IN CONFIDENCE

Case No: BS20C02098

Neutral citation :[2021] EWHC 3185 (Fam)

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

BRISTOL DISTRICT REGISTRY

2 Redcliff Street,

Bristol

Date hearing commenced: 15th November 2021

Before:

HIS HONOUR JUDGE WILDBLOOD QC
Sitting as a Judge of the High Court.

Re CO (a Child: care proceedings)

- -

Between:

A Local Authority	**Applicant**
- and -	
The mother	**First Respondent**
-and-	
The father	**Second Respondent**
-and-	
The child	**Third Respondent**
By his guardian.	

- -

Caroline Elford for the Local Authority

Jasvir Degun for the mother

Teresa Thornhill for the father.

Judi Evans for the child.

HHJ Wildblood QC:

1. **Introduction -** I have anonymised this judgment heavily because, with the agreement of the parties, I intend to release it for publication. The annex to it, which I will not publish, gives the confidential detail by way of a glossary. Subject to any subsequent order, I do not intend to name the Local Authority. It is sufficient to say that the application before me is made by one of the five Local Authorities in this area.

2. These care proceedings were started on 9th November 2020. They concern a boy ('C' for 'child') who is not yet a teenager. In essence, they were brought because of C's extreme behaviour and the parents' inability to cope with it in the circumstances in which they were living.

3. Like his parents, who are in their late 40's / early 50's, C is Eastern European. He came to this country with his mother about four years ago, after his father had found work here. Prior to coming here, he and his parents had always maintained their home in their country of origin, with the father working in other European countries at times. The parents speak very limited English and one of the frustrations of these proceedings is that, at four interim hearings, there have not been interpreters, despite orders that there should be. Two excellent interpreters have assisted throughout this final hearing. Unlike his parents, C speaks English and his native language. The Embassy of the family's country of origin have attended some of the hearings and part of this final hearing.

4. C's parents have been married for over thirty years but, very recently, separated. The parents have adult children that they have raised successfully and without any recorded difficulty; the guardian confirmed to me in evidence that he had not found anything of any note to suggest that the parents' adult children experienced inadequate parenting. The Local Authority clarified in closing, after some insistence from me, that it does not seek to produce any evidence to suggest that the older children received inadequate parenting. All of the reports that I have read state clearly that the parents both love C and have a genuine and heartfelt wish to do what is best for him. This is not a case where there is any suggestion that either parent has criminal convictions or mental health issues. I give this judgment on the basis that they are decent people who have known immense emotional hardship.

5. For the past eight months, C has lived in residential accommodation in a registered children's home under Section 22C(6)(c) of The Children Act 1989. I will refer to it as 'RA House' - for 'residential accommodation house'. RA House is in the Midlands, at a distance of about 130 miles from where the parents live. The mother, who works six days a week in a factory, travels to the region of RA House when she finishes work on the sixth day and stays overnight in a hotel there, funded by the Local Authority. Therefore, she sees C on two days of the week (the day she travels and the following day); although there are tensions, she has co-operated with the contact arrangements, has attended without fail and has maintained a considerable emotional input in C's life while he is there. Although there is one report of her discussing her feelings about these proceedings during contact, that was a one-off and occurred at a time when the mother was deeply distressed. Overall, she has not just co-operated with the arrangement for C to be placed there; she has helped C settle there, despite her wish to have him back home. The father, who works hard in full-time employment, has visited fortnightly; although he is more vocal in his views, to his

obvious credit he has co-operated also with the arrangement. Additional weekly contact by Zoom has been suspended since June 2021 but may be restored if C wishes.

6. C's placement at RA House now costs £9,500 a week. Initially, it cost over £11,000 a week. If C remains there, there will be an annual cost of £494,000. The internet tells me that the average base salary of a social worker is £30,303 p.a. Therefore, this placement would cost the equivalent of the annual gross pay of 16.3 social workers. On top of that, there are ancillary costs, such as the mother's hotel and travel expenses and the hidden costs of the time and expense of public servants, such as social workers. The Local Authority has injected considerable resources, time and commitment in trying to help C and his parents. I wish to record my strong commendation of the Local Authority social work team.

7. There are six particular aspects of his accommodation at RA House that I will set out now:

   i) He is subject to a High Court authorisation that he may be deprived of his liberty. That authorisation has been put into effect since he has been there and its proposed continuation is the reason for this case remaining in the High Court before me, sitting under Section 9 of The Senior Courts Act 1981. Because this placement falls under section 22C(6)(c) of the 1989 Act, it is not caught by Regulation 27A of the Care Planning, Placement and Case Review (England) Regulations 2010 as amended by SI 2021/161. There is a full 'statement of purpose' relating to RA House at page D0 of the bundle. I have read it.

   ii) He sees his parents regularly. That involvement of the parents is a key part of the arrangement. Both parents play a full and important role in C's emotional well-being, the mother especially so.

   iii) He receives intensive education in a special school where he is in a class of four pupils. The 'O' school is described at page D0i of the bundle.

   iv) He receives therapy. The care plan now states that C 'will be provided with the opportunity to engage with structured therapy at least once/week'.

   v) He receives care from the care-workers at RA House. Although there have been changes in personnel, the educational, therapeutic and care workers all work as a team, I accept.

   vi) He does not wish to be living there. His parents and siblings do not wish him to be living there, either.

8. There are two options for C's future. The first is that C should return to live with his mother with such support as might be put in place for him and for her. The parents both seek that outcome. No professional considers that would be enough to prevent a repetition of the past and another breakdown in family care. The second is that C should be subject to a care order and should remain subject to the same authorisation that he may be deprived of his liberty. Local Authority and guardian both contend that only the second option will meet the demands of his welfare.

9. The order authorising the deprivation of C's liberty is expressed in terms that permit:

i) 24-hour supervision of C by two workers when he is in the home or out on activities;

ii) Waking night staff to be in place (such staff are not used, currently);

iii) Door sensor alarms to be present on both the entrance doors and rear entrance doors;

iv) In the event that C does depart from the home, staff to follow him and keep him in sight. The staff may follow the 'C missing from care protocol' if they are to lose sight of him;

v) Physical restraint may be used, if required, as part of behaviour management or de-escalation techniques.

10. The parents have struggled with the care of C for years. This brief chronology alone shows the difficulties that there have been:

i) In 2015, C was admitted to psychiatric hospital in his native country. This is how he has described his time there [C74]: *'…it was a fucking mental hospital for crazy people and they used to restrain me so many fucking times and inject me with needles it was so sad and scary and fucking horrible, you know.'* I accept that his experiences in that hospital are indelibly imprinted on his memory. He was given Risperidone, amongst other drugs, and treated as a child who has ADHD. Plainly, his admission to hospital was for a reason and signals that, even at that stage, there were intense problems in the care of C.

ii) In 2017 he and his mother joined the father in this country. Here, his behaviour was increasingly dysregulated, dangerous and, at times, violent. It seems that the approach in this country to children receiving medication such as Risperidone is different. C was weaned off it. The parents think that the cessation of his medication was a significant cause of the difficulties that they then faced with his behaviour. The withdrawal of Risperidone may have side effects that a simple internet search will reveal. However, everything that I have heard suggests that there was a very broad spectrum of reasons for C's extreme behavioural difficulties.

iii) Unsurprisingly, C came to the attention of the Local Authority on 9th November 2018 as a result of his behaviour. Between 26th February 2019 and 21st November 2019 CAMHS provided therapy for C but stopped working with him, due to concerns about his safety whilst at home. As a result, the view was taken by those working for CAMHS, and by a community paediatrician, that C was suffering trauma in the family home and should live elsewhere. It was another 11 months before he did so.

iv) The first lockdown due to the pandemic began on 23rd March 2020. The family were living in a small flat. The parents were trying to contain C whose behaviour was becoming more and more challenging. I have studied with care the six-page chronology that begins at A1 of the bundle. It gives a very clear account of just how extreme the difficulties were. The one place where he had been heavily supported and making progress before going to RA House was at his school (KW) where his teacher, Ms J, said that he had been making 'excellent progress'.

v) The Local Authority commissioned a parenting assessment by one of its social workers, 'Ms SW'. She reported in May 2020, two months in to the first lockdown. She stated that C was beyond parental control and that it was only a matter of time before someone was seriously injured in the home. She advised that support in the home from a social worker and family support worker to assist the parents with implementing boundaries would not be enough to ensure that C or his parents were safe. She recommended that C needed to live elsewhere. Everything that I have heard and read suggests to me that Ms SW was right in her assessment. Her oral evidence at this hearing accorded with her statement, in which she had written:

a) '*during this assessment the parents have appeared to show nothing but love and commitment towards their son C…there is no doubt that these parents are doing the best that they can to parent their son. However, the serious concern is that there are increasingly more reports when C is beyond their control…another concern is that C believes that he can control his parents and threaten them with knives or other household items…I believe that the parents and their son are all at risk of serious harm and it is only a matter of time before someone is seriously injured*' [C12].

b) '*Due to the ongoing high level of threatening behaviour from C towards his parents and the risk that a member of this family will get seriously injured by the physical assaults by C on his parents, I am of the view that C is beyond the control of his parents and he needs to be living in appropriate accommodation that can keep him safe from harm and offer him appropriate support around his emotional/education/and physical needs that encourage and support a positive and safe relationship with his parents and extended family members* [C16].

vi) Notwithstanding the Local Authority's considerable efforts, it took until 8th October 2020 (five months after the parenting assessment and 11 months after CAMHS withdrew) for C to be placed at the 'MT residential unit' under an arrangement that was made pursuant to Section 20 of The Children Act 1989 with the parents' agreement. That placement was not successful; there was conflict between C and the other child there. Therefore, on 10th November 2020 (the day after the issue of these proceedings), C moved to another residential placement called BT, which is a Local Authority residential facility. An interim care order was put in place and, later, orders were made authorising the Local Authority to deprive C of his liberty. He did not settle well there either; his behaviour was extremely challenging and the staff at BT could not contain him.

vii) After a succession of serious incidents, C moved to RA House on 25th March 2021, where he remains. As the psychologist, Dr G, said in evidence, after his experiences in hospital in his native country, it must have been re-traumatising for C to have been placed unsuccessfully in the two previous UK care homes.

11. The strain on the parents of the circumstances in which they found themselves was huge and put obvious pressure on their relationship. Having given untruthful accounts to the expert psychologist in this case (Dr G) of their marriage being happy, the mother now says that the father was emotionally and psychologically abusive to her in the time leading up to their separation and that they had been sleeping apart for four years (which must be since they came to the UK). They both accept that they did not give a full or frank account of the difficulties in their relationship when first speaking to Dr G. Historically, I have been told by the parents in evidence, there was some violence in the relationship, and I

will say more about that later. I am left with the clear impression that it was the immense strain on these parents that provided the setting for the fracturing of their relationship and the development of the admitted abuse that the mother experienced from the father.

12. The mother's position statement setting out her account of the abuse that she suffered from the father is at A60 of the bundle. The father has responded at A64. Their statements include these accounts:

i) The mother states: '*[The father] would call me names and use abusive language towards me. He would call me an imbecile, a whore, a doormat and accused me of sleeping around. When I would leave our home to have a cigarette, he would yell out the window at me saying "take the imbecile [referring to C] with you". Although not all of the name calling and abuse took place in front of C, a lot did, which cannot have helped with C's behavioural difficulties. He also on at least one occasion told me and C that we should move out.'*

i) The father states: '*I accept that in the heat of the moment when arguing, that I may well have insulted the mother by name-calling and saying things I did not mean. I cannot remember precisely what words I used… [The mother] would ask me to leave if C was having a moment, and I would grab my shoes and leave the house as quickly as possible. I accept that I may well have muttered these things under my breath, and that C may have heard me… From my perspective caring for C took a huge toll on our relationship, which led to arguments due to the pressure and stress. I accept that C would have heard some of these arguments, and that living in this environment may have contributed to his behaviour. It was a vicious circle.'*

13. It is plain that the father is a strong character who has a clear work ethos. The mother is a softer character and her distress during this hearing in relation to C's circumstances was genuine and wretched to observe. She has played the main domestic role and has borne much of the strain of caring for C in this country, since she came here. One of the adult children lives here but the rest of her family and friends live in her native country or elsewhere in Europe. She now lives in a bed-sit on her own and, I find, is very isolated. She has engaged in a course about therapeutic parenting and also about domestic abuse. The father is also living alone. The amended care plan states that: '*Dad is currently waiting to start this* [therapeutic parenting] *work – timescales for this are dependent on Dad's capacity to make himself available for regular sessions.'*

14. The guardian, social workers and the workers from RA House all recommend that C is not returned to the mother and that the only solution to these proceedings that would be compatible with C's welfare is a care order coupled with the authorisation that is sought. Dr G's evidence was also in support of that outcome, although she acknowledged that there were gaps in her assessment of the family. The social workers, guardian and the workers from RA House, gave very firm and strong evidence that C is making progress at RA House and it is essential to his welfare that he should remain there. They say that, if he returned to the mother now, it is highly likely that he would revert to the dysregulated, dangerous and, at times, violent behaviour of the past. His mother would once again not be able to cope with his behaviour, even more so now because she would be caring for him on her own. They say that his home life would once again break down and he would come back into care, having lost the place at RA House; there needs to be further 'work' with both C and the mother before they could be reunited.

15. By the time that C arrived at RA House he was traumatised by his experiences. The experience of being in the hospital in his native country, of coming to this country, of

living with parents who could not control him, of being in two, previous, unsuitable placements combined with his profound behavioural and emotional difficulties to present an extremely difficult task for the RA House. He is very clear that he does not want to remain at RA House. Initially, he did not engage in therapy until recently. There are still episodes where his behaviour is out of control, such as where he has climbed on a fire exit, run away, assaulted staff and put himself in danger. His diet and hygiene are poor. Slowly, and with the input of the skilled workers at RA House and the mother, C is beginning to make progress, but it is slow.

16. There were three aspects of the care plan that caused me particular concern:

i) The absence of a clear diagnosis as to what might cause C to behave in this way. Does he suffer from Attention Deficit Hyperactive Disorder? Does he suffer from an Autistic Spectrum Disorder? The evidence of the expert, Dr G, was that it was necessary for C to have therapy in relation to the trauma that he has suffered and that only then could a reliable diagnosis be made. Otherwise, the trauma might so distort the diagnosis as to make it unreliable. I much prefer the guardian's opinion that, whether in care or not, therapy and investigation as to diagnosis should run in tandem and should both be kept under review. Otherwise, therapy could be given on a false premise and a misunderstanding of the cause of the behaviour. For instance, when providing therapy, it would be necessary to have an understanding as to whether the child did have ASD. The care plan will be amended to reflect the need to keep diagnosis under review (paragraph 6.3)

ii) The absence of a clear aim within the care plan. Therapy takes time, of course, but I agree with the guardian that, if C does remain at RA House, the clearly stated aim should be for C to return to live with his family as soon as is compatible with his welfare. It is now agreed that, if I make a care order, there would need to be a *thorough* review of whether C could return to his mother in 18 months' time. At the start of closing speeches, the much-amended care plan at page 8 used different language and I made it clear that looser wording would not suffice as far as I was concerned. Therefore, this issue has now been tidied up.

iii) The absence within the documentation of a clear definition as to who would oversee the therapeutic aspects of this care plan and draw together the therapeutic, educational and social care aspects of C's placement, if he remains at RA House. I raised this during the hearing and, as a result I received further information which, on what I have now read and heard, appears to provide the definition that I was seeking. The position is this:

a) The clinical director of the company that runs RA House is a Dr NJ. He is a psychologist with extensive experience of working with children.

b) The company 'clinical lead' is a Mr IS who is a registered psychotherapist with over 20 years' experience of working in the field of trauma.

c) Ms Mu is a qualified drama therapist who has worked with children for 17 years and specialises in working with trauma and attachment. She provides consultation to the staff at RA House in relation to the care of C. She gave impressive and informed evidence. She wrote lengthy documents (which, wrongly, were headed 'psychological report' – she is not a psychologist). After

giving evidence she wrote to the court saying that she had felt '*very under prepared – the information that I was given suggested a few questions on the report that I had written.*'

d) Ms Go is a registered play therapist with over 20 years of experience of working with children. She has a particular interest in trauma and attachment.

e) There is a care manager at RA House, but she is not in a position to drive the therapeutic, medical and educational aspects of the suggested care plan. The social worker or team manager are not either. The structure in relation to the therapy is that a Ms Go provides play therapy to C and she is supervised by Ms Mu. Ms Mu has a line manager, Mr I.S (who is a psychologist) and the clinical lead of the company that runs RA House is a Dr NJ.

17. At the heart of the Local Authority's case, therefore, is that C was beyond the control of his parents and that, by the time of the Local Authority's intervention, their care of him had deteriorated to the point where he was suffering significant emotional harm. The threshold document pleads matters more broadly by asserting '*the nature of likelihood of harm alleged is i) emotional, ii) physical and iii) impairment suffered from seeing or hearing the ill-treatment of another.'*

18. Section 31(2) of The Children Act 1989 contains the 'threshold criteria' and provides: '*A court may only make a care order or supervision order if it is satisfied— (a) that the child concerned is suffering, or is likely to suffer, significant harm; and (b) that the harm, or likelihood of harm, is attributable to — (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or (ii) the child's being beyond parental control.'* The parents both concede that the 'threshold criteria' are fulfilled on the grounds of 'the child being beyond parental control'. The father also concedes that section 31(2)(b)(i) is fulfilled on the grounds of likelihood of emotional harm.

19. The main legal focus of this hearing, therefore, has been on the welfare provisions of Article 8 of the European Convention on Human Rights, Section 1 of The Children Act 1989 and the case law that applies to cases such as this.

20. The legal considerations are agreed. Before I set them out, I consider that the following passages from judgments given by the European Court of Human Rights are of particular importance and apply with clamant cogency to a case where the proposed and extremely expensive care measures would authorise the relevant public body (the Local Authority) to deprive a young person of this age of his liberty:

i) Hokkanen v Finland 19823/92 [1994] ECHR 32 (23 September 1994) - In that case the following was said: '*In previous cases dealing with issues relating to the compulsory taking of children into public care and the implementation of care measures, the Court has consistently held that Article 8 (art. 8) includes a right for the parent to have measures taken with a view to his or her being reunited with the child and an obligation for the national authorities to take such action (see, for instance, the Eriksson v. Sweden judgment of 22 June 1989, Series A no. 156, p. 26, para. 71; the Margareta and Roger Andersson v. Sweden judgment of 25 February 1992, Series A no. 226-A, p. 30, para. 91; and the Olsson v. Sweden (no. 2) judgment of 27 November 1992, Series A no. 250, pp. 35-36, para. 90).*

ii) Ohlsson v Sweden (no. 1) – In that case the following was said: *As for the remaining aspects of the implementation of the care decision, the Court would first observe that there appears to*

have been no question of the children's being adopted. The care decision should therefore have been regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measures of implementation should have been consistent with the ultimate aim of reuniting the… family.'

iii) Soares de Melo v Portugal (Application No. 72850/14) - '*Une considération primordiale n'exclut pas l'existence d'autres considérations et, en présence d'un droit conventionnel, il faut s'efforcer d'harmoniser les différents intérêts. Cependant, il est important de souligner que l'intérêt supérieur de l'enfant n'est pas, en principe, opposé au droit fondamental des parents à vivre une vie familiale avec leurs enfants. La règle de l'intérêt supérieur de l'enfant ne peut être interprétée comme une règle excluant les droits fondamentaux des parents'*. That means, in English*: 'A primordial consideration does not exclude the existence of other considerations and, in the presence of a convention right, it is necessary to harmonise it with other interests. Therefore, it is important to underline that the superior interest of the child is not, in principle, opposed to the fundamental right of the parents to have a family life with their children. The rule of the superior interests of the child cannot be interpreted as a rule that excludes the fundamental rights of the parents.'*

21. **Law –** I will now set out the agreed principles of law that apply in this case. Prior to closing submissions, I drafted what follows so that the advocates and other professionals could consider them. Having done so, all counsel told me that they were agreed.

22. The first decision is whether the threshold criteria are satisfied and, if so, on what basis. In relation to that:

    i) I have to scrutinise the document, called the 'threshold document', which sets out the Local Authority's contentions.

    ii) Then I have to scrutinise the replies of each of the parents to that document to see what is in issue.

    iii) Where there are disagreements in relation to matters raised on the threshold document which, I consider, need to be resolved in order to fulfil the over-riding objective, I must recollect that:

        a) The Local Authority bears the burden of proving disputed matters that it raises.

        b) The standard of proof that I must apply to such disputed matters is the balance of probabilities. If, eschewing speculation, the Local Authority demonstrates on evidence that it is more probable than not that an event occurred in the manner that it alleges, the court will make a finding to that effect and the event will become an established fact within the proceedings. If the court does not make a finding, the alleged event will be treated as not having occurred, in accordance with the binary approach that the court adopts.

23. If the threshold criteria are satisfied, the court must consider the provisions of Article 8 of the European Convention, Section One of The Children Act 1989 and the case law that emanates from the higher courts as to the correct application of those provisions.

24. Before the court could make a care order, the Local Authority would have to demonstrate that such an order is:

    i) Necessary for the protection of the welfare rights and freedoms of C.

    ii) Proportionate to the proven circumstances of the case.

    iii) Legal, in the sense that it must be in accordance with The Children Act 1989, which are Convention compliant.

25. The making of a care order in this case would be an extreme measure. It would leave C living a long way from his parents, against his and their wishes, in state funded accommodation and, if the court so directs, subject to an order authorising that he may be deprived of his liberty. In accordance with case law, led by Re B [2013] UKSC 33, such an order should not be made save as a last resort, where no other order, compatible with C's welfare, might be made. I have asked counsel to agree this single and condensed sentence as representing the summary of the case law: Nature, law and common sense require that it be recognised that the best place for a child to live is with a natural parent unless proven and proportionate necessity otherwise demands.

26. In analysing the welfare of the child, the court must:

    i) Identify the realistic options that are available for the child. Here only two are suggested:

        a) C should live with his mother and the Local Authority's application should either be dismissed or, subject to the threshold being crossed and the welfare considerations in Section One of the 1989 Act, a supervision order be made.

        b) A care order should be made on the basis of the current care plan which provides that C would remain at RA House, either with or without the additional order authorising the deprivation of his liberty.

    ii) Avoid a linear analysis. That means that it is wrong to approach a case such as this by focussing on the negatives that are perceived to attach to the prospects of the mother caring for C and then make a care order as the default option. The pros and cons of the two options that present themselves must be weighed up in an holistic analysis before the court reaches its conclusion.

    iii) Decide upon the support that might be available if C lived with the mother before evaluating it within that holistic evaluation.

    iv) Apply the provisions of the welfare checklist in section 1(3) of The Children Act 1989

27. In relation to the application for an order authorising the deprivation of C's liberty:

i) The exercise of the inherent jurisdiction in this way must comply with the substantive and procedural requirements of Article 5 of the same Convention;

ii) As was said by the former President, Sir James Munby in Re A-F (Children) [2018] EWHC 138 Fam: 'The framework within which the issues arising in these cases fall to be considered is the analysis of Article 5 set out by the Strasbourg court in *Storck v Germany* (2005) 43 EHRR 96, paras 74, 89, repeated in *Stanev v Bulgaria* (2012) 55 EHRR 696, paras 117, 120, and helpfully summarised in the Supreme Court by Lady Hale DPSC in *Surrey County Council v P and others (Equality and Human Rights Commission and others intervening), Cheshire West and Chester Council v P and another (Same intervening)* **[2014] UKSC 19**, [2014] AC 896 (Cheshire West), para 37:"… what is the essential character of a deprivation of liberty? … three components can be derived from *Storck* …, confirmed in *Stanev* …, as follows: (a) the objective component of confinement in a particular restricted place for a not negligible length of time; (b) the subjective component of lack of valid consent; and (c) the attribution of responsibility to the state."

iii) As Sir James Munby went on to say in the same case: '*A "confinement" of the kind I am here concerned with will be lawful if, as a matter of substance it is both necessary and proportionate, i.e., the least restrictive regime which is compatible with the child's welfare.'*

28. It is accepted by all parties that, properly defined in accordance with those principles, the regime at RA House that the Local Authority proposes would involve a deprivation of C's liberty, if authorised by the court. It is therefore for the Local Authority to demonstrate that the deprivation of C's liberty is both necessary and proportionate – i.e. the least restrictive regime which is compatible with C's welfare.

29. Threshold criteria – The Local Authority threshold document has undergone a number of metamorphoses. It relates to the time when the Local Authority took protective measures – that is, 8th October 2020 when C was first accommodated by the Local Authority.

30. In its specifics, it begins by alleging that C has significant emotional and behavioural difficulties which can result in violent and dysregulated behaviour towards property, himself, and others placing him and others at risk. The document (most recently amended on 16th November 2021, I think) then lists a number of examples. There is an abundance of evidence on this issue and it is a contention that is plainly proved.

31. On the issues specifically raised in the document:

a) C did threaten his parents with a knife and, indeed, grazed his father's finger with the knife. The chronology refers to this incident on 20th October 2019. It also refers to another incident in which C scratched his mother's neck with a bread knife (9th May 2019), although I did not hear evidence of that and so do not making findings in relation to it.

b) C did use violence against both of his parents. There are very many references to this in the chronology (which I have studied). However, by way of generality, I accept the mother's evidence that she repeatedly had bruises that were caused by C. I also accept her account that he threw items at her and, on some occasions, hit her with them.

c) C did urinate over his mother, defecate on the floor, smear face on the walls and place faeces in his shoes.

d) C was verbally abusive to the parents and others and did threaten violence. The mother gave a particular account of him reacting strongly when told to stop playing a game called Roblox on the computer.

e) C did have to be restrained by his father and brother on at least one occasion. The social worker, Ms SW, gave evidence that the parents had told her about the incident when this occurred [see C9, para 7.4].

32. Beyond those points I heard admitted evidence, which I accept, of many other incidents, including that:

a) C '*sprayed washing up liquid around the house and in his Mum's face, which went into her eyes and also covered the bathroom with faeces*' [F53]. I accept that the parents told the social worker, Ms SW, this account.

b) C caused a fire in the flat on at least one occasion (28th May 2020) – As the chronology stated and the parents admit: '*Dad reported that C poured flammable substances into the container and set fire to it, destroyed the vacuum cleaner and destroyed Dad's laptop.'*

c) C did say on at least one occasion that he would kill himself.

33. Further, and generally, the mother was asked during an adjournment of her evidence to read overnight the account that she is reported to have given to Dr G when attending for Dr G's assessment. It is at E41 from paragraphs 10.24 to 10.34. I will not cut and paste it into the judgment, but the mother accepted that she had given this account of life with C and that the account that she had given was true. It summarises the extreme difficulties that she had with C.

34. Returning to the threshold document, it alleges that the parents have not always been able to manage C's behaviour whilst he was living at home with the parents. On that contention:

a) I accept it as a general description of the parents' inability to manage C's behaviour.

b) I accept the examples given in the threshold document. The parents did lock themselves in rooms or in the car at times when faced with threats of violence from C. The father gave very clear evidence of having to lock himself in his room at night for fear of C coming into the room and harming him. I do not

accept the mother's account that she only went in to the car to get away from the father; it was the overall situation in which she found herself that caused her to do so [see for instance L19: '*C didn't sleep for 25 hours on Friday. This morning he was asleep at 3.00 a.m. He is screaming but overall, his behaviour is not bad. On Saturday, the mother went to sleep in the car for two hours at 5.30 and went back in at 7.30 and slept again'*]

35. The document then alleges that the parents have not been able to put boundaries in place, particularly in respect of sleeping. Again, overall, it is clear that this was the case in relation to both parents. They could not contain his behaviour. I accept that C's sleep pattern was disrupted and that, on one occasion, he did not sleep for 25 hours. The parents struggled to contain his computer use and were not able to control his behaviour.

36. The document alleges that C was exposed to the parents' domestically abusive relationship. I do not accept that there is evidence of C being affected by witnessing physical violence between the parents. The mother says in her replies to threshold: '*physical violence happened on one occasion only, in [native country], before C was born, since then the father has never aside a hand to me. There was however one situation which C saw, while getting to the microwave, the father pushed me out of his way.'* On what I have heard, I accept the mother's evidence which the father agreed. That evidence is not enough to make domestic violence a feature of the threshold findings, in my opinion. I do accept that, in the context of the extreme strain that they were under, the father was emotionally abusive to mother. He used strong and critical language to her and did not support her adequately with the care of C. The combination of C's behaviour and the parents' relationship must have made the environment in the small flat very harmful to C's emotional wellbeing. C could not avoid witnessing the emotional abuse of the mother by the father. An example is given in the threshold document where C poured water on the father's bed and the father poured water on the mother's bed. I accept that this was emotionally harmful for C. I also accept that, for C, witnessing the emotionally abusive relationship between the parents was harmful. I also accept that, although the alleged particulars in the threshold document do not support a finding that C did suffer significant physical harm, there was a real possibility or likelihood that he would do so, given that there were already incidents in which he caused a fire with a flammable substance in the flat and attacked his father with a knife.

37. I find that the threshold criteria are fulfilled on both limbs of section 31(2) of the 1989 Act - section 31(2)(b) (i) and (ii).

38. The mother contends that, now that she is on her own, things have changed, and she would not face the same difficulties that she would be C's sole carer. I can say immediately that I do not accept this. I say that because:

i) I do not accept that the parent's inability to care for A previously related only, or principally, to the relationship between them. It arose because they could not cope with his behaviour.

ii) C's primary carer was the mother. C was in her sole care for part of his upbringing (e.g. when the father came to this country to work) but, even when the father was there, it was the mother who was mainly responsible for his care.

iii) If C were in the mother's care now, she would be looking after him on her own. I have no doubt at all that she would not be able to cope with his behaviour as matters currently stand (that is, before C's behaviour has changed and she has learnt how to face the parenting challenges that he would still bring).

iv) Given the extreme nature of C's behaviour, I think that he would be too much for any one carer to manage, in any event. I accept the point that has been made to that effect by Ms Evans on behalf of the guardian.

v) The remedial and therapeutic work for C and the mother is only just beginning.

vi) The mother is now living in very difficult circumstances. She has poor accommodation and has just separated from her husband of 30 years. She remains very isolated.

39. **Evidence –** I will now summarise the evidence that I have heard.

40. Evidence of Dr G – Dr G, the psychologist, wrote her main report in February 2021, a month before C moved to RA House. At that time, she expressed her doubts about the proposed move there and wrote at E55:

It is clear from my direct assessment of C, the information held upon him and discussion those involved in his care, including that of his placement, parents and school, that C presents with a number of very significant challenges. C was reportedly presenting with major issues with his behaviour at a young age and these issues were noted at around 4 years old. Whilst his father has suspected that this was a result of his immunisations, there is significant research against this theory that child immunisations cause autism (Gerber & Offit, 2009), though without his medical information, it is difficult to determine the precise immunisations he was given. Notwithstanding however, I note from discussions that he was presenting with significant aggression. There were other indicators of developmental pathology, as described by his mother, noting his speech to have regressed at this point and that he was struggling with peer relationships.

As a result of C's poor behaviour, he was then sectioned and spent a period within an institute within [his native country]. *I do not have the medical information from that period, and this would be very helpful. However, there have been indications from C's later discussion, drawings and from his parent's description that there were many clinical practices which have left him traumatised. He has spoken of being strapped down, isolated and over medicated. These experiences appear to have led to major trauma and PTSD presentation. It has appeared to professionals that he has experienced flashbacks, and this may be a major underpinning factor when considering his aggression. It is also unclear as to the medication he was given and the effect this may have had on brain development.*

C appears to always be in a heightened 'fight or flight' response, and he is easily triggered. His experiences have also led to a development of a major attachment disorder and there are certainly features of ASD. Whilst I have been unable to complete a formal assessment of ASD with C, his significantly impacted social communication challenges and developmental description is consistent with such. C is clearly a very challenging child to parent, and with little support and a language barrier, his parents have struggled to manage his behaviour. He was then taken from his home to Local Authority care, with what appears to be little effective planning, and any change for this boy has been extremely detrimental to his wellbeing. C has thrived at his school over the period where, very slowly, he has started to trust adults. Since his move into care this has regressed, and I believe that consistency is what is needed. I am concerned at the planned

move to another care facility, as this would mean his parents would struggle to have contact, due to distance and he would not be attending school, which has been his only safe haven.

C's placement will need to be extremely carefully managed…Move to new placement- RA House: This placement would be able to provide C with holistic, specialised care. It is positive that the house seemingly has experience with complex social, emotional and behavioural needs and have staff who are well-versed in trauma informed response. It is positive that there is therapeutic support offered that would be available to C. However, there are also associated risks….

41. However, by the time of her second report, dated 13th October 2021, she said: '*From the updating documentation, it is positive to see that C appears to be settling well into RA house. It seems as though they are able to offer him a supportive environment and I am pleased to see that they are involving him in discussions, as demonstrated by including him in one of the team meetings. There seems to have been an improvement in C attending school, wearing his uniform and a reduction in the frequency of incidences. It is also positive that C has been provided with a dietician to help rectify his eating habits. However, there still appears to be some issue with C's hygiene and sleep pattern, albeit staff appear to be acting in an appropriate response to try and promote this. There will be no 'quick fix' in terms of stabilising C due to the complex trauma he has experienced. However, it does appear that this long journey has at least begun. With regards to his engagement in therapy, this again may take a prolonged time for him to even begin to engage. By having the trusted bonds with staff at RA house, this will have already started to allow C to experience a therapeutic and nurturing environment.'*

42. In her oral evidence, Dr G said that she had read the recent documentation and was now of the firm opinion that C should remain at RA House. She supported the application for authorisation to deprive C of his liberty. She considered that the company that run RA House are trying to provide him the right therapy, but it is proving difficult and will take time to progress. She felt that those working with him should have experience in complex trauma work.

43. She said that the domestic disharmony between the parents would have affected him and that he is hypervigilant. If he were to return to the mother and the arrangement broke down, it would impact upon him 'hugely and negatively.' Since CAMHS had declined to work with C further in 2019, there would be major difficulties finding C effective therapy if he went back to the mother. Private therapy would not be easy or quick to find and would have to be funded.

44. The fact that the parents did not tell her about the domestic abuse was material and meant that there were obvious gaps in her assessment of them. In her second report she wrote:

An important source of information gathered from the documentation is the mother's disclosure of several allegations made towards the father perpetrating emotional and psychological abuse. This was said to have occurred within the family home, sometimes in the presence of C. She reported that she had not shared a bedroom with her husband for four years, which was around the time that they had been in the UK and it is therefore reasonable to assume that this has been a longstanding issue. She has stipulated that "there were times when the father's abuse became so intolerable that I actually slept in the car rather than in the same house as him." which demonstrates the level of distress she must have been experiencing.

I appreciate that the mother has given her reasons for not disclosing the information regarding the alleged abuse previously, however I am mindful that the parents were both independently asked to specifically comment on their relationship during their assessments. The mother had deliberately withheld this information which demonstrates a lack of honesty and openness. I agree with the opinion of other

professionals and indeed with the parents, that it is likely that C's experience within his parental home have exasperated [she means exacerbated] *and/or compounded C's issues. I believe that it will take a prolonged period of time for C to build appropriate attachments to others and to work on the many areas of dysfunctional behaviour. It will be important for staff to maintain areas which have been successful in helping C to achieve this, with regular review taking place. Contact between C's mother and his father appears to be going well. It is positive that the mother has separated from the father and moved out of the accommodation.'*

45. Evidence of Ms Mu (therapist) – Ms Mu filed two reports. Her report of 10th June 2021 recommended:

C needs very specialist care, preferably a team trained in therapeutic parenting to enable C to begin to feel safe. The therapeutic parenting model of PACE (Playfulness, Accepting, Curiosity and Empathy) would be a good model to begin; to help C to feel accepted as he is; able to be a child, relax, and have fun; as well as helping him to understand and express why he might be feeling this way; whilst providing empathy to help him know he is cared for and valued. Once he is feeling safe, accepting that he can be cared for and is worth caring for, he will need care and support to help change his perpetuating view of himself as unmanageable and unsafe.

He will need very firm boundaries and routines which would need to be put in place with care and empathy. It would not be helpful for C to be moved placement again as it could simply retraumatise him and perpetuate his view of himself. It will take a long time for C to begin to feel safe and to change his behaviours, at any point he perceives he is not safe his challenging behaviours may escalate, as they did when he was at BT.

Caring for a child with such complex needs, and with the high levels of trauma C has, is very challenging. It will need patience, care, and support for the team around C. It will be important for the team to remember he is not being aggressive through spite or misdemeanour but through fear and not understanding another way of expressing himself.

Due to his complexities, I believe a care home with no other children would be the best place for now, although it can be harder when working as a team to form full bonds and keep consistency, just having one or two people caring for C would become too exhausting for one person. Therefore, it will be very important for the team caring for C to try to be as consistent as possible and provide him with the care and nurture he needs whoever is on shift.

C would benefit from a direct therapy intervention to help him process and work through his past trauma. He would benefit, to begin with, from a creative or play based approach as he would struggle to articulate his thoughts and feelings…

C and his family have a very complex relationship. He is very close to his family, and they are very important to him, however, currently they do not appear to be able to keep him safe. I would recommend that his family, in particular his mother, receive her own therapy and support. If the view were to integrate C back into living with his parents, some family therapy and clear interventions would need to take place. It is not just C who would need to change, the environment he lives in will need to be able to meet his needs.'

46. At C115 there is a further report from Ms Mu, dated 11th October 2021. In it she concludes as follows:

C has improved in many areas since his previous CANS – including Sleep, Social functioning, Adjustment to Trauma and Traumatic Grief, Hyperarousal, Physiological Dysregulation, Family, Optimism, Sexual

Development, School Attendance, Attachment, Anger Control and Sexual Aggression. He is engaging better with staff on a day-to-day basis and going to school regularly.

However, staff have also noted some areas in which he has regressed – including Spiritual / Religious, Recreational, Suicide Risk and Judgement. Please note that the following have also been recorded as a higher score for this CANS assessment:

- *Language – staff felt that the CANS assessment is written to include his family and although C can communicate well in English, a translator is required for contact and meetings and therefore this had been previously marked incorrectly as a 1 and has now been placed at a 2.*

- *Runaway – C has once gone in front of the house on the street, never before had he made any attempt to go anywhere. Although this is still very low risk is it noted to be watchful of.*

- *Psychosis – Although there have been no reports of voices, the staff feel he has mild disruption in thought processes and therefore it is something to keep a watchful eye on it.*

C is making some great progress in the house and in the school. Although some of these appear to be small steps, given his level of trauma and his behaviours displayed prior to arriving at RA House, this is a great improvement. C still has a long way to go before he is able to fully manage his outbursts and regulate his emotions. He appears to be starting to talk to people and has now begun some therapy – although this is in the very early stages. It would be important for staff to continue engaging him with consistency, playfulness and empathy.

47. In addition to her report, Ms Mu also filed a statement on 11th October 2021 in association with the manager of RA House, JD [C125]. In an overview at C128, she repeated the progress that C is making.

48. In her oral evidence Ms Mu explained how, after one initial session of therapy with her, C had declined to engage in more. However, that was on 7th May 2021, in the early stages of his stay at RA House. She said that he is now engaging better with Ms Go, the play therapist although, she said, '*we are still at the first stage of therapy.'*. Ms Mu does monthly consultation sessions with Ms Go. She gave examples of how C has made improvements with sleeping and, overall, is less dysregulated. He is wearing his school uniform and is showing much more interest in his education. Only slow progress is being made in relation to his eating and his hygiene.

49. Evidence of Ms Du (Registered manager of RA House) – She said that C's bedtime routines have become more consistent and settled. Routines within the home have been better and he has adjusted to them. She has put in place incentive charts. Overall, he has been more settled and polite and is not using foul language as much. Educationally he has improved; he gets up to school now, although he is sometimes late. He attends every day and engages well with education. In relation to food, in August he would not eat anything that was already open and had to watch it being opened; that has now improved. She said: '*We make food from his native country for him. His diet needs improving massively, but at least he now sits down and tries what is offered to him.'*

50. She said that there were still incidents when he had to be restrained. There had been one incident when he got out of the home. I heard a great deal of evidence about that incident, which occurred on the night of Saturday 18th / 19th September after a difficult contact visit in which a different interpreter had been assisting. C was settled that night and staff had

gone to bed. C got up in the night at about 1.30 a.m. and was heard leaving the building. Very quickly (within three minutes, Ms Du said) the staff were with him outside. He was persuaded to come back into the house but then left twice more through the living room window. Eventually he settled again, after the staff persuaded him to do so. Ms Du said that C did not get into the road when he was out of the house. The father was told by C that he did and, the father said, C gave him a large bolt that he had found in the road.

51. In my opinion this issue, which was raised at some length on behalf of the parents, does not assist their case because:

    i) If C were to be at home with the mother on her own it is the sort of incident that would highly likely to occur frequently if C were to be in her sole care.

    ii) The staff at RA House dealt with the incident skilfully and quickly. I do not accept that the occurrence demonstrates a lack of care or skill in the workers there. C cannot be in total lockdown and the removal of 'waking night' staff was sensible since C resented it so much.

    iii) This was one incident in nine months in which he got out of the property. I accept that there were other incidents of different types (C climbed on a fire exit at school, for instance and, last weekend, climbed on to a car and damaged the roof) but that is nothing in comparison to how C was behaving when he was at home as the chronology makes abundantly clear. I will refer to three other incidents at the home shortly.

52. Ms Du agreed that there had been changes of staff at RA House since C arrived. That is a relevant and unfortunate factor in any residential environment and is also why children are better off placed in families if possible. But C's placement there cannot be viewed piecemeal. The overall picture is of a specialist environment with a core group of workers who are experienced and committed to his welfare.

53. Ms Du was asked about a report that had been written on 25th August 2021 by a consultant paediatrician, Dr AT. In that report the doctor said: '*One of the big improvements since settling into his new placement has been with his sleep…eating is still a major problem…his behaviours seem to have settled quite markedly.'* The workers from RA House who accompanied C to the doctor's appointment were '*not aware of him being seen by CAMHS in this country.'* I do not think that anything material turns on the fact that the workers gave that incorrect information.

54. Ms Du described how the person caring for C needs to be 'on it, 24/7.' She said that C needs support, therapy, a lot of supervision, guidance and someone to deal with his behaviours. He has two carers at RA House throughout the day and are on call at night. Ms Du thought that caring for C would be beyond one person.

55. The three other incidents of which I heard during the evidence and which show how demanding C would be for one person to care for him are:

    a) An incident on 3rd October when he put a pillow over the face of a care worker with his arms around her neck [G270].

    b) An incident at G288 when he hit a care worker with an umbrella in the car. Ms Du said it would not be safe for one person to take him to school.

c) An incident on 26th October 2021 when he crept out of bed and poured water in to plug sockets.

56. Evidence of Ms TM – the team manager. Within her evidence she:

i) Provided a statement, dated 11th November 2021, in the light of the suggestion by the guardian in his report that there was a gap in the Local Authority evidence as to the support that might be offered to the family, if C were to be returned home. Her statement says that a social worker might be allocated, a Family Support Worker could visit once a week. CAMHS, she said, would not accept C as a patient in the light of their previous assessment and involvement with him. Respite care would not be available because of C 's complex needs and due to the effect that he might have on another household. Some daytime activities, specialist education and parenting advice could be provided. However, she said, most of this was in place before C was accommodated by the Local Authority. It would not be sufficient to render C safe at home, she said. I agree with her.

ii) Said in oral evidence that, if he went home, C would revert to how he was before. The mother does not challenge him and lets him do as he pleases. That does not help him to be safe. Progress with the mother's therapeutic parenting has not been as advanced as had been hoped and there is much more to do.

iii) Also said in oral evidence that, if C went home, it would be either under a supervision order or no order. She said: '*It would be a desperately unsafe for him…It is not just the once a week therapy that he needs, but the provision of a team who work together to provide therapeutic care. He needs two adults caring for him constantly, due to his needs and the risks that he may pose to himself. The mother could not manage him on her own and things would revert to how they were before. The mother would be at risk, possibly of her life'.* For example, she said, C put his hand over the mother's mouth so that she could not breathe through her mouth and said: 'die mummy – aged 10 or 11- January 2020 (this was confirmed by the mother in evidence). Ms TM said: '*There is nothing that I can identify that would provide the necessary level of support at home. If he goes home, it is highly likely that there will be significant harm to C or his mother and the placement will break down. That would be highly detrimental to C. He could not complete the therapeutic journey he needs if he went back to the mother.'*

iv) Finally, she said that C's relationship with the mother is very important to him. It is probably the most significant relationship that he has. If she is put in the role of single carer, it could harm their relationship because of the strain that would be placed on the mother. The mother does not understand his complex needs and is not being realistic. She diminishes the difficulties that there were at home significantly.

57. The guardian's evidence – The guardian gave oral evidence that accorded with the recommendations in his report which is dated 10th November 2021 and is at E108. In it he says, amongst other things:

Whilst I acknowledge C's needs are complex and he requires an intensive package of therapeutic support, it is my professional opinion that he has made considerable progress since being cared for at RA House. Specifically, he is able to regulate his behaviour more consistently, is beginning to form positive relationships

with staff, is engaged in his education and the number of serious behavioural incidents have considerably reduced. This is a stark contrast from C's presentation at his previous placement.

Within this setting [RA House], C is the only child in this placement and, as such, he is provided with the dedicated, focused care that he requires to meet his complex needs. Furthermore, whilst living in this setting, C is able to access a Specialist Education Provision, which is linked with RA House. Despite my professional view that this placement is meeting C's needs in many regards, I remain acutely aware that C still experiences issues, for example, with his diet and with personal hygiene. Furthermore, being placed at RA House means C is a significant distance away from his parents, with whom he has established, positive relationships. That said, on balance, it remains my professional opinion that C's current placement is most adequately equipped to meet his needs at this time.

Having considered this application, and notwithstanding the positive progress C has made at RA House, it is my professional view that C is likely to continue to require such restrictions (as set out of paragraph 11 of Ms TM's Statement, dated 9/11/21). Such restrictions constitute a deprivation of his liberty, given his age. I consider the restrictions to be proportionate in the circumstances, and necessary to ensure his welfare needs are met. As such, I support the making of a further order authorising the deprivation of C's liberty, as per the regime in place at this time, on the basis such an order is permissive only. The restrictions, particularly those around restraint, should be used only when necessary, and should be relaxed if it all possible. The restrictions should remain subject to regular review.'

58. The parents' evidence and submissions– The parents gave evidence in accordance with the matters that I have already set out. They both emphasised how much they love C and how much they want him to come home to the mother. The father said that he would support the mother and he hoped that their marriage might be restored. The mother emphasised that she is best able to care for C, as his mother, and that the difficulties that have been encountered in residential care would not be the same if he were to be back home with his family. She also stressed how scared C had been during the first lockdown because he feared that he would lose his parents to the virus. The father accepted that he had filed a statement in July 2021 saying that he supported C's continued placement at RA House. However, he said, that was on the basis of his understanding that C was receiving therapy there. When he learnt that he was not and that he had climbed on the fire exit at the school, he both changed his mind. The mother ended her evidence by saying: '*I want C home more than anything else in the world. I want him to go back to his previous school. If I needed help, I would contact Ms TM. I do have close friends. I will learn English.*'

59. The parents are concerned about whether C's basic care needs are being met at RA House. They are particularly concerned about whether C's hygiene and dietary needs are being met and also whether he is being kept safe at RA House and at the school. With skill, Mr Degun addressed me on these issues in closing. The mother also considers that she has not been adequately assessed as a sole carer of C now that she has separated from the father and has started therapeutic and counselling work. As Mr Degun submitted, Dr G said that there were gaps in her evidence because of the changes that have now happened. Mr Degun emphasised that the last parenting assessment was in May 2020. He submitted that the correct course would be for C to live with his mother, whilst she and C engaged in the counselling and therapy to which the mother is committed.

60. Mr Degun submitted that a feature of the case is that C is a native of another country and his culture and heritage also add to the weight of the importance of him living within this family and community. Rightly, the parents both emphasise the importance of cultural

issues. Further, they draw to my attention that there has been a delay in providing therapy for C and the continuation of therapy cannot ever be guaranteed.

61. The parents argue that they have co-operated with the Local Authority and would continue to do so if C were to be returned to the mother. The mother has travelled to contact every weekend and co-operated with the arrangement. In July 2021, the father filed the position statement, saying that, on the basis of the information that he had received by then, he supported the continuing placement of C at RA House. Ms Thornhill made strong and skilful submissions in closing on that latter point, putting it further in the context of the parents having applied to discharge the interim care order on the basis of the experiences of C in the previous residential institutions – that is, the father supported RA House initially notwithstanding their views of what had gone before it.

62. Ms Thornhill also submitted that the father had been urging that there should be an identification of the reasons for C's behaviour, including a diagnosis of any underlying condition or disorder. I picked up in that point from the father's statements when first reading these papers and it led to the firming up of the care plan on that issue as I have described above.

63. The incidents that have occurred at RA House led the parents to submit that RA House is not a panacea and that the difficulties that the parents had when C was at home are not being mitigated in his placement there. Although I appreciate why that submission was made, and made well, I do not accept it. I do accept that C is making improvements at RA House. Ms Thornhill reminded me of the evidence about the number of changes in staff that have occurred at RA House which, she submitted rightly, must be unsettling for this disturbed boy. I have already dealt with that point above.

64. **Analysis –** I think that the necessary holistic analysis of the two options can be carried out in this case by reference to the welfare checklist in section 1(3) of the 1989 Act.

65. The first factor listed in that subsection is '*the ascertainable wishes and feelings of the child (considered in the light of his age and understanding)*. C's wishes are clearly expressed. He wants to go home. The fact that he has begun to say positive things about RA House on occasions, does not detract from that. His feelings are of a child who is closely connected to his parents and to the other members of his family. If he returns to his mother now, it will therefore accord with his wishes and feelings. If he remains in care, it will not. I accept that it will create an additional difficulty for the carers at RA House to cope with C if he is told that he is not going home. However, I think that, with the level of input that is being provided, he will be containable and, after a period of disappointment and adverse reaction, will settle again once care there becomes the norm.

66. The next factor under the subsection is '*his physical, emotional and educational needs'*.

67. The parents are concerned that C's 'basic needs' are not being met at RA House. They refer, in particular, to his diet and hygiene. As to diet, I accept the evidence (e.g. from the letter written by Dr AT, the paediatrician) that 'eating is still a major problem with him having quite a restricted diet' although I also accept that, since that letter was written, there have been improvements. I also accept that the fact that he will only have a bath when the mother is present (that is, once a week) and tends to sleep in his clothes raises important points about his hygiene. However, I also accept that the people working with him at RA House have these issues in focus and are working on them. I have no doubt that, in time,

progress will be made on these issues as it has been on other issues. More importantly, if I compare that with the extent to which his needs would not be met with the mother, the balance is very firmly tipped in favour of RA House.

68. If C goes home to his mother, it is highly likely that the same problems will occur as before, and the mother will not be able to keep him safe or cope with him. Indeed, there is no reason why his behaviour should *not* revert to how it was previously in her care. I do not accept that the absence of the father would change that, and, in any event, the father sees himself as playing a supportive role to the mother and so would not be absent. When, rather than if, the placement with the mother once again broke down, it would be extremely damaging for C. Thus, if he were to live with the mother his physical and emotional needs would not be met. That would have an inevitable impact on the fulfilment of his educational needs.

69. If C remains at RA House, his emotional need to live with his family and within his own culture, if possible, would not be met. However, he would continue to receive the specialist support and therapy that he receives there. As a result, it is likely that he would develop in his emotional maturity and stability in a way that he would not at home. If there is to be a chance for him to be integrated once again with his family in a way that is sustainable, his placement at RA House is the only identified means by which that might now be achieved. Further, C's emotions and behaviour are so dysregulated at present that there needs to be a profound investigation of how his emotional needs can be met; there is no way that would happen if he returned home even if privately funded therapy could be obtained for him.

70. The next factor is '*the likely effect on him of any change in his circumstances*'. The biggest change would come about by the making of a care order, because that would signal the end of these proceedings and of the family's bid to get C home. He would then know that, for at least the short and medium term future, he would be remaining in RA House against his wishes. I accept that would be a major change for him and also for his family. However, given the alternative option, it is a change that is necessary and proportionate as long as it has a clear aim of returning C to his family as soon as is compatible with his welfare. It will not be compatible with his welfare, if he is allowed to drift in care or if a placement in care becomes treated as so much the norm that genuine attempts to work towards returning C to his family are not made.

71. The next factor is '*his age, sex, background and any characteristics of his which the court considers relevant'*. As to his age, he will soon be a teenager. As such, if he behaved towards his mother with the violence and aggression that he has used on occasions in the past, he would pose a real and increasing danger to her as he gets old and stronger. Ms SW's correct prediction that someone would be 'seriously injured' would once again arise. That risk, of him hurting his carer, is not removed by him being in RA House (and e.g. putting a pillow over a carer's face or hitting someone when they are driving a car) but with 2:1 supervision, he is much less likely to cause harm in that way. Further, C's carers at RA House are trained in how to deal with such incidents. The mother is not.

72. As to his background, he has experienced turmoil and disruption for most of his life. His family placement broke down when he was aged five or six and admitted to hospital in his native country. When he came to this country his behaviour was out of control and he needed to move away from his family. He has witnessed the breakdown of his parents' relationship and the abuse of the mother that followed. He was then in two residential

homes that could not contain his behaviour. He has now come to a home where they are beginning to be able to work with him and provide him the restorative and therapeutic care that he needs. If he went home to the mother, it would lead to a return to the chaos of the past. His only hope now is at RA House where they can provide him the care that he needs.

73. As to his characteristics, I think that there is very little chance that it would ever be possible to reach a position where there was a clear identification of any underlying disorder ('a diagnosis') if he went home now. The difficulties would once again be compounded in a way that would make it extremely difficult to separate trauma from any disorder – this is what happened in the past, for instance when CAMHS tried to get involved. Further, if the placement with the mother did breakdown, as is highly likely, any work that had been done with him would be undone, as he went through the trauma of subsequent removal and placement elsewhere. Now that the care plan has been amended in relation to what is being called 'diagnosis, I think that there is a much greater chance that it will be possible to find the root causes of C's behaviour if he remains at RA House. As part of that, at RA House he will receive therapy that would be difficult and delayed if he were to come home now.

74. The next factor in the subsection is 'any harm that he has suffered or is at risk of suffering'. I have already recorded the harm that he has suffered. If he goes back home, he will suffer it again in all probability. At RA House there is a reasonable prospect of that harm being mitigated if he receives the therapeutic care that is offered to him there and there is a clear aim that he will return to his family when and if it is compatible with his welfare.

75. The next factor is '*how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs'*. Comparing the two options before me, his needs will not be met if he returns to the mother. Although it is never possible to speak in absolutes on issues such as this, there is a much more realistic prospect of his needs being met at RA House.

76. The final factor is '*the range of powers available to the court under this Act in the proceedings in question'*. If the court made no order, or a supervision order with C returning home, it would not be compatible with his welfare. The only order that can now be made consistently with C's welfare is a care order. Such an order is necessary and proportionate.

77. As to the application for authorisation to deprive C of his liberty in the terms of a continuation of the existing order, I have no doubt that is both necessary and proportionate. I think that it is inevitable that, without that authorisation, C would attempt to leave RA House and there would be further incidents where he would attempt to hurt staff, damage property (e.g. jump on car roofs) or put himself at risk (e.g. climb up fire exits or pour water into sockets). His placement at RA House would not be sustainable without that authorisation.

78. **Conclusion –** I therefore make the orders sought by the Local Authority. I do so on the basis of the care plan in its current, amended form. As I have emphasised repeatedly in this judgment, the aim must be to return C to live with his family as soon as it becomes compatible with his welfare so to do. To that end, the review in 18 months' time must be thorough. If it isn't the parents would be able to bring the matter back to court on an application to discharge the care order under section 39 of the 1989 Act. By then C should have received more than 18 months of therapy, specialist education and skilled care from

the team there. He will be a teenager and in the run-up to the time when he may be taking GCSE's. He will be fast approaching the age where he will be seeking much more independence prior to achieving majority. Between now and then his placement there will have cost about £750,000.

HHJ Stephen Wildblood QC
22nd November 2021.