Case No: ZW18C00189

IN THE FAMILY COURT
AT WEST LONDON

West London Family Court,
Gloucester House, 4 Dukes Gren Avenue
Feltham, TW14 0LR

Date: 09/01/2019

Before :

HIS HONOUR JUDGE WILLANS

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Between :

The London Borough of Hounslow **Applicant**

- and -

(1) The Mother ("CO")
(2) The Father ("MT")
(3) The Child ("L") (by his Children's Guardian) **Respondents**

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Ms Caroline Croft (instructed by **London Borough of Hounslow Legal Department**) for the **Applicant**
Ms Janine Sheff (instructed by **Reena Ghai Solicitors**) for the **First Respondent**
Mr Stuart Whitehouse (instructed by **MK Law**) **for the Second Respondent**
Mr Stephen Lue (instructed by **Creighton and Partners**) **for the Third Respondent**

Hearing dates: 7, 18-20 December 2018

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JUDGMENT

His Honour Judge Willans:

1. **I have reached the conclusion that L should be cared for by his father, MT, and have contact with his mother, CO, as envisaged under the care plan proposed by the LA and amended in the light of the Guardian's recommendations.**

2. Within this judgment:

   i) In section A I set out the material I have considered in reaching my decision

   ii) In section B I summarise the relevant legal principles

   iii) In section C I note such relevant background information as is required to understand this judgment

   iv) In section D I summarise the key evidence which assisted me in reaching my decision

   v) In section E I provide my analysis and conclusions.

A. Introduction

3. This judgment arises in care proceedings in which I am asked to make welfare decisions for the child in question. Conscious of the potential for this judgment to be published I anonymise the parties by way of initials. L is the child in the case (and was born on 17 December 2017) whereas CO is his mother and MT his father.

4. To reach my decision I considered the papers contained within the final hearing bundle (supplemented by some limited additional information); additionally, I heard oral evidence from: Dr G (consultant psychiatrist), VL (the allocated social worker); YS (a worker from the residential unit in which mother and child have resided); CO and the Guardian; finally, I considered both written and oral submissions from counsel for each party. At the conclusion of submissions.

6. The question for me is as to whether L should be cared for by CO or MT? These are the realistic options. Both the LA and Guardian argue in favour of MT. MT wishes to care for L. Whilst CO would be willing to support MT she would want to care for L herself.

B. Legal Principles

7. The paramount concern for the Court is L's welfare. In assessing his welfare I have regard to all the circumstances of the case but give particular regard to those matters identified at section 1(3) Children Act 1989 ("the welfare checklist").

8. All parties accept the inevitability of a supervision order (at least) in this case. Such order can only be made in circumstances in which the test in section 31(2) Children Act 1989 ("the threshold test") has been met, namely:

> (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

9. However, the finding that threshold is crossed is not of itself sufficient to justify the making of a final public law (care or supervision) order. The crossing of the threshold opens the door to a qualitative assessment in which the child's welfare and article 8 rights are engaged. In making a public law order the Court will have decided that no lesser form of intervention will properly safeguard the welfare needs of the child and that such an order is proportionate, reasonable, lawful and necessary.

10. In considering the question of placement the Court asks itself whether the proposed carer can provide good enough care for the child in question. This is not intended to be viewed as a high standard of care. A related question will be to evaluate such a question within the timescales of the child and as such the Court will ask not only whether good enough care can be provided but also if it cannot be provided immediately can it be provided within the child's timescales.

11. To the extent the Court is required to determine factual disputes it does so by applying the ordinary balance of probabilities. This burden falls upon the party making any given allegation. There is no burden on the other party to disprove the allegation. All evidence must be considered but the Court will apply particular attention to that provided by the parents. When approaching the evidence of a party who has been shown to have lied I will remind myself of the *Lucas Direction*. This reminds me that a witness who has been shown to have lied may be reliable in respect of other disputed matters and the Court should not simply discount them as a witness of truth.

12. I bear in mind that when considering the standard of care to be provided to L the Court must recognise that it should not engage in social engineering in an attempt

to improve the life of the child. I must accept a range of parenting styles, skills and approaches. There may be attitudes and approaches which are questionable but do not of themselves justify intervention. The Court has a role to safeguard children but not to protect them from all forms of poor or indifferent parenting.

13. I am obliged to carry out a holistic analysis identifying the realistic options for placing the child and then assessing the respective positives and negatives of each option against the other before concluding my evaluation.

C. Background Information[1]

13. In 2015 I considered proceedings concerning the older children of CO. At the conclusion of those proceedings I made care and placement order for two children and a living with order in favour of the father of a half-sibling.

14. I refer to the threshold within the previous proceedings[2]. This identified significant harm arose out of, amongst other things, CO's verbal and physical abuse of her older children; domestic violence between the adults in the home setting and experienced by the children; poor relationship choices; neglect in the form of poor supervision of the children including leaving them with inappropriate carers and the state of the home; and emotional dysregulation. It is of note that Dr G reported in the previous proceedings that CO presented with traits of Dependent Personality Disorder and Borderline Personality Disorder ("PD") highlighting that such conditions are '*long term, chronic disorders with varying degrees of severity*' and commenting that CO at that time had yet to

[1] I have been working from the digital bundle. This comprises two separate pdf documents. The second document relates to the previous (2015) proceedings. To avoid confusion when referring to this bundle I will add the preface 'K' so that for example 'A39' become 'K A39'
[2] K A40

achieve a degree of stability in such regard. Dr G was somewhat cautious as to prognosis but set a base level of 12-18 months of work before change might be perceived.[3]

15. CO is a Portuguese national deriving from Madeira. I find it difficult to gain a sense of her history prior to arriving in the UK when aged 15. The difficulty arises from CO's reported lack of any real memory from when she was a child (she told me in evidence she tends to forget things) and a degree of conflict in reporting: whilst she has previosuly reported a largely uneventful childhood although in the current proceedings she indicated she had suffered sexual abuse from a family member when a child.

16. Prior to these proceedings CO had given birth to three children. They all featured within the previous proceeding however only the father of the youngest child was a party within those proceedings. The other two fathers could not be traced/were understood to have left the country. As noted above the issues included domestic turbulence.

17. I am asked to bear in mind three factors which interact when assessing CO. First, her native language is not English. Secondly, she has an agreed PD of the form diagnosed by Dr G. Thirdly, she has some cognitive limitations. Within these proceedings Dr Y (Chartered Clinical Psychologist) has confirmed the likely presence of either a learning difficulty or borderline learning disability. He points to the likely impact of language on reducing CO's scores (and thus possibly increasing her apparent difficulties) and of her PD additionally impacting on her capacity to retain information when stressed or when struggling to manage her

[3] K E207

emotions. I do bear these points in mind as have, in my judgment, all the professionals who have engaged with CO.

18. During the evidence it was suggested the residential assessment was undermined by reason of the timing of the cognitive assessment report (which post-dated the residential report). It was suggested this called into question whether the unit had paid proper regard to CO's personal characteristics with the potential for the assessment to be consequently flawed. The witness from the unit rejected this suggestion. I agree with the witness. It is plain to me the unit is very experienced in dealing with individuals with challenging cognitive difficulties. The assessment was PAMS based which is designed to appropriately evaluate such parents. My impression was of workers who had a good sense of CO and her particular presentation and there were many aspects of the evidence (parts of which were relied upon by CO – such as the counselling engagement) which suggested they provided a fair assessment. I formed a similar view in respect of both the social worker and guardian's engagement with CO. Each seemed conscious and responsive to CO's personal position.

19. I did not find language to be the significant impediment as suggested within the arguments. I note this is not the same as the impact the same might have on IQ scoring which presumes an English based education. I, in common with the Guardian (and other professionals), found CO to be competent in her use of English. Although assisted by an interpreter she largely wished to give evidence in English. I found her to be a coherent speaker who seemed to recognise where she struggled in articulating what she wanted to say. The professionals in this case (the allocated social worker; the Guardian and Dr G) have long standing

knowledge of CO and I accept their evidence as to limited difficulty in communication. I do not find that this is a case in which CO has sought to take a compliant approach appearing to understand what is said when she does not in fact follow the line of conversation. My assessment of CO is of an individual who has lived and worked in this country now for around 18 years and has a good working use of English. Further my sense is of an individual who is able and willing to point out when she is not understanding what is said. It seems to me the issues of PD and learning difficulties are more significant factors.

19. At the end of the previous proceedings[4] CO appears to have maintained contact with her youngest child whilst that child was subject to a supervision order and lived with its father. Sadly, I am told such contact ended with the ending of the supervision order. I recall the relationship between CO and the father of the child was highly conflictual.

19. CO and MT appear to have met in late 2015 and their relationship endured on an 'on and off' basis for the next two years or so. It has been made more complicated by a period of separation following MT sleeping with CO's sister. Despite their separation there was some intimacy between the parents into the middle of this year. The evidence is that they are now separate and no suggestion was made to the contrary.

20. MT is an Albanian national and has limited rights to remain in this country. As part of their care package the Local Authority have committed to providing

[4] 10 July 2015

support to him. Furthermore, I cannot overlook the likely impact upon his right to remain of attaining caring responsibilities for the child.

21. MT's background is equally unclear as to detail. There is no real suggestion of significant issues beyond the financial difficulties in his home country which led him to travel to this jurisdiction to improve his life chances. The proceedings themselves have not thrown up significant concerns in his regard. Indeed, it is an important feature of this case that all parties support his capacity to care for L (whether as their primary argument: the LA, MT and Guardian) or as a default in the event CO cannot care (CO). Each party either relies upon or accepts the conclusions of the parenting assessment undertaken in his regard. At final hearing no party sought to challenge this assessment or to examine MT.

22. These proceedings have continued well beyond the 26-week period provided for within the rules. The most significant factor in this regard related to MT's representation. In simple detail MT was previously represented by different lawyers. My recollection is that they might have represented him in respect of his immigration claim. However, it began to concern the parties as to whether he was receiving appropriate assistance from the solicitors within these proceedings. A concern was the impression that his case was not being sufficiently articulated in contrast to his appearance (to both LA and Guardian) as a parent who might offer a worthwhile opportunity for L. As a result, at a late stage of the proceedings MT changed solicitors to representatives with public law experience and the timetable was then delayed enabling appropriate assessment of MT.

23. Whilst this is a matter of concern the effect has in my judgment been positive. L now has options before the Court which would likely have been unavailable but

for the delay. I cannot ignore the distinct possibility that this would have been a case involving consideration of Placement/Adoption but for the delay. The delay has had the incidental benefit of permitting a prolonged period of consideration of CO's caring skills. As I was told in evidence the residential unit typically assesses over 12 weeks (perhaps slightly longer in cases of learning difficulty), but in this case although the formal assessment ended some time ago the unit has continued to work with and are able to provide updating information for a period now in excess of 1 year.

24 I do not intend to detail the proceedings within this judgment. Reference should be had to section B of the bundle and the case management orders which identify the various steps taken within the proceedings. The most important point to note is that L and CO have not been separated and have been resident within the unit throughout this period.

D. Outline of Evidence

25 I will briefly set out my assessment of each of the witnesses.

26 I start with the professional witnesses who appeared before me. Dr G gave her evidence separate from the other witnesses due to diary difficulties. I was at IRH reluctant to permit her to give oral evidence as I was unsure as to what purpose would be derived from what then seemed to be a challenge based upon the failure to use an interpreter at the assessment. In hindsight CO was right to push for her to give evidence albeit for different reasons. By the end of her evidence it was clear that the perceived challenge based on language difficulties had fallen away and rather CO was now largely seeking to rely on Dr G as a positive witness in her favour. I will return to her evidence below but by way of assessment I found

her to be an engaged expert who had an obvious interest in the developing understanding of 'treating' personality disorders. She was a fair and balanced witness who was willing to identify the potential for progress whilst still providing clear and robust evidence as to the caution required in assessing this. She was particularly fair in her approach to a particular episode recorded in an email just prior to the final hearing. She made clear that this sort of incident was not surprising and that was to be expected as CO progressed in her response to treatment and in the light of the surrounding circumstances.

27 I was impressed by VL (social worker). I have seen her give evidence before and as previously she gave clear and understandable evidence. She dealt with all questions put in a fair and balanced manner and evidenced her responses where necessary. It is in my judgment particularly important that she has provided consistency of role throughout the proceedings. This case and this mother required a consistent worker and the LA were right to ensure this opportunity was available. I bear in mind she knows the mother well and is well placed to deal with the issues that arise when CO is anxious or feels challenged. CO rightly paid credit to her through her advocate at the start of examination.

28 YS gave evidence from the perspective of the residential unit. As with the social worker she impressed me as to the level of understanding the unit has developed as to working with CO. As with the social worker she gave clear evidence. She was a straightforward witness who could give examples to back up her point when called upon to do so. She has managed a team working with CO 24/7 throughout the last year and was in my assessment well placed to inform the Court.

29 It is perhaps right to record that whilst there were of course challenges to the evidence provided by the LA, these areas of disagreement were not highly conflictual in nature. In part this reflected Ms Sheff's careful and measured approach but I sensed it also reflected the fact that this case was not so much about challenging the past / or about resolving factual disputes and the conclusions reached but more about the balance reached by each witness in assessing the future.

30 The Guardian was able to bring to the case her experience from the prior proceedings. This was immensely helpful. As with all the professional witnesses I felt she paid appropriate regard to CO's undoubted love for L and was equally able to recognise areas in which progress had been made. I found her a fair and balanced witness upon whom I could place reliance.

31 CO gave evidence in an engaging manner (I agree with counsel for the Guardian). There were elements of humour at times which permitted me a more rounded understanding of her character. She impressed me with her love for L and with her commitment to the process. There can be little doubt that a period of 1-year within a unit would be a significant challenge to any parent. It is a real credit to CO (which I take into account) that she has endured this period. It was noteworthy that she retained her composure for most of the hearing and that when she felt anxious was able to appropriately manage her feelings by taking 'time outs'. It was clear to me that this was a mother heading in the right direction. As with the other witnesses this was not a case heavy with factual dispute and there were only limited areas in which I was asked to resolve dispute between the parties. My assessment was in such regards certainly not of a parent seeking to mislead me

and to the extent I might disagree with her I sense this reflects her cognitive difficulties more than any inherent wish to mislead. I was left in no doubt that she wants the best for L. I was given the opportunity to look at a small book put together by CO in the form of a 'life story' for L. Whilst CO told me it remained a work in progress it plainly demonstrated a high level of care and thought on the part of CO. CO also told me that she remained committed to L whatever the outcome of the hearing. I accept what she told me in this regard.

32 I did not hear from MT. However, a combination of what I have read and observations of his presentation in Court left me in no doubt that he is committed to his son. Observing him listening to the evidence it was clear he was paying attention and was on occasion moved by what he was hearing. There is a sense in the papers that he might have been thought to be passive in the face of CO. I am in little doubt he places value on her role as mother to CO and I suspect this is overlaid by cultural values.

33 I obviously bear in mind the written evidence which can be found at section C and E of the bundle. I do not intend to detail the written evidence within this judgment. Rather I will provide a summarised overview to enable any reader to understand the parameters of the evidence received.

34 Dr G confirmed her recommendations from 2015 had not changed and confirmed CO had not sought or received the recommended course of therapy since that report. She confirmed CO suffered with extreme personality disorder of an enduring quality which is resistant to change without long term therapeutic support and with meaningful progress only likely to be identifiable after a period of 12-18 months of committed engagement. She identified the issues surrounding

available resources for such work and noted the importance of CO finding a therapist in who she could place trust. She stressed the treatment of such personality traits depended on the motivation; ability to engage and confront relationship patterns and the capacity to endure negative experiences with sufficient support without needing treatment. Management largely consists of assisting the individual to find a way of life that conflicts less with their character; the aims should be modest and considerable time should be allowed to achieve them. The process of therapy will itself be challenging and likely to uncover difficult thoughts leaving CO destabilised exaggerating some of the deficits in her parenting and reducing her capacity to meet the needs of a child in her care. She felt there was little to suggest a direct risk to L whilst within the unit rather the risk was primarily of being caught up in future incidents of DV or emotional volatility. The expert noted evidence of progress being made but did not feel CO was at the point where she could take on the full care of L within her sole responsibility[5].

35 In her oral evidence Dr G was at pains to point out that CO's difficulties should be seen as part of her make-up and should not be taken as grounds of criticism. It was important for her to establish a trusting relationship as challenges to her way of thinking were destabilising. The expert gave appropriate credit to the progress made to date and took the view that the recent incident at the unit should be seen in context as to be expected on her trajectory of progress. The situation could be viewed as one of treatability and there was developing understanding in this field. Mood stabilisers might help in managing the situation. Future work should be

[5] For reference see E78 on in particular

viewed over months with the better course (although likely unavailable) being psychotherapeutic counselling. An alternative was talking therapy (CBT) which could be gauged over a 6-month period. An issue might arise on CO leaving the unit when there might be a need for change of counsellor.

36 I agree there were positive aspects to be found in the evidence of the expert. It is a feature of the case that CO has been able to show sustained engagement with her counsellor at the unit and appears to have built a positive trusting relationship. I accept she is committed to this work. It is also right to note that she is in a better position than she was within the last proceedings and there are ground to believe she may continue the currently positive course. I also give regard to her capacity to apply strategies to manage her moods – e.g. taking time out. This has at one level permitted her to continue a working relationship with the professionals notwithstanding difficult moments. I also bear in mind the view of the expert as to the limited risk of physical harm to the child whilst in a supported environment.

37 However the timeframes remain significant particularly when one has regard to the period of work to date. I cannot overlook the fact that the expert proceeded on the basis that psychotherapeutic counselling had commenced within the unit. Having heard all the evidence this was not the case. I accept the evidence from the unit that the work to date has been in the form of talking therapy. Whilst this observation does not intend to undermine the good work done it is plainly work at a lower depth level. I also cannot overlook the ultimate conclusion of the expert which did not support placement with the mother and which highlighted risks for L if placed into the sole care of CO whilst she underwent therapy. The strategies deployed by CO within the unit have shown some positives but it is questionable

whether these could be deployed safely within the community without readily available and on-hand supportive care. I bear in mind the process required has an uncertain prognosis.

38 The unit evidence (YS) is found within a detailed report which is difficult to summarise. I have considered it in reaching my conclusions. Having regard to the passage of time it is appropriate to reflect on the contents of the addendum report (June 2018)[6].

39 Albeit with some reservations it was made clear that the issues in this case are not about the basic care provided to L or as to the level of affection expressed by CO to L. However as at June 2018 the unit remained concerned as to CO's inability to manage her emotions especially when situations were out of her control. It concerned the unit that at such times CO's dysregulated emotions were expressed in the presence of L. The unit considered CO would require support with care of L into the future and could identify no evidence of CO making progress and developing new skills in her parenting. CO continued to demonstrate vulnerability in managing relationships; there was no evidence to suggest an improved working relationship with professionals and there were some concerns as to CO's management of her relationship with MT.

40 The central concern related to CO's management of her moods. She remained erratic in such response and this led to concern that L's welfare needs would be missed whilst CO was otherwise distracted. The unit considered she was at the start of a long journey and questioned whether she had the capacity to make the changes required. The unit pointed to the substantially extended assessment

[6] E180

process and drew attention to the failure to make substantial progress within this extended period.

41 In oral evidence YS focused on this feature. She was clear that there had been a substantial opportunity to demonstrate change and sadly this had not been shown. Whilst recognising the strategies deployed she drew attention to the repeated need of the unit workers to step in and provide care or oversight to ensure L was safeguarded. When asked to do so YS could provide clear examples of the same enduring up to the present day and on a weekly basis. This was not a case in which such concerns had become historic in character. On occasion L had to be removed from CO's care; on occasions they have provided care when CO felt it necessary to leave the unit. In the words of the witness it remained necessary to provide scaffolding support around CO to ensure an appropriate level of care for L. She felt one-to-one care during the child's waking hours would be required. Whilst matters were manageable within the context of the unit this would not likely be the same in the community and this posed a real concern for the witness insofar as the child's welfare was concerned. Whilst the engaged professionals could interact in the knowledge of CO's PD, this would not be the case for other third parties interacting with CO on a daily basis (e.g. teachers and other individuals). What would this likely mean for CO's emotional presentation and thus for L?

42 The picture was not entirely bleak. It was positive CO was reflecting on the situation and there had been areas of progress, e.g. hygiene and routines have been adapted and maintained. CO does get there but it takes time as is to be expected with parents with a learning difficulty.

43 This evidence was plainly important. The unit has worked with CO for an extensive period far beyond that expected. The work has been undertaken with an eye on CO's personal needs and I accept the work was structured to benefit CO. I accept language issues have not obstructed the assessment. As such the unit are pre-eminently placed to advise the Court on both progress made and prognosis. Their caution in such regard must be viewed as well informed. Insofar as there were factual disputes as to the need for the unit to intervene in L's care I accept their evidence. Late in the evidence I heard from CO as to particular difficulties with a named worker. I did not consider this challenge particularly illuminated my understanding of the case.

44 VL understandably placed reliance on both the expert and residential evidence. I have borne in mind her written evidence[7]. In oral evidence she was pleased with the positives identified by Dr G but continued to express concern as to periods when L would be in the sole care of CO given the need for a high level of support whilst in the unit. She confirmed the LA now agreed the Guardian's views as to contact between CO and L (a minimum of 6 times per year but subject to review). She felt CO was at an early stage in her process.

45 When examined she agreed the central issue related to emotional regulation. She felt the progress at the unit should be seen in the context of a somewhat artificial setting. The level of support is set at an unusual level but there is still difficulty within that setting. Outside of the unit it was questionable as to the level of available support. CO's sister had her own issues and CO' mother struggled with mobility. She would be worried as to a move into the community given the

[7] C34

continuing difficulties within a highly supported therapeutic community. She evidenced occasions when she had faced difficulty in communicating with CO and would have been concerned if CO was not at that time supported as she was by the unit. Incidents continued to occur on a regular basis (every 3-weeks or so). The ideal would be for CO to be in a position in which she can report after the event having resolved the issue without intervention yet intervention was still required.

46 CO impressed me with her love for her son. She demonstrated clear commitment to him and has shown some practical capacity to meet his daily needs. She told me about the development of her strategy to take time out when stressed. This seems to be working for CO. She felt she would have support when outside the unit from both her sister and mother. She pointed out she had not deliberately hurt L and had not intended to handle him roughly on occasion. She told me that she had not expected to be in the unit so long and had found it upsetting to be required to remain there so long. She dealt with some particular incidents concerning a birthday party and chicken pox. She told me contact 6 times per year was insufficient. She expressed her commitment to continuing counselling work irrespective of the outcome in the case.

47 She accepted she had not pursued work following the last proceedings and had not pursued the anger management options suggested by the unit in May 2018. She repeated her ability to rely upon her family. She was able to show some insight into the impact on L of seeing her in an emotionally dysregulated mood. She agreed she struggled to trust people and questioned how she could be forced to do something if she did not want to do it.

48 I do not find the evidence of family support particularly persuasive evidence. It is quite clear CO's sister has been struggling with her own medical difficulties to the extent that her children are in the current care of her local authority. For the avoidance of doubt there is no good evidence to suggest poor parenting on her part. But on what basis will her sister be available to CO, even when well? I certainly do not accept she will be available as the unit have been at short notice to step in and take care of L if CO finds herself in emotional turmoil. The situation surrounding the maternal grandmother is little better. She has mobility issues and within the previous proceedings had limited insight as to the difficulties confronting her daughter. I am not persuaded she would be able to provide anything like the support currently provided by the unit or envisaged as needed into the future.

49 I was left in no doubt as to CO's motivation or indeed her commitment. But the work she will need to do will be challenging and I have no doubt she will face periods of turmoil into the future as she confronts the issues raised by the work and arising out of everyday interactions.

50 The Guardian set out her recommendations within her final analysis[8]. The oral evidence did not cause her to amend her conclusions. She agreed CO deeply loved her child but was not in the right place to care at this time. She is on the start of a journey but has a long way to go despite the benefits made available by her presence within a 12-month therapeutic community. She felt it was a false comparison to compare the impact within the previous proceedings with that experienced by L. Given the need for the unit to intervene one cannot evaluate

[8] E132

what the outcome would have been but for the readily available support. The Guardian felt CO was still capable of acting in the previous manner, when she is angry she reacts but now she has a greater level of remorse as she understands the consequences of her actions. She is not yet in the position to modify her behaviour. She understood the evidence pointed to a further period of 12-18 months' work. She considered no level of robust planning could safeguard L in the community.

E. Analysis and Conclusions

51 In this case the options are placement with either of CO or MT. Both seek to care for L. MT does not put himself forward as a substitute only should I deem CO to be unable to care for L. As such they are in direct conflict. My principle responsibility is to gauge which of the two are best placed to care for L.

52 The legal threshold is agreed as being crossed on the facts of the case. I accept the agreed threshold and adopt its contents. I do not intend to spend further time on this question save to record that it permits the making of public law orders subject to the legal principles set out above.

53 I turn to the welfare checklist.

54 Given L's age it is impossible to draw any conclusions as to his wishes and feelings. He is unable to state his wishes and lacks the age and the maturity to have views considered. It might though be reasonable on the facts to attribute to him a wish for consistency of care (if safe) and for the opportunity to retain a relationship with both his parents. I take this approach.

55 In the context of this case L's pressing **need** is for stable and predictable parenting. The evidence strongly suggests this will best be found in the care of his father. MT's parenting assessment indicates he is appropriately placed to meet L's emotional needs and this is supported by both local authority and the guardian. In contrast there remain real and pressing concerns as to CO's ability to regulate her emotions with a direct consequential implication for L. The implications for L at such times are sadly obvious and significant. I agree CO remains at the beginning of her journey in such regard and that despite her commitment the timescales must be measured over many months; the prognosis is uncertain, and; there are likely to be challenges within this period which will place her in a position in which L's needs are not prioritised. My assessment tells me that these challenges will flow both from the likely therapeutic process but also from the uncontrolled daily environment in which CO must deal with individuals not conscious of her PD. Pending a successful therapeutic outcome I consider L will be at risk of significant emotional harm in being caught up in the emotion of the moment or in having his needs neglected.

56 I have real reservations as to the maintainability of the current coping strategy whilst in the community if CO is caring for L. CO simply will not have the option of taking time out from L when difficulties arise. This strategy has merit but it has limited application during periods of sole unsupported care. Given the unpredictability of the circumstances which occasion such issues it will not be possible to have in place a safeguarding system for moderating the immediate difficulties for L. I do not accept that either the sister or grandmother can come close to replicating the current role undertaken by the unit. I agree with the unit

assessment of a need for constant vigilance whilst CO gains sufficient insight to resolve her difficulties without problematic behaviour.

57 Moreover I have concern as to whether L's physical needs will be appropriately met at such times. I do not suggest CO would intentionally act to the detriment of L but at such times she has shown herself unable to put his needs first and absent oversight I consider it likely he would suffer significant harm. Examples include the rough handling seen in the unit but I also cannot rule out the potential for him to be left alone whilst CO seeks to manage her mood.

58 I have borne in mind throughout this judgment L's personal characteristics. He does have some medical issues but the evidence suggests he may be over the worst. He is a child of mixed heritage and it will be important to him for each aspect of his culture to be understood and respected. I do not consider this is a feature which calls me to favour the position of one parent over the other. My sense is that both parents recognise the positives the other can bring.

59 I reflect on the impact on L of a future change in his circumstances. In this case change is ahead whatever decision is taken. There are areas of uncertainty in each regard. If placed with his father there are the uncertainties touching upon his immigration status. There is also the inevitable significant change in primary carer which will undoubtedly impact on L. In contrast there is the change in moving from supported care in the unit to community care in the sole care of his mother. I do not understate the significance of change that will arise if placed with his father but I do consider this is a more predictable state of affairs and the evidence tells me there is a greater level of confidence surrounding such a placement. In contrast there is unanimity of concern expressed by all the experts

in the case of permitting L to be cared for by CO in the community. It is incumbent on the LA to consider whether an appropriate level of support can be provided to manage such a placement. This is particularly so in the case of a learning disadvantaged parent. However, I accept the evidence of the professionals that the risks in the case are of such a nature that wrap around care would be required akin to that currently available in the unit. In her submissions for the mother it was suggested a further 6 months should be given to evaluate CO. In considering this suggestion I bear in mind the extensive period already permitted. In my judgment it would be wrong to further extend these proceedings (if this is what is being sought). There has been more than sufficient time to evaluate the potential care that can be provided by each parent. Equally it would be wrong to require the LA to commit to continuing the current placement. This is an expensive resource which has been extended to the appropriate limit and the time has come to evaluate whether CO can return to the community with L or not.

60 As referred to above I consider there are risks to L of being in the care of CO at this time outside of a supported community. I cannot identify at this time when this is likely to no longer be the case. I am confident the period will be measured in many months and in all likelihood a period of at least 1 year. I cannot be confident the situation will be risk free at the end of such a period. In contrast the evidence suggests L can be cared for by his father without risk of harm. There is no factual dispute in this regard.

61 The evidence suggests both CO and MT have capacity to meet the basic needs of L. However, for the reasons given above there are continuing concerns as to

whether CO can meet the broad needs of the child now. This contrasts with the care that MT can offer and which has not been disputed before me.

62 When balancing the realistic options, it is clear to me as follows:

a) There are benefits to L of being in the primary care of his mother. This would be the option of least change and permit L to remain with his primary carer throughout his life. It would avoid the emotional trauma of separation and placement with his father

b) Against this sits the significant concern as to CO's unresolved PD issues with the associated likelihood of future emotional harm. It is difficult to have confidence as to the prospect of success of any therapeutic process and the timescales for the same would leave L in his mother's care for a sustained period during which she would undoubtedly find herself emotionally challenged. On the available evidence she would likely respond negatively in such circumstances and this would likely have a significantly harmful impact on L. I doubt the availability of appropriate support to safeguard L during such times.

c) Placement with MT would likely permit a more settled parenting environment. It would enable L to retain a relationship with his mother whilst she progresses on her journey towards improved mood regulation. It is agreed MT can meet L basic needs and it is agreed he has a commitment to his son.

d) The negatives of this outcome are reflective of the points raised at 62(a) above – particularly the impact of separation from CO.

63 In my judgment the weight of professional evidence points in the same direction. It tells me that whilst CO loves L she is not placed at this time to take on sole care of him outside of a supported community. Were I to take this approach then I would on the evidence be accepting and approving an outcome which caused L to be left in a setting in which emotional dysregulation was present and in which he would be in a position of risk of continued significant emotional harm. Absent the support of the unit I struggle to predict with accuracy the likely impact upon L but I am confident it is a risk which cannot be accepted.

64 My assessment is that CO has a lot to offer to L but requires the time and opportunity to continue her route towards better mood. Dr G has persuaded me that this is not a fanciful aim. But it will require significant motivation and commitment on the part of CO in the context of problematic resource availability.

65 In contrast MT is in effect ready and able to assume care of L without any of the difficulties confronting CO. There are undeniable practical issues including housing and immigration but none of these are insurmountable given practical support. Further these issues do not touch directly on the quality of care which can be provided by MT.

66 In reaching these conclusions I have very much borne in mind the impact which will be experienced by L in moving primary carer from CO to MT. CO starts the case with the element of status quo in her favour. Whilst this is not a factor directly found within the welfare checklist it is of course referenced when considering the impact on the child of a change in circumstances. The reality in this case is that for L there will be a significant change whatever decision is made.

Moving into the community with CO is itself a profound change for L who has to date experienced his life in a supported environment.

67 My assessment has led me to the conclusion that MT is not only better placed to care for L at this time but on the evidence the only parent who can at this time care for L and safeguard him from the risk of significant harm. I have therefore decided that L should move into the care of his father, an outcome that should be reflected by a living with order.

68 The evidence makes clear that MT will require significant assistance in such regard and I note the working agreement and planning in such regard. A particular aspect of this planning will be in the management of contact. I have no doubt L will benefit from being assisted and befriended by the LA. The parties agree there should in such circumstances be a 12-month supervision order. I agree. The same is a proportionate response to the circumstances. It is a reasonable and necessary invasion of private family life. It is welcomed by MT which is perhaps the clearest indication as to its proportionality.

69 Throughout this judgment I have noted the significance of CO and the love she feels for her son. She has sadly lost two children to adoption and a further child no longer has contact with her. She has made progress within these proceedings and I believe she has the potential to make further progress. As Dr G noted she is not to be blamed for the situation she faces. This judgment should not be read as any form of criticism of her.

70 The care of L will now transition to his father and the LA is entitled to be cautious as to how this will impact on CO. There are also real questions as to how she will herself transition back into the community and as to the potential for seamless

continued therapy. The likelihood is of a period of cessation of support and this may have implications. Dr G told me that there may be sense in other forms of work being undertaken to bridge the gap between the talking therapy of the unit and follow up work in the community. I endorse this approach.

71 This does leave uncertainty as to the question of contact. There is no doubt there should be contact. However, it will have to be reduced from the current level based on primary care. In my assessment the LA were right to reconsider their approach to this question. Having considered all the circumstances of the case I agree contact should in principle be set at a minimum level of 6 times per year. If CO continues to appropriately engage and matters settle then I will envisage the contact increasing to at least a monthly level. My sense is that MT will support contact and values CO's role as mother. There does need to be an exit strategy at the end of the supervision period. In my view this requires active and sensible review of contact on a regular basis.

72 This concludes my judgment. I have agreed for it to be shared with the lay parties (social workers, parents and guardian) in advance of handing down at 2pm on 9 January 2018. It has been agreed that CO will attend Court early on that day so that the judgment can be considered with the assistance of time and interpreter support. The judgment can be released at 10am to the lay parties. I will deal with any corrections or requests for clarification at the hearing.
