardians. As such her evidence must be treated with caution.*

> *"[F] is charged with 2 counts of rape: one which was alleged to have taken place on either the 6th or 7th May 2014 and the other on the 10th May 2014. [F] denies both. In considering these allegations and their veracity, the learned judge is asked to consider a number of contradictions in [X's] statements:*
> *(i)On the 30/04/14, [X] telephoned the police and requested that they assist her to leave the family home. Whilst she did state that she had moved back in 3 months previously, she stated that they were not in a sexual relationship: [A73B]. In a subsequent police interview she states 'We were getting on well and I ended up sharing a bed with him':C27.*
> *It should be noted that despite making serious allegations against [F] that day and being returned to Essex, she is back in the family home by at least the 06.05.14 on his evidence;*
> *(ii) On the 08.05.14, [X] was spoken by police officers and stated that 'she is not willing to substantiate any allegations despite been given full support and advice': A73ao;*
> *(iii) on the 10th May 2014, [X] did not make an allegation of rape to police rather simply one of assault: A89;*
> *(iv) the police note discrepancies in the timing of the then reported assault: A97;*
> *(v) [X] did not make any allegation of rape until 4th June 2014: C26. [X] stated that the first rape was on the 6 or 7th May 2014: C7. It is particular note that [X] was spoken to by the police and [F] was questioned at the station on the 8th May 2014 and no allegation was made.*
> *(vi) Numerous other inconsistences noted by the police in her statements:* ***A109."***

29. The attack on X's credibility concludes as follows:

> *"It is submitted on [F]'s behalf that he has been consistent in his account and has assisted the investigation. [X] is historically unreliable, has made outlandish and serious allegations in the past and has a personality disorder which if untreated can cause a person to act in this manner. Her accounts have been inconsistent, and her actions of continually returning to the home demonstrate that she was not in fear of [F]. The court is respectfully asked to prefer the evidence of [F] over hers."*

30. With respect to F, these submissions strike me as comprehensive, measured, entirely consistent with his own arguments before me and, contrary to his now stated position. They reveal clear professional fidelity to what were, self-evidently, F's instructions.

31. In any event, the Local Authority submit each of the points raised by F was in fact before HHJ Atkinson and that he was fully able to challenge X's credibility. Addressing the substance of the CRIS report, the Local Authority submit that F's submission is simply untenable on a true analysis of the material. Mr Barnes has, in convenient tabular format, dissected from the documents, that all agree were before the judge, the following entries and references. They require to be set out in full:

"It is submitted that the private law proceedings contained at section 'J' of [F]'s bundles that he has prepared for this hearing (which contain material from the 2016 private law proceedings, and which was before HHJ Atkinson) contain the following pertinent references:

Relevant Entry	***Reference in Section J of [F]'s Bundle***
"6.9 Police photographs suggest that [X]'s bruising may have been drawn on her face with makeup and is not consistent with bruising that would occur as a result of the reported injury; they re-photographed [X] the following day and there were no bruises present on her face. The police will not be pursuing the allegations of assault"	[**J48**]
"6.12 At the Strategy meeting on 18.07.12 the police shared that there is no evidence to suggest that any of these allegations are true and it appears that they have been fabricated by [X]. There are concerns that [X] has used V to support her evidence to professionals and the police; he has been ABE interviewed on several occasions but the police feel that he has been coached by his mother regarding what he should say in order to support her story. If this is the case this evidences that V is being exposed to a high level of emotional abuse in the care of his mother"	[**J48**]
"There are concerns that if [X]'s attention seeking behaviours continue she may increase the	[**J49**]

frequency or severity of her allegations that could lead to her causing herself a serious injury whilst the children are in her care or actually harming one of the children"	
"[W] denies that his father has used any physical violence towards him or his siblings. He recalls his mother once hitting him with a hoover and told him not to tell his father" [W] thinks that his mother is "bribing" [V] to say negative things about his father as he claims that she "did it to me"".	[**J51**]
"20.01.12…Police suspect that [X] may have firebombed the car herself and are concerned for her mental health"	[**J63**]
"31.05.12… Police confirmed that [F's] fingerprints were not found on the car during the bomb attack...Police expressed a concern for [X's] mental health and presentation when having interviewed her".	[**J64**]
"05.07.12…[X] attended the GP with all of the children requesting help for V following him witnessing a further attack whereby a man cut her face with a knife….The GP observed scratches to [X's] face that appeared to be like cat scratches"	[**J65**]
"06.07.12….[X] reported to the Police on 06.07.12 that the alleged incident involving the knife attack occurred on 01.07./12 not 02.07.12 or 04.07.12….the police	[**J66]**

have photographed [X's] face twice since 01.07.12 and there were no signs of the scratches she alleged were caused by the Stanley knife"	

32. In what is, in my judgement, a complete deconstruction of F's argument, Mr Barnes identifies, within the papers before HHJ Atkinson, the following key references, demonstrating that both the underlying material and analysis claimed by F to have been suppressed, were, in fact, before the judge. Again, these must be set out in full:

Relevant Entry	**Reference in 2016 papers**
"09/05/2012 - 12PAC071980, 4213163/12 [V] was interviewed by police regarding an allegation he had made against his father, F. [V] said when his mother was in hospital having S, his father woke him up and touched his willy. [V] said his dad rubbed his willy up and down with his hand and told him to do the same to him or he would kill him. [V] further disclosed that 2 years ago his father made him and his brother W watch 2 young boys (age 5-6) on the internet having oral sex. It was felt that V had been coached by his mother into making the allegation and there were a number of inconsistencies in his account. No further action was taken."	Police disclosure bundle [**A0b**]
"4213163/12 - Sexual assault on male -	Police disclosure bundle [**A106**]

Allegation of sexual assault on one of his son's [V] believed to be false reporting - NFA."	
"[As part of a summary of [F]'s police interview on 6 August 2014]: [F] denies raping [X] on the 10th May. F was arrested for an assault. The police rang [X] and asked her if anything else happened and she said no. She was also ringing Limehouse Police Station [where F was in custody] trying to get him out. F does not know how she got the bruise. He stated that she has been known to use makeup to create "injuries" before. This injury he thinks she must have caught herself or injured herself. He denies hitting her with a rolling pin; he denies putting a tea-towel in her mouth."	Police disclosure bundle [**A126**]
"20/01/2012 14:38 DC 183028 RJ ROWLERSON We have received a phone call from Essex police - PS Kevin Hughes / DS Tracey Martinez, apparently in the early hours of the morning, the victim who now lives in Essex Colchester has had some fire damage committed against her car, this is being investigated by Essex Police and at present no crime report has been completed - they have an incident reference of EP 2012 01 19 0898, they had limited details and were enquiring for background info Soit Richard Unwin	Police disclosure bundle [**A326**]

has appraised them of our investigations, the Essex police are currently conducting enquiries and have the contact details for the Sapphire office"	
[Reference contained within a case note prepared on 13/05/2016 in respect of a meeting at school between the social worker, Ms Khan, and [W]] [W] became upset and told me that his life was fine until social service became involved. I explained to [W] the reasons why we were involved more recently but that social workers have been involved with his family for a lot longer. I provided examples to him of concern regarding domestic abuse between his [F] and [X] and more recently between his [F] and [M] and how this has been reported by [M] and [M's daughter]. I explained to [W] that there was an outstanding criminal trial where is father is charged with serious offence and know from the school he was worried and upset about this. [W] reply to the disclosures that his [X], [M] and [M's daughter] had made was lies. That his mother is a 'bitch' a liar who would put make up on to pretend she had bruises, [M] is ' hormonal' and doesn't know what she says when drunk whilst [M's	Core Bundle [**F65**]

daughter] is 'mental' who is in an out of hospital. [W] reported that he had not seen any violence and he and his siblings were fine to return to his dad and [M's] care. I explained to [W] that social worker for [M's] children [Y] and [Z] is not wanting for them to return to her care because of they are worried about [M] not being able to care for them and keep them safe. [W] denied that there was anything wrong with [M] and was more concerned that they were going to be placed with [the father of Y]. Again I gave [W] examples of past concerns of domestic violence, multiple moves for [Y] and [Z] and more recent concern regarding sexualised behaviour. [W] asked what that I tell him what these were as he wanted to know and I informed him how the children are using sexual language and it is being observed that [Z] is touching herself both by herself and inside."	

33. Though it is not necessary for me further to burden this judgment with the transcript of the notes, it is sufficient to say that they expressly identify: X being challenged that she had coached V into giving false evidence; fabricating bruises; attention seeking behaviour; delay in reporting rape. Explicitly, it is put to her that the police and other professionals considered her to be an unreliable witness.

34. Given what I have identified as F's almost obsessive focus on the court proceedings and his compendious knowledge of the details of the paperwork, I am driven to conclude that his submissions before me on this point are a calculated and high-risk deception. Of course, he would have known that Ms Gasparro had taken all these points on his behalf. Similarly, he would have known the questions put to X in cross

examination. From F's perspective it was extremely unfortunate that the Local Authority was able to identify the above material so quickly and efficiently. It entirely dismantles F's argument. The best interpretation that I can possibly place on this conduct is that both parents have contrived to make an application based on what they knew to be an entirely false premise, as a last ditch and desperate attempt to overturn the findings. In this ambition they have singularly failed.

35. In his closing document Mr Barnes states:

> *"18. It is submitted that there was material before HHJ Atkinson which would have allowed the judge fully to consider [F]'s case, and, in particular (a) any purported coaching by [X] of [V]; (b) the allegation made against [F] of arson and the lack of forensic evidence in support of that allegation; (c) [X's] purported application of make up; and (d) the consequences of [X's] allegedly false allegations for the welfare of the children."*

36. This leads the Local Authority to conclude:

> *"19. In light of the material that is before the court; and contrary to his assertion of making this application, [F] was able, and in fact did have his case put to [X] on each of the points upon which he now relies save for the alleged arson."*

37. I agree with this submission. The judge had a welter of significant evidence before her, highlighting the unreliability of X as a witness. In the context of the totality, the fact that the judge's attention was not drawn to the wrongful allegation of arson against F made by X, has, in my judgment, no impact on the overall evidential landscape. In other words, applying the reasoning of Lord Hope in **McInnes (Appellant) v Her Majesty's Advocate (Respondent) (Scotland)** (supra), taking all the circumstances of the hearing before Judge Atkinson in to account, there is no real possibility that different findings would have been made. Further, to apply the test identified in my earlier judgment there are no "solid" grounds to challenge the earlier findings (**Re: ZZ [2014] EWFC**). As I emphasised in my earlier judgment, where I was considering the application to reopen the previous findings, the approach of Judge Atkinson had not simply been to discount X's evidence on the basis of her general unreliability but carefully to weave her way through the detail of the allegations and identify corroborative material. She also carefully explored the discrepancies in X's evidence and some of the inherently unlikely explanations advanced by F. Finally, the judge sensitively evaluated the demeanour of all the witnesses. I made the following observation in my judgment, which I consider bares repetition here:

> *"23. In exploring the "discrepancies" which, as I have said, formed both the essence of his case before Judge Atkinson and the central premise of this application, the Judge considered a variety of evidence, extraneous to the oral evidence of the complainant and the father. It is important to identify that this was not a case where the Judge confined herself to simply evaluating who she believed. She was undertaking a forensic trawl of the corroborative information available, to assess whether it supported or undermined the reliability*

> *of the allegations. It was, if I may say so, a thorough and impressive forensic exercise. The details of it are particularly in evidence in paragraphs 76 to 89. I do not propose to work through these in the course of this judgment but again they can be read into it."*

38. F's own immaculately presented written submissions on this point contain the following:

> *"120. With regards to this essential missing evidence, and the gross miscarriage of justice I perceive we have suffered, I also have the option to apply to the court of appeal to reopen all our appeals since 2016 on the basis of the new evidence that has been disclosed."*

39. F also sought to 'stage' (his words) an example of the difficulty faced by a judge who has been deprived of relevant material by, he told me, deliberately removing a number of documents from the bundle he had provided to me. On this he makes the following submission, which I record but refrain from commenting upon:

> "122. *On the 11.11.19 during cross-examination of Mr King I crudely demonstrated how easy it was to provide a bundle to the court with evidence missing."*

40. Having regard to the backdrop therefore, it is easy to see how F's un-foreshadowed submissions on the third day of this final hearing, advanced entirely out of context, had some initial attraction. The reality however is that when placed in the framework of the entirety of the evidence available to Judge Atkinson, as they require to be, they have very little, perhaps no significance.

The Threshold Criteria

41. The Local Authority contends that T was likely to suffer significant harm at the time of the commencement of the proceedings based on a constellation of risk. This is set out in the final threshold document dated 16th August 2019. I highlight the following:

> "The local authority relies upon the following 5 heads of risk which are established by reference to the sub-paragraphs pleaded:
>
> a) Older children: the parents have had a combined total of 8 children removed permanently from their care in the course of contested proceedings in 2015/16.
> b) Sexual violence: a risk of significant emotional harm arises from exposure to serious sexual violence in the care of the parents:
>
> i. Her Honour Judge Atkinson found that the father raped his former partner on 6th/7th May 2014, and on 10th May 2014;
>
> ii. The father adamantly refutes this finding and as a consequence there has been no measure taken to reduce or address this risk;
> iii. The risk of further sexual violence, though unquantifiable, is significant;

iv. The mother made (and then retracted) an allegation that the father had raped her on 17th December 2015.

c) Domestic violence: a risk of significant emotional harm arises from exposure to serious domestic violence in the care of the parents:

i) In respect of his previous relationship the father had been controlling, and had perpetrated acts of violence and sexual violence;

ii) In respect of the parents' relationship the father perpetrated acts of violence against the mother as found by Her Honour Judge Atkinson;

iii) The father's perpetration of domestic violence and the deficits in the father's conflict resolution abilities remain unaddressed;

iv) The parents have a propensity to resort to violence;

v) The parents' relationship was accurately described by the mother in her 4th statement in the proceedings before Her Honour Judge Atkinson (subsequently retracted when the parents' relationship resumed) as being characterised by controlling, abusive, aggressive, and violent behaviour on the part of the father;

vi) The parents' older children were exposed to domestic violence in the parents' relationship;

vii) Subsequent to the decision of Her Honour Judge Atkinson (and arising from recent Police disclosure) further domestic violence occurred involving Police call outs to the family home which the parents have not previously disclosed to the Court or in the course of assessment:

a. On 29th January 2017 the father grabbed the mother by the scruff of the neck and strangled her (saying "*I'll put you to sleep*") in the course of an argument when the mother had asked for money (the father always having her cash card), this was the third occasion in their relationship that the father had strangled the mother, on the previous two occasions she had passed out, on being spoken to subsequently by the Police the mother stated she did not want to go to Court;

b. On 7th February 2017 following an argument at around 5pm the father slapped the mother and kicked her out of the house, on attendance by the Police the mother responded to DASH risk assessment (without substantial elaboration) reporting prior stalking, sexual assault, strangulation, and controlling behaviour;

c. On 12th August 2017 the Police attended the parents' home following a phone call from the mother who was found to be intoxicated and had alleged that the father had hit her, she stated that the father is very controlling, the mother described

having suicidal thoughts about taking something sharp into an adoption hearing and slashing her throat if her child is adopted;

viii) The parents continuing inability to acknowledge and address the history of violence within their relationship means that the risk of a recurrence of violence, though unquantifiable, is significant."

42. Additionally, the Local Authority emphasises M's chronic and excessive alcohol abuse and her aggressive and violent behaviour when intoxicated. Though it is recognised and properly acknowledged that M has achieved abstinence almost uninterruptedly for a period of eighteen months, the Local Authority submit, correctly in my judgement, that a risk of relapse must be identified. Similarly, though M has been effective in managing her mental health, she has a history of self harming and suicidal behaviour. It also has to be identified that as recently as June 2018, immediately following Baker J's decision not to return T's sibling, M got extremely drunk, self-harmed by cutting both her wrists and attempted suicide by cutting her throat with a razor blade.

43. Central to the Local Authority's case is the personality and general functioning of F. In their threshold document the Local Authority highlight the following:

> "Father's personality and functioning: the father's functioning inhibits his ability to provide safe, consistent, and child-focused parenting leading to a risk of significant emotional harm:
>
> i. The father has a Narcissistic Personality Disorder which is characterised by a propensity to place his own needs above those of others;
> ii. At points of high emotion there is a risk of violence and sexual violence at times when the father loses control of his behaviour;
> iii. The father engages in transgressive sexual behaviour, including: sexual violence, engaging the services of a prostitute, and is inclined to over-sharing sexual information; and
> iv. The father's prioritises (and the mother defers to) his views, beliefs, and his pursuit of legal proceedings even where that comes into conflict with the welfare interests of the child in relation to vaccination and registration of birth, and full engagement with assessment."

44. Finally, in evaluating likely future harm, the Local Authority contend that there is no prospect of the parents separating and no likelihood of the mother placing T's needs above those of her own or the father's. Nor, the Local Authority says, is there any realistic prospect of permanent separation.

45. Additionally, the Local Authority submit that the parents lack insight into the significant risk of harm which arises in relation to their care of T and do not accept the findings of Her Honour Judge Atkinson. They highlight the conduct towards

professionals, particularly, though by no means exclusively, F's extreme hostility. Linked inevitably to this last point is the contention that the parents are entirely unable to work with the professionals to manage and thus to reduce the risk to T.

46. I say, at once, that I have no difficulty at all in concluding that the threshold criteria, as set out above, is established in this case. Most strikingly, the conduct of F towards the professionals is, as they have described in evidence and I have witnessed in this court room, both contemptible and iniquitous. The impact on HHJ Atkinson of the campaign of harassment against her was, as I have read, alarming.

47. So too, in my assessment, has been the impact on Mr Hill, the Director of the unit. F's modus operandi is to "research" material that might be available, either by way of general gossip or on the internet and to deploy it, when an occasion arises, against those who have crossed him. Given F's perspective on the world, which perceives a hostile and corrupt state, it is inevitable that this is potentially a wide group.

48. In his cross examination of Mr Hill, which I address further below, F made references to his wife, his culture, his daughter. In evidence, he took Mr Hill, in detail, through the negatives of the Ofsted report, overlooking the fact that the overall assessment was a positive one. He was critical, directly and inferentially, of the building and the staff. I also note, in passing, that F was somewhat disdainful of the other residents. The manner of F's questioning can best be described as bombastic and, on occasions, bullying.

49. With great respect to Mr Hill, who had held this post for eighteen years, it struck me that F had eroded something of his professional self-confidence. Later, when F came to give evidence himself, I asked him if he recognised that he had this impact on Mr Hill. He told me that he did recognise it. He also acknowledged that he appreciated the real distress he had caused to Judge Atkinson. In addition, towards the end of the case, F proffered an apology to Mr Barnes to whom he has been extremely discourteous and, on occasions, belittling. In what it will be seen is something of a pattern, F speculated adversely about Mr Barnes's personal and family life. Mr Barnes, like Mr Hill, bore the onslaught with dignity and professionalism. It is necessary to state that this behaviour has taken place in front of me in a court room. I had a strong sense of F endeavouring to rein himself in. I infer that in different circumstances he would have unleashed his invective more freely. I record that F expressed some remorse for his behaviour to Mr Barnes, which I consider, on balance had, at the time it was given, some sincerity to it. What F lacked, however, was any even tentative understanding of why he behaved in such a way.

50. Tellingly, F's cross examination of the last witness, the Guardian, was, particularly and especially towards its later stages, offensive. Even allowing for the fact that she is the professional representing F's child and recommending an adoptive placement and might therefore expect a degree of robust questioning from a father acting in person, F's treatment of her was overbearing, oppressive and bullying. The Guardian should not have had to endure such an onslaught. I was, on reflection, rather too slow in closing down F's behaviour towards her. This was, I think, a reflection of the distorted dynamic that F creates.

51. It is also important to record that M rarely seeks to rein F in. Indeed, she is often voluble and highly critical of the professionals in her own right. This said, as F himself stated, the couple's behaviour in this court has been greatly moderated from the behaviour

exhibited before HHJ Atkinson. In that court F told me that M, at times, charged around shouting and upturning chairs.

52. It is this quite extraordinary behaviour that poses the most immediate risk to T. Moreover, it is exhibited by both parents in varying ways and to differing degrees. It creates an alarming spectacle. Even when the couple is quiet or behaving humorously, as they sometimes do, there is a fragility to the peace and an underlying tension. I agree with the Local Authority's view and indeed, with the evidence of Dr. Sinclair that the behaviour that I have described is reflected in the couple's own personal relationship. M rarely shows an ability for independent thought or action. As Dr. Sinclair states M is heavily invested in the relationship. She has, Dr. Sinclair considered, experienced such a difficult and traumatic life that the love she perceives to be offered to her by F, is of a more nurturing quality than anything she has received before. F states in the assessments and to me in this court that he is attracted to women whom he perceives to be 'vulnerable' and who he can 'rescue'. I formed the impression that M considers that she has been rescued by F. Dr. Sinclair made it plain that if confronted with a conflict between the needs of her baby and those of F, M would choose F. In her report Dr. Sinclair notes that F frequently interrupted M, insulted her when he became angry and made generally derogatory remarks about her intellect.

53. Dr. Sinclair's report draws the following conclusions which have been carefully distilled:

a. "M has an idealised projection of her relationship with F which does not accommodate the reality of their relationship [**E175/2232**];
b. this leads her to have a tendency to overvalue or accept evidence which is exculpatory of [F]'s behaviour [**E176/2242**];
c. there is a high degree of dependency on the part of [M] [**E182/2449**]
d. [F]'s high narcissism and combination of positive self-image corresponds to an "independent style" [**E182/2463**];
e. the relationship is co-dependent in nature [**E185/2573**];
f. the balance in the relationship necessarily changes depending on extrinsic events [**E186/2586**];
g. [M] is submissive to [F]'s more dominant role [E187/**2632**];
h. [cognitive] impairment is a consequence of [M] and [F]'s attachment styles: [F] will continue to dominate his relationships, and [M] will ignore or minimise information that threatens the stability that she has found in these relationships [**E187/2687**];
i. if a risk assessment were to suggest that a child would be vulnerable in [F]'s care then [M] would likely not believe the results or be motivated to take steps to safeguard a child [**E189/2719**]; and
j. [M]'s intellectual behaviour and bias towards [F] may impede her her ability to identify risk and/or safeguard a child in her care [E190/2731]."

54. Something of these conclusions can be understood in the context of the couple's private sexual life. F is enthusiastic to communicate to people that he regards his sexuality as *'bisexual'*. Mr Barnes has suggested that F tends to "overshare" the graphic intimacies of his private life. Mr McKenzie, Chartered Clinical and Forensic Psychologist said that

F was primarily attracted to, what he termed, "clean cut young men". F could not contemplate a same sex relationship however, because he has a strong sense of wanting to be part of a traditional family unit, by which he means one in which his children have a male and a female parent. F appears to agree with Mr McKenzie's assessment of his primary sexual proclivity.

55. One of T's siblings has been placed with a same sex couple. In his earlier appeals F has suggested that some of my own work both academically and in the case law, suggests a sympathy to such families which, it was contended, should preclude me from hearing this case. The Court of Appeal did not agree with that submission. It has to be said that it is not easy to reconcile these views with F's own sexual orientation as he expresses it. Indeed, some might regard it as a hypocritical position. I think it most likely reflects F's own conflicts which Dr. McKenzie considers to fall short of being accurately categorised as *'delusional'* but to constitute a *'disturbance of personality'* typified by *'overvalued ideas'*, exhibited in reactions which present as paranoid. M accommodates all this without any apparent dissatisfaction or criticism.

56. Earlier this year F pleaded guilty to an offence of outraging public decency. He received a conditional discharge. This incident involved his receiving oral sex from a prostitute in his car in the Bethnal Green area. Initially, F gave some rather ludicrous explanation suggesting that the police officer had mistaken the sexual act for discovering F "urinating into a bottle". I note that M stood by F's explanation. However, when I indicated a degree of scepticism at a Directions Hearing, F amended the account. In many ways I have to say that I consider the altered explanation to be equally odd. F says that he encountered the woman in Bethnal Green entirely by chance. She had recently been "beaten up" and her bruises were evident. She had cuts to her face to which she had applied a plaster. As I understand it, blood was still visible. F told me that he felt sorry for her. He explained that he had oral sex with her because he had a long-standing difficulty with erection dysfunction and he wanted to "experiment" with another woman to see if the difficulty was localised to his partner or a more general problem.

57. In the context of the history of the case I find it to be particularly disturbing that F should have had a sexual encounter with somebody who had recently been physically injured. I also consider it troubling that M accepts this later explanation and, again, without criticism. In fact, M is critical of herself, explaining F's behaviour to be a consequence of her low sexual drive at that time following her suicide attempt. In what I regard as a rather benign analysis Mr McKenzie states *"it may also be noted [F] appears to have acted out by seeking the services of a sex worker which is a different course from being sexually forceful with [M]"* All this leads Mr. McKenzie to the view that *"[F's] sexual aggression is a dysfunctional means of acting out his aggression and anger in situations of significant mutual conflict".* However, Mr. McKenzie concludes that his report *"remains limited in its understanding of [F's] sexual aggression".* He highlights the fact that there are three reports of rape *"within highly conflicted intimate relationships"*, the most recent allegation of rape was made by M, two years ago, from which she resiles, on the basis that it was a malevolent complaint on her part born of her anger with F at the time.

58. On the 17th July 2019 in the fourth statement of the social worker, Mr King, further previously unreported allegations of sexual disturbance and assault were set out:

- *"In 1996, a 12 year old boy made an allegation that [F] had shown him his penis in the back of a van and offered to pay him for oral sex.*
- *In 2012 [F]'s son F was interviewed by police after making an allegation that [F] had woken him and touched his penis. He further alleged that [F] had made him and his brother [W] watch two young boys on the internet having oral sex.*
- *Following the allegation from his children that [F] had child pornography on his computer, it was reported to a social worker that [F] had asked his mother to dispose of his computers for him.*
- *The children had seen sex toys in the home."*

59. None of these allegations was prosecuted by the police. Both F and M consider that they were maliciously motivated complaints. The 2012 allegation arose in the context of a highly conflictual adult relationship. It is F's account that his son was coached by his mother in to making the false allegation. M accepts these explanations and considers that F poses no risk of sexual harm to a child. She told Mr McKenzie that F seemed attracted to young adult men as opposed to women or children. The consensus, as I see it, between Dr. Sinclair, Mr McKenzie and Ms Jo Duncombe (independent sexual crime/child protection consultant) is that F is a low sexual risk to a child of T's age. It is important to state that this important qualification offers little if any reassurance for the future.

60. A further understanding of the couple's inter dependency is found in the assessment of Dr. Sinclair. M states the following by way of explaining her relationship with F:

> *"He looks after me. Knows my moods, when I need a lift he's like let's go out, let's do this or that. If I don't feel like it he might get a take-away or see a film and cuddle up together."*

61. The evidence of Dr. Sinclair's assessment resonates with the evidence more broadly:

> *"[F] stated that he felt [M] was infatuated with him as she has told him that if he were to leave her then she would kill herself. [F] disclosed that [M] does not allow him out of the house for fear of meeting another woman. [F] stated that [M] is a stalker and she will not leave him alone to get on with his life.*
>
> *These behaviours suggest an over-reliance on the relationship and an acceptance or tolerance of behaviours from her partner that is not statistically common in most relationships"*

62. F made a number of interesting observations to Dr. Sinclair regarding his relationship with women:

> *"[F] does not fear self-disclosure to partners or intimacy but this is on his terms. He told me an independent social worker has hypothesised that he is attracted to or attracts women in need and his relationship history appears to support this. Forming attachments with vulnerable women will reduce his risk of developing a dependency on his emotional partner."*

63. As to the observations of the couple's behaviour Dr. Sinclair notes the following:

> *"grooming behaviours from [M] to [F],*
> - *[M] listened respectfully to [F] without interruption with one exception.*
> - *[F] frequently interrupted [M].*
> - *[M] was easily influenced by these interruptions, abandoning spontaneous responses to incorporate ideas or information provided by [F].*
> - *[M] referenced both [F] and I when speaking so that he was included in the exchange. In contrast [F] only directed his attention to his partner when he interrupted her or during disagreements and an argument.*
> - *[M] maintained a calm composure during a conversation that escalated into an argument where [F] was sarcastic, condescending, patronising and insulting towards his partner.*
> - *He infrequently corrected her vocabulary when this was not necessary or rephrased a question using higher frequency vocabulary.*
>
> *[M] told me [F] accepts her the way she is but encourages her to show a greater interest in the legal process or self-improvement even though he knows that she is not interested in either activities. Although she has access to the financial balance sheets, joint account and [F]'s personal account he takes responsibility for their finances and the tenancy is in [F]'s name only. [M] and [F] told me [M] willingly concedes to his legal strategies although he would prefer that she took a more active role rather than passively agreeing and then conceding to the influences of her legal team or the local authority.*
>
> *Mr McKenzie also noted a paternalistic dynamic between the couple but concluded that this was not intended to control. My observations suggest that [F] knowingly exerts his influence on his partner in order to present a united front."*

64. F was particularly impressed with the evidence of Mr McKenzie. He appeared to perceive him as a witness who supported his case. Certainly, Mr McKenzie was at pains to illustrate the positives. He acknowledged M's sustained abstinence from alcohol. He stated in his report that in terms of evaluation of risk *"the trend is downwards"* and observes *"it would appear the risk position has significantly reduced from the period of the removal of the older children"*. However, the thrust of his responses and, it must be said, particularly to F's own questions, struck me as entirely concordant with the Local Authority's case. Moreover, in his report Mr McKenzie referred to *"complex systemic risk, the overall picture being hard to determine".* Mr King, the key social worker, used similar terms in his own statements.

65. Mr McKenzie emphasised that F has a *"narcissistic personality structure"* and recognises what he terms to be *"a history of difficult interactions"*. With respect to him

and in the light of what I have said above, this is something of an understatement. Illustrated in F's responses to HHJ Atkinson and Mr Hill, F's approach to those who cross or are likely, potentially to oppose him, is to 'research' them and see if he can gather ammunition against them. With Mr Hill this information was, in my judgement, stored until it could be deployed to its greatest effect. F's relationships with professionals is not merely to be described as *"difficult",* it is shocking and egregious. It has consistently corroded the self-confidence and professional esteem of those who have been unfortunate enough to have to work with him.

66. F has, in my assessment, recognised the effect he has on people when he unleashes the full force of his wrath against them. He seems unable, however, to restrain himself. This I see as a feature of the personality problems that the experts describe. I do not see any indicators at all of F being able to curb this behaviour, nor did Mr McKenzie. When he was asked whether there was any evidence that indicated some potential for open and easy cooperation with safeguarding agencies and Local Authority social workers, sufficient to justify a plan of rehabilitation, Mr McKenzie was unable to identify any. He posited instead that there should be some identifiable sanction if cooperation was not forthcoming.

67. When pressed to pursue the force of his logic, all Mr McKenzie could identify by way of sanction was the threat of removal of T from his parent's care. It is important to state that Mr McKenzie immediately realised the unsustainability of such an approach. By way of illustration, I remind myself, here, that T has not received any childhood immunisations at all to date. This is notwithstanding that his case has been before the High Court and that he has been represented by a Guardian. Nobody has, until this last hearing, brought this to my attention. Both parents are equally opposed to it on what are, to my mind, unsustainable medical grounds. The chaos and confusion they both contrive to create around them is inimical to good professional practice. It confuses and distracts those charged with responsibility for T and it creates fertile ground for error and professional misjudgement. Mr King, who has worked heroically with this family both in these proceedings and the earlier proceedings is accused by both of them as pursuing *"a vendetta against them".* In fact, in his determination to keep M and T together at the unit, Mr King has proved himself to be entirely independent and objective. During the case before me M screamed at Mr Harmer (the social worker who co-worked the case with Mr King) that if T was not returned she would kill herself and it would be his fault. All the evidence points clearly and irresistibly to a profound, deep seated and intensely hostile approach to the Local Authority and to authority in general. Of course, as I have referred to above, much of this is intrinsic to F's philosophical resistance to the scope and ambit of the State's powers.

68. Notwithstanding my analysis of the expert evidence, relating to the couple's relationship, Mr McKenzie considered that M had developed a more *"reflective"* view of F's *"limitations".* He considered that she had become better able to see herself *"as separate"*. I accept this evidence, in principle. M has worked very hard to achieve sobriety and has a raft of strategies enabling her better to cope with life in general but it is entirely evident, as the above paragraph once again illustrates, that she is completely powerless to oppose F in any meaningful way. Her autonomy is critically compromised.

69. There is no doubt that M has been deeply traumatised by experiences in her past, which do not require to be identified in this judgment. She spoke of these in her evidence in a

way which was both moving and conspicuously authentic. Her care of T, in his first few months, has been unimpeachable. She is, all agree, instinctive to his needs and capable in meeting them. This is not merely confined to practical parenting skills, it goes further, she is emotionally attuned to her son. Whether those skills would transfer, in her present sobriety, to older children who may become challenging or difficult is entirely speculative. Her stated and it requires to be said entirely untenable position, at this final hearing is that she will separate from F *'if the Court considers it is necessary for her to do so'*. For the avoidance of any ambiguity, that decision was for her, not the Court and the time to take it has passed.

70. It was plain from the beginning of these proceedings that F did not relish the confinement of a residential assessment. He made the sensible calculation that it was unavoidable if the family were to remain together. My sense is that this was as much a forensic decision as an emotional one. As has been observed, the legal proceedings have completely taken over F's life. They have also taken him away from his son. He has been repeatedly advised to concentrate on the former. This is advice he has been unable to take. As I have already stated, F has spent many hours on his feet in this court room asking questions across a broad sphere of issues, supplemented by his voluble interruptions of the cross examination of the lawyers. Frequently, it has proved easier and less painful to others, simply to grant him a very wide licence. Inevitably, of course, this has frequently led him, inadvertently, to unpick his own case.

71. F found the privations of the unit difficult. This is entirely understandable. He considered himself to be wiser, more mature and generally superior to the other residents. Of necessity, there are many CCTV cameras. Additionally, there is a great deal of supervision and observation. It is an undoubtedly claustrophobic situation. F convinced himself that it would be possible for the family to return home together following the six-week review. There is no evidential basis for such optimism but F believed that Mr Hill would recommend it. In fact, Mr Hill proposed a further period of assessment that permitted the parents to take T out in to the wider community for unsupervised periods. It was, at this time, that F unleashed the gossip he had heard to the effect that Mr Hill had been seen smoking cannabis with one of the residents. F's position quickly became untenable and he returned to his own home. In his unsparing and discourteous cross examination of Mr Hill, F contended that the extended assessment was a cynical and exploitative device to misuse public funding for profit.

72. In the period that followed on from his departure from the unit F has been able to participate in a scheme known as the "Everyman project". The objective here has been to address his domineering, coercive and generally confrontational behaviour. Plainly, this is the beginning of a long journey. The parents have also commenced "couples therapy", which they describe as "a work in progress". There have been numerous arguments between them, seen, for example, in the course of the mid-way review and during the assessment of Dr. Sinclair. It also requires to be said that their behaviour in the court room, whilst I accept much improved from that which HHJ Atkinson was apparently subjected to, has nonetheless been erratic and confrontational. Additionally, I have wondered on a number of occasions, whether F has been enjoying his role as an advocate manqué, in an investigation which he has interpreted as adversarial.

73. Mr Barnes characterises the litigation conduct in his closing submissions in this way:

> *"Allegations against professionals/working with professionals: an extraordinary array of, at times highly personal, attacks and allegations have been made during the proceedings and in the course of the hearing. This is led by the father, but the mother is frequently aligned with the father and equally forthright in this regard at times. Some worries have been grossly inflated (e.g. flea bites at Jamma), some have no basis (e.g. that the social worker and Jamma conspired to sabotage the parents' placement), and some are verging on the delusional (e.g. that P has been sold into a paedophile ring etc …).*
>
> *These allegations are fundamentally without foundation but are a continuation of extraordinarily aggressive, personal, and harassing conduct which is best exemplified by the parents both having been convicted of harassing HHJ Atkinson."*

74. To this submission, with which I agree, I can only add that I found M's account of the Local Authority's allegedly selling P (the subject child in the proceedings before HHJ Atkinson) into a paedophile ring, to be an alarming move into the distorted perspectives of F.

75. Following F's departure, it was obviously challenging for M to remain in the unit alone. This is not because, in my assessment, she found the environment as claustrophobic as F so obviously did but because she resented the separation and this made her anxious. F's world reopened when he left the unit. He was able to absorb himself in the litigation and his many appeals with even greater freedom. He was also able to resume his passion for Karaoke. He tells me that he has a good voice, indeed, he has suggested that I go and watch him perform. He intimated that M was not entirely without some ability in this sphere either.

76. On 19th September 2019 there was a telephone call to T's General Practitioner. It was said to have been made by a male with a discernibly West Indian accent. Unusually, the caller did not give a name or indicate where he was calling from. As I understand it, the call was made the day after M thought that she had found a bump or bruise on T's head. The caller stated that he was employed by the unit but it was obvious that he was telephoning from outside and, it seems, near a busy road. The caller reported that T had been dropped on a pavement or some kind of hard surface. I am clear that this did not happen, indeed, I can find no evidence to support such an incident. I strongly doubt that the call was made by an employee of the unit. Why should they say they worked there and decline to give their name? I also found M's evidence to be particularly tortured and confusing. M had suggested that someone at the unit had injured T and insinuated that it was a particular carer. This fell short of an actual accusation. I should also say that the insinuations decreased when M was pressed for detail. The doctor who examined T was prepared to accept the presence of a bruise but those involved in T's care (other than the parents) saw no bruise and considered this was just the shape of T's head which did not change. There is no convincing evidence of any skin discolouration. Mr Barnes has been unable to identify sufficient coherence in the evidence to press for any finding. He submits that, in any event, it is *"not forensically necessary for the Court to strain to resolve this issue"*. I agree, but I consider that wherever the truth lay M was motivated in her complaints around this time to extricate herself and T from the unit. In my judgement she made a grave miscalculation that another unit might be found or that

she might be permitted to be reunited with F as a family. This strategy was thwarted by the Order of Mostyn J (who declined to discharge the ICO and refused to injunct the local authority, as set out above). Following the inevitable breakdown of the placement T was separated from his parents and placed in foster care.

77. It is obvious that separation has been difficult for T. I emphasise that this is entirely because T had been receiving such warm and nurturing care from his mother. In her anxiety to return to F, M put her own needs before those of her baby. It illustrates the centrality of F to M's emotional well-being. Her actions also illustrate the accuracy of the analysis of the expert evidence which provides an ultimately seamless narrative.

78. I found the Guardian's evidence to be thoughtful, reflective and kind. Whilst paying tribute to the parent's efforts and particularly to those of the mother, she considered that they were, at best, in what she termed "*the pre-contemplative stage of the cycle of change".* F fails to take responsibility, in my view, for any of the circumstances that give rise to these proceedings or to the earlier ones. In the Court room, at least, he has made a real effort not to be disdainful or dominant in his attitude to M. This was not the case in the couple's meetings with Dr. Sinclair and, accordingly, whilst I am prepared to accept that it is a move in the right direction it is very tentative. F's attitude towards the world generally is aggressive, as the history of this case reveals. The Guardian considered that any child exposed to this dynamic would see themselves either as the aggressor or the bullied. Interestingly and entirely without any insight, M described precisely that paradigm in F's older children.

79. I regret to conclude that there is a chasm between T's needs and the capacity of his parents to meet them. Nor is there any prospect of this being bridged within timescales that are even remotely consistent with T's. There is a wide raft of concerns which are, both individually and collectively, incompatible with any further delay in resolving T's future. Here there is not only a complete inability to work with the Local Authority or with any of the safeguarding forces, there is virulent and bitter resistance to it. There is, for all the reasons I have set out, a corrosive dynamic in the parent's relationship which is likely to be emotionally harmful to any child exposed to it. There remains, in the light of HHJ Atkinson's un-displaced findings of rape, a continuing risk of sexually aggressive behaviour and domestic violence on F's part. Moreover, it must be identified that, whilst T may not be at sexual risk from F, at this stage, the evidence offers no reassurance in relation to that risk as T gets older.

80. There is no doubt that there were, from the outset of this case, real challenges in keeping this family together. It is important that I say that I am entirely satisfied that each of the professionals involved and without exception, has been determined to give this family the very best possible opportunity. It is equally important that I identify, as I have above, the efforts made by M to achieve and maintain her sobriety. Most importantly of all, M's loving and nurturing care for T will place him well for the future.

The Legal Framework

81. Though it hardly requires to be said, in the light of the above, there can be no doubt that the "threshold criteria" are met in this case, pursuant to Section 31 (2). For completeness, this provides:

> "(2) A court may only make a care order or supervision order if it is satisfied—
> (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
> (b) that the harm, or likelihood of harm, is attributable to—
> (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
> (ii) the child's being beyond parental control."

82. There have been no members of any wider family canvassed as potential carers in this case. It is perhaps important to say that even if there had been it is difficult to see how any family placement could have sustained the kind of onslaught which would undoubtedly have been directed towards them particularly from F. The starting point in assessing T's future is to identify his most pressing needs. These are clear: T needs a secure, stable, permanent, loving home; a family that will sustain him throughout his childhood, adolescence and beyond; an environment in which he is permitted to flourish and grow and which provides an opportunity for him to realise his potential, whatever that may be. This is unlikely to be achieved in foster care but there is every prospect of it within an adoptive placement. In coming to this view, I bear in mind the emphasis on the child's welfare throughout his life, highlighted in Section 1 Adoption and Children's Act 2002 (ACA 2002):

> **"1 Considerations applying to the exercise of powers**
> (1) Subsections (2) to (4) apply whenever a court or adoption agency is coming to a decision relating to the adoption of a child.
> (2) The paramount consideration of the court or adoption agency must be the child's welfare, throughout his life.
> (3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
> (4) The court or adoption agency must have regard to the following matters (among others)—
> (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
> (b) the child's particular needs,
> (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,
> (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
> (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,
> (f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

> (i) the likelihood of any such relationship continuing and the value to the child of its doing so,
> (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,
> (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

83. In considering an adoptive placement in this case, I am required to evaluate the parent's opposition to it, as contemplated in the framework of Section 52 ACA 2002, the relevant aspects of which state:

> **"52 Parental etc. consent**
> (1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that—
> (a) the parent or guardian cannot be found or lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent , or
> (b) the welfare of the child requires the consent to be dispensed with."

84. The clearest and must authoritative guidance as to the correct approach is that of Baroness Hale in **Re B (A Child) [2013] UKSC 33, [2013] 2 FLR 1075:**

> "Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do. In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions. As was said in *Re C and B* at paragraph 34:
>
> 'Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child."'

85. It is a sad feature of this case that the words of Baroness Hale in the above judgment seem bleakly apposite. The circumstances I have taken some care to set out above point a magnetic north towards adoption in this case. I am entirely satisfied that "nothing else will do" or to put it differently any other alternative would fall significantly short of achieving the basic welfare needs of this child. I am clear that this is a case which requires the parent's consent to be dispensed with. Accordingly, I approve the Local Authority's plans.

Post Script

The hearing of this case took far longer than had been anticipated. As I have indicated above, I have permitted F, as a litigant in person, a degree of latitude that I certainly would not have extended to counsel. I am here, as in every case authorising a permanent separation of a child from a birth family, extremely conscious of the enormity of the decision. I permitted F to explore a wide range of issues which were not foreshadowed in case management. The consequence of all this, as I made clear at the time, was that no judgment writing time was available, nor could I identify any before the end of the term. Additionally, after the hearing had concluded I was informed that there were two outstanding appeals relating to interim orders in these proceeding made by a different judge. This was not drawn to my attention during the hearing, nor to that of any other party. Permission to appeal in respect of both applications was refused on 22nd January 2020. This judgment, on notice to the parties, is handed down on 23rd January 2020.