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Neutral citation number: [2024] EWFC 193 (B)

IN THE FAMILY COURT  
(Sitting at Middlesbrough)

No. MB23C50332

Teesside Combined Court Centre  
Russell Street  
Cleveland, Middlesbrough  
TS1 2AE

Friday 12 April 2024

Before:

HIS HONOUR JUDGE MURRAY

B E T W E E N . :

DARLINGTON BOROUGH COUNCIL

Applicant

- and -

(1) M

(2) F

(3) C

(through the Children's Guardian)

Respondents

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MS H SCOURFIELD (instructed by Darlington Borough Council) appeared on behalf of the Applicant.

MS K KITCHING (instructed by Clarke Willis) appeared on behalf of the First Respondent.

MS S HERMAN (solicitor of Hewitts Solicitors) appeared on behalf of the Second Respondent.

MS A CLANCY (solicitor of BHP Law) appeared on behalf of the Third Respondent.

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# J U D G M E N T

JUDGE MURRAY:

1 I proceed to give judgment in this matter. I make it clear from the outset that I will be directing a transcript of my judgment in due course.

2 I am concerned with the welfare of C, a little girl born on 6 January 2019, making her five years old. She is represented in these proceedings through her children's guardian, Poppy Sinclair, in turn represented by Ms Clancy. C's mother is M, represented by Ms Kitching. C's father is F, represented by Ms Herman. I mean no disrespect to the parents as I continue through this judgment and will refer to them as "the mother" and "the father". The local authority is Darlington Borough Council represented by Ms Scourfield.

3 The local authority issued these proceedings on 29 July 2023. The concerns at the point of the local authority issuing those proceedings are set out in the order of 19 January 2024, where final threshold findings are set out. It is important for what will come in this judgment to set out what those concerns were and what findings I have made. I quote from that order:

"1. On 8 February 2023, C was placed on the child protection register due to issues around parental domestic abuse, drugs and alcohol.

2. C is at risk of physical and emotional harm as a result of domestic abuse between the parents:

(a) There is a history of domestic violence between M and F. The parents' relationship is volatile and they have separated several times, with neither making permanent steps to protect C. The parents thereby continue to expose C to physical, significant emotional harm and risk C being caught in the crossfire.

(b) F assaulted M in her home on 7 January 2023, resulting in there being cause for C's safety and wellbeing. M had visible injuries, which would have been upsetting for C and caused her emotional harm.

(c) During an unplanned child care social work visit on 26 April 2023, F walked into M's home with one bottle and one can of alcohol.

(d) On 16 June 2023, Darlington social workers visited C and on several occasions C shared that F had been visiting the house and M was scared of him. The parents believe C is mistaken and that F had not been inside the house but he has been outside of the house.

(e) The incidents described above occurred despite M undergoing work with domestic abuse services.

(f) M was advised to reapply for a non-molestation order against F to prohibit and limit his access to her home. However, she has failed to do so. M went to Scotland to escape F but returned to Darlington, thereby failing to take preventive action to protect C.

(3) M has had access to professional help but failed to actively engage with drugs and alcohol services. M has a history of substance misuse:

(a) M accepts smoking cannabis at least two to three times per week, but does not believe she has a dependency on it.

(b) The results of M's hair-strand testing in September 2023 concluded that either cannabis or use of cannabis from around April to June 2023, and predominantly the passive exposure to cannabis during the period from around April to August 2023. Passive exposure to cocaine during the period from around February to mid-August 2023. Passive exposure to MDMA and amphetamine from around February to mid-August 2023. Use of tramadol during or around February/March 2023. Excessive consumption of alcohol during the significant majority of the period from around February to late August 2023.

(4) F has a history of substance misuse. The results of F's drug and alcohol testing in September 2023 was consistent with:

(a) Use of cocaine from around May to last August 2023.  
Use of cannabis from around mid-June to late August 2023.  
Excessive consumption of alcohol during the majority of the period from around May to late August 2023.

(5) F has a significant criminal history regarding domestic violence against his previous partner and children, which caused significant harm to those children dating back to 2012.

(6) F experiences mental health difficulties and this impacts on his ability to parent or prioritise C and thereby causing her emotional harm and neglect. In January 2023, following a domestic abuse assault upon M, the police were required to intervene at M's home

after finding F with a ligature around his neck in an attempt to end his life.

(7) The parents do not show insight into their behaviour and the impact on C. They failed to work openly and honestly with professionals.”

In short then, the concerns relate to:

- (a) Domestic abuse between the parents to which C was exposed either directly or indirectly.
- (b) The mother and father’s drug and alcohol misuse.
- (c) The father's mental health difficulties; and
- (d) Parental lack of insight.

4 The matter first came before the court on 6 July 2023 when a child arrangements order was made in favour of the mother, supported by an interim supervision order in favour of the local authority, the court being satisfied that threshold pursuant to s.38 of the Children Act 1989 was satisfied.

5 At that point the mother was living in a refuge with C. On 16 August 2023, the court made an interim care order in favour of the local authority. That order was made as a result of a change in the mother’s circumstances. She had been evicted from the refuge due to alleged aggressive behaviour and alcohol misuse, and was in temporary accommodation. I have read evidence from the specialist domestic abuse service setting out the reasons for that eviction. I also understand that her recorded behaviour in the refuge coincided with the tragic loss of her sister, who had committed suicide. That loss is understandably an ongoing focus of pain for the mother, which may, whilst not excusing her later actions, provide some understanding in respect of them. It is also a feature of the concern held by the local

authority that the impact of that loss has not yet been subject to any sort of therapeutic intervention, the mother not yet having undertaken bereavement counselling.

- 6 The plan at that stage was for C to remain in the mother's care, but due to the increased risk the court found it necessary to make the interim care order along with an exclusion direction to prevent the father from attending at the mother's property. At the same time, a safety plan was produced and agreed by the parents, dated 18 August 2023. That safety plan made it clear that the concerns were focussed around the mother's alcohol use and C being exposed to the volatility of the parental relationship. The parents agreed that the father would not attend at the mother's property. Contact would be made by 999 if there was an immediate risk to the mother or C. If the matter was not urgent, then information was to be shared with the police by way of a call on 101.
- 7 The local authority then completed a parenting assessment of the mother. It is dated 6 December 2023 and I pull out these extracts from that parenting assessment. These are direct quotes that, in my view, are relevant to the decision-making process that I must undertake. At para.4.11:

“The local authority worry that M has not been open and honest previously about her relationship with F, which ultimately resulted in the issuing of proceedings and a further non-molestation order being granted during the current care proceedings due to significant concerns around her ability to care for and protect C. It is evident that M is not forthcoming in sharing information and this has been evident recently when there was information to suggest that F had breached the non-molestation as raised by M's mother. M failed to raise this with the social worker until it was raised with her, and furthermore denying it happened as reported by her mother, but confirmed that C spotted F who was near her home. M continues to withhold information. This could impact how the social worker will be able to work effectively with M to support her so that C continues to remain safe living in her care.”

Paragraph 5.4:

“M admitted that during the time she and F were together there had been lots of arguments and it was not until January 2023, where he had ‘showed his true colours’ by assaulting her, M had voiced that she understands the risks from F with regard to his violent behaviour. She was informed by Harbour of F’s failure to attend group work and does not feel that he will change his behaviour. M has voiced she is adamant that she does not want to resume a relationship with F, saying that she would get another amendment or a restraining order against him, as she does not trust him.”

Paragraph 5.17:

“Due to M continuing to minimise F's behaviours and how this impacts C, she was made subject to child protection planning followed by interim group proceedings. If M recognised the seriousness of F’s behaviour back in January 2023 the local authority would not have issued proceedings in July 2023 as she would have clearly demonstrated that she could be a protective factor and demonstrate an ability to protect. However, it is evident that the ongoing concerns around her relationship with F and being dishonest with services and him continuing to stay over at her house, due to this, the local authority’s main concern is that M would invite F back into her home and potentially resume a relationship with him. This would mean that C is at risk of future harm while there and thereby she is more aware of domestic abuse between her parents. She would grow up normalising this behaviour and potentially being harmed if she were to intervene. It is positive that since care proceedings have been issued that M has been able to end the relationship and cease contact with F. M’s support through Harbour has been able to increase her knowledge in respect of the impact of domestic abuse and recognising his behaviours.”

Paragraph 8.4:

“It is evident that M can demonstrate she can continuously meet C’s needs. C is regularly seen as a clean, presentable and happy young girl. She has excellent school attendance and all her health needs are being met. The parents still need to make a dentist appointment as a check-up. However, no concerns were raised in terms of dental health and hygiene following the initial health assessment. C has lived with her mother for the entirety of her life and has lived in their current home for most of C's life.”

Paragraph 8.24, under “Emotional Warmth”:

“M consistently displays emotional warmth towards C often giving her reassurance that she loves her, and giving her kisses and cuddles. Home visits regularly highlight the close and loving bond between C

and M. It is lovely to observe their interactions. C feels close to her mum and loves her very much. At the moment, C has wanted to sleep with her mum every night because she is scared of monsters in her room.”

Paragraph 9.1:

“C’s interactions and observations at home with her mum have consistently been positive and loving. C will often seek out hugs and kisses from M and wanting to be close by sitting next to her or on her lap. M always displays love and affection towards C and will often say positively encouraging words to C. C speaks fondly and positively of her mum, as well as their dog. I completed the Three Islands direct worksheet with C to get a better understanding of the relationships in her life. On C’s “Island of Always”, C did put, “Me, mummy and daddy”. C voiced that she loves her mummy very much, giving her lots of kisses and cuddles, and she plays with her.”

- 8 Under “Areas of Concern”, the local authority noted the mother’s continuing alcohol misuse, saying that they were worried about the long-term impact of the excessive alcohol use on the mother’s mental health, and therefore her ability to meet C’s needs in the future. However, the parenting assessment does not say that the mother’s excessive alcohol misuse has an impact on the day-to-day care that the mother provides to C. In short, there is no evidence to suggest that the mother’s excessive alcohol misuse has a negative impact on the good standard of care that this mother otherwise provides on a day-to-day basis.
- 9 The local authority filed is final social work statement dated 24 November 2023 prior to the formal date on the parenting assessment, but no doubt heavily influenced by it. The final plan of the local authority at that stage, contained with the final care plan of the same date, was for C to remain in the mother’s care underpinned by a child arrangements order and supported by a six-month supervision order. From the final social worker statement I read the following:



“M has engaged in all sessions as part of the parenting assessment taking place at her home. To summarise, it is evident that M can provide a good level of care and parenting to C and we are not seeing a negative impact in C’s health, education, emotional and behavioural development currently with M as the sole parent and main carer. The local authority continues to express their worries around M’s alcohol consumption and her openness and honesty, and that she is not volunteering information that has been asked of her. There is currently a non-molestation order in place until the end of care proceedings. M has advised she would like to have an extension of this order to further ensure her safety, and the local authority would be in support of a further non-molestation order being granted. However, I am mindful that is only useful as a deterrent and for safety if M ensures she reports any breach of the conditions to the police and to the social worker.”

10 The final hearing then was listed on 21 December 2023 with an issues resolution hearing listed on 15 December 2023. On 11 December, that issues resolution hearing and the final hearing were vacated. There had been late filing of drug and alcohol testing and as a result late filing of the local authority’s evidence. But for personal reasons associated with the children's guardian, the case was not capable of conclusion within those timescales. The 26 weeks was therefore extended. But, because of the general agreement to the local authority plan, the case was simply relisted to a final hearing on 19 January 2024 with a one-day time estimate. No issues resolution hearing was listed at that stage.

11 On 10 January 2024, the children's guardian arranged to meet with C, to have a visit with C at school. Without repeating the evidence of that meeting, which I confirm I have read at length, the children's guardian asked C if there was any time that the father had come to the house. When I refer to “the house”, I mean the family home that C shares with her mother. C told the children's guardian that the father had brought her a present at Christmas. The father said he would just sleep one time, but she wanted the father to sleep, she said, “five times”. It was clear that C was very conscious that the information that she was providing might get her mother and/or father into trouble. Having told the children's guardian the

information she did, she then asked if the children's guardian was going to take her off the mother.

12 After that conversation, the children's guardian spoke then to the mother. The mother denied that the father had attended at the property and appeared perplexed and disappointed. The children's guardian stressed to the mother the importance of being open and honest. The mother told the children's guardian that she had reduced her drinking and was only drinking a bottle every other day. I understand that to reference one bottle of wine every other day. The children's guardian then alerted the local authority to the information that had been provided by C.

13 On 18 January 2024, the parties were served with a social work statement dated the day before, 17 January 2024. Having visited C and having spoken to the school, the local authority had then also spoken to the mother's allocated worker at We Are With You, an alcohol service that had been working with the mother. The allocated worker from We Are With You had told the local authority that although the mother was attending at her appointments, it did not appear to be meaningful engagement in respect of realistically tackling her alcohol issues. In fact, the allocated worker was reporting that the mother did not see her alcohol consumption as an issue. Within that statement the local authority advised that it had changed its care plan. The local authority were now saying that C could not be safe in her mother's long-term care. As a result, they sought a final care order or a plan of long-term foster care.

14 So it was that matters then came before me on 19 January 2024 for a final hearing. Clearly, because of the recent information that had been provided, and the change of plan from the local authority, that hearing could not be effective.

[JUDGE MURRAY: I pause there in the middle of my judgment to reflect that there is an awful lot of noise, which is taking place outside. I want to ensure that everybody can hear and understand my judgment and I am willing to continue as long as everybody is satisfied that they can focus on what I am saying. As opposed to, focus upon what I suspect might be a chainsaw of some description outside my courtroom. Is everyone happy for me to continue? I proceed then.]

15 I was able to utilise the hearing to determine threshold and made a number of findings as recorded within that order and set out, as I have, earlier within this judgment. I was satisfied, as I am now, that those threshold findings satisfied s.31 of the Children Act 1989 in opening the door to allow me to make final public law orders. I relisted the final hearing for 4 March 2024 and gave directions to file any additional evidence in respect of the more recent issues.

16 As part of that hearing on 4 March 2024, I addressed the mother and the father directly in court. I explained to them the importance of being honest and open with the court. I explained that the court would ultimately be assessing risk in this case. There was an acceptance by the parents in respect of that risk and the court had more to work with in terms of assessing whether any identifiable risk could in fact be managed.

17 Following that hearing, the mother filed a statement dated 19 February 2024 denying that the father had been at her property since April 2023. She said that it was difficult to know why C gave the impression that the father had been to the property around Christmas, but said that C can say random and odd things. Although not directly calling C a liar, she was telling the court that either C was confused or mistaken.

18 On 29 February 2024, the mother filed another statement. In that statement she accepted that she had not been truthful with professionals or with the court in the previously filed

statement. She now accepted that the father had been to the property around Christmas. In her statement she says:

“I would like to now accept that on one occasion over the Christmas period I did allow F to have unsupervised contact with C. I also accept that I told C not to tell professionals about this. I would like to sincerely apologise to the court and to the professionals involved in the case for any dishonesty I have shown in relation to this issue. I am fully aware of and accept the fact that I should not have allowed F to have this unsupervised time with C and that I should have been honest about this sooner. I would like to clarify the circumstances around the contact C had with F.

This was on one occasion over the Christmas period. I cannot recall the exact date. F’s friend had contacted me to say that F’s mental health was in a bad place and he expressed that he was suicidal. Following this F then turned up at my door. I did not ask him to attend at my property. F asked to see C. C was present and saw that F was at the door and that she wanted to see him. I made the decision to allow F into the home to see C, which I accept was an error in judgment. F and C then spent some time cuddling on the mattress in the front room before C then fell asleep. Following C falling asleep, F then left my property. He did not stay over but I can understand why C may have recalled events this way as he was still present when she fell asleep.

As stated above I also accept that further to this incident taking place, I told C not to tell professionals that it had happened. Again, this was an error in my judgment and I apologise to the court and to professionals for this. I panicked and I was scared about the consequences of having allowed F to have unsupervised contact and I know that I did not behave in the right way in trying to hide what had happened.”

On that basis the matter came before me again on 4 March 2024 for a final hearing.

### Positions

- 19 The local authority invite me to the view that the risks associated with continued placement with the mother are too high and cannot be managed. They point to the mother and father’s dishonesty within the proceedings and C being exposed to risk, even within the currency of proceedings. The local authority points to the historical issues going back over a number of years, not only of volatility within the relationship but then a lack of openness and evidence

of dishonesty in their dealings with professionals. In short, given the history, how can the court be satisfied that C would be protected from the longstanding risks associated with these parents.

20 As such, they invite me to make a final care order, approving a plan which would see C removed from the mother's care and placed in long-term foster care. Although a transition plan for C's move from the mother's care to the foster care was filed at the door of the court on the first day of the final hearing, by the time of submissions I had been told that there were amendments which needed to be made. The detail of those amendments were not clear at the point of submissions. I expressed some dissatisfaction at the lack of a transition plan being filed well in advance of the final hearing, and further dissatisfaction in the manner in which it was conceived - specifically without any reference to or input from the mother.

21 In any event, following the oral evidence, it was generally accepted that the transition plan was itself lacking. I have made it clear that if I approve the local authority plans I would only be doing so in principle, essentially determining that the mother could not provide good enough long-term care. A further short adjournment would be required so that a complete plan could be put before the court to include how the local authority were going to manage separation, before I could finally approve the local authority plans.

22 On behalf of the mother, I am urged to consider whether C's welfare really demands separation from the mother. I am referred to the very good and loving relationship between C and the mother and the impact that removal will have on C. I am asked to consider that in the final welfare analysis, although this is a case with risks, the risk of harm arising from her removal outweighs the risk of remaining in the mother's care. The father echoed the mother's position.

23 The children's guardian is not satisfied that the local authority plan is the right plan so as to meet C's needs. The children's guardian submits that when a court undertakes a proper analysis the risks associated with C in the mother's care do not justify her removal. Instead, the guardian submits that C ought to remain in the care of the mother, that placement being underpinned by a supervision order for a period of 12 months. I have read the children's guardian's final evidence as well as heard from her directly from the witness box.

### The Law

24 In most applications for a care order the court is essentially taking a three-step approach. First, determining the factual matrix insofar as those facts are relevant to the decision that the court must make. Second, if relevant, determining whether the threshold for the making of public law orders, be they final care orders or final supervision orders, have been met under s.31(2) of the Children Act 1989. Third, deciding what plan to approve and order to make.

25 That last step involves a welfare analysis of the realistic options before the court in deciding which plan best meets the child's welfare throughout his or her minority.

26 When undertaking that analysis, it is C's welfare which must be my paramount consideration. It also involves application of the principle that the court must make the least interventionist order which will meet C's welfare and consideration of the "no order" principle. When a court is undertaking the welfare analysis in deciding which plan best meets a child's welfare needs, the court must have regard to the welfare checklist contained within s.1(3) of the Children Act 1989. The welfare checklist is as follows:

- “(a) the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding);
- (b) her physical, emotional and educational needs;

- (c) the likely effect on her of any change in his circumstances;
- (d) her age, sex, background and any characteristics of hers which the court considers relevant;
- (e) any harm which she has suffered or is at risk of suffering;
- (f) how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.”

27 Often in care proceedings, such as this case, it is the harm the child has suffered, or is at risk of suffering, that becomes the focus within the litigation. Ms Scourfield has referred me to the case of *Re F (A Child: Placement Order; Proportionality)* [2018] EWCA Civ. 2761. That is a case, as I discussed in my exchanges with Ms Scourfield, that has many factual similarities to this case. It involved concerns around alcohol consumption, risks associated within the parental relationship, breaches of safety planning designed to prevent the risk of harm by restricting contact between the parents, and resulting dishonesty around the breaches of those plans. Although *Re F* was an appeal against an approved plan of adoption, the principles it highlights in respect of evaluation of risk are relevant regardless, in my view, as to the proposed plan in this case.

28 I read from that judgment at para.2:

“In short summary, there is no complaint about the judge’s legal self-direction, his findings of fact or his conclusion that the threshold for intervention was met. Further, he identified

(1) *The type of harm* that might arise.

(2) *The likelihood* of it arising.

But he did not sufficiently address:

(3) *The consequences*: what would be the likely severity of the harm to [that child] if it did come to pass?

(4) *Risk reduction/mitigation*: would the chances of harm happening be reduced or mitigated by the support services that are or could be made available?

(5) *The comparative evaluation*: in light of the above, how do the welfare advantages and disadvantages of [that child] growing up with his mother compare with those of adoption?

(6) *Proportionality*: ultimately, is adoption necessary and proportionate in this case?"

29 In this case that final question of proportionality is one, of course, not in respect of adoption. But the question of proportionality relates to removal from the mother's care. At paras.24 and 25:

"24. In these circumstances, close attention needed to be paid to the nature and extent of the risks. As foreshadowed at the start of this judgment, there must be (to borrow a phrase from a different context) an intense focus on the type of risk that is involved, *how likely* it is to happen, and what the *likely consequences* might then be. Only by carrying out this exercise is it possible to know what weight to give to the risks before setting them alongside other relevant factors. So, for example, the risk of further physical harm to a child who has been severely injured by a denying parent is likely to be a factor of predominant weight. By contrast, to borrow from the evidence in this case, where a mother who untruthfully denies drinking goes to a park at night to drink alone, leaving her baby with its grandmother, the court will view that risk with a sense of proportion.

25. Similarly, close attention must be paid to the true significance of lies and lack of insight in the context of assessing welfare. Lies, however deplorable, are significant only to the extent that they affect the welfare of the child, and in particular to the extent that they undermine systems of protection designed to keep the child safe. However, as noted by Macur LJ in *Re Y (A Child)* [2013] EWCA Civ. 1337, they cannot be allowed to hijack the case ..."

30 Those principles, which I have set out from *Re F*, were repeatedly approved by the Supreme Court in *Re H-W (Children) (No. 2)* [2022] UKSC 17.

31 Ms Scourfield also referred me to the case of *QS v RS (No 2) (Application to Terminate Appointment of Guardian)* [2016] EWHC 1443 (Fam) and I was referred to that case by the local authority, because the local authority and the children's guardian hold different views



in respect of final disposal in this case. From that judgment then I remind myself that whilst the children's guardian was required to offer advice to the court, in doing so the guardian becomes a witness subject to the same judicial scrutiny as any other witness. The children's guardian starts with no special advantages in proceedings as compared to other witnesses and the court, in reaching its decision in respect of the welfare of a child, must consider all of the evidence in the case, including but not limited to the evidence of the children's guardian.

32 The court is the decision-maker and must reach its decision by reference to the matters set out in the Children Act 1989, s.1. I must have regard to the totality of the evidence before me. In essence, whilst the evidence and views of the children's guardian are important pieces of the evidential picture, I must have regard to the wide canvass of evidence and weave those threads of the Guardian's evidence, into the overall tapestry of this case. I have not been referred to any other particular or relevant legal principles in my determination of this case.

#### Evidence

33 As well as reading the full bundle, I have also had the opportunity of hearing evidence from the social worker, the mother, the father, and the children's guardian. I have also heard submissions made by all parties. I am not going to repeat in this judgment all of the evidence and submissions that I have heard during the trial. It would be disproportionate to do so. However, I highlight some parts of the evidence which I felt were particularly relevant to my decision-making process.

34 The social worker gave evidence and essentially set out her reasoning for the change in the care plan from November 2022. Although there was only evidence of one breach in the plan since November 2022, the social worker told me that she was considering that breach in the

context of the history of the case. She told me that the mother knew clearly what she was not allowed to do under the safety plan, but that has not prevented the father then from attending the property. She said that the case must be considered alongside the breaches prior to the issue of proceedings, and of C being caught up in the volatile parental relationship over a number of years. She told me that C would be at continued risk of harm because the mother simply could not be trusted. She had lied to professionals about the father visiting at Christmas. She had suggested that C was at best confused and at worse lying about the visit, and the mother had been dishonest with the court.

35 For the social worker, all of that meant that C would continue to remain at risk and could not be safely cared for by the mother. The social worker pointed out that although the plan had been formulated in November 2022, in the knowledge of the mother's alcohol consumption, the local authority were now aware that the mother's engagement with We Are With You was not as positive as had been anticipated and understood. In essence, the breach of the safety plan over Christmas was a factor which had to be seen in the context of the other worrying issues in this case. It was that overall consideration which had shifted, or had resulted in a shift in the social worker's assessment as to whether the mother could safely care for C.

36 It was the social worker's view that the risk could not be managed by way of a safety plan or assistance from the maternal grandmother, or other protective orders because -

- (a) that support and protection had already been in place
- (b) they relied on the mother's honesty to enforce and/or protect
- (c) the parents had shown that they were willing to breach any protective measures put in place to minimise risk

- (d) the mother and father had already shown that she could be dishonest with professionals and with the court; and
- (e) the maternal grandmother could not mitigate any risks because the mother had not been honest with her about the father's visit. If the maternal grandmother is not told then how can she protect?

37 I pause there to note that the maternal grandmother has featured in this case not only as a respite carer for C but also as a suggested support for the mother moving forward. A statement was produced from the maternal grandmother during the final hearing, which I allowed to be entered into evidence. The maternal grandmother was not available for cross-examination. I have filtered that into that weight that I can attach to that statement. I do not, as the local authority solicit I should, simply ignore the contents of that statement. Overall I consider the evidence from the maternal grandmother as an indicator of a wider family member who is willing to provide ongoing support to the mother, including respite care, and who was clearly not aware of the breach in the safety planning over the Christmas period. She can provide ongoing assistance and support, but I must view that in the context of her being available to do so before which did not prevent a breach in the safety planning because the mother did not tell anyone about it.

38 The social worker was also particularly concerned of the impact that all of the secrecy imposed by the mother has had on C. In a conversation between the children's guardian and C on 10 January 2024 I have already referred to the unusual way in which she has presented, feeling uncertain as to how she should answer questions and what information that she should provide to the children's guardian, concerns that what she was saying was essentially going to get her mother and/or father into trouble.

- 39 The social worker tells me that she has had ongoing concerns about the impact on C's emotional welfare. The mother telling C that she must not tell anyone about the visit by the father. More recent case recordings indicate that C feels unable and/or unwilling to speak to professionals. The social worker suggests, quite reasonably, that she is presenting that way because of the uncertainty and confusion that has resulted by the mother telling her to keep secrets. The social worker told me that she is therefore concerned not just about C's physical safety, but also emotional harm which she may be suffering and, in turn, which she may suffer in the future.
- 40 The mother gave evidence and was cross-examined primarily around the breach of the safety plan over Christmas. The mother told me that the father had not provided C with any Christmas present. She had heard that the father was suffering with issues in respect of mental health, including suicidal ideation. She told me that the father turned up at her house and that he had knocked on the door. She answered it not knowing it was him. When she answered the door, the mother told me that C also saw that it was the father and that she was desperate to see the father. She told me that she did not think the father was a risk at that time.
- 41 That suggestion by the mother caused me some concern. As I explored in submissions with the advocates, the fact that the mother was aware that the father was suffering low mental health made the situation, in my view, riskier rather than safer. The mother told me that the father laid down with C in the living room until C fell asleep, and once she had the father left. He did not stay over, although she told me that she could understand why from C's perspective she thought he did. She told me:

“It was that time of year and he was in a bad place. I crumbled. At the time I thought that it would damage her more if I did not let him

in. It was Christmas time and she was begging me to let him in. She was begging. It was really hard when she wants to see her daddy.”

42 When asked how anyone could be satisfied she would not do it again, she said, “If that happened now I would not let him in”. At the time the mother told me that she had thought, “I cannot have another suicide happen”. I draw the reasonable inference that the mother was referring to the loss of her sister in August 2023. She told me that she realised that her sympathy for the father had resulted in a situation where the local authority was not asking the court to approve C’s permanent removal from her care. She told me that if C was removed from her care it would be “devastating for C”.

43 It was at this point in the questioning that the mother became significantly upset and distressed. I consider that upset and distress to have been genuine and associated with the questioning around her failures, accepted by her, at Christmas and the potential consequences of her actions as a result. The mother went on to say later that she needs the father to understand that he cannot turn up again because she will phone the police. As she said that, I was looking directly at her and I noted that she shifted her gaze to the father because shifting it back again to the advocate who was asking questions.

44 Ms Scourfield properly explored with the mother her views of the father. When asked directly, the mother told me that she did not think that the father was a risk when she had let him into the property over Christmas. She went on to tell me that she had been scared and frightened of the father previously, specifically during the relationship in the early months of 2023. However, she told me that she did not think that the father was a risk to C. The local authority points to that piece of evidence as a basis for real concern in respect of the mother’s lack of insight and the future risk to C if that mother does not have that insight in respect of the risk the father poses.

45 At first blush, that is a compelling submission. However, I remind myself of the mother's last piece of evidence in the cross-examination. She was again asked about her views in respect of the father as a risk and the mother responded:

“He is not a risk to C. Me and him was toxic when we were in a relationship. He was a risk then when we were in that relationship. I am not in a relationship with him anymore and not since early last year. It was being in a relationship which was bad.”

The mother told me that she wanted to continue with assistance in respect of alcohol consumption and that she is drink, as I say, a bottle a day on a night.

46 The father gave brief evidence as to the circumstances of his visit over the Christmas period. He confirmed the mother's version of events. When cross-examined about the breach of the safety plan, in particular in respect of the mother, he told me this:

“Yes, she should not have done it and let me in, but the bairn was crying. I was just going to leave the presents in the doorstep but then the bairn saw me. It was less about me and more about C. But I accept that C should not have been put in that situation.”

47 The father told me that he was suffering from mental health issues at the time. He told it was a particularly hard time of the year and he had not seen C. He told me that he had now sought help for his mental health. He said, “I have a crisis team now”. He said that he had been to West Park a week ago and had a number for the crisis team, and that they are now a phone call away for support. He told me that he was working We Are With You and is about to start work with Harbour.

48 Ms Scourfield cross-examined him about his previous dishonesty with professionals and the court, and the fact that there had not been a lot of time within the proceedings to evidence change. He accepted that it had taken some time for him to seek help and accepted that he

has not provided any independent evidence within these proceedings, within the final hearing, as to his suggested recent progress. He told me the following:

“It is my mental health that leads to the drug use. I know it is not going to take weeks. It is going to take months and it will take as long as it takes. Everyone can change and I want to keep going forward. I never had any support around me. Now I do. The woman I talked to through West Park, I have never had that before. I never had someone to call. Now I do. I hope it is not too late.”

49 The children's guardian told me that she did not want me to think that she was not concerned about the issues in the case. She did not minimise the reasons as to why the local authority issued proceedings, nor does she want me to think that she is not concerned about the breach of the safety plan over Christmas and the parents' subsequent dishonesty about it. These were serious matters which presented a risk of harm to C. However, the children's guardian told me that she had thought very carefully about the risks in the case as opposed to the risks associated with removal from the mother's care; in particular, given the evidence there is in the case, as to the high standard of care that the mother provides to C and the harm that the guardian considers will be caused if C is removed from the mother's care.

50 Having done so, she did not think the risks required removal and a plan of long-term foster care. Instead, she told me that she supported a plan that C would remain in the mother's care under a child arrangements order but with a supervision order in favour of the local authority for a period of 12 months.

### Analysis

51 This is a case in which I have been greatly assisted by reflection upon the welfare checklist. It is worth going through that checklist so as to assist understanding as to how I have reached the final determination that I have reached.

“(a) the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding).”

52 C is only five years old and what is clear and without dispute is the positive and loving relationship that she has with her mother. I can say with some level of certainty that C would wish to stay living with her mother and would also wish to maintain a relationship and have contact with her father.

“(b) her physical, emotional and educational needs” and  
“(d) her age, sex, background and any characteristics of hers which the court considers relevant.”

53 In many ways C’s physical, emotional and educational needs are the same as any other five-year-old. However, C has previously been exposed to the volatile parental relationship and, on at least one occasion, been present in the operation during an incident of domestic abuse. C needs security. C needs stability. Not just in terms of her physical care but also in respect of messages that she receives from the adults in her life. She does not need to be told to keep secrets. She does not need to be caught up in the lies and dishonesty of her primary caregiver.

“(c) the likely effect on her of any change in his circumstances.”

54 If I approve the local authority plan, I will be approving the removal of C from her mother’s care. The mother has been C’s primary caregiver all of her life. Their relationship is described in glowing terms. Their attachments appear to be positive and secure. To remove C from the mother’s care will be distressing and upsetting, and emotionally harmful to C. However, the removal of C from the mother’s care will negate the risks associated with the father and the mother’s ability to protect C from those risks.

“(e) any harm which she has suffered or is at risk of suffering.”



55 I will come back to that paragraph in a moment.

“(f) how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.”

56 This is a case where this mother has shown an ability to meet C’s basic needs to a high standard. There is no suggestion that she is unable to meet those needs moving forward. There are no real concerns with school attendance, although some recent issues have been raised by the local authority in respect of sickness absences from school. Despite those concerns, I do not have the evidence base before me to make any findings in respect of those absences. C is a well-loved child who is thriving in her mother’s care. The issue is not about those basic care needs. The issues in this case are around the risks associated with C being exposed to the volatility, previously evidenced, within the parental relationship, a dishonesty perpetrated by the parents and, to a lesser extent, risks associated with the mother’s alcohol consumption.

57 This is a case then where the risk analysis the court must undertake is at the heart of the decision-making process. It goes back to para.(d) of the welfare checklist, “Any harm that she has suffered or is at risk of suffering”. To that end, as I undertake that risk analysis, I return to those *Re F* principles which I have already set out.

“(1) *The type of harm* that might arise.”

58 In my view there are three areas of potential harm relied upon by the local authority:

(a) Physical and emotional harm as a result of the mother’s alcohol use.

- (b) Physical and emotional harm of being caught up in the volatility of the parental relationship.
- (c) Emotional harm with being told to keep secrets and tell untruths to professionals.

“(2) *The likelihood* of it arising.”

- (a) The likelihood of physical and emotional harm as a result of the mother's alcohol misuse.

59 There is no doubt in my mind on the basis of all of the evidence I have read, both from hair-strand testing and from the mother’s own evidence to me from the witness box, that the mother does have an ongoing issue in respect of excessive alcohol consumption. However, this is also a mother who has had as longstanding issue with alcohol abuse, yet has seemingly been able to maintain a high standard of care for C. I have carefully read the mother’s parenting assessment and the evidence as a whole to ascertain whether there is any link between the mother’s alcohol consumption and any adverse impact upon the care being provided to C. There is, on my analysis of the evidence, none.

60 As I consider the issue of the mother’s excessive alcohol consumption, I was reminded of the wise words of Baroness Hale of Richmond JSC in *Re B (A Child: Care Proceedings: Threshold Criteria)* [2013] UKSC 33. Once often quoted in these courts and not quoted so often, and yet those words are relevant in this case:

“We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities, or who espouse anti-social political or religious beliefs.”

61 In respect not only of the issues of the mother's alcohol drinking but also more generally in respect of issues of C being exposed to domestic abuse, I have again referred back to the words of HHJ Jack in *Northeast Lincolnshire Council v. G & L* [2014] EWCC B77, repeated in *Re A* [2015] EWFC 11, again once often quoted in these courts and not quoted so often any longer:

“I deplore any form of domestic violence and I deplore parents who care for children when they are significantly under the influence of drink. But so far as Mr and Mrs C are concerned there is no evidence that I am aware of that any domestic violence between them or any drinking has had an adverse effect on any children who were in their care at the time when it took place. The reality is that in this country there must be tens of thousands of children who are cared for in homes where there is a degree of domestic violence (now very widely defined) and where parents on occasion drink more than they should. I am not condoning that for a moment, but the courts are not in the business of social engineering. The courts are not in the business of providing children with perfect homes. If we took into care and placed for adoption every child whose parents had had a domestic spat and every child whose parents on occasion had drunk too much then the care system would be overwhelmed and there would not be enough adoptive parents. So we have to have a degree of realism about prospective carers who come before the courts.”

62 I am clear that this mother has an issue with excessive alcohol consumption. There will always be a risk that her excessive alcohol consumption may, at some point and in perhaps specific circumstances, result in physical and emotional harm. However, given the high standard of care that this mother has shown despite that issue and the absolute absence of any evidence to show that the use has negatively impacted upon C's welfare in any way, I am satisfied that that risk is low.

(b) The likelihood of physical and emotional harm in being caught up in the volatility of the parental relationship

63 I agree with the submissions made by all parties that the relationship between the parents was toxic. The impact of that toxic relationship upon C is clear to see and it is set out within the threshold findings made by the court on 19 January 2024, which I have already read out. In particular, C has on at least one occasion been put at risk of being caught up in the crossfire of that volatility but, in terms of emotional harm, has been subjected to that volatile relationship.

64 I am told that the parents ended their relationship in April 2023, certainly by the time proceedings were commenced in late June 2023. There are concerns expressed in respect of when the relationship ended and the ongoing contact that the mother had with the father, even after the point of separation. Whilst the evidential picture is murky as to when that relationship ended, the worst case scenario is that it has been some nine months since that relationship ended. There is no evidence before me that during the currency of the proceedings there has been any recommencement of that relationship. No concerns have been expressed in respect of the mother's motivation to remain outside of a romantic relationship with the father.

65 On balance, I consider the greatest risk of C being exposed to emotional and physical harm comes from her experiences of the parents as a couple. On the basis that there is nothing to suggest a recommencement of a romantic relationship, the risks associated with C being exposed to that relationship in the future are low. Any risk in that sense arises should the parents decide at some future point to re-establish that relationship. I am satisfied from everything I have read and heard from both parents from the witness box, that the risk of that happening is low. That does not, however, negate the risk.

66 Even if the parents are not in a relationship, the risk still exists that contact between the parents may place C at risk of being exposed to volatility within even a platonic relationship. There is some evidence to suggest that even when the mother was saying the relationship was at the end in early 2023, there were concerns in respect of the father's involvement in her life. That is, however, less likely than the risk arising from a re-established relationship, with a toxicity previously evidenced, resurfacing.

67 But the local authority are right to remain concerned. When there are satellite issues of poor mental health and excessive alcohol consumption in respect of a parent, there remains a real risk that even contact between the parents may result in volatility which C may be exposed to. But that risk only arises if the parents come into contact and, as such, I must consider the identifiable risk in this case that a similar situation arises in the future, as over last Christmas, whereby the mother allows the father into the property or allows some other form of contact to occur which places C at risk.

68 I ask myself then, "What is the likelihood of that happening?" As I do so, I make clear that on balance I accept the circumstances of the breach over the Christmas period as set out in the mother and the father's evidence. Both were consistent in respect of the circumstances of his visit and the local authority has not sought to persuade me as to an alternative version. It is on that basis that I proceed to consider likelihood. There is no evidence to suggest that since the commencement of the proceedings that a similar breach or exposure has happened on any other occasion. There is reference to an occasion where the maternal grandmother has informed the local authority about a form of contact as between the mother, the father and C, but the evidence is limited in respect of that incident and, certainly, the local authority have not invited me to make a welfare finding in respect of that incident.

69 I am satisfied that it was the specific circumstances of that time of year which led to the father attending at the mother's property. Although I remind myself that there is likely to be emotionally demanding times of the year in the future, such as other Christmases but also birthdays, there is no suggestion that there was any other breach around C's birthday, which was in January of this year. As I have indicated, I am concerned about the mother's reasoning in respect of risk, given she knew that the father's mental health was at that point poor. I am also concerned that despite the father's assurances to me in his oral evidence that he has made progress in respect of support around his mental health, no independent evidence has been forthcoming.

70 I am ultimately led back to the evidence the mother gave to me in the courtroom on this issue. I found her oral evidence, the way it was delivered and her presentation in that delivery, compelling. I make it clear that it was not a single aspect of that evidence but rather a combination of all of those factors. I accept on balance that this mother has made a terrible mistake by letting the father into the property on that occasion, and more importantly realises the potential draconian consequences of her having done so.

71 As part of this analysis in terms of likelihood of harm, I have also considered the dishonesty perpetrated by both parents to the professionals and the court. They have lied. I have specifically considered the relationship between those lies and the likelihood of harm arising from exposure to the parental relationship. I have gone back and considered the words of Sir James Munby, the President of the Family Division, as he then was, in Re A [2015] EWFC 11:

“The second fundamentally important point is the need to link the facts relied upon by the local authority with its case on threshold, the need to demonstrate why, as the local authority asserts, facts A + B + C justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of types X, Y or Z. Sometimes the linkage

will be obvious, as where the facts proved establish physical harm. But the linkage may be very much less obvious where the allegation is only that the child is at risk of suffering emotional harm or, as in the present case, at risk of suffering neglect. In the present case, as we shall see, an important element of the local authority's case was that the father 'lacks honesty with professionals', 'minimises matters of importance' and 'is immature and lacks insight of issues of importance'. May be. But how does this feed through into a conclusion that A is at risk of neglect? The conclusion does not follow naturally from the premise."

72 Does the fact that the parents have lied about the incident mean that any future incident is more or less likely to occur? Although not specifically submitted, the local authority may say that the fact that lies were told, not only to professionals but also the court, is indicative of their willingness to tell lies about it in the future. But I am not convinced that that is an argument in respect of likelihood insofar as the harm is concerned. It is a consequence of the breach rather than a cause. In line with the observations of Sir James Munby, the fact of the dishonesty does not, of itself, increase the risk of exposure to the volatile parental relationship, especially in the circumstances that I have found the breach was taking place.

73 I do not condone, nor excuse, the breach of the safety plan, or the decision-making of the mother on that occasion, or the dishonesty perpetrated by both of these parents. However, when I consider all of the evidence, I am satisfied on balance that it was a one-off mistake and more importantly that the likelihood of the mother allowing it to happen in the future is low.

(c) The likelihood of emotional harm of being told to keep secrets and tell untruths to professionals

74 I should say from the outset that I am satisfied from all the evidence I have read and heard, that the mother telling C not to tell anyone about the father's visit has caused C emotional

harm. It is simply not good enough that this mother has put C in a position where she is being told to lie to professionals. I am satisfied from the description of C's presentations thereafter that the impact of the mother's actions has been significant on C's emotional wellbeing. However, despite my strong feelings about the mother having done so, I focus back on the likelihood of her doing so in the future.

75 If another incident were to take place whereby C was exposed to the volatility of the parental relationship, I am satisfied that the parents would likely lie about it and tell C not to tell the truth. They have done so under the spotlight of these proceedings. The consequences would be even more acute for C's continued placement with the mother in those circumstances. If C were in the mother's care, it would be because the court had given her the benefit of the doubt within these proceedings and accepted her evidence. The mother would surely know that if any similar incident took place in the future, it would be likely that the court would consider removal from the mother's care.

76 To that end, on the basis of the dishonesty already perpetrated, I consider that if C was exposed to the parental relationship untruths would be told by the parents and it is likely that C would also be told to lie about it. But ultimately, this is a question inextricably linked to the likelihood of the mother and the father exposing C to the volatility of their relationship in the future. That is a risk which I have already considered and that I have determined that the risk of them doing so is low. In essence I consider that the risk is low that a future breach will occur, but if it did there is a high risk that C would be exposed to emotional harm.

77 I then move on to the consequences as identified in *Re F*. What would be the likely severity of the harm to C if it did come to pass? In terms of the risks associated with the mother's alcohol consumption, the likely consequences are that the mother's ability to meet C's



ongoing basic needs would be negatively impacted. It is a consequence associated with the decline in the mother's parental ability rather than an immediate risk, seen in cases such as physical or sexual harm.

78 In terms of exposure to the volatility of the parents' relationship, whether it was a romantic or platonic relationship in which the harm was caused, C would be exposed primarily to ongoing emotional harm. Children are impacted and affected by parental domestic abuse in different ways, but it is likely that she would normalise that behaviour and that would have a negative, psychological impact upon the way that she views the world. She would be robbed of the opportunity of having a normal childhood and her development would be marked by her experiences of her parents' behaviour. However, given that C may also be exposed to an incident of abuse within the relationship, she may also be exposed to physical harm. Whilst not minimising that consequence, I make it clear that the physical harm arises as an exposure to the volatility in the parental relationship rather than any physical harm intentionally perpetrated towards C herself by either parent.

79 In terms of being asked to lie to professionals, the emotional harm caused to C may have psychological implications and her ability to maintain relationships with those professionals around her, who are tasked with ensuring she is not only kept safe but also that, for example, her educational needs are being met. It may have an impact not only during her minority but also during her majority. I am alive to the fact that unseen emotional and psychological harm can be just as damaging and longstanding, if not more, than physical harm. It is often said that the scars inside take longer to heal.

Risk Reduction and Mitigation: Would the chances of harm happening be reduced or mitigated by the support services that are, or could be made, available?

80 I have already determined that the likelihood of the two primary harms that I have identified is low. Given a breach to the safety plan has taken place during the proceedings, despite various support from professionals and family members, I do not consider that that low risk could be reduced further. However, the current level of risk can be maintained by the continued use to the safety plan, specifically involving and including the maternal grandmother. In my view, the maternal grandmother needs to have a good understanding of what the issues and risks are in this case so that in the future she can be vigilant in identifying any issue that might arise.

81 I am of the view - as I go on to consider para.(g) of the welfare checklist - that a supervision order based around a supervision support plan, clearly setting out management of the father's contact and signposting support in assisting the mother in terms of bereavement counselling and/or alcohol services, may also assist in maintaining the current level of risk. But, in my view, it does not decrease that level of risk.

By comparative evaluation, in light of the above, how did the welfare advantages and disadvantages of C growing up with her mother compare with those of long-term foster care?

82 I have already undertaken analysis of the relevant paragraphs of the welfare checklist, filtering in where relevant the pros and the cons of her remaining with the mother as opposed to removal to long-term foster care. The issue in this case, in my view, is one of risk and the analysis of that risk in circumstances where the majority of the welfare checklist points to C's welfare needs being met in the care of the mother. It is a question firmly of proportionality.

Is the plan of the local authority for C to be removed from the care of her mother, where she is settled, she is thriving and is loved, proportionate when I consider the risks of her remaining in that placement?

83 I have considered side-by-side the two alternative options for C. There are many positives associated with the mother's care and the impact of removal of C from that placement would be significant and emotionally damaging. But this is also a case where the risks have been clearly identified in respect of that ongoing placement. The strongest positive for removal from the mother's care is the illumination of those specific risks that I have identified.

84 However, as I look to the analysis that I have undertaken, I am drawn to the inevitable conclusion that removal from the mother's care is not a proportionate response to the harm that I have identified, the likelihood of that harm occurring, and the consequences of that harm on C. In my determination the risk of harm in removing C from her mother's care is disproportionate to the risks of the likelihood of consequences of harm were she to remain in the mother's care. It is my view that C's welfare needs are best met, despite the risk identified and associated with that placement, in the mother's care.

85 I do not approve the local authority plans to remove C from the mother's care under a care order. For the reasons I have set out my view is that the proportionate and least interventionist order in this case is a child arrangements order in favour of the mother, underpinned by a 12-month supervision order in favour of the local authority.

86 Subject to any more detailed submissions, I am not satisfied that the circumstances of this case fall into that category of exceptionality identified by the President in *Re JW (Child at Home under Care Order)* [2023] EWCA Civ. 944. I do not see the advantages for C in the

local authority maintaining parental responsibility and I certainly do not see the advantages outweighing the disadvantages of continued local authority intervention.

87 I do not see that any support or oversight that might be provided by C being a child in care could not be accomplished through a properly formulated supervision order and support plan. I invite the local authority to consider my judgment and the court's analysis of risk and consider its position on the basis of that analysis in respect of the supervision order, supported by a support plan with an accompanying amended safety plan.

88 I am also of the view that information needs to be shared with the maternal grandmother in respect of the risks in this case. It may be that a copy of this judgment ought to be shared with her.

89 That ends my judgment in this case.

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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
civil@opus2.digital*

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