

MISS RECORDER HENLEY

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Before:

MISS RECORDER HENLEY

**IN THE FAMILY COURT
SITTING AT NEWCASTLE UPON TYNE
In the matter of the Children Act 1989**

Case No. NE18C00357

**In the matter of
J (September 2015)**

BETWEEN:

M

Applicant

-and-

(1) LA

(2) F

(3) J

(A Minor acting through his Children’s Guardian, Sally Kendrew)

Respondents

JUDGMENT

Representation

Applicant Mother – Miss Wood (Counsel)

Respondent Local Authority – Mr Gray (Counsel)

Respondent Father – Not present or represented

Respondent Child – Miss Hodge (Solicitor)

Introduction

1. The Court is concerned with J (born September 2015) now aged 3 years 7 months old. J is the subject of a Care Order granted on 3rd August 2016 following a contested final hearing in care proceedings. J's final care plan in those proceedings provided for him to live with his paternal aunt PA and her partner MS, with a view to them applying in due course to become his Special Guardians. Their address is a protected address although the Mother has become aware of the area in which they live. Contact between J and the Mother had been taking place on a fortnightly basis, supervised by his Aunts, away from their home. In June 2017 J's Aunts stated that they were no longer prepared to supervise contact with the Mother. In August 2017 LA took over responsibility for supervising the Mother's contact. Contact currently takes place on a fortnightly basis, supervised by the LA.
2. The Court is concerned with four applications:
 - (a) An application by the Mother dated 5th May 2018 to alter her contact arrangements pursuant to s.34 Children Act 1989 in order to improve her contact, to allow it to take place in a community setting and ultimately on an unsupervised basis. The Mother has intimated during these proceedings that she seeks to care for J and therefore would seek to have the care order discharged. She has not made a formal application to discharge the Care

Order, nor did she pursue an ambition to secure the return of J to her care during this hearing.

- (b) An application by the LA dated 19th June 2018 for permission to refuse contact between J and his Mother pursuant to s.34(4) Children Act 1989.
 - (c) An application by the LA dated 18th January 2019 for the care order in respect of J to be discharged and replaced with a Special Guardianship Order in favour of J's Aunts.
 - (d) An application by the LA dated 15th March 2019 for an order pursuant to s.91(14) Children Act 1989 to prohibit the Mother from making further applications without leave of the Court.
3. The Mother is M, (born March 1988) now aged 31 years old. She has attended the hearing and is represented by Miss Wood.
 4. The Father is F (born December 1982) now aged 36 years old. He has been given notice of the final hearing but has chosen not to attend or participate.
 5. The parents do not present as a couple. Each parent has separate supervised contact with J. The Father's contact continues to be supervised by J's Aunts and takes place on a fortnightly basis. The Mother's is supervised by the local authority and takes place on a fortnightly basis.
 6. J is represented by his Children's Guardian, Sally Kendrew. Sally Kendrew was also J's brother, C's Guardian.
 7. J's Aunts are not parties to these proceedings but each has filed witness statements and attended Court to give oral evidence during the hearing.

Background

8. J is the youngest of the Mother's three children.

9. C (born February 2007) now aged 12 years old is placed in long term foster care pursuant to a Care Order made on 21.02.18. On 15.05.18 the Mother applied to discharge the Care Order with the ambition that he live with her. That application was dismissed by His Honour Judge Hardy on 5th December 2018. The Mother also sought unsupervised contact with C, which was not sanctioned and ultimately the frequency of her contact with him was maintained in accordance with his original care plan, so that it takes place once every three weeks. Prior to care proceedings being issued in respect of C, he had been residing with his Father, DJ. C's contact with the Mother was to be supervised by the local authority. It was determined in the care proceedings that in breach of a written agreement, C's Mother and Father deliberately and knowingly conspired to allow the Mother to have several sessions of unsupervised contact with C. C was removed from his Father's care and placed in foster care in April 2017 where he remains. The Mother refused to accept that she posed a risk to C or that her contact with him should be supervised. A Care Order was granted. On 5th December 2018 HHJ Hardy ordered that C and J were to have contact with each other, commencing with indirect contact, which would progress to telephone contact and ultimately lead to direct supervised contact. This sibling contact has yet to commence. C continues to have supervised contact with M. These proceedings were originally consolidated with the Mother's application to discharge the care order in respect of C. HHJ Hardy made final orders in respect of C in December 2018 but adjourned the applications in respect of J. The Mother informed the Court during this hearing that she has lodged an appeal against the orders made by HHJ Hardy and that she awaits the outcome of that appeal. She acts in person for the purposes of the appeal.

10. H (born June 2014) is now aged 4 years. He was made the subject of a Care Order and a Placement Order on 27.02.15. He has subsequently been adopted.

11. The Father has another child, K, who has not been the subject of any proceedings and with whom J has direct contact, arranged by J's Aunts and K's Mother with the support of the local authority.

12. The threshold criteria findings which led to J's removal from the care of the Mother, relevant as of 10th September 2015, included:
 - (a) That she had already had a child permanently removed from her care
 - (b) That she lacked insight into how her behaviour and choices impact upon her child
 - (c) That she had failed to prioritise the needs of her children and had an unstable and chaotic lifestyle
 - (d) That she historically abused alcohol as an adult
 - (e) That she has a history of relationships with violent partners where domestic violence has been prevalent.

Evidence

13. During this hearing, I have heard from the legal representatives on behalf of each party. I have read the bundle of documents filed for this hearing, including an agreed note of HHJ Hardy's judgment in respect of the Orders he made in December 2018 with regards to C. I heard oral evidence on 26th March 2019 from: SW, allocated social worker; PA and MS, J's Aunts; it was not possible to conclude the hearing that week due to the ill health of one of the advocates and therefore the matter resumed on a part heard basis on 23rd April 2019 when I heard evidence from the Mother and the Children's Guardian. I directed written submissions be filed and reserved judgment, indicating that I would produce a written judgment. I am grateful to the advocates for their assistance with this matter and for their detailed written submissions.

Care Plan

14. The final care plan filed by the local authority in respect of this matter is dated 17th January 2019. It provides for the Care Order to be discharged and replaced with Special Guardianship Orders in favour of J's Aunts. It recommends that J's contact with the Father should continue on a fortnightly basis, supervised by his carers.
15. It is proposed that the Mother's contact take place on an indirect basis only 6x per year, managed by Children North East. Two of these exchanges would take place around Christmas and J's birthday.
16. Should the Court take the view that the Mother should continue to have direct contact with J, then the LA would seek to continue the Care Order to allow it to manage contact arrangements and would invite the Court to grant a s.34(4) Order to allow it permission to suspend the Mother's contact if required.
17. The local authority also seeks an s.91(14) Order to prevent the Mother from making further applications in respect of J without the leave of the Court for a period of two years if a Special Guardianship Order is made and three years if the Care Order remains in place.

The Law in respect of Factual Determinations

18. The law to be applied when considering whether to make factual determinations is well settled. The Court applies the following well established principles:
19. The burden of proving the facts pleaded against the Mother in support of its applications for an s.34(4) Order and an s.91(14) order rests with the local authority.
20. The standard to which the local authority must satisfy the court is the simple balance of probabilities. The inherent probability or improbability of an event

remains a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred: **Re B [2008] UKHL 35** at [15]. Within this context, there is no room for a finding by the court that something *might* have happened. The court may decide that it did or that it did not: **Re B [2008] UKHL 35** at [2].

21. Findings of fact must be based on evidence not on speculation. The decision on whether the facts in issue have been proved to the requisite standard must be based on *all* of the available evidence and should have regard to the wide context of social, emotional, ethical and moral factors: **A County Council v A Mother, A Father and X, Y and Z [2005] EWHC 31 (Fam)**.
22. In determining whether the local authority has discharged the burden upon it the court looks at what has been described as ‘the broad canvass’ of the evidence before it. The role of the court is to consider the evidence in its totality and to make findings on the balance of probabilities accordingly. Within this context, the court must consider each piece of evidence in the context of all of the other evidence: **Re T [2004] 2 FLR 838** at [33].
23. The evidence of the parents and carers is of utmost importance and it is essential that the court forms a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them.
24. I also however, must bear in mind the observations of Macur LJ in **Re M (Children) [2013] EF2A Civ 1147** “It is obviously a counsel of perfection but seems to me advisable that any judge appraising witnesses in the emotionally charged atmosphere of a contested family dispute should warn themselves to guard against an assessment solely by virtue of their behaviour in the witness box and to expressly indicate that they have done so”. I make clear that my assessment of the Mother and of each of J’s Aunts has not been based solely upon their performance in the witness box nor their behaviour within the Courtroom.

25. The court must always bear in mind that a witnesses may tell lies in the course of an investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress. The fact that a witness has lied about some matters does not mean that he or she has lied about everything: **R v Lucas [1982] QB 720**. I make clear that in reaching my conclusions in these matters, I have given myself this direction in respect of the evidence of the Mother.

Legal Framework in respect of welfare decisions

26. The criteria for determining whether to discharge a care order is the welfare test found in s.1(1) Children Act 1989. In this case it is the Local Authority who seeks to discharge the Care Order and therefore it is the Local Authority who has the burden of proving that the child's welfare requires the revocation of the order.

27. I remind myself that the child's welfare is my paramount consideration. In considering what orders to make I have regard to the Welfare Check List found in section 1(3) of the 1989 Act.

28. In considering whether to continue public law orders I have had close regard to the Article 6 ECHR and Article 8 ECHR rights of each parent and of the child, but I remind myself that where there is tension between the Article 8 rights of the parent, on the one hand, and of the child, on the other, the rights of the child prevail; **Yousef v The Netherlands [2003] 1 FLR 210**.

29. When a care order is in place there is an obligation on the local authority to promote reasonable contact between a child and a parent; s.34(1) Children Act 1989.

30. An order pursuant to s 34(4) Children Act 1989 should not be made merely against the possibility that circumstances might change to justify the termination of contact **Re S (Care: Parental Contact) [2005] 1 FLR 469.**

31. The leading case in relation to suspension of direct contact between a child and his parent remains **Re C (Direct Contact: Suspension) [2011] EWCA Civ 521,** where Munby LJ set out the following principles, later confirmed by him in **Re Q (Implacable Contact Dispute) [2015] EWCA Civ 991; [2016] 2 FLR 287** at paragraph 19:

- Contact between parent and child is a fundamental element of family life and is almost always in the interests of the child.
- Contact between parent and child is to be terminated only in exceptional circumstances, where there are cogent reasons for doing so and when there is no alternative. Contact is to be terminated only if it will be detrimental to the child's welfare.
- There is a positive obligation on the State, and therefore on the judge, to take measures to maintain and to reconstitute the relationship between parent and child, in short, to maintain or restore contact. The judge has a positive duty to attempt to promote contact. The judge must grapple with all the available alternatives before abandoning hope of achieving some contact. He must be careful not to come to a premature decision, for contact is to be stopped only as a last resort and only once it has become clear that the child will not benefit from continuing the attempt.
- The court should take both a medium-term and long-term view and not accord excessive weight to what appear likely to be short-term or transient problems.

- The key question, which requires “stricter scrutiny”, is whether the judge has taken all necessary steps to facilitate contact as can reasonably be demanded in the circumstances of the particular case.
 - All that said, at the end of the day the welfare of the child is paramount; “the child's interest must have precedence over any other consideration”.’
32. In **Re Q**, Munby LJ also referred to the analysis of McFarlane LJ in **Re W (Direct Contact) [2012] EWCA Civ 999**, drawing attention to the decision of Strasbourg court in **Gluhakovic v Croatia (Application No 21188/09) [2011] Fam Law 687; [2011] 2 FLR 294** at paragraph 57, to the effect that:
- “ ... the obligation upon authorities, including the court, is not absolute and, whilst authorities must do their utmost to facilitate the co-operation and understanding of all concerned, any obligation to apply coercion in this area must be limited since the interests, as well as the rights and freedoms, of all concerned must be taken into account, and more particularly so must the best interests of the child.”
33. In a private law setting, when evaluating welfare the Court of Appeal emphasised in **Re G (Residence: Same-Sex Partner) [2006] EWCA Civ 372, [2006] 2 FLR 614**
- [26] 'Welfare'... extends to and embraces everything that relates to the child's development as a human being and to the child's present and future life as a human being. The judge must consider the child's welfare now, throughout the remainder of the child's minority and into and through adulthood. The judge will bear in mind the observation of Sir Thomas Bingham MR in **Re O (Contact: Imposition of Conditions) [1995] 2 FLR 124** at 129, that:

'... the court should take a medium-term and long-term view of the child's development and not accord excessive weight to what appear likely to be short-term or transient problems.' [27] ... Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach ...

34. **Re S (A Child) (Child Arrangements Order: Effect of Long-Term Supervised Contact on Welfare) [2016] 2 FLR 217**, the Court of Appeal held that the fact that there would have to be long-term supervision of contact was not in itself a reason to refuse direct contact. Before the reintroduction of direct contact could be refused on grounds of disturbance to the child or caring parent, it would have to be shown that the disturbance went well beyond mere inconvenience.

35. **Re B (Care Proceedings: Appeal) [2013] 2 FLR 1075**, the Supreme Court re-examined the meaning of 'is likely to suffer' and concluded that the threshold of likelihood, namely 'a real possibility, a possibility that cannot sensibly be ignored having regard to the gravity of the feared harm in the particular case'

36. **Re S-B (Children) [2010] 1 FLR 1161**: Held that a risk of significant harm must be established on the basis of evidence and not assumptions or speculation about future behaviour.

37. The local authority must not only prove on the balance of probabilities the facts on which it relies by calling witnesses who can speak to matters first-hand but must link the facts upon which it relies with the assertion that the child is at risk by demonstrating exactly why, on the given set of facts, the child is at risk of significant harm. In undertaking its analysis, the local authority must bear in mind society's willingness to tolerate very diverse standards of parenting (**Re A (Application for Care and Placement Orders: Local Authority Failings); sub nom Darlington Borough Council v M, F, GM and GF [2016] 1 FLR 1, FD**)
38. S.91(14) Children Act 1989 provides that “On disposing of any application for an order under this Act, the Court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.”
39. In **Re P (Section 91(14) Guidelines) (Residence and Religious Heritage) [1999] 2 FLR 573**, CA Butler-Sloss LJ drew up the following guidelines for the Court to consider when deciding whether to grant a s.91(14) order. She indicated that in general, the Court always has to carry out a balancing exercise between the welfare of the child and the right of unrestricted access of the litigant to the Court.
- (a) Section 91(14) should be read in conjunction with s.1(1) which makes the welfare of the child the paramount consideration

- (b) The power to restrict applications to the court is discretionary and in the exercise of its discretion the court must weigh in the balance all the relevant circumstances.
- (c) An important consideration is that to impose a restriction is a statutory intrusion into the right of a party to bring proceedings before the Court and to be heard in matters affecting his/her child.
- (d) The power is therefore to be used with great care and sparingly, the exception and not the rule.
- (e) It is generally to be seen as a weapon of last resort in cases of repeated and unreasonable applications.
- (f) In suitable circumstances (and on clear evidence), a court may impose the leave restriction in cases where the welfare of the child requires it, although there is no past history of making unreasonable applications.
- (g) In cases which do not have a past history of making unreasonable applications, the court will need to be satisfied first that the facts go beyond the commonly encountered need for a time to settle to a regime ordered by the Court and the all too common situation where there is animosity between the adults in dispute or between the local authority and the family; and secondly that there is a serious risk that without the imposition of the restriction, the child or the primary carers will be subject to unacceptable strain.
- (h) A court may impose the restriction on making applications in the absence of a request from any party, subject to the rules of natural justice, for example the opportunity for the parties to be heard on the point.
- (i) A restriction may be imposed with or without limitation of time. An order which is indeterminate or is to last until a child is 16 should be an exceptional step because it is, in effect, an acknowledgment that nothing more can be done. If such an order is made the Court must spell out why and what needs to be done to make a successful application in the future. In **S v B & Newport City Council; Re K [2007] 1 FLR 1116**, a special guardianship order and a s.91(14) order were made preventing the natural parents making any application for contact without limitation of time because the child's

needs required that order to be made and failure to do so, in light of the parents volatile behaviour, would impose an unacceptable strain on the carers.

(j) The degree of restriction should be proportionate to the harm it is intended to avoid. Therefore the court imposing the restriction should carefully consider the extent of the restriction to be imposed and specify, where appropriate, the type of application to be restrained and the duration of the order.

(k) It would be undesirable in other than the most exceptional cases to make the order ex parte.

40. S.91(14) orders without limit of time should only be made in outstandingly bad cases, which merit the strongest degree of forensic protection from the child from ill founded conflict.

41. It is permissible for a judge imposing a s.91(14) order to identify a particular issue and to suggest to the litigant that unless they could show that a particular issue had been addressed any future application for permission to apply to the court for further relief was unlikely to be successful; **Stringer v Stringer [2007] 1 FLR 1532**

42. Once a prohibition under s.91(14) has been made, any further applications for leave to bring proceedings should generally be heard inter parties rather than ex parte, this enables the court to investigate fully whether or not there is a genuine need for further proceedings. It is open to a judge making a s.91(14) order to direct that any permission to apply during its operation shall not in the first instance be served on the respondent, but should be considered by the judge on paper.

43. In **Re S (Permission to Seek Relief); Re E (Permission to Seek Relief) [2006]**

EWCA Civ 1190 the Court of Appeal; Thorpe and Wall LJ; determined that it was not permissible to attach conditions to a s 91(14) of the Children Act 1989 (the 1989 Act) order, beyond stating how long the order was to last and identifying the type of relief to which it applied. While it was permitted by the 1989 Act, and might well be appropriate for the court to impose a particular course of treatment on a party as a condition of making a contact order under s 8 of the 1989 Act, it was impermissible to impose conditions on a s 91(14) order and, in particular, impermissible to require that a party undergo treatment as a pre-condition of making an application for permission to apply. While a s 91(14) order could properly be made without limit of time or be expressed to last until a child was 16 years old, such an order would be the exception rather than the rule, and the reasons for making any such order must be fully and carefully set out. If the need for a s 91(14) order became apparent only during the course of a hearing, or at relatively short notice, the court had to ensure, if necessary by a short adjournment, that the person on the receiving end of the order, particularly if a litigant in person, had a full opportunity to consider the making of such an order, and to voice objections. However, a greater degree of flexibility was permissible when considering whether a resident parent needed to be served in the first instance with an application for permission to apply. In certain sensitive circumstances, it was open to the judge when making a s 91(14) order to direct that any application for permission to apply during its operation should not, in the first instance, be served on the respondent to it, but should be considered by the judge on paper.

44. In **PM v CF [2019] 1 FLR 670** the Court made it clear that the subject children needed protection from the father and the mother needed the confidence to know that the father could not make any application to the Court for any s 8 Order in respect of the children without permission of the Court.

Keehan J observed at page 677 paragraph 28 “there is however no evidence before me that there is a realistic prospect that this father can effect substantial

change or that any such change would be sustained by him in the foreseeable future” and at paragraph 30 “if the father is able to effect the necessary changes it will be open to him to make an application to me for him to prove to me and to satisfy me that he has effected change, he may seek to apply to persuade me that the period of the section 91(14) Order should be reduced to a more limited period”.

45. In **Re P & N (Section 91(14): Application for permission to apply: Appeal)**

[2019] EWHC 421 (Fam) Mr Justice Cobb reviewed the authorities in respect of the procedure to be followed when determining whether to grant leave once a s.91(14) order is in place and came to the following conclusions:

1. The circumstances in which the grant of permission following a s.91(14) order will be made without notice should be very rare indeed. The correct procedure is indicated in the judgment in **Re S [2006] EWCA Civ 1190, [2007] 1 FLR 482.**

2. The application should be considered ‘in the first instance’ on the papers, or at an oral hearing which can be ‘without notice’ to the respondent particularly if there are concerns about the effect on the respondent of learning of a fresh application.

3. If the applicant seeks an oral hearing, he/she should not be denied this. If the application is without merit, then it can be dismissed at that stage, and the potential respondent may well have been spared any engagement with the process.

4. If the application shows sufficient merit (i.e. the applicant has demonstrated a prima facie case that there is a need for renewed judicial investigation on the basis that he has an arguable case), the court should list the application for an ‘on notice’ hearing to allow the respondent to make representations. 5. This approach guards against the court acting upon an application that may not “tell the whole,

or indeed a true, story”. It may be that when the permission application is considered with the assistance of the respondent, it becomes clear that there is no need for renewed judicial intervention. In any event, it is the approach that fulfils the court’s obligation under the ‘overriding objective’.

46. 14D Special guardianship orders: variation and discharge

(1) The court may vary or discharge a special guardianship order on the application of—

(a) the special guardian (or any of them, if there are more than one);

(b) any parent or guardian of the child concerned;

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

(d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;

(e) the child himself; or

(f) a local authority designated in a care order with respect to the child.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1)—

- (a) the child;
 - (b) any parent or guardian of his;
 - (c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 4A;
 - (d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.
- (4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).
- (5) The court may not grant leave to a person falling within subsection (3)(b)(c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

Positions of the parties

47. The local authority invites the Court to discharge J's Care Order and continue his current placement by granting Special Guardianship Orders in favour of his Aunts and a Child Arrangements Order providing for the Mother to be permitted to exchange indirect contact with J on six occasions each year. Should the LA be unsuccessful in persuading the Court to reduce the Mother's contact in this way, the LA would seek to maintain the Care Order and would seek a s.34(4) Order to allow it permission to refuse M's direct contact. It is the local authority's case that should the Mother be permitted to continue to have any direct contact with J, then this could only be managed by the local authority with a Care Order. However, it is the local authority's recommendation that the Mother should have no direct contact with J irrespective of the legal framework under which he is placed. The local authority also seeks a s.91(14) Order to require the Mother to

be granted leave of the Court before making any further applications in respect of J for a two year period if a Special Guardianship Order is granted, or for a three year period if the Care Order remains in place.

48. The Mother seeks an Order pursuant to s.34 for more contact with J, including contact in the community leading to unsupervised contact. Her position in respect of J's placement has changed during the course of these proceedings but during this final hearing she seeks to persuade the Court that she agrees to J remaining in the care of his Aunts. Her position in respect of which order should be made to underpin the placement has also changed during the proceedings, and during the course of the hearing, but by the conclusion of the hearing she instructed Miss Wood to submit that he should be placed under a Care Order if the Court sanctioned direct contact but under the auspices of a Child Arrangements Order if not. She opposes the making of an s.91(14) Order.

49. The Father supports the LA's care plan for J. He expresses concern about the Mother's capacity to disrupt J's placement and harass his carers and suggests that the Court grant a Non Molestation Order to protect them from her.

50. The Children's Guardian supports J remaining with his current carers, under the auspices of Special Guardianship Orders. She supports the LA's contact plan in respect of both parents and the making of a s.91(14) order against the Mother for a minimum period of four years. She invites the Court to grant a s.91(14) Order for the remainder of J's minority.

Welfare analysis

51. I am invited to determine:

- (a) The most appropriate legal framework for J's placement with his Aunts – the options being; a Care Order, Special Guardianship Orders or a Child Arrangement Order.

- (b) What the arrangements for the Mother's contact should be with J – this question is inextricably linked to the type of order I should make as the local authority and Guardian submit that a Care Order is only required if I conclude that J should continue to have direct contact with the Mother, which they do not support.
- (c) If I conclude that there should be a Care Order, whether I should grant a s.34(4) order to permit the LA to refuse direct contact with the Mother.
- (d) Whether I should grant a s.91(14) order to restrict the Mother's ability to bring further applications in respect of J without the leave of the Court.

Discussion and conclusion

52. In determining these issues, I must consider J's needs now and in the future. J is a three year old boy who lives in his family of origin, which is culturally appropriate for him. He suffers from Eczema, which is managed via prescribed medication. He has delayed speech and language which is assisted via speech therapy. He is making good progress in respect of this. He attends nursery. He presents as happy and settled within his placement and does not display any distress during or around contact sessions with either of his parents. He is unable to express his wishes and feelings in respect of these applications by virtue of his age. J needs to have settled care arrangements which are safe and which can support his global development into adulthood. He has a right to enjoy a relationship with both of his parents, provided that contact is safe for him and can be safely managed.

53. With regards to the appropriate care arrangement for J there is just one realistic placement option before the Court – a placement with J's current carers, his paternal aunts. I have had the benefit of reading the Special Guardianship assessment in respect of them and have heard each of them give evidence. J's two Aunts each impressed me as caring, dedicated and committed carers. Their motivations for becoming his Special Guardians and desire to hold Parental

Responsibility for him are borne out of a desire to lead a normal family life. A natural and understandable ambition. J has been placed in their care since 15th August 2016. All of the professional evidence concludes that he is happy, settled and thriving in their care and that they are willing and able to meet his needs to a high standard throughout his minority and beyond. There is no evidence base to conclude that this arrangement should be disrupted and I am entirely satisfied that he should remain in their care in the long term.

54. All parties agree that the Father's contact is working and there is no reason for me to interfere with that arrangement. I approve it and am satisfied that there is no need for me to make an order in respect of it.

55. The appropriate legal framework in respect of J's placement is linked to what the appropriate contact arrangements should be between J and the Mother. J's aunts wish to become his Special Guardians but say that they cannot manage or supervise direct contact with the Mother. The local authority and J's Guardian contend that direct contact will undermine J's carers and has the capacity to disrupt and destabilise his placement, whether it is managed by the local authority or by his Aunts or supervised by another agency. Save for the issue of the Mother's contact, the professionals agree that J's carers should be appointed as Special Guardians for him. However, they also agree that if the Court orders continued direct contact, the only way that that could be safely managed is via the continuation of a Care Order, alongside a permissive s.34(4) Order and an s.91(14) order. The Local Authority and the Guardian acknowledge that the Mother's contact with J is a positive experience for him at this stage but argue that on balance, its potential to disrupt and destabilise his placement outweighs the benefits to J of it continuing. The Guardian's opinion is that when balancing the emotional harm likely to be caused to J by ceasing direct contact with the Mother against the likely emotional harm which would be caused to him by it continuing, the lesser of the two would be caused by ceasing direct contact. The local authority has reached the decision that all direct contact between J and the Mother

should cease in any event and if the Care Order remains in place, it seeks a s.34(4) Order to allow it permission to refuse direct contact.

56. There is a wealth of evidence provided by the local authority and J's carers of the Mother behaving in a disruptive, aggressive, antagonistic and hostile way towards J's Aunts, his Father, his Father's new partner and J's social worker since the making of the Care Order. Having heard from J's social worker, I accept her evidence as entirely truthful in respect of these issues. She gave her evidence calmly and dispassionately with no hint of exaggeration. The Mother did not seek to challenge many of these allegations and when cross examined about various incidents repeatedly said that she "could not remember" them. When I pressed her about whether she sought to persuade me that these incidents had not happened she said that she was not denying them, she simply could not remember them. The Mother prayed in aid of 'memory problems' to justify her lack of recollection. I do not accept her account in this regard. She was able to recall speaking to a police officer about harassment in 2017 on the telephone telling me that she "was in bed" at the time of the call and yet asserted that she could not recall similarly significant incidents which were far more recent than that. I gained the clear impression that the Mother sought to evade answering questions by saying that she could not remember incidents and that she was not open and honest with the Court.

57. The social worker gave a clear and cogent account of the Mother telling her that she knew that her husband worked as a police officer and on another occasion that she knew that she had two children and was able to describe them accurately to her. The Mother denies telling the social worker that she knew that she has two children and describing them to her, the Mother accepts telling the social worker that she knew that her husband was a police officer but denies that this was said to intimidate or threaten the social worker. I reject the Mother's account and accept the evidence of the social worker on this issue who has no reason to fabricate these incidents. I am satisfied that the Mother obtained this information and

shared it with the social worker in an attempt to intimidate and harass her. I also accept the social worker's evidence that during a disagreement with the Mother, the Mother said "next time you'll need a police officer with you". I am satisfied that these are examples of harassment conducted by the Mother in this case. This harassment has involved threats, attempts to intimidate and abuse. It has been also directed against J's aunts who I am satisfied, have endured her repeatedly trying to message them via social media and telephone and repeatedly contacting members of their family and friends, necessitating police involvement. I accept their evidence as entirely truthful about these issues. It has been necessary for them to block all forms of communication from the Mother on the advice of the Police. Notwithstanding repeated warnings by the Police not to contact J's Aunts, the Mother has continued to do so. She accepted during her oral evidence that this was against the advice she received from the Police in November 2017 and that she took it upon herself to contact them again without receiving any indication that it would be acceptable for her to do so. This harassment has also been directed against J's Father and his new partner, who have each had to seek protection from the Police. The Police have issued several warnings to the Mother about her conduct. At no stage during the course of the Mother's oral evidence did she deny receiving these warnings or deny that they were justified. The Mother has sought to denigrate J's carers and the Father and has made unfounded allegations that the standard of care that J has received from his Aunts has been unsafe.

58. Having heard from J's Aunts, I am satisfied that each of them is an honest straightforward and well motivated witness. Neither of them displayed any malice towards the Mother despite all that they have endured. Each expressed regret that she could not simply enjoy a relationship with her son and that they could not get along in a civil fashion for his sake. In an ideal world they would wish to be able to communicate with the Mother and permit her to have direct, supervised contact with J but her behaviour has led to them accepting the advice of professionals that her contact with him should now take place on an indirect

basis only. I am satisfied that the Mother's behaviour has involved deliberate attempts to manipulate, undermine and destabilise J's placement. I do not accept her oral evidence to me that she accepts and supports J remaining with his carers. During these proceedings she indicated that she sought his return to her care, which was recorded on a Court order dated 28th June 2018 as follows "The Applicant mother wishes to care for J although has not made an application to discharge the care order", she put forward her cousin as a prospective alternative carer for him (notwithstanding the fact that this cousin has no established relationship with J) and she informed the social worker in February 2019 that she knew where he and his carers lived. In her oral evidence, following direct questioning by me, she accepted that she thought that by telling the social worker that she knew where he lived the social worker would move him to a different placement. These three examples amply demonstrate that she does not truly support his placement and has tried to have him removed from the care of his Aunts as recently as February 2019.

59. Having heard the Mother's evidence she presented as disingenuous, manipulative and deliberately vague and evasive with regards to her future plans. I gained the distinct impression that she continues to wish to have J returned to her care in future. She would not acknowledge that she is unable to parent him as well as his Aunts can and failed to accept that there were any deficits in her ability to meet his needs. Any concessions she made consisted of stock phrases such as "I need to complete work", "he is happy and settled in their care" which I am satisfied were her attempts to say what she thought she needed to in order to achieve her purpose for this hearing – namely to continue to have direct contact with J. She accepted that she is appealing the orders made in December 2018 and when I pressed her, refused to say what her intentions were should I make an order that she disagreed with. I accept the evidence of the Guardian and the social worker that the Mother has repeatedly stated away from the Court arena that she would not give up "fighting for her sons" and I am satisfied that the Mother's true intentions are to continue to do all she can to have them both returned to her care,

whether by Court applications or by making life for their carers so unbearable that they cannot continue to care for him. I accept the Guardian's opinion that this is a Mother who will always want more and who will not stop until she gets what she wants. I am satisfied that her true motivation is to have both children placed with her.

60. In 2018, the Mother was diagnosed with a Borderline Personality Disorder. She did not volunteer this diagnosis to the local authority or to J's Aunts and it was only revealed during the course of these proceedings. The Mother has filed a letter dated 19th March 2019 from her Community Psychiatric Nurse. The letter sets out that "in the Mother's case, the diagnostic criteria assessed for her personality disorder are as follows:

- (a) markedly disharmonious attitudes and behaviour, involving usually several areas of functioning, e.g. affectivity, arousal and impulse control, ways of perceiving and thinking and style of relating to others
- (b) The abnormal behaviour pattern is pervasive and clearly maladaptive to a broad range of personal and social situations
- (c) The disorder is usually, but not invariably, associated with significant problems in occupational and social performance."

61. The letter goes on to describe the Mother as having "a marked tendency to act impulsively without consideration of the consequences, together with affective instability. The ability to plan ahead may be minimal, and outbursts of intense anger may often lead to... "Behavioural explosions"... M struggles in key areas including impulsivity, tolerating distress and emotional regulation."

62. Through no fault of her own, the Mother's treatment has been delayed since diagnosis and it is to her considerable credit that she has engaged with services and is committed to recovery, however she is in the very early stages of treatment, which is likely to be long term. During the course of her oral evidence the Mother

accepted that the contents of the letter were an accurate description of her symptoms and diagnosis. I was however troubled by her attempts to imply that her treatment plan may be a short one. The letter makes clear that the Mother will require long term work and that the success of that work cannot be guaranteed, although her motivation to do the work is a positive starting point. I also note however, that the Mother has undertaken a course of DBT in the past with little to no benefit.

63. The Mother is described by J's social worker as manipulative and controlling. In essence, the local authority submits that her behaviour around contact arrangements is unmanageable for his carers. It argues that direct contact can only be arranged by a team of professionals and that it would necessitate the LA sharing Parental Responsibility with the Mother via a Care Order. But for the issue of the Mother's contact, there is no reason why J would need to be the subject of a Care Order. His Aunts meet his needs to a very high standard. At the time that the care proceedings concluded it had been hoped that J's Aunts could become his Special Guardians within a short period of time, something in the order of 6 months was suggested. That has not proved possible due to the need for the LA to continually exercise its Parental Responsibility to deal with the Mother's direct contact with J. The Mother concedes that should I order direct contact, the Care Order should remain in place for the purposes of her contact.

64. The continuation of the Care Order represents a significant intrusion into the life of J and his carers. J has ongoing involvement from a social worker, statutory visits, health assessments and professionals meet on a regular basis to discuss his welfare. He has had social work involvement throughout his life. He remains a looked after child. As he grows older he is likely to be increasingly aware of the restrictions and stigma that this status brings to his life. Despite having a family placement, J and his carers are not able to enjoy normal family life to the full. His Aunts do not hold Parental Responsibility for him and all decisions have to be made by a "corporate parent". He will not be able to stay overnight at the homes

of friends without the consent of the local authority and without safeguarding checks being carried out.

65. J has been in the care of his aunts since he was a year old. Prior to that he was in local authority foster care. His primary attachments are to his aunts. But for managing the Mother's fortnightly contact with him, the state intrusion that a Care Order brings to normal family life is entirely unjustified. Having heard and read all of the evidence in this case, I am satisfied that the only way that the Mother could have on going direct contact with J would be if the local authority was to continue to hold a Care Order in respect of him, to allow it to manage the Mother's contact arrangements and provide a "buffer" of protection for his carers. To expect J's aunts to manage direct contact to the Mother themselves would be unfair and I am quite satisfied would put them under unacceptable strain. They have tried to supervise contact, they have tried to communicate with the Mother and ultimately those arrangements have broken down due to the Mother's volatile, unpredictable, abusive and hostile behaviour. I make clear that this behaviour is far outwith the norm and sits entirely with the diagnosis that the Mother has now been given. J's carers cannot be expected to have to endure her behaviour, which I am satisfied would inevitably take its toll upon them and in all likelihood could jeopardise their ability to fully meet J's needs. It is no exaggeration to say that this type of "wearing" behaviour is of such a nature and degree that it may well jeopardise J's placement. I accept that for J, his welfare demands that he remain placed with his current carers and that they are given the opportunity to meet his needs, without enduring abuse and harassment. I make clear that my priority in this case is to ensure the viability of J's placement and to ensure that his carers are protected.

66. I need to balance whether the benefits that continued direct contact with the Mother brings to J justifies the state intrusion that a Care Order delivers. All parties accept that at the current time, J has a positive relationship with the Mother; that he enjoys having contact with her and that supervised contact is

generally a positive experience for him. J is aware of who his mother is and they enjoy good interactions with each other. She prepares well for contact and they engage in activities that he enjoys. J loves the Mother and she loves him. I therefore approach this balancing exercise on the basis that J and his Mother have a right to enjoy a relationship with each other and that their relationship is a positive one. It is a draconian step to limit a parent's contact with a child so that it takes place on an indirect only basis. The Mother seeks to persuade me that far from limiting her contact with J I should be permitting her to have community based contact, with a view to it progressing to unsupervised contact. I cannot do so. I am satisfied that unsupervised contact poses a risk of significant emotional harm to J due to the Mother's volatility, emotional outbursts and her desire to disrupt his placement. The Mother has at times openly accepted that she will not stop until J is placed in her care and that she will never accept him living permanently with his Aunts, although she would not admit as much in the witness box. As I have stated I reject her oral evidence to me in that regard.

67. I am satisfied that unsupervised contact carries with it unacceptable risks of significant harm to J and would send entirely the wrong message to the Mother. Community based contact also carries unacceptable risks to J's welfare. The Mother has not worked in a transparent way with the local authority about her relationships and associations but what is known is that even within the confines of the restrictions she has faced to date she has attempted to introduce inappropriate adults to J – a partner who is only able to see his own children on a supervised basis and a friend who was investigated for attempting to abduct her own child from a supervised contact setting. Community based contact provides further opportunities for her to continue to attempt to introduce inappropriate and high risk individuals to J, placing him at risk of significant harm.

68. Direct contact to the Mother, even when professionally supervised, does bring with it the risk of significant emotional harm to J. J has not suffered any such harm to date but the risk of such harm is likely to increase as he gets older and

becomes more cognitively capable of understanding verbal and non-verbal communication, thus making him more aware of her views and attitudes. Direct contact gives the Mother the opportunity to raise unfounded complaints about his carers in an attempt to destabilise the placement – as occurred in May 2018 when the Mother raised complaint about a perfectly innocent bruise resulting in distress to his aunts and the need for professionals to investigate. It also gives the Mother the opportunity to say derogatory things about his carers and to put J in the position of being “torn” between them. Her behaviour in this regard is well established as far as it relates to C, who has described being “torn” between his carers and the Mother. The Mother lacks insight into the impact of her behaviour on her children and cannot see that by denigrating their carers she is causing them emotional harm.

69. I am satisfied that it is likely that as J grows older he will become ever more aware of his Mother’s negative attitude and that she is incapable of regulating her own behaviour to protect him from this by reason of her Borderline Personality Disorder. Whilst her condition may well ameliorate over time, either through treatment or maturation or both it is likely that any such amelioration will take a long time to achieve and there is in prospect the possibility that it may not ameliorate at all. I do not accept the Mother’s submission that the risk of future harm in this case is theoretical. There is a sound evidence base to conclude that the Mother has and will continue to attempt to use direct contact and the arrangements for it as a means by which she can criticise, harass and undermine J’s carers and threaten the stability of his placement. There is also a sound evidence base to conclude that the Mother will replicate her behaviour so that she seeks to draw J into her adult disputes and negative views just as she has done with C.

70. The Mother seeks to persuade me that an outside agency, such as Children North East, could supervise her contact going forward. I do not accept that this would provide any additional protection for J’s carers. They would still be left in a

position where they would have to endure undue strain as a result of the Mother's unpredictable and explosive behaviour. They would have to endure her constant attempts to communicate with them and to seek more and different contact arrangements. Such contact would continue to provide a platform by which the Mother could undermine J's placement, criticise his carers and make false allegations against them. For these reasons I also reject the suggestion that reducing the frequency and/or duration of contact will reduce the undue strain that his carers would be placed under.

71. I appreciate that to conclude that J should have no direct contact with the Mother is a draconian step to take and that it is not consistent with the arrangements that have been approved as far as C is concerned. The Mother continues to enjoy supervised direct contact with C on a regular and relatively frequent basis and may well consider that both children should be treated the same. I disagree. Unlike J, C is a child in local authority foster care who does not have the option of a family placement. There is no alternative to him remaining a looked after child, placed under a Care Order. He is much older than J and the quality of the relationship he has with the Mother is different. It would be far more difficult for his contact to change in the way that is proposed for J, and he is far more likely to experience emotional harm and distress if direct contact were to cease. My decisions are driven by J's circumstances, which are wholly different to C's. I am satisfied that J's family placement must be protected and prioritised because it offers him the best long term outcome as far as his care and welfare is concerned.

72. There is a very clear evidence base to conclude that the organisation and arrangement of direct contact for the Mother is simply unmanageable for his carers. I am satisfied that they have done their best in very difficult circumstances and that they cannot be expected to make those arrangements going forward. It is not acceptable for them to be harassed in the way that I am satisfied that they have been and I am not prepared to sanction any arrangement that puts them under further unacceptable strain. Sadly, even with a Care Order in place they have

faced intolerable behaviour from the Mother. I do not accept that by simply blocking the Mother's calls and attempts to contact them by social media, the problem will be solved. J's Aunts have already taken these steps and the Mother has already been warned by the Police in November 2017 and had agreed with the Police that she would not contact J's aunts. Yet, despite knowing that it was unacceptable for her to do so, the Mother contacted J's Aunts via Facebook Messenger on 12th February 2019 stating "Think again before a ever let u and marie play happy familys [sic] im my sons mother and always will be and as for his father he has 2 boys to sarah so he will be happy and leave J out am not agreeing to what u said and no will a take any decision either without appealing it." The Mother accepts that this was "unwelcome" and that she knew she should not have sent it and yet she did. It is not an isolated example. On 21st August 2018 she sent a message to them stating "Yous arent' big and aren't clever either and as for father of the year its getting sorted sick to death of you all." I do not agree that a written agreement would have prevented her from sending these messages, nor that a written agreement would prevent her behaving in this way in future. The Mother has breached written agreements previously in respect of C and openly continues to have illicit communications with him despite knowing that she should not do so.

73. To continue a Care Order indefinitely, potentially for the next 15 years, is a very heavy price to pay for J to have direct supervised contact with his Mother, especially when it carries with it the risk of significant emotional harm in its own right. Even professional supervision can do no more than bring a session to an end. If the Mother has an outburst or says unpleasant things to J about his Father and/or his Aunts the damage is done as soon as the episode occurs. Shortening a contact session or reducing the frequency of contact does nothing to prevent the risk of this occurring, it simply reduces the opportunity for it to occur.

74. The harassment that surrounds direct contact arrangements threatens the stability of J's placement whether the Care Order remains in place or not and I am

therefore satisfied that J's welfare demands that direct contact with the Mother should now cease. I accept the evidence of the local authority and J's Guardian in this regard. It is right to acknowledge that at the current time, direct contact has not and is not causing J direct harm. However, the Guardian has had the benefit of acting as C's Guardian as well J's and the Mother's behaviour in so far as C's contact is concerned provides a solid evidence base for concluding that it is likely that the Mother will seek to use direct contact to draw J into her negative views about his Aunts and in J's case, his father, and thereby cause him significant emotional harm. There is also a solid evidence base to conclude that she is likely to use direct contact as a means of attempting to destabilise his placement by using it as a means to make unfounded complaints about his carers – for example in relation to any bruise or minor injury that he may innocently obtain.

75. The Mother argues that this local authority has not set clear enough parameters around contact and that a written agreement would assist to manage contact arrangements going forward and should be tried before the step is taken to cease direct contact. I accept the evidence of the local authority that expectations have been made abundantly clear to the Mother and that she is incapable of consistently following what is expected of her. I also accept the evidence of the Guardian that in so far as C is concerned, written agreements have been attempted but have been repeatedly breached by the Mother. I do not consider that written agreements would make any meaningful difference in this case. This is a Mother who is so incapable of moderating her own behaviour, and is so unpredictable, by reason of her personality disorder that I am satisfied that written agreements will make no difference and cannot prohibit each and every type of troublesome behaviour the Mother would maliciously invent.

76. The Mother has repeatedly demonstrated that she is unable and/or unwilling to work co operatively with professionals. Indeed, even in respect of the issue of sibling contact between J and C, which was ordered at her request in December 2018, such contact has not taken place because the Mother refuses to agree to

either J's social worker or C's foster carer being present when it takes place. I am satisfied that her reasons for this are borne out of her personal dislike for these individuals and that her stance in this regard is not at all child centred. This most recent and on going issue is yet a further example of her attempting to control contact arrangements to her own end. Her demands and changing requests in respect of contact are incessant and would place J's Aunts under undue strain.

77. I am satisfied that J's right to a normal family life with his carers, with whom he has his primary attachments, his natural paternal aunt and her partner, outweighs the potential benefits that continued direct contact with the Mother will bring to him and that the risk of emotional harm to J from direct contact continuing outweighs the emotional harm likely to be caused by ceasing direct contact with the Mother.

78. Without on going direct contact there is no need for the Care Order to remain in place and I am satisfied that J's welfare requires it to be discharged so that he can enjoy a normal family life in the care of his Aunts. The local authority has assured me that J will continue to hold Child in Need status for as long as it is required and that it will continue to advise and assist J's Aunts. I am satisfied that the local authority will need to provide assistance and support to J's Aunts in respect of the issue of contact for a considerable period of time as it is likely that the Mother will not accept my Orders and that she will seek to challenge them. I consider it likely that she will seek to do so via continued litigation but also by seeking out greater contact with J than I have sanctioned. The Mother is a manipulative and devious individual who may well seek to use a variety of different methods to achieve this from befriending J's Aunts to threatening and intimidating them. I also consider it likely that she will seek to have illicit contact with J, possibly by trying to physically locate him but also more likely by using social media as he grows older. The Mother has demonstrated an aptitude for creating false profiles on social media to make contact with those she is prohibited from contacting. The Mother told me that she communicates with C by text

message despite knowing that she is not permitted to do so. She told me that no one has the right to stop a parent contacting their child. The Mother is doggedly determined and I consider that the local authority will need to provide support and advice to J's Aunts for many years to come in respect of these issues. I am satisfied that this is not a reason for the Care Order to continue and that this advice and support is best provided informally and as part of a Special Guardianship Support package. I endorse the observations made by J's Guardian in submissions that it would be helpful for J's carers to be provided with a support network of other Special Guardians who may face similar issues to them and that it would be helpful for them to receive regular training and to attend workshops provided by the fostering service with regards to managing contact to C, to the Father, managing the Mother and life story work.

79. The Mother would invite me to conclude that in the event that she is not awarded direct contact with J, then J's placement should be secured under the auspices of a Child Arrangements Order. I can see no justification for her refusal to support a Special Guardianship Order in this case save for that it would make it more difficult for her to challenge J's placement in future, which I am satisfied she intends to do. I am concerned that the Mother's motivation in seeking to persuade me to make a Child Arrangements Order is to allow her greater opportunities to contest his care arrangements in future and to give her a greater ability to challenge J's carer's decisions. This would not be in J's best interests. I am satisfied that is not the appropriate order in this case for those reasons.

80. I am satisfied that the most appropriate legal framework for J's placement is Special Guardianship. Special Guardianship Orders in favour of each Aunt will offer him the security, stability and permanence that he needs. The Mother cannot apply to revoke these orders without leave of the Court. These orders will give J's Aunts enhanced parental responsibility to make decisions for him and they send a clear message to the Mother and to J that this is his permanent home. In May 2018 J's Aunts enquired about the possibility of adopting him. Ultimately

they decided against making such an application due to the distorted family relationships that would ensue. J still enjoys regular supervised contact with the Father and, following on from this hearing will exchange indirect contact with the Mother six times per year. He also has contact with his paternal half sibling and is due to have some contact with C as a result of HHJ Hardy's Order. Special Guardianship is the closest legal arrangement to adoption for a family placement and I am satisfied that it is the right order in this case.

81. I am satisfied that continued indirect contact, coupled with life story work for J which the local authority should support J's Aunts with under the Special Guardianship support package, will assist to meet his identity needs and address the confusion that he is likely to feel as he gets older about his mother.

82. Whilst leave would be required before the Mother could apply to revoke the Special Guardianship Order, leave is not required for her to make section 8 order applications in respect of J. I consider it highly likely that she would seek to do so and that she is unlikely to accept that her contact should remain indirect only. I am concerned to protect J's Aunts from what I expect will be repeated applications from the Mother in this regard. I make clear that although the Mother does not have a history of making repeated applications in respect of J to date, he is still only 3 years old and between these proceedings and the original care proceedings he has been the subject of contested proceedings already for much of his young life. J's welfare demands that his carers are able to care for him free from the strain of repeated applications from the Mother. I am satisfied that until and unless her Personality Disorder is successfully treated and/ or ameliorates she poses a risk of significant emotional harm to J through her behaviour both directly within the confines of direct contact and indirectly as a consequence of her harassment of his carers and that an s.91(14) Order is justified in this case to prohibit her from making applications for s.8 orders without leave of the Court.

83. I agree with Mr Gray that the Family Court provides a powerful weapon in the Mother's armoury with which she can disrupt J's security and placement – a Sword of Damocles to worry the carers and those supporting them, which I am satisfied she will seek to utilise.
84. During examination-in-chief, the guardian set out her opinion evidence of the “immense impact upon C” of litigation: that he is constantly being asked questions and drawn into proceedings; that he needs the opportunity to be a young child; that the litigation he has experienced has impacted (i) his education and (ii) his behaviour and she was of the view that J now faces the same risks. I am satisfied that in circumstances in which J will no longer be the subject of a Care Order, which would automatically render the local authority a party to further litigation, J and his carers need the protection of the added filter that a s.91(14) Order will give to weed out unmeritorious applications and prevent the need for them to become involved repeatedly in Court applications.
85. The Mother's behaviour and diagnosis renders this an exceptional case where I am satisfied that the s.91(14) order should remain in place for the next five years. It is not a barrier to the Mother making applications but it provides a mechanism by which unmeritorious applications can be swiftly dismissed without disruption to J or his carers. Should the Mother be able to evidence that her circumstances have changed in that time and that she no longer meets the criteria for Borderline Personality Disorder or that her symptoms have significantly ameliorated, then it will be open to her to apply to persuade the Court that the term of the s.91(14) order should be reduced. I accept the Guardian's opinion that the Mother is likely to see the end of a finite term of an order such as this as a “green light” to permit her to make further applications. I therefore consider that the s.91(14) order needs to be in place for a sufficient period of time to dissuade her from this course and to enable J to commence and settle into school. I consider that five years strikes

the right balance in this case and agree with the Guardian that the two years proposed by the local authority is not long enough. Whether the s.91(14) Order needs to be extended beyond five years will depend upon the Mother's conduct during the life of the order.

86. When considering the procedure for any leave application, the Mother will need to satisfy the Court on paper in the first instance that any contact application she makes has a reasonable prospect of success and to do so I expect that she will need to provide written evidence from her treating team that the symptoms of her Personality Disorder have ameliorated through successful treatment and/ or maturation. I expect that the Mother will only reap the benefits from such treatment in the medium to long term, such is the pervasive nature of her difficulties, hence my decision to make a long term s.91(14) Order. I anticipate that it will be only if she can provide such evidence, that her application for leave will be heard on an inter parties basis. In this way J's Aunts should be spared from the anxiety and anguish of repeated trips to Court. At an inter parties hearing I would expect that the Court will need to have evidence from both this local authority and from Sunderland City Council in respect of the Mother's behaviour as far as C is concerned. Updated police disclosure will also highlight whether the Mother's behaviour has changed. The Court will need to be clear about what the Mother's true intentions are in bringing an application and if leave is granted, stipulate clearly the nature of the application she has leave to bring. This is because the Mother has a past history of changing her position during the course of proceedings. If leave is granted, then I anticipate that a Guardian will need to be appointed for J and consider that if at all possible his Guardian should be Sally Kendrew for the sake of continuity, so that her experience of the matter is not lost. I make these observations, not as conditions to the s.91(14) Order, but to assist a future Court met with further applications from the Mother. I consider that any further applications should be allocated to be determined by a Judge sitting at Circuit Judge level. For the remainder of 2019 I am sitting locally on a regular basis and therefore I will reserve any further applications concerning J to

me until the end of this year. Thereafter, applications will be released to a Circuit Judge.

87. I am satisfied that the proposed indirect contact to the Mother six times per year is appropriate and meets J's welfare needs to maintain a knowledge of his Mother and his identity. Such contact is to be exchanged two ways and will include letters and photographs. It should include updates from J's carers in respect of his health and education. I am satisfied that J's address, the address of his nursery, schools and GP should remain protected from the Mother to prevent her using that information to further harass his carers. I am therefore satisfied that J's final care plan is in his best interests and I approve it.

88. I direct that a copy of this judgment be disclosed to J's Aunts so that they can see the basis upon which I have made welfare determinations in this case and to enable them to provide this judgment to a Court or other agencies in future should the need arise. I also give permission for my Order to be disclosed to them so that they have a copy for their records which they may need to provide as proof that they hold Parental Responsibility for J for health and education purposes.