Case No: ME14C00973

IN THE FAMILY COURT AT MEDWAY
Sitting at Tunbridge Wells

Merevale House
42-46 London Road
Tunbridge Wells
Kent
TN1 1DP

Date: 14/04/2015

Before :

HER HONOUR JUDGE HAMMERTON

- -

Between :

Medway Council	**Applicant**
- and -	
(1) EL	**Respondents**
(2) JC	
(3) Camilla Doolin Children's Guardian	

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- -

Miss Anna Mckenna appeared for the local authority
Ms Maureen Obi-Ezekpazu appeared for EL
Miss Alev Giz appeared for the child
Mrs Pauline Lloyd appeared for the children's guardian.

Hearing dates: 3rd March 2015

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Judgment

H H J Hammerton:

1. This is a reserved judgment following a hearing on 3rd March 2015 when I made an order discharging a care order made by HHJ Polden on 27th February 2013. The care order was in respect of a child, whom I shall refer to as JC. The care order was made in favour of the local authority Medway Council.

2. The application to discharge the care order had been made initially by the local authority and was made on 21st May 2014. The hearing of the application has been protracted and has followed an extraordinary course. In the midst of the proceedings,

the local authority changed its position and sought permission to withdraw their application. Since 30th September, the application for the discharge of the care order has been made by the father and also by JC, who is separately represented with his own solicitor.

3. At the final hearing there was a further change of position in that the application for a discharge of the care order was now supported by the local authority and the guardian. Given the agreement of all parties it was not necessary to have a full hearing and the order was made effectively by consent.

4. Agreement having been reached on the substantive issue there were a number of applications made by JC's father. Given the urgent need to conclude the proceedings without any further delay, I heard submissions in respect of those matters and gave a short judgment the same day. Given the complexity of this case and the unusual history it was important to the parties that there should be a detailed judgment. Firstly to provide details of the background and context to the rulings made by me and more particularly the circumstances in which all parties reached agreement that the care order in favour of Medway Council should be discharged. Secondly to highlight the problems arising from the lack of legal representation for the father.

5. At the final hearing the father had the benefit of representation by counsel who was acting pro bono. A position statement filed on behalf of the father read as follows:

> " The court is invited to make:
>
> (a) A declaration that, pursuant to relevant provisions of the Human Rights Act 1998, between 21st May 2014 and

3rd March 2015 there had been numerous violations of the Article 8 rights of the Respondent father.

(b) A declaration that the Respondent father suffered harm flowing from the duty of care that the local authority has towards him and in consequence of the actions of the local authority.

(c) A clear and unequivocal requirement that the local authority provide the appropriate level of services to ameliorate the harm caused by their involvement, namely a clear care plan on discharge.

(d) An order for costs, both past and contingent.

(e) Discharge of all injunctive orders made against him.

(f) Damages to be quantified for breach of the Respondent father's Article 3 and Article 6 rights.

(g) An injunction, pursuant to section 7 of the Human Rights Act 1998, preventing the local authority from separating him from JC in breach of his Article 8 rights, by use of section 20 of the Children Act 1989 or emergency protection order."

6. In so far as (a), (b) and (f) are concerned, I made it clear at the beginning of the hearing that this was not a case where the matter could be dealt with on a summary basis. The application for declarations was without notice to the other parties. This

was not a case where it was appropriate to proceed in the absence of pleadings. In any event, given that I had presided over the court hearings from 3rd November to date and that part of the claim was based on the protracted nature of the proceedings arising in part from my decisions, it would be quite inappropriate for me to hear the application. In the circumstances, counsel for the father agreed not to pursue those matters.

7. In respect of the application for an injunction under section 7 of the Human Rights Act, there was no evidence that the local authority were threatening to remove JC from the care of his father, in fact quite the opposite. In those circumstances there were no grounds for seeking an injunction and the application was not pursued.

8. In terms of the discharge of the injunctive orders made against the father, the orders were made initially by me on 3rd November 2014 and repeated in the order of 14th November 2014. They included the following:

> "(1) The father be forbidden from disclosing any documents or evidence from this case and case ME12C00790 to any third party without the permission of the court, save to a qualified legal advisor with the purpose of obtaining legal advice.
>
> (2) The father be forbidden from disclosing any information to any third party which might lead to JC's identification to the public, or any section of the public, as a child involved in these proceedings.
>
> (3) The father be forbidden from allowing, encouraging or otherwise facilitating the recording of JC's purported views

> about the professionals in the case, whether such recording be visual or sound or written or otherwise, and whether by way of interview with JC or otherwise, for the purposes of dissemination to the media or onto the internet or to any third party, and he shall be forbidden from disclosing any such recording to any third party, including media organisations, and from posting the same onto the internet. For the avoidance of doubt, such prohibition shall apply to any recording made by JC himself."

9. With the discharge of the care order and the conclusion of these proceedings, there is no basis for the continuation of the injunctive orders. Accordingly, they fall away and have been discharged.

10. Accordingly the remaining issues which require decision are i) the provision of services to the family by the local authority and ii) the application for costs.

The Background.

11. JC has at all material times been in the sole care of his father. Care proceedings in respect of JC began on 25th July 2012. On that date a fire broke out at the home of JC who at that time was aged 10. JC was at home alone with another child. The police were called and JC was taken into police protection and then into foster care. An application for a care order was made and an interim care order was made shortly thereafter. Throughout the care proceedings JC remained in foster care.

12. The full background to the care proceedings is set out in the judgment of HHJ Polden which is dated 27th February 2013. The judgment is reported as *JC (Care Order)*

[2014] EWFC B185 27.2.2013. In his judgment given at the conclusion of contested care proceedings, HHJ Polden found that the threshold had been made out. He refused the application for an adjournment of the final hearing and subject to two small amendments approved the care plan, which was that JC should remain in long-term foster care with contact to his father on six occasions per year.

13. One of the amendments which was incorporated into the revised care plan was that the local authority would actively review consideration of reunification of JC with his father. That was contingent on the father engaging in the therapeutic services of a psychologist and on the basis that "there would be meaningful growth which demonstrated that he was able to effect a change in his parenting ability."

14. It is important to note that during the care proceedings the father was represented under a public funding certificate. There was no appeal from the judgment of HHJ Polden. It is clear that the father does not now accept the findings made by HHJ Polden. It is unclear whether in fact there has ever been a time when the father has accepted the findings, indeed within these proceedings the father attempted to persuade the court to conduct a rehearing of some of the issues decided by HHJ Polden.

15. Following the conclusion of the care proceedings, the police discontinued their investigations of an offence of child neglect against the father. As of Spring 2013 his bail conditions which previously restricted contact with JC were removed.

16. During the summer of 2013, the father embarked on a 12 week parenting course. At the conclusion of that course, it was decided by the local authority that it was possible for JC to return to his father's home. The return was on the understanding that the

father would accept ongoing involvement and the support of the local authority. On 10th October 2013, JC returned to his father's care and has remained there ever since.

17. On 21st May 2014, the local authority filed their application to discharge the care order. The grounds for the application read as follows:

> "The child was subject to a care order, but has now returned to his father's care and is doing exceptionally well. The local authority now seek to discharge the care order."

18. Directions were given by which the case was allocated to HHJ Polden. A children's guardian was appointed for the child and it was requested that, if possible, Ms Doolin be appointed as she had been the guardian in the earlier proceedings.

19. On 6th June, the father sent an email to the court. Within that document, he set out that he was overjoyed that JC was back in his care. He alleged that he had always been willing to work with the local authority, but that his efforts had been blocked by the guardian, Ms Doolin, and also by the court appointed expert, Dr Celeste Van Rooyen. He made allegations that there had been breaches of international law. He said that social workers had misled the court and said in terms that JC had been severely emotionally damaged by the forceful removal from his care. He accepted that he had made the mistake of leaving his son alone and said that it was something that would not be repeated.

20. Copies of that email appear to have been sent by the father to various people, including Miss Tatjana Zdanoka, an MEP. On 4th June, the father made clear that he

was not prepared to meet with the guardian and sent copies of correspondence that he had sent to the MEP.

21. On 5th June, the father wrote to HHJ Polden, stating that he and JC had refused to meet with the guardian, the reason being that he was making complaints against the guardian and was considering taking legal action against her. It was asserted that JC would be traumatised if he saw the guardian again.

22. On 12th June, the guardian filed a position statement. Within that statement, she set out her disquiet that JC had been returned to the care of his father without the father having undertaken the therapy recommended in the care proceedings. The guardian questioned whether the 12 week parenting programme had been sufficient to effect a change in the father's parenting. She sought further information from the local authority so that the court could be satisfied that the care order should be discharged. The guardian also raised the difficulty that she had been unable to meet with JC and made clear that she opposed the father's application that she be removed as guardian.

23. The matter came before HHJ Polden on 17th July. On that occasion, there was a newly allocated social worker. The social worker had not seen JC and had been unable to file any evidence to justify the application for the discharge of the care order. In the circumstances, the matter was adjourned to a further hearing listed on 11th August. HHJ Polden refused the application to discharge the guardian. He directed that JC be separately represented by a new solicitor. He indicated that this was a case where it was appropriate for the guardian to be legally represented by CAFCASS Legal.

24. The matter came back before the court on 11th August. The local authority had failed to file any updating evidence. Accordingly, the matter was adjourned again to a

hearing on 30th September. The matter was listed on that date for one hour only. It was assumed that the application would proceed on an uncontested basis.

25. Thereafter, on 27th August, a statement was filed by the social worker, Beverley Sewell. The lengthy statement set out a deteriorating position in terms of the relationship between the father and social workers. Within the statement, it was said that the local authority intended to withdraw their application for the discharge of the care order. Further it was proposed that JC should move to respite foster care every three weeks, from a Friday to a Sunday. It was acknowledged that there had been no care plan filed as required by paragraph 18 of the Care Planning, Placement and Case Review (England) Regulations 2010.

26. The guardian provided the court with an analysis on 16th September. She opined that from the statements filed by the father and the evidence provided by the local authority it appeared that the father had not made any changes to his understanding or lifestyle so that the risks of emotional and physical harm to JC which had been identified at the time of the last proceedings remained. The guardian expressed concern that the local authority's plan relied on the co operation of the father which in her view was unlikely to be achieved. Given that JC had been in his father's home for some 11 months she thought the disruption of placing in foster care would cause further emotional harm. She advised that there needed to be careful monitoring by the local authority. The guardian said in terms that if further information or incident occurred which impacted on JC's physical safety or emotional welfare she would wish to revise her position.

27. On 30th September, the local authority filed a position statement in which they set out that they were unable to advance a positive case that the child's welfare could be met

by a discharge of the care order. It was said in terms that, at the time the local authority had applied for a discharge of the care order, it had been hoped that the father would continue to work positively with the local authority and that he would engage with local authority support. It was said that the opposite had happened and that the father had become convinced that the role of the local authority in JC's life had been negative.

28. It was also said that the concerns about the father's parenting, which had been set out in the judgment of HHJ Polden, had not receded in the way that had been hoped. In those circumstances, the local authority wished to share parental responsibility for JC. It was made clear that there was no plan to remove JC from the care of his father. It was recognised that this would cause him harm. However, they felt there was a need to monitor and safeguard his welfare and they felt unable to do so in the absence of a continuing care order.

29. The father and the solicitor for JC sought to persuade HHJ Polden that the care order could be discharged at the hearing on 30th September. That application was refused by HHJ Polden. He decided it was necessary to have a hearing which would include oral evidence from the social worker, the father and the guardian. Accordingly, the matter was set down before him for a one day hearing listed on 3rd November. There is a recital to that order, which reads as follows:

> "Upon the court indicating to all parties that these proceedings are confidential and that they must not disclose the evidence in the case, including the written evidence, nor discuss the evidence or submissions, written

> or oral, in this case with any third party without the express permission of the court."

30. The father, still acting in person, appealed the order of HHJ Polden. In the Appellant's Notice, he set out the basis for his appeal and the remedy which he was seeking, which was as follows:

> "(1) To remit to another county court judge or to transfer to the Family Division of the High Court.
>
> (2) To order the court to consider the section 31 threshold, which is now different from that at the time of the making of the care order on 26th February 2013."

31. The application for permission to appeal was refused by Macur LJ. It was said that the application was totally without merit and accordingly the Applicant could not request an oral hearing to reconsider the decision. In her reasons, Macur LJ emphasised that the decision made by HHJ Polden was a case management decision which was entirely reasonable. She rejected any suggestion that HHJ Polden had given the appearance that he had prejudged the case.

32. On 29th October, the local authority made an application for an injunction, forbidding the father from disclosing documents or information that would lead to the identification of JC. In support of the application, there was a statement from the social worker. Within that statement, there was a description of the escalation of the public protest made by the father against the local authority; it was said that this was conducted in a way which was likely to identify JC, in addition to protests in the

street, the father was in constant contact with reporters from the BBC and there was information that he was planning to attend before a committee of the European Parliament.

33. The hearing was listed for 3rd November. In the event, HHJ Polden was unavailable and the matter came before me. The hearing commenced in the morning and I heard evidence from the social worker, Miss Palles, and also Miss Parvanova. The social workers were agreed in their view that a return of JC to his father had been premature. Miss Parvanova said that, whilst there had been positive points identified in the parenting assessment in the autumn of 2013, none of those had been tested. She said that it was optimistic to return JC on the basis that the father had said that he would engage with the social worker. In the event, not only was there a disengagement with social workers , but matters were aggravated by the very aggressive manner displayed by the father towards a number of social workers and other professionals. This occurred on any occasion when the father disagreed with their views.

34. Miss Parvanova had become very concerned as to the welfare of JC and, most particularly, in relation to the fact that he had become involved in the proceedings and in her view pressurised by the father to write statements. She was particularly worried as to the effect on JC of being exposed to the media coverage of his father's campaigns against the local authority and other professionals.

35. There was also a concern that JC had indicated that he wanted to record his experience of the care proceedings and place the film on YouTube. Miss Parvanova said in terms that she struggled with the fact that a child of such a young age could have such wholly negative views of social workers. In her view, JC had adopted his father's beliefs. She was worried about the prospect of information being placed on

the internet which carried risks that threatened JC's welfare not only at the present time but also in the future.

36. The father was due to give evidence after the social workers. During these proceedings, the father has had the benefit of a Russian interpreter. The father's native language is Russian. He has a good command of English, however, he is not fluent and on occasions he has difficulty in finding the right expression and in understanding certain phrases. The interpreter had been booked only for the morning. She could not stay for the full day and it was not possible to find an alternative interpreter. Accordingly, it became clear that the matter would need to be adjourned. The first available date was a week later on 14th November.

37. The fact of an adjournment was clearly a disappointment to the father. He had hoped that the matter would be concluded that same day. Not least because he was due to appear before the Petitions Committee of the European Parliament on 11th November. Once this became known there was discussion as to the arrangements that would be made for the care of JC whilst his father appeared before the committee. The matter resulted in an agreement, which is set out in a recital to the court order of the same day:

> "The father will provide the social worker, Miss Palles, with prior notice, of the names, addresses and telephone numbers of the child minders he intends to use to care for JC during any period that he intends to spend in Brussels or abroad pending the adjourned hearing."

38. Given that the proceedings were continuing, injunctions were made to prevent any publicity in respect of the case. The terms of the orders made are set out at paragraph 8 above.

39. Contrary to the impression given to all parties at the hearing and without notice to anyone, the father removed JC from the jurisdiction and took him to Brussels. No information was provided to the local authority or to JC's school. At the time the social worker had been trying on repeated occasions to contact the father, this was for the purpose of conducting her statutory visits. JC was away from school on the 10th, 11th and 12th November.

40. It is unclear as to when the father decided to take JC to Brussels. There is reference in the evidence to a conversation on 25th October with a tutor at JC's school, where it appeared that the father was considering removing JC from school to attend the hearing in Brussels. He was advised of the formalities that would be required by the school if he wished to do so. In the event, no application was made for permission for an authorised absence from school.

41. The appearance before the Petitions Committee was filmed. The film did not show JC being present. The film was placed on the internet and the story attracted publicity in the national press.

42. On the morning of 14th November, the local authority made an application in the High Court. The application was made without notice. It was heard by Jackson J. The application sought injunctive relief against the media. The application was refused by Jackson J on the basis that any application should have been on notice and, further, that the issues could be appropriately dealt with by me within the Children Act proceedings.

43. The parties assembled at court shortly after 1pm, in time for the hearing which was due to start at 2pm. Shortly before the hearing, the local authority served a statement from the allocated social worker, which had been made that day. The position, as set out in the statement, was that the care plan had changed. The local authority was now of the view that it was impossible to work with the father and, accordingly, they sought removal of JC into foster care.

44. The facts relied upon in support of this change of position was the failure of the father to communicate matters in an honest way to the local authority. By way of example, on 3rd November, JC did not attend school and it appeared that he had lied to the social worker in respect of being with a child-minder. There was the concern of JC lying to professionals and being left on his own. There were also the concerns about the publicity, which was being actively courted by the father, apparently without any regard to the injunctions that had been made.

45. The late change in the care plan presented the other parties with a number of difficulties. The father was, understandably, extremely distressed. His excess of emotion caused him to behave in an aggressive and intimidating manner. This was not confined to verbal aggression and at one stage included physically threatening behaviour towards counsel for the local authority.

46. The solicitor acting for the child was without instruction. The guardian was clear that the matter could not proceed without further investigation. She was increasingly concerned that she was unable to meet with JC. She sought the father's co-operation to enable her to do so. Notwithstanding her inability to meet with JC she was clear that the circumstances did not justify a peremptory removal of JC to foster care.

47. I concurred with the view of the guardian that this was not a case which justified immediate removal to foster care. It was clear that there were a number of factual disputes and the matter would need to be adjourned. The father disputed the evidence in respect of his absences from the home leaving JC unsupervised and also the absences of JC from school. It was clear that there would need to be further oral evidence. There was a further consideration that given the change of care plan which included removal of the child from his parent, it was thought that the father would qualify for legal aid.

48. The matter was set down for three days to make allowance for the fact that the father might not be represented. It was set down for the 12th, 13th and 14th January 2015, those being the first available dates. The length of time before the next hearing had an advantage in that it was hoped that there would be sufficient time to secure legal representation for the father.

49. In the meantime, the injunctions were continued. Arrangements were made for the transcript of HHJ Polden's judgment to be anonymised and, subject to his consent, to be placed on the internet.

50. On 10th December, the local authority filed a witness statement from the social worker, which updated matters since the last hearing. The social worker described what she regarded as being a deteriorating position in respect of JC's home circumstances. There were repeated occasions when he was left alone at home, with the father apparently unconcerned as to the consequences. There was also an anonymous telephone call concerning conditions within the home. There had also been a post on the internet in respect of the ruling made by Jackson J.

51. The solicitor for the local authority invited the court to consider expediting the hearing and finding a date before January. The email was copied to the other parties. I concluded that there were no grounds for expediting the matter and it was inappropriate to change the listing that had been made. In the circumstances, an order was made by me on paper on 10th December, confirming the hearing of the matter on the original dates.

52. It would appear that at this stage, for a very brief period, the father had the benefit of public funding. I received a letter from Ms O'Donnell, solicitor acting for the father, which apologised for letters emailed by the father directly to me and asked for them to be withdrawn.

53. It would appear that the application made for public funding for the father had been submitted using the wrong form. A further form was submitted shortly before Christmas. There was a logjam at the Legal Aid Agency. At the advocates meeting held in January, it became clear that the application for legal aid was unlikely to be determined prior to the hearing. The position taken on behalf of the father, JC and the guardian was that it would be unfair and unjust for the hearing to proceed in the absence of legal representation for the father.

54. On the first day of the hearing, there was still no response from the Legal Aid Agency in respect of the father's application for public funding. There was a further complication in that the allocated social worker was unavailable. It was known that she would be abroad for the hearing and it had been intended that her evidence would be given by video-link. In the event, it had not been possible to make contact with her and no video-link was available.

55. In the circumstances, the local authority made an application for an adjournment. The father objected to the adjournment. He wanted the care order to be discharged there and then, on the basis that if the social worker was not present, the local authority were unable to prove their case. I dismissed his application and the matter was re listed for a further and final hearing, commencing on 3rd March.

56. In order to assist the father with his legal aid application, I gave directions that if a response had not been received from the Legal Aid agency by 26th January I would direct a representative from the Legal Aid Agency to attend the review hearing listed on 6th February.

57. Shortly before the review hearing a decision was made by the Legal Aid Agency. This was a refusal of public funding. The refusal was on the basis that, as the proceedings were for a discharge of a care order, the father was not entitled to non-means and non-merits tested funding. The financial position of the father placed him outwith the eligibility for public funding.

58. At the review hearing the father was assisted by counsel, Ms Shabana Saleem, acting *pro bono.* In a position statement filed by Ms Saleem, I was reminded of the recent raft of cases, namely Q v Q; Re B (A Child); Re C (A Child) [2014] EWFC 31 and also the more recent authority of Re D (A Child) [2014] EWFC 39 at page 35. I was invited to transfer the matter for hearing by the President, so that the President could consider making an order for legal funding on the basis that (a) fairness to the child can only be achieved if there is fairness to those who are litigating, which includes the necessity to ensure the father is legally represented; (b) the father is unable to effectively conduct his own case, indicative of his reliance on an interpreter and *pro*

bono assistance; and (c) failure of the state to provide legal funding is a breach of his Convention rights.

59. Prior to the hearing, communication had taken place with the President's office. It had become clear that it would not be possible for the matter to come on in a timely manner before the President and, in any event, the matter was part-heard before me. Accordingly, the application for transfer was not pursued and Ms Saleem withdrew.

60. The father, acting on his own, sought to argue that I should direct alternative funding for legal representation, in particular, funding by the local authority. Whilst I was conscious of the clear inequality of arms and sympathetic to the difficulties faced by the father, I was not persuaded that this was a case where I could direct the local authority to pay for the father's legal representation.

61. Whilst there were difficulties for the father, these were, to some extent, ameliorated by the fact that JC was legally represented and the case advanced by both the father and child was identical. It was far from satisfactory, however this was a case where there could be no further delay. Whilst the father had the disadvantage of speaking in a tongue which is not his native language, he is someone who is intelligent and able to express his views.

62. Prior to the final hearing, the guardian provided a final analysis. She informed the other parties, on 19th February, that she had changed her position and could no longer support a removal from the father's care into foster care. In her view, that would be likely to cause more harm than JC remaining in his father's care. She was very clear that the involvement of JC in the legal proceedings and in the father's campaign against the local authority had been emotionally harmful. She believed that it was essential that the proceedings be brought to a swift end.

63. It would appear that the local authority had reached a similar view. The social workers statement was filed on the eve of the hearing. The proposal by the local authority was that JC's needs could be met by a referral to CAF (Common Assessment Framework) which would require the father's agreement. The advantage of a CAF was that there would be no involvement by social workers. The professionals involved would be those from education and from health, the purpose being for them to provide support to JC and his father. That would enable some support whilst at the same time ensuring removal from any interaction with the local authority, which had caused such division and distress.

Legal parameters

64. In so far as the legal parameters are concerned, in respect of the discharge of a care order, the leading authority is Re S [1995] 2 FLR. The guidance is conveniently set out by Hughes LJ in the case of Re C (Care: Discharge of Care Order) [2009] EWCA Civ 955 at paragraph 17:

> '17. The test upon an application for discharge is clearly set out by this court as long ago as 1995 in Re S (Discharge of Care Order [1995] 2 FLR 639 at 643. As Waite LJ put it:
>
> "Section 39 of the Act allows the court to discharge a care order on the application of (inter alios) a parent. Here the jurisdiction is discretionary from the outset (there being no obligation on the parent to satisfy the court that the threshold requirements no longer apply). The issue has to be determined by the court in accordance with s1 of the

Act, which (by s1(1)) makes the child's welfare the court's paramount consideration …"

I need not read the remainder.

18. I entirely agree that the applicant for such an order must make out his case. It does not follow from that that the test is simply a matter of listing potential benefits. Welfare is a more complicated and rounded consideration than that. I am quite satisfied that the judge is entitled to take into account the continuing effect, or in this case lack of effect, of the care order.

19. The judge found on ample evidence that this was a care order to which the local authority simply could not give proper effect. It is true of course that the fact that a child who is the subject of a care order proves recalcitrant, obstructive and uncooperative is in no sense a justification for the local authority washing its hands of him. Young people who are difficult, obstructive or recalcitrant are often precisely the young people for whom a care order is a necessary, if unwelcome, protection. They may be children in considerable need. J is certainly in some need, but that does not mean that the judge is not entitled to take account in his decision of what is involved in preserving a care order. This one set up conflict.'

Merits of the discharge of the care order.

65. It seems to me that the reference to conflict in the case of Re C is wholly pertinent to these proceedings. Regrettably, the conflict which, in my view, has been generated by the implacable hostility of the father towards the local authority, has been the cause of harm to JC. The father has been unable to contain his feelings. He has not been able to put them to one side in order to focus on the needs of JC. He appears to have been oblivious as to the effect on JC of being subjected to his relentless and hostile battle with the local authority.

66. It is clear from the evidence in the bundle, whether from social workers, members of the school or the guardian, that the father has no compunction in behaving aggressively towards professionals whilst in the presence of JC.

67. The guardian in her final analysis described the decisions in the case as being finely balanced however concluded that the less harmful option will need to be followed. She wrote:

> "Taking all of the above into account, I would struggle at present, despite my concerns, to support JC's removal into foster care. In any event, the local authority are no longer pursuing this care plan and also seek to discharge the care order, acknowledging as I do that it remaining in place will have little impact on JC's welfare and, indeed, further may act to his detriment, as the local authority would have to continue to share parental responsibility with the father, which has proved impossible to do to date, given the

> father's overtly hostile attitudes towards the local authority and the professionals endeavouring to monitor JC's welfare."

68. I have no doubt that, as set out by the guardian, this is a case in which it is imperative that the conflict comes to an end. It may well be that notwithstanding the conclusion of the proceedings, the father will continue with his campaigns against the local authority. In that case unless the father takes steps to exclude JC from involvement and protect him from the ill effects of his campaigning, there is the risk of further emotional harm to JC. That risk is additional to the risks that arise from the deficiencies in the father's parenting as identified in the care proceedings. Given the premature return of JC to his father's care it is not possible for the local authority to ameliorate these risks. JC has now been in father's care for 15 months, he has always expressed a wish to remain in father's care and as a result of recent experiences has adopted an increasingly negative attitude towards social workers. A change of residence would have a profound effect on him and on close analysis is not viable. Neither is it workable for a care order to remain as a framework for additional support and protection. It is clear that there is no benefit in retaining the care order indeed the opposite is the case. Hence the agreement of all parties that the care order should be discharged.

Greater provision of services

69. I turn now to the specific issues that have been raised by the father. Firstly, it was submitted on behalf of the father that, whilst the care order should be discharged, there should be greater provision of services by the local authority. In oral

submissions, it was said that this should include support for the father's parenting and, in particular, an assessment of JC by a psychologist. The request for a psychological assessment was surprising. On 10th December 2014, the solicitor for the guardian had canvassed with the parties the prospect of instructing Dr Anthony James to assess JC.

70. The guardian has, throughout, been deeply concerned as to how she could properly assess JC's emotional needs. She has been handicapped in doing so by being unable to have any contact with him. In her analysis, dated 8th January, she set out in terms that:

> "It was disappointing that the father and JC would not agree to engage in a psychological assessment, as this would have helped both myself and, in my view, the court greatly in understanding the emotional impact, both positive and negative, of being placed in foster care and the relationship that JC holds with his father. I remain concerned that JC is strongly influenced by his father's views and that it would prove extremely precarious for JC to express any concerns to professionals about his care whilst living with his father."

71. The proposal by the guardian for an assessment was rejected out of hand by the father and also by the solicitor on behalf of JC. It was said that JC did not wish to meet with another professional. When I asked counsel why the father was now seeking a psychiatric assessment, I was told that once the care order had been removed, the father no longer felt threatened by the consequences of an assessment.

72. In my judgment, that is a wholly unsatisfactory answer. It reflects the ongoing difficulties that have bedevilled this case. The time for obtaining an assessment was during the course of proceedings. It is unfortunate that that opportunity was missed. Now that the proceedings are over and there is to be no statutory order, it is impossible for the local authority to commission an assessment as suggested. Parental responsibility will now be solely with the father. He must make the decisions. If he feels it is necessary for JC to be seen by a psychologist, it will be for him to secure those services through his GP.

73. Criticism was made of the Community Assessment Framework and the uncertainties in respect of the benefits which would arise there from. It seems to me that the only uncertainty is whether the father will give his consent. Given his complete mistrust of the local authority, sadly a position that is now also adopted by JC, it seems to me that it is entirely appropriate for there to be a possibility of a support framework, which is separate from the local authority and which would not include any social workers. It is clear that the father is quite unable to work with social workers and I see no prospect for any change.

Application for costs

74. I turn now to the issue of costs. The application for costs falls into two parts: (1) the costs of the proceedings, having regard to the number of hearings and the length of time over which the hearings have taken place; and (2) contingent future costs. It is said on behalf of the father that this is a case where the change of position by the local authority, both in September and, more importantly, in November, was unwarranted. It is said that, throughout, the local authority have failed to analyse the case properly.

The local authority are criticised for the late filing of evidence and mismanagement of the case.

75. Whilst counsel for the child did not make a claim for costs, she did make a supporting submission in terms of highlighting the failure by the local authority to consider the effects on JC, particularly with the constant change in care plan. She also criticised the local authority for their failure to conduct the exercise of considering the balance of harm until the eve of the final hearing.

76. The legal test in respect of making an order for costs is set out in the Family Proceedings Rules, specifically Rule 28.2, which makes clear that the provisions of CPR Part 44 will generally apply, although there is an exception in that in family proceedings there is no presumption that the unsuccessful party will pay the costs of the successful party.

77. Costs are entirely in the discretion of the court. The authority, in terms of costs as between parties in public law proceedings, is the decision of the Supreme Court in Re T (Costs: Care proceedings: Serious allegations not proved) [2013] 1 FLR 133. In that case, it was emphasised that costs orders made in children cases are a rarity and will only be made when the party's conduct has been reprehensible or a position was taken which was beyond the boundary of what was reasonable.

78. In so far as the conduct of the local authority within these proceedings is concerned, it is clear that there are grounds for criticism. I find that the original decision to return JC to his father took place without any adequate assessment of the risks and any consideration as to whether the matters, as found by HHJ Polden, remained as matters of concern. Thereafter, there was the wholly unacceptable position of the frequent change of social workers. By September 2014, there had been seven different social

workers allocated to JC. There was also the inexcusable failure to provide evidence at the hearings in July and August.

79. It seems to me that there may have been grounds for the making of a wasted costs order in respect of the hearing in August. However, it would appear that that was not a matter which was requested at the time. It would have been a matter for HHJ Polden.

80. As of September, there was the further change of social worker, to Miss Palles and her team leader, Miss Parvanova. It seems to me that both of those social workers, who have been subject to extensive criticism by the father, were justified in reviewing the position of the local authority and in particular examining the entire history of the case. Having considered the matter, they realised mistakes had been made by the local authority.

81. I find that Miss Palles was genuine in her view expressed in the early autumn that she would be able to work with JC. It was in those circumstances that the proposal was made for the care order to remain, on the basis that the local authority would have a monitoring role. I find that it was the behaviour of the father which made that impossible. As the father's behaviour became increasingly aggressive and hostile, the situation became more and more difficult to monitor and contain.

82. It is the job of social workers to protect children. It is unsurprising that Miss Palles and Miss Parvanova became increasingly concerned as to the position of JC. Their view was that the only way in which he could be protected was by removal from the care of his father. The difficulty with that proposal was that any removal would not be straightforward. JC is bright, intelligent and articulate. He is 12 years old. He has been in his father's care now since October 2013. It would appear that he has become increasingly enmeshed with his father's thinking in relation to his views of the local

authority. If he was to be removed from his father's care, there would be difficulty in terms of settling in the home of a foster carer and it seems to me potentially insuperable problems in terms of contact with his father. In terms of JC's emotional wellbeing, the reality is that his father is his only relative living in this country. I find that these difficulties were underestimated by the social workers.

83. Whilst mistakes have undoubtedly been made by the local authority, and matters perhaps seem clearer when looked at with hindsight, this is a case where the father is also at fault. His focus on fighting the local authority at every turn and doing everything to obstruct the professionals has been totally unhelpful. He has made clear that he has no respect for the court. That has been evident in many of his actions.

84. By way of example, the order that JC's passport should be delivered to JC's solicitors was thwarted by the father taking the passport to the Dutch embassy. He has gone out of his way to provoke those working for the local authority and has been unrestrained in his insults and the language he has used when speaking of the professionals in this case. The father has a tendency to blame everyone else for any misfortune. It seems to me that the sequence of events has been caused in part by his own actions.

85. In the circumstances whilst there are grounds for criticism of the local authority's management of this case, I am not persuaded that this is a case which falls into the category of reprehensible behaviour which would justify an order for costs being made against them.

86. The application for contingent costs was on the basis that the local authority should pay for the future costs to be incurred by the father. It was said that the future costs

would be in respect of commissioning an assessment by a psychologist. This appears, in my view, to be effectively a claim for damages. In so far as any claim for costs are concerned, any such order is restricted to litigation costs incurred in terms of litigating the claim. I know of no provision whereby costs could include the expenditure on a report to be obtained subsequent to the litigation.

The guardian

87. I turn now, to the position of the guardian. The guardian has been the subject of intense and constant criticism by the father. It would appear that this stems from the fact that her evidence was accepted in the original care proceedings by HHJ Polden, evidence with which the father disagreed.

88. In my view there are no grounds for the allegations which the father makes against the guardian. To the contrary, throughout these proceedings I have been impressed with the contribution made by the guardian. She has worked under a significant handicap. She has been faced with intense hostility from the father and prevented from having any contact with JC, whose interests she has sought to protect. She has risen above the personal insults and provided the court with detailed and objective reports.

89. I find that the guardian was wholly justified in raising the initial concerns as to the circumstances of JC's return to the father. Further, it is to be noted that it was the guardian who, in July of last year, correctly opined that it was essential that the proceedings be concluded swiftly, as an elongation would be harmful to JC.

90. In her penultimate analysis, the guardian expressed her concerns in terms of considering practicality and suggested that there needed to be imaginative thinking in terms of the proposed care plan. Her final analysis, dated 26th February, is a careful

and perceptive piece of work in which she accurately weighed the competing considerations when considering the overall welfare of JC.

Legal Aid.

91. I turn, finally, to the lack of Legal Aid. The absence of legal funding for the father has undoubtedly placed him at a disadvantage. I have already set out the attempts made to secure public funding on his behalf. In terms of the provision of legal aid it is impossible to rationalise the distinction between defending an application for a care order and defending an application for the withdrawal of permission to discharge a care order, when both applications are made by the local authority. The outcome being sought by the local authority is the same, namely the removal of the child from his parent. However the application made within original care proceedings will attract non-means tested public funding whereas the application to withdraw a discharge of a care order will not.

92. The lack of legal representation inevitably causes an imbalance in the effective presentation of the cases advanced by the parties. When, as here, the subject matter is grave and emotive, the absence of representation is particularly inappropriate and unfair. The advantage of legal representation is not confined to the presentation of the case. In family proceedings, there is an additional advantage that the advocate can protect the client from himself. Timely advice will prevent the party from behaving in a way that he might regret.

93. In this case, the father has not had the benefit of such advice. His behaviour in court before me has, at times, been unrestrained. He has frequently demonstrated the worst aspects of his personality and his propensity to act with aggression. The ferocity of his

outbursts has been such that it is easy to understand why the social workers were so concerned for the welfare of JC.

94. In addition there is the effect on the trial process. Every hearing before me up until the last one has taken longer than was necessary. Indeed, I have already referred to the fact that the final hearing was listed for three days to accommodate the fact that the father might be unrepresented.

95. At the final hearing, there was the huge advantage that the father for the first time was represented by Miss Obi-Ezekpazu acting pro bono. That enabled the matter to proceed swiftly on the basis of brief legal submissions and be concluded within half a day. I am indebted to Miss Obi–Ezekpazu, Miss Saleem and Miss Choudry (who acted pro bono for the guardian in the earlier hearings). It is gratifying that there continue to be members of the Bar who are prepared to give up their time to assist those who would otherwise be unrepresented. Their contribution is invaluable; indeed without their assistance, the court faces an almost impossible task.

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