

ENGLAND AND WALES / JUDGMENT

J (A Child : application for a care order)

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MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title Neutral Citation Number: [2018] EWHC 2840 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Case No: WX18C00483/FD18P00052 Royal Courts of Justice Strand, London, WC2A 2LL Date: 19/10/2018 Applicant 1 st Respondent 2 nd Respondent 3 rd Respondent Before : MR JUSTICE WILLIAMS

- ----- Between : A Local Authority
- and - The mother
- and - The father
- and - J (by his Children's guardian)
- -----
- ----- Ms Alicia Collinson (instructed by The Local Authority) for the Applicant Ms Leonorah Smith (instructed by Cross Solicitors) for the 1st Respondent The 2nd Respondent was not present or represented Ms Shân Morris (instructed by Gamlins) for the 3rd Respondent by his Children's Guardian Hearing dates: 17th - 19th October 2018
- ----- Judgment Approved MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court. Mr Justice Williams :

Introduction

1. I am concerned with a little boy, whom I shall call J, who was born in Ireland in July 2015. He is represented by his Children's Guardian from Cafcass Cymru and Ms Morris, counsel. J's mother lives in Ireland and is represented by Ms Smith. She is currently in a mother and baby unit in Ireland and the mother has not attended this hearing in person. Arrangements were made for her to attend by video link. The mother is still breastfeeding (at least partially) her newly born baby, B-R, (born in August 2018) and so says she could not reasonably be expected to attend this hearing in person. However even though those arrangements were made she has chosen not to participate, preferring to prioritise

attending contact sessions with J and B-R. J's father lives in north-east Wales. He is not named on the birth certificate and so does not have parental responsibility. He also has been given the opportunity to participate in these proceedings but has not done so. Statements of service of the proceedings on him appear at C14 to C19 and attempts to engage him have been made, both by the social worker and by the Guardian. He has not responded in any substantive way.

2. The local authority bringing the applications is represented by Ms Collinson, counsel. The applications which I have been considering over the last three days are the application for a care order apparently issued on 27 September 2018 and an application for a placement order apparently issued on 12 October 2018. [I say 'apparently' since it has subsequently become clear on the 19 th October that the Central Family Court has declined to issue the two applications and they must now be issued at the Wrexham County Court. I give consequential directions as part of these proceedings and this judgment is given on the basis that the applications will now be issued.] At first blush a final hearing on such applications taking place on the 17 th to 19th of October might appear like a very rapid disposal indeed. For reasons which will become apparent in fact quite the contrary is the case. I have also been considering, within the care proceedings an application issued by the mother dated 3 October for a direction pursuant to section 38 (6) Children Act 1989

Background

3. In February 2015, His Honour Judge Gareth Jones gave judgment on an application by the local authority for a care order in respect of R, J's older half-brother. R had suffered serious inflicted injuries at the hands of either his mother or his father (unrelated to J). His Honour Judge Gareth Jones was unable to determine which of them had inflicted the injuries but he concluded that it was one or the other and that the parent who had not inflicted them had known of them and had failed to protect R. He made a care and placement order and R has subsequently been adopted. MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title
4. At the time of that decision the mother was around four months pregnant with J. No one involved in the proceedings was aware of this save for the mother. The mother then left Wales and travelled to Ireland where she gave birth to J. She gave a false account of the circumstances in which she came to be in Ireland to the Child and Family Agency (CFA), when she first became involved with them, telling them that R was living with her father in Wales. 5. J was born in July 2015 and remained in hospital for some three days before being removed into foster care. The CFA had made enquiries in Wales and had ascertained that R was not living with his maternal grandfather but rather was in care. They learned of His Honour Judge Gareth Jones' decisions and, given what the CFA had learned about the mother and R, they had serious concerns for J's safety. The CFA made an application for an interim care order in respect of J, which was refused because the mother agreed to him being placed in voluntary care. On 29 July 2016, the CFA made a further application for a

care order and on 9 August 2016 an interim care order was made. Those care proceedings continued through 2016 and 2017 and were listed for final hearing in October 2017. For reasons which I have not fully understood it was only at that hearing that the court came to consider whether the proceedings should be transferred to Wales pursuant to article 15 of EC regulation 2201/2003 (referred to in this judgment as BIIa). On 6 October 2017, the Irish court determined that J had a particular connection with Wales and that the Welsh courts would be better placed to hear the case and, at a later hearing in December 2017, the Irish court determined that it was in J's best interests for the courts of England and Wales to hear the application. For reasons which I will set out briefly later, that application was not finally determined by this court until June 2018. Given that J had been effectively in care for nearly 3 years by that stage I decided that rather than require the proceedings to be issued in the family court at Wrexham, that I would continue to deal with J's case so that a final hearing could be expedited. I listed the matter for a three-day hearing commencing on 17 October and prehearing reviews including an issues resolution hearing took place in September and October 2018. The mother's team confirmed that she would not be seeking to reopen the fact-finding relating to R, and thus the three day time estimate still appeared realistic.

Regrettably the preparations for the hearing were not as thorough as they should have been. In a case such as this with a tight time estimate it is even more essential that the preparatory work including the documentation for the court is undertaken. Unfortunately in this case no preliminary documents were filed with the bundle and the bundle which was filed was missing almost all of the updating material. A chronology was in the bundle but was five months out of date. No list of essential reading was provided and the parties position statements came in on the morning of the first day. The video link and telephone links were plagued with difficulties both at the English end and at the Irish end. Indeed on Thursday when the Irish social worker was to give evidence the video link did not operate at all because somehow communications had broken down between the local authority and the Dublin end such that the suite was not available in Ireland. Time did not permit a further enquiry into how this most unsatisfactory situation came about. But it bears repeating that when video links are to be used it is essential that the lead solicitors understand the process by which the link is to be achieved and that they liaise closely both with the court in this country but also with the provider elsewhere to ensure that the facilities are available and the connections can be made at the time that is required. Setting up video links with a booking made for 1030 on the second day, when the hearing is due MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title 6. to start at 1030 simply results in a loss of time - bookings must be made to ensure that the link can be tested before the time the hearing is due to start, even when the same video link had worked the day before. At the commencement of the hearing Ms Smith, on behalf of the mother, made an application to adjourn the hearing until Thursday morning. The basis of the application was that the mother was attending contact on Wednesday afternoon and wished to attend by video link but she did not have the laptop facilities to do so whilst at contact. Given that the hearing had been set up some three months before and directions had been given to ensure that the mother could attend by video link her decision to attend contact, rather than seek to

rearrange it, was surprising. I refused the application. As it turned out, on Thursday morning the mother instructed Ms Smith that she would not have participated in the hearing by split screen video link even if that had been possible. Again she decided she would attend contact. She did not wish to either listen to the evidence of the witnesses nor to give evidence herself; she said her statement was sufficient. At the end of evidence on Thursday, I gave Ms Smith a further opportunity to speak to the mother to see if she wished to give evidence on Friday morning. Given that the mother was critical of the Guardian for reaching conclusions without having seen the mother, I wondered whether the mother might wish to reconsider her position and to participate in the hearing. However on Friday morning Ms Smith said that the mother had maintained her position that she did not wish to participate and relied on her written statement. The irony of the mother criticising the Guardian for not seeing her prior to filing her report (the Guardian was unwell on the day she was due to travel to Ireland to meet the mother) and yet not participating in this hearing which was to determine J's future, was obviously lost on the mother. The Issues

7. The local authority maintain that the threshold criteria are met and that J's best interests require that a care order be made together with a placement order which will allow J to be placed for adoption. The grounds for the application are set out in a lengthy narrative form at Part 6 of the application form [B205]. The essential elements of the local authority position I think are a. b. the mother is in a pool of perpetrators for causing serious inflicted injuries on R, if she did not inflict the injuries she has either actively concealed what happened to R or was wilfully turning a blind eye to his injuries and had thus failed to protect him,
- c. her behaviour since then in failing to come clean about what happened to him, and her failure to undertake therapy means that she still poses a risk to a child, such as J, who was in her care d. e. that evidence from the assessments in Ireland demonstrate that she is at high risk of entering into another abusive relationship and failing to protect J that the father of J has been subject to findings being made against him in respect of other children which demonstrate that J would be at risk of significant harm in his care. MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title 8. In respect of J's welfare the local authority say that adoption is in his best interests for the following essential reasons, a. the mother has not demonstrated any or any sufficient change in her ability to provide good enough care for a child since 2015;
- b. a psychological report by Dr Joanne Kelly-Keogh in June 2016 in Ireland identified extensive therapy that the mother would require to address the underlying personality issues that she experiences and which compromise her ability to provide good enough parenting for a child. That therapy has not been undertaken and thus the mother cannot have changed sufficiently to safely care for J;
- c. other evidence demonstrates that the mother's ability to provide good enough parenting is compromised. She has never had full time care of any of her children (save for four weeks in respect of R), she is not attuned to their needs, does not appear to be able to take on board

advice as to childcare and would be unable to cope with J particularly given the very considerable emotional distress he will sustain when he is separated from his foster carers; d. e. the mother has just had another baby, B-R, who she is seeking to care for in Ireland. At present she is in a mother and baby unit in the early stages of an assessment process being undertaken by the Irish courts to determine whether she could provide long-term care for B-R. At present B-R is not in the mother and baby unit with her and will only join her if she successfully completes the first stage of the assessment. The local authority say it is wholly unrealistic for her to expect to be able to parent not only B-R but also J; the delay in settling J's medium to long-term future has already been significant. He is three years and three months of age. He is securely attached to his foster carers but needs to move to a permanent home before the harm that will result from separation from his foster carers becomes even greater. The psychologist in Ireland is of the opinion that his next move must be to a permanent home, an interim placement is wholly inimical to his welfare. Therefore testing whether the mother can provide good enough care to J by placing him with her would be harmful, particularly given that the indications that the mother has changed are not currently very good;

- f. given his age and the window that is currently open (but closing as he gets older) of the probability that he could be successfully placed for adoption it is not in his interests to delay a decision any further. The assessment process in Ireland appears to be three months without B-R, three months with B-R and then up to one year in supported accommodation. The Irish CFA do not support J's placement with the mother and would oppose B-R's placement with her if J were placed with her. In the circumstances, the placement of J at a mother and baby unit with the mother in Ireland is not indicated because there is no evidence that it is available and, in any event, if it were, the possibility of it being successful is so speculative that it is contrary to J's welfare to even attempt it; g. there are 32 potential adoptive families in Wales alone who may provide a suitable match for J and a placement could reasonably expect to take place within the next 3 to 6 months. That will provide him with the security of a MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title permanent home at an age when he will be able to make the transition successfully. 9. In relation to the threshold the mother accepts the findings of His Honour Judge Gareth Jones of February 2015 in that she accepts that she failed to protect R and should have acted differently. She maintained she did not cause his injuries and asserts that R's father has subsequently admitted that he hurt R. She maintains that she did not lie to social services about her pregnancy and did not flee to Ireland to avoid proceedings in relation to her unborn child. She maintains that she has changed. The effect of her position in relation to threshold is implicitly to accept that the threshold was met as at July 2015 which is the relevant date, but only on the basis of failing to protect R.
10. She has issued an application seeking a direction from me that J be placed with her at the mother and baby unit that she is currently residing at in Ireland for the purposes of an assessment. She says that she is currently living in one part of the unit as a preparatory placement and that her son B-R who was born in August 2018 will join her for a second part

of a residential assessment. The necessary consequence of this application, if I were to accede to it, would be that the final hearing would be adjourned until that assessment had been undertaken. The mother says that she has made enormous improvements in her life in that she is no longer living in a hostel and is single having separated from B-R's father in April of this year and that she is now focused on and dedicated to caring for J and B-R. She says that she has started EMDR therapy.

11. On behalf of the mother Ms Smith acknowledged that the absence of evidence confirming that such a placement was available was an obstacle. The mother's alternative position was that this final hearing should be adjourned so that the mother could undertake the therapy which Dr Kelly-Keogh had recommended. Ms Smith submitted that the mother had now undertaken 7 of the 24 sessions and that it was fair to the mother and to J to allow her to complete that process and to then be reassessed by Dr Kelly-Keogh to ascertain whether sufficient progress had been made in addressing her issues to make placement of J with her viable. Ms Smith emphasised that the mother had not been given the opportunity in Ireland of attending a mother and baby unit with J, nor had she been given the opportunity to undertake the intensive therapy that Dr Kelly-Keogh had identified as being required in her report of July 2016. Ms Smith submitted that this court should leave no stone unturned in its efforts to ensure that J was given an opportunity to be brought up by his birth mother. She submitted that it would only require a short adjournment in order to obtain that report which would be commissioned after the mother had completed the remaining 17 or 18 sessions of EMDR therapy. That, suggested Ms Smith, meant that a report would be available in around six months' time and the court could then review the position. Ms Smith emphasised that positives in the mother have been identified and she should be given the opportunity to build on those. She submits that the criticisms of the relative lack of attachment between the mother and J is not down to a lack of effort or ability on the mother's behalf but a consequence of the artificial nature of the relationship based, as it is, in a contact centre. She submits that J has a very clear interest in his mother being given the opportunity to make progress through therapy. How will J feel, asks Ms Smith rhetorically, if B-R is given the opportunity to be brought up by his mother but J is not? MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title
12. The father has engaged with the social worker to a limited extent albeit has not participated in these proceedings. He has made clear that he is unable to care for J but would like to be involved in his life if possible. As a result, a full parenting assessment of him has not been undertaken, nor has a contact assessment been undertaken as the father is unwilling to have any supervised contact. It is of course right that the father has not even met J.
13. The Guardian has reached the same conclusion as the local authority and supports the making of a care and placement order. She does not accept that the mother has made any real or any significant changes in the 3 ½ years since R was made the subject of care and placement orders and that whilst the mother has a relationship with J, and he with her, and that she can meet some of his needs whilst in contact, there is no evidence of a sufficient

change to warrant further consideration being given to the mother's application. In fact, the Guardian is of the view that the evidence continues to demonstrate that the mother is dishonest, is not attuned to J's needs and remains a high risk to J, either of injuring him or of failing to protect him. She says that honesty is an essential foundation to the assessment process that the mother invites the court to undertake pursuant to section 38(6). She also says that honesty is an essential prerequisite to progress being made in therapy. She notes that in the mother's statement, filed at the commencement of these proceedings, the mother continues to demonstrate dishonesty both in relation to her account of what happened to R and the circumstances in which she came to Ireland. Ms Morris points out that the mother's account in her recent statement in relation to how R was injured and R's father's role in it, is in stark contrast to the statement that she filed in 2014 in which she identified various occasions in which she said R's father had handled him roughly or otherwise potentially injured him. She also points out that the mother's account of the circumstances in which she came to Ireland and the information she gave to the CFA on her arrival are dishonest and indeed the Irish court has already made a finding that the mother fled from Wales in order to avoid social services involvement in her new baby's life. How, she says, can the mother assert that she is making good progress in therapy when she continues to be in denial about the most basic facts relating to the past. She is clear that the very significant delay that has already occurred in settling J's future is of very real concern and has placed J in a position where the mere fact of moving him from his foster carers will cause him significant emotional harm. She is clear that no further delay should be countenanced in settling J's future and that what he needs is to be placed with a family who can become his long-term permanent carers. She is resolutely opposed to the suggestion that the mother should be given another chance to demonstrate that she can provide good enough parenting to J. The Guardian views this as being focused on the mother rather than on J and notes that even the possibility of B-R joining the mother in the mother and baby unit is currently speculative and that to expect the mother to be able to cope not only with B-R but also with J, who will inevitably be seriously distressed as a result of the separation from his foster carers, would be simply to set up a situation in which J would experience the distress of separation from his foster carers and be placed into a situation which was likely to prove to be short-term with all of the negative consequences for J that that would entail. She notes that at the current time J is just over the three-year age threshold when adoption stands the best chance of success. She submits (and no one disagrees with her) that the chances of a successful adoption get proportionately lower the further away from the age of three that the child gets. She submits that adjourning to enable the mother to produce a review of her progress carries with it almost no MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title prospect of that developing into a viable possibility of J being placed with her given that there is such an obvious lack of progress so far and such a poor prognosis given the mother's continuing dishonesty. Ms Morris submits that the timeframe would probably involve a six month period before the review would be received from Dr Kelly-Keogh, that would then be followed perhaps by placement of B-R with the mother in the mother and baby unit (if the review was positive) and that could not possibly evolve to J

being placed with her, given the risks to J and the burden that would place on the mother, and thus even if the mother made very positive progress throughout, it would probably be more in the nature of a year before any view could be taken that J might be placed with her. That would all assume very positive progress which currently there is no real basis to assume. That would then leave J in a position a year from now still with no permanent placement, having put down even deeper roots with his foster carers and where his prospects of being successfully adopted were ever diminishing. That, the Guardian says, cannot in any circumstances be in his best interests where the likely outcome is that the mother will not have made sufficient progress. The Legal Framework Section 38(6) Assessments

14. The court's statutory powers appear at Sections 38(6), 38(7A) and (7B) of the Children Act 1989: "38 Interim orders.
 - (6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.
 - (7) ... (7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly. (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to—
 - (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
 - (b) the issues with which the examination or other assessment would assist the court,
 - (c) the questions which the examination or other assessment would enable the court to answer,
 - (d) the evidence otherwise available,
 - (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
 - (f) the cost of the examination or other assessment, and
 - (g) any matters prescribed by Family Procedure Rules." MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title
15. Section 38(6) was twice considered by the House of Lords. Since then, subsections (7A) and (7B) have been added by amendment, but the two decisions remain determinative of the interpretation of sub-section (6). In *Re Y (a child): S. 38(6) assessment* [2018] EWCA Civ 992,

Lord Justice Peter Jackson considered the parameters of such an assessment. The Court of Appeal considered the decisions of the House of Lords in relation to the purpose and scope of such assessments. I do not intend to look further into the Court of Appeal's judgment in this respect as it is not directly germane to the issue before me. It seems to me that it is implicit within the factors identified at subparagraphs (7A) and (7B) that there is evidence before the court that such an assessment can be carried out. The evidence would usually comprise of proposals in respect of one or more mother and baby units, would identify the assessment that would be carried out on the child and the mother, the timescales and the costs. Without that information the court would be unable to perform the function that it is required to do by section 38(6). The court cannot undertake the exercise on a theoretical or hypothetical basis. Care Orders

16. In order to make a care or any public law orders, the Local Authority must prove that the situation justifies the intervention of the State. This means that the Local Authority must establish the statutory threshold set out in s.31(2) of the Children Act 1989: "A court may only make a care order or supervision order if it is satisfied- (a) (b) that the child concerned is suffering, or is likely to suffer, significant harm; and that the harm, or likelihood of harm, is attributable to- i. the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him."
17. The relevant date for determining whether the threshold is met is the date at which protective steps were first taken which in this case is July 2015.
18. It is for the Local Authority to prove that the threshold is crossed. In approaching whether the threshold has been crossed, I remind myself of what the President said in the June 2013 review from the President's Chamber, as further explored in para. 46 of Re J (A Child) [2015] EWCA Civ. 222. There, it was said that the court needs to know what the nature of the Local Authority case is, what the central factual basis of the case is, what the evidence is upon which the Local Authority relies to establish its case, what the Local Authority is asking the court and why.
19. In approaching the threshold, the court must be satisfied that the facts alleged by the Local Authority are proved by admissible evidence on the balance of probabilities. The Local Authority must then demonstrate the link between those facts and the threshold. In other words, the court must then be satisfied that those proven facts demonstrate why the child has suffered or is at risk of suffering significant harm. I observe in this case that the mother's response is not to challenge the threshold in respect of her prior failure to protect. Whilst I am alive to the President's MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title observations on proof of disputed facts I also have to take note of the history of the case and the extent to which disputed facts are documented in the papers and what I can infer from the long-standing history of this family.
20. In respect of the task of determining whether the facts have been proven, I bear in mind the Guidance given by the President in the matter of Re X (Children) (No.3)

- [2015] EWHC 3651 at paras.20-24 and that the burden of proof lies squarely on the local authority to establish on the balance of probabilities that the facts which are alleged support the threshold. All the evidence is admissible notwithstanding its hearsay nature, including Local Authority case records or social work chronologies which are often second or third hand hearsay. However, the court should bear in mind that it is hearsay and give it the weight it considers appropriate: see Section 96(3) of the Children (Admissibility of Hearsay Evidence) Order 1993 and *Re W (Fact Finding: Hearsay Evidence)* [2014] 2 FLR 703.
21. When I come to assess the evidence, I bear all of those factors in mind in reaching my conclusions on the threshold and the outcome. Outcome and Legal Framework
22. In considering the Local Authority's application for a care order, I must have regard to s.1 of the Children Act and since the plan is for adoption, also to the welfare checklist in s.1(4) of the Adoption and Children Act 2002: see *Re C (A Child) (Placement for Adoption: Judicial Approach)* [2013] EWCA Civ. 1257 and *Re R*
- [2014] EWCA Civ. 1625. I note that in *Re W-C* [2017] EWCA Civ 250 Lord Justice McFarlane said it was not necessary in a case such as this to consider the case through the prism of the s.1(3) welfare checklist but rather should focus on the ACA s.1(4) welfare checklist. Likewise, I must treat as my paramount consideration in accordance with s.1(2) of the 2002 Act, the child's welfare throughout his life.
23. Section 1(4) of the Adoption and Children Act 2002 provides: (b) (c) (d) (e) (f) "The court or adoption agency must have regard to the following matters (among others)- (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding), the child's particular needs, the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person, the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant, any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering, the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant including (i) the likelihood of any such relationship continuing and the value to the child of its doing so the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment (ii) MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title in which the child can develop and otherwise to meet the child's needs, the wishes and feelings of any of the child's relatives or of any such person regarding the child. (iii)
24. In respect of placement, s.21 of the Adoption and Children Act and s.52 apply to that application. Section 52(1)(b) provides: "The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that- (b) the welfare of the child requires the consent to be dispensed with." In this case, the father does not have parental responsibility and so, does not fall within the definition of a parent within the

meaning of s.52(6), but of course the mother does. I do, of course, take into account what the father's position is but I am not required by the statute to consider or dispense with his consent.

25. In *Re P (Placement Orders: Parental Consent)* [2008] 2 FLR 625, the Court of Appeal held that the word "requires" has a connotation of the imperative (i.e. what is demanded rather than what is merely optional or reasonable or desirable). What has to be shown is that the child's welfare throughout her life requires adoption, as opposed to something short of adoption. The child's circumstances may require statutory intervention, perhaps may even require the indefinite or long term removal of the child from the family and his or her placement with strangers, but that is not to say that the same circumstances will necessarily require that the child be adopted. The question at the end of the day is whether what is required is adoption.
26. It is for the Local Authority, since it is seeking to have J adopted, to establish that nothing else will do: see *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, *Re B-S (Adoption: Application of s.47(5))* [2013] EWCA Civ. 1146 and *Re R*. As Baroness Hale of Richmond said in *Re B*: "...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where nothing else will do."
27. This echoes what the Strasberg Court said in *Y v. The United Kingdom* [2012] 2 FLR 332: "...family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under Article 8 to insist that such ties be maintained." MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title
28. The judicial task is always to evaluate all the options and undertake a holistic evaluation of the child's need. In *Re B-S*, the Court of Appeal stressed the following three points: (1) (2) (3) "Although the child's interests are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible; the court 'must' consider all the options before coming to a decision; the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer."

29. In *Re B-S*, the court held that the following two elements are essential when the court is being asked to approve a care plan for adoption and make a non-consensual placement order or adoption order: (a) (b) There must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option; and Certainly, there must be an adequately reasoned judgment by the Judge.
30. In *Re-M-H (a child)* [2014] EWCA Civ 1396, the Court of Appeal considered the test for dispensing with consent and the ‘nothing else will do’ test. Lady Justice Macur observed that that phrase was often taken in isolation from the preceding words, referring to exceptional circumstances and the overriding requirements of the child’s best interests, and she noted that: “it stands to reason that in any contested application there will always be another option to that being sought. In some cases the alternative option will be so imperfect as to merit summary dismissal. In others, the options will be more finely balanced and will call for critical and often anxious scrutiny. However, the fact that there is another credible option worthy of examination will not mean that the test of “nothing else will do” automatically bites. The holistic balancing exercise of the available options that must be deployed in applications concerning adoption is not so as to undertake a direct comparison of what probably would be best but in order to ascertain whether or not the particular child’s welfare demands adoption. In doing so it may well be that some features of one or other option taken in isolation would produce a better outcome in one particular area for the child throughout minority and beyond. It would be intellectually dishonest not to acknowledge the benefits. But this is not to say that finding one or more benefits trumps all and means that it cannot be said that “nothing else will do”. All will depend upon the judge’s assessment of the whole picture determined by the particular characteristics and needs of the child in question no doubt often informed by the harm which she has suffered or been exposed to.”
31. It is always important to bear in mind what Mr. Justice Hedley said in *Re L*, which was that: “society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

32. That approach has been endorsed by the Supreme Court in *Re B*, where both Lord Wilson and Baroness Hale emphasised the very diverse range of parents and the diverse standards of parentings that society must be willing to tolerate: “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.”
33. Sir James Munby emphasised the task of the court in relation to carrying out the global holistic evaluation and the need to undertake a multi-faceted evaluation of the child’s welfare taking into account all the negatives and positives, all the pros and cons of each option. “What is required is a balancing exercise in which each option is evaluated to the degree of detail necessary to analyse and weigh its own internal positives and negatives, and each option is then compared side by side against the competing option or options.”
34. I must take into account J’s welfare throughout his life: the short, medium and long term welfare interests. I approach it on the basis that, if adopting a solution of permanent separation from his parents, it is on the basis that “nothing else will do” and that if a placement order is to be made, that his situation requires it rather than it being only desirable. Delay is likely to be prejudicial to his welfare, although planned and purposeful delay may be appropriate.
35. I take account of the Article 6 and Article 8 rights of J and the parents. I remind myself that, where there is a tension between the Art.8 rights of the parents on the one hand and the Art.8 rights of the child on the other, the rights of the child prevail: see *Yusuf v. The Netherlands*.
36. In determining what order to make, to the extent that it infringes the Art.8 rights of the mother and the father, the court must be satisfied that it is necessary and proportionate. Any conflict between the interests of the child and that of the parents should be resolved in favour of the solution which best promotes the child’s welfare. In determining the proportionality issue, I approach it on the basis that if, on welfare grounds, the option of placing the child with a parent is only marginally outweighed by placing them away from the parent, that may be disproportionate. Conversely, if the option of being placed away from the parent is clearly more likely to promote the child’s welfare, that will be a proportionate interference.
37. In carrying out the assessment, plainly some factors will carry far more weight than others. The balance sheet approach advocated by Lord Justice Ryder, whilst helpful, cannot convey the relative importance of any particular issue. The holistic evaluation MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title is not a map without contours, but rather one in which there are very significant features on the landscape which may ultimately come to dominate the outcome. The detailed factual background

38. In July 2014 the mother gave birth to a child, R in North Wales. In late July 2014 he was admitted to hospital with multiple soft tissue and bone injuries. On 4 August 2014 an emergency protection order was made in respect of him and on 12 August an interim care order was made. Proceedings continued to a final hearing which took place in February 2015. During the course of a four day hearing His Honour Judge Gareth Jones heard a fully contested care case where the circumstances of R's injuries were the central focus. The mother, R's father, the social worker and the Guardian gave evidence. In addition, His Honour Judge Gareth Jones had extensive documentation before him including, R's medical records, medical reports from a paediatric radiologist and a consultant paediatrician, emergency services records, police records, including interviews with the mother and father, together with statements from various witnesses. R had suffered a fracture to the left clavicle, a fracture to the right seventh rib, probable periosteal injuries to the 6/7 and 8 th ribs, together with eight areas of bruising or skin loss. R was four weeks old. The mother's case, when interviewed by police, and at the outset of the proceedings was that she did not know how the injuries had occurred and did not believe the father would have inflicted them. However by 27 October 2014 the mother's position had changed. By then she was 100% certain that R had been hurt by his father and she set out a number of incidents prior to R's admission to hospital when she had seen the father handling R roughly. The father also gave evidence. He was treated as a vulnerable witness as a result of a report from a clinical psychologist and special measures were implemented to enable him to give his evidence. He gave evidence that the mother had handled R roughly but did not describe any incident which could have accounted for the injuries R had sustained. He did not directly allege that the mother had hurt R. The judge concluded that what happened to R was a closed secret known only to the mother and the father and that R had sustained his injuries on 31 July 2014 while in the care of the mother and the father. He could not identify on the evidence which parent was responsible. One or other of them inflicted the injuries to R. The judge concluded that each of them knows what has happened but both have chosen to keep silent for reasons of their own. The failure to protect R was considered very significant. The risk to R if he was returned to either of them could not be evaluated but given the other difficulties the judge had outlined he concluded they could not cope with him in the future and cope with him safely. Safety was the dominant feature. Thus Care and Placement orders were made and subsequently R has been adopted.
39. By the time of that final hearing the mother was pregnant. In late March 2015, the mother travelled to the Republic of Ireland where she gave birth to J. J was made subject to protection by the Garda shortly after his birth, but an application for an emergency care order was refused in July 2015 because the mother agreed to place J in voluntary care. A further application for an interim care order two days later was refused on the same basis. J has remained with the same short-term foster carers ever since, and has been having frequent, regular contact with his mother.

40. In circumstances of which I'm not entirely clear on 29 July 2016, a fresh application was brought by the Child and Family Agency for an interim care order and a care MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title order. It may be that the mother had indicated an intention to withdraw her consent to voluntary care or it may simply be that by this stage, as a result of assessments, the CFA had concluded that proceedings were necessary to determine J's medium to long-term future. On 9 August 2016 an interim care order was made. It is clear from the judgment of Judge Brendan Toale delivered on 6 October 2017 (see paragraphs 27 and 29 in particular) that the interim care order was made on the basis of the apprehended risk arising by virtue of what had been found to have occurred to R.
41. Over the course of 2016-17 there have been two psychological assessments: an assessment of the mother by Dr Joanne Kelly-Keogh; and an assessment of attachment by Mrs Jacinta Nolan.
42. It appears that the early stages of the Irish proceedings were taken up with a dispute over jurisdiction, with the Irish court concluding on 1 March 2017 that as at 29 July 2016 J had had no habitual residence. On 3 May 2017, the Irish court determined that the Irish court had jurisdiction pursuant to article 13 BIIa, namely due to J's physical presence in Ireland. On 9 May 2017, the CFA issued an application for transfer of the proceedings to England and Wales pursuant to article 15. On 4 October 2017, a hearing took place before Judge Toale and on 6 October 2017 Judge Toale concluded that the first two of the three requirements set out in article 15(1) were satisfied, in that J had a substantial connection with England and Wales and that the courts of England and Wales were better placed to carry out that function. On 11 December 2017, Judge Toale delivered a further judgment on the article 15 transfer. In that judgment, he determined the third criteria in article 15(1) namely whether it was in J's best interests for a request to be made for the courts of England and Wales to assume jurisdiction. In that judgment he concluded that it was in J's best interests for such a request to be made. Judge Toale made an order on 11 December 2017 directing the CFA to introduce an article 15 request to the courts of England and Wales but stayed the making of that request until 5 January 2018. No party sought to appeal that decision and so on 5 January, the stay lapsed.
43. Thus, on 23 January 2018, an application was made to me, pursuant to article 15(5), inviting the courts of England and Wales to assume jurisdiction.
44. Unfortunately, the determination of the request then ran into the sands. On 29 January 2018, the mother commenced an application for judicial review of Judge Toale's decision and Mr Justice Noonan in the High Court of Ireland granted a stay and injunctions which had the effect of putting the article 15 request on hold. In response to that order on 12 February 2018, Mr Justice Cobb stayed the transfer request and vacated the hearing listed for 21 February. One consequence of vacating the hearing on 21 February 2018 was that the six week time limit specified in article 15(5) could no longer be met. On 15 March 2018, Mr Justice Barrett in the High Court of Ireland dismissed the judicial review proceedings. He

therefore refused the application for judicial review and released the stay and injunctions in respect of the transfer. On 18 April 2018, Mr Justice Keehan restored the transfer request for hearing on 23 May 2018.

45. The matter came before me on 23 May 2018 but could not be completed then. I gave judgment on the article 15 transfer request on 5 June 2018. I accepted the transfer. On 26 June 2018 I made further orders which provided for J to be a ward of the court and to remain placed in the care of the same Irish foster carers pending the final determination of these proceedings. I made further orders on 3 September 2018 and 2 MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title October 2018. By that time the local authority had sent the application for a care order to be issued by the CFC on 28 September 2018. Subsequently an application for a placement order was sent on 12 October 2018 to the CFC to be issued. At the issues resolution hearing on 2 October 2018, the mother foreshadowed an application pursuant to section 38(6) Children Act 1989 for a direction that she and J be assessed in a mother and baby unit in Ireland. She confirmed that she did not seek to reopen the findings that were made by His Honour Judge Gareth Jones in 2015.
46. By then, the mother had given birth to B-R - he was born on in August 2018. On 28 August 2018, the CFA applied for an interim care order which was granted. The mother was having contact with B-R five days per week for two hours. This has recently been reduced to 3 days per week for three hours. DNA tests confirmed B-R paternity by a man living in Ireland and for a short period B-R was placed in the care of the paternal grandmother. However, it then came to light that she had allegedly withheld information about the father that was highly relevant to the proceedings and so on 21 September 2018, B-R was removed from her care and returned to foster care. On that same day the Irish court approved the placement of the mother at a mother and baby unit and the mother moved into part of the unit in early October. Evidence and Assessments
47. I have been provided with some six lever arch files of documentation which includes a considerable amount of documentation from the Irish proceedings as well as information from previous proceedings concerning the mother and father in North Wales. At the commencement of the hearing, I invited the parties to agree the essential reading and I have been able to undertake most of that, together with consideration of various other documents to which I have been referred throughout the hearing.
48. I have had the benefit of position statements on behalf of each of the parties. I have heard evidence from
 - a. Ms Jacinta Nolan, the Irish child psychologist
 - b. AM, the Irish social worker
 - c. LK, the Irish foster carers' link worker
 - d. JNJ, the Welsh social worker e. the Guardian

49. I have not heard from the mother. That is most unfortunate as I would very much have welcomed the opportunity to hear from her. I understand the pressure which is on her at the moment, with a new baby, and her desire to make the most of contact with each child. However that is a rather short term view given the importance of this case to the future of J, but also probably B-R. It is an indication, albeit perhaps only a small one, that the mother has not made much progress in being able to face up to the consequences of decisions she has taken. Nor have I heard from Dr Kelly-Keogh who was not available to give evidence. A detailed list of questions was sent to Dr Kelly-Keogh, but due to her workload she has been unable to answer those questions in time for this hearing.
50. A psychological assessment was undertaken by Jacinta Nolan in Ireland in November
2017. She noted that J has an engaging, secure attachment with his foster carers. His primary attachment figure is his foster father. She concluded that they were meeting MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title all of his psychological and emotional needs. She considers that he will suffer significant distress when separated from his foster carers and their two children leaving him with a sense of rejection, abandonment and, possibly, guilt. She said it was imperative that his new carers are able to acknowledge, understand and respond sensitively to J's internal and external struggle arising from his move from his primary attachment figures. The matching would be significant. Ms Nolan's preference, in terms of J's welfare, was for him to remain with his current foster carers, but she acknowledged that they were a short-term option only. She noted that his best psychological and emotional interests can and will only be served if he moves from his current placement to a long-term placement.
51. Ms Nolan observed four sessions of contact between J and the mother. She noted that they enjoyed pleasant interactive contact which demonstrated a connection with each other. She noted that J did not demonstrate upset on leaving contact.
52. Dr Joanne Kelly-Keogh, a registered psychologist, assessed the mother in June 2016. The following are some of the salient points from her report
- a. The mother has a history of poor employment and educational attainments;
 - b. she has experienced relationships where she was abused physically and verbally. She entered a relationship with R's father, knowing that he had a history of physical violence in intimate relations;
 - c. her account of how R was injured has changed several times, from not knowing, to making presumptions, to stating that she saw R's father pull him across the carpet;
 - d. she meets the criteria for avoidant personality disorder in that there is a pervasive pattern of social inhibition, feelings of inadequacy and hypersensitivity to negative evaluation beginning in early adult life and present in a variety of contexts. She also demonstrates traits of dependent personality disorder. A particular feature of this is remaining in abusive relationships. She also exhibits traits of schizoid personality. she has a poor capacity for

reflective functioning which limits her ability to feel secure or to provide security for any children; she has an IQ in the low average range but her working memory is strong. She invalidated certain psychometric tests due to faking good; e. f.

- g. overall her personality structure is dysfunctional with particular issues connected with a frail personality and the issue of abusive relationships together with her need to have a child to fill her sense of emptiness. The psychologist was concerned about her lack of honesty and openness, her failure to protect her oldest son and that even after 30+ counselling sessions she has not been able to make progress in understanding the links between her childhood and her present personality characteristics; the psychologist was of the view that the mother did not present as a protective parent, she is psychologically vulnerable and lacks openness. She also continues to show a lack of empathy for her son R's injuries and has shallow reflective abilities. She considered the mother to be at high risk of entering into another abusive relationship and the possibility of failing to protect her child should this happen. h.
53. AM's evidence is contained in a number of affidavits which she has filed in the district court of the Dublin Metropolitan District together with a statement filed in this court and social work reports filed with the Dublin court. Prior to AM's involvement, MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title a different social worker, LD, had fulfilled the social work function in Ireland. Some of the salient features of AM's evidence are as follows
- a. when the CFA were first involved with the mother, she told them that her b. older child was being looked after by the maternal grandfather in Wales. She also told them that she was not aware that she was pregnant when she arrived in Ireland. AM had reached the conclusion that the mother had deliberately concealed her involvement with social services in Wales and had sought to mislead Irish social services. They concluded that she had continued to be deliberately dishonest in relation to the accounts given about the injury to R although she has been committed to attending access with J and was supportive of the relationship that J had with his foster carers; following receipt of the report from Dr Kelly-Keogh, it seems that no further therapy was undertaken with the mother. The evidence suggests that this was for a number of reasons: first of all, funding in Ireland was refused on the basis that it was planned to apply for a transfer of the proceedings to Wales and so it would be more appropriate for her to engage in long-term therapy in Wales. It was also the case that the mother, at some point, had said that she did not consider that she needed further therapy in addition to that which she had undertaken prior to having seen Dr Kelly-Keogh. It was said that the mother could have appealed against the refusal of therapy but did not do so. I agree with Ms Smith that this is a somewhat harsh position for the CFA to take, given what is known about the mother's cognitive functioning. However the net result is that the mother has not undertaken any therapy between 2016 and 2018;

- c. during the pre-birth assessment in respect of B-R, the mother showed very limited insight and capacity to reflect on the injuries sustained by R whilst in her care. This indicated that in the more than three years since the hearing before His Honour Judge Gareth Jones the mother's position has altered little;
 - d. since the mother has been having contact with B-R, there have been some concerns about her understanding of child development. The example given was that the mother was saying that B-R was able to hold his bottle himself when he was some two weeks old. Given his age this was not possible and the supervisors were concerned about her lack of understanding of a young baby's development; f.
 - e. AM consulted with Dr Kelly-Keogh regarding a review of the mother. Dr Kelly-Keogh advised that the mother should engage in therapy in order to enable her to carry out a meaningful review of whether there had been a change in the level of risk posed by the mother. Dr Kelly-Keogh recommended EMDR therapy saying she needed to attend a minimum of 24 sessions of therapy; the mother attended one session but refused to then work with the male counsellor. The therapy was due to commence on the 29th of May 2018 but many of the sessions had been rescheduled, missed or cancelled due to the mother being unwell. As at the end of August 2018, the mother had attended three sessions; the person providing the EMDR was changed to a female therapist, given the mother's concerns about the previous person providing that. She has now attended 7 sessions and it is noted that Dr Kelly-Keogh recommended she undertake 24 before a review would be appropriate; g. MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title h. AM was very concerned about the possibility of J being placed with the mother in the mother and baby unit. She said that if that were done, the CFA would not consider placing B-R with the mother.
54. LK is the link worker with the foster care family in Ireland, who have cared for J since shortly after he was born. She confirmed that they were absolutely clear that they could not offer J a long-term home. They were content to maintain his placement until a long-term home was found for him, but there is no question of them undertaking that long-term role.
55. JNJ's evidence is contained in the following documents and was supplemented by her oral evidence
- a. the section 37 report prepared following my initial decision to accept the transfer;
 - b. a risk and parenting assessment in respect of the mother;
 - c. a statement dealing with the parenting assessment of the father; d. the care plan;
 - e. a final statement; f. a placement options analysis.
56. She travelled to Ireland and saw the mother on 10 July 2018. She says the mother presented as engaging, polite and pleasant. However, the following emerged from their discussions.

- a. having regard to other contemporaneous information, the mother's assertion that she was unaware that she was pregnant when she left for Ireland in March 2015, was not considered to be honest;
 - b. she maintained that R's father was J's father despite the DNA testing proving c. he has a different father; the circumstances of her relationship with B-R's father and her pregnancy suggested that she continued to make poor choices in terms of her relationships with men who were controlling or worse.
57. Some of the relevant aspects of JNJ's evidence are as follows: a. b. the mother's relationship with B-R's father, which she complains was sexually and physically abusive, shows that the mother continues to engage in relationships with inappropriate partners. Dr Kelly-Keogh identified this as a concern in 2016 and it appears that the mother continues to be unaware of the risks for her and any child of engaging in such a relationship. JNJ notes that although the mother said the relationship with B-R's father ended in December 2017, she was still trying to contact him in April. Thus it is early days for the mother in looking at her propensity to become involved in inappropriate relationships with individuals such as the three fathers of her children; the mother has an understanding of and can provide basic care needs to a good enough standard during supervised contacts. She clearly loves J. However she is not well attuned to the developing needs of J. An example given was that she does not prompt him to use the potty, but relies on him to tell her, which results in accidents happening. It is noted that she continues to need to be coached by the supervisors about fairly basic tasks and JNJ infers that the mother is not progressing in the way that one would expect, in terms of MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title recognising a child's developing needs. The mother demonstrates a knowledge of basic safety issues but is still unable to account for the injuries sustained by R and gives inconsistent accounts of how they occurred and her knowledge. There is an emotional relationship between the mother and J, but it has not developed in the way that it might have done given the amount of contact which has been taking place for 2 hours, three times a week for some three years or more (recently changed to twice a week for 2 ½ hours, following J starting at playschool). The mother tends to be reactive to J's needs rather than being proactive. She does on occasions bring toys or home-cooked food. The parenting assessment concludes that whilst the mother is able to meet J's basic needs during supervised and highly supported contacts, there is an over- arching concern about her capacity to keep J safe from harm. There are concerns about her ability to protect J, in relation to her adult relationships, but also in relation to her lack of empathy for R and his injuries. There are concerns about her honesty and her denial about the true identity of J's father. Further, there are concerns about her ability to look after J's needs away from the highly supported contact that she has. She is unable to forward plan. Overall, JNJ does not believe that the mother would be able to sustain any necessary changes required to appropriately parent and safeguard J within timescales which are in his interests; e.
- c. at present, very little progress has been made in relation to mother's therapy;

- d. viability assessments in respect of relatives have demonstrated that neither the mother's sister, nor her mother, nor her father provide realistic options in respect of J's future care. This is based on both current views and also historic information known about those individuals at the time of R's proceedings. JNJ notes that none of the family members have come forward seeking to be further assessed; JNJ's attempts to contact the father resulted in very little progress. He sent a message saying that he was not in a suitable situation to look after J, but, if possible, he was more than happy to be involved in contact. When she was able to speak to him, the father would not contemplate contact being supervised and so no progress was possible on that front. He told JNJ that he would rather J be adopted than go back to the mother. Information from another local authority raises concerns about historic allegations having been made against him in respect of sexual and physical assaults against children and adults and a history of illicit substance misuse. Together with the previous findings made against him, in proceedings relating to his daughter in North Wales, the local authority did not consider he would be an appropriate parent. In any event he had not put himself forward.
58. JNJ's final statement addresses the welfare checklist factors. It is clear that J is currently a happy little boy who is attached to both his carers. He has had some speech and language therapy which has been improving his speech. Although there have been various concerns over J's health so far, no serious issues have emerged. The most significant issues for J will be the change that will be necessary as a result of a move from his short-term foster carers and the significance of the harm that J would be at risk of, if returned to his mother. The local authority have concluded that although the mother may be able to meet some of J's needs in supervised contact, she could not meet his need to be kept safe and secure, if he were to be placed with her. MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title Given the absence of any other family carer the only options would be long-term foster care or adoption.
59. In her placement options analysis, JNJ explores the pros and cons of long-term foster care under a care order, a placement order and adoption, placement with mother, placement with father, kinship care and remaining with the current foster carers. It will be apparent from much that I have already said that in fact several of the options she explores have no merit at all because the father is not putting himself forward, nor are any family members, nor are the Shorts, the foster carers, prepared to offer a long-term home. The local authority have ruled out the mother as a potential carer because of the risk factors and do not support an adjournment because of the poor prognosis in respect of the mother and the delay that would result from adjournment. The local authority assessment of the pros and cons of long-term foster care is that whilst J would retain his link with his family and would have a long-term home, he would not have the permanence that he needs. Adoption is the preferred option because it will provide a forever home for him and he is still at an age where he could be expected to make a successful transition to a permanent adoptive placement. Of course the downside is that he will lose direct contact with his mother and wider family (although I am told that there is some prospect for him to keep a connection

with R).

60. The care plan sets out how the local authority's adoption plan will be implemented. It will need some adjustment to reflect the adoption support work that will be required given the unusual circumstances in which J will be adopted; namely that he has not sustained abuse, rather has experienced very good care, but will experience his separation from his foster carers as something akin to a bereavement. The evidence suggests that at his age a placement is a real probability and is likely to take place within 3 to 6 months. The care plan provides for a reduction in the mother's contact to once weekly for a month, then once fortnightly, and then once monthly until placement. A goodbye visit will take place.
61. The mother's recent statement asserts that R's father had never hurt R and so it had never occurred to her that he would do so. This is in contrast to the contents of her statement of 27 October 2014, when she identified several occasions either when R's father had hurt R or had behaved in a way which was very concerning, and she admits that she failed to protect R. Further, she denies being dishonest about her pregnancy at the time she left the Wales and denies travelling to Ireland in order to flee the authorities. However, given the evidence both from Ireland, the findings of the Irish court and the documentary evidence, it is plain that the mother is not telling the truth in this respect. Curiously the mother still maintains that the father is not J's father and she maintains that no sexual activity has ever taken place. Given the DNA results and the content of certain evidence from 2015, this is hard to understand. The mother additionally says that she is having positive contact with J and that they have a close bond. She says that she believes that J should be placed with her in the mother and baby unit and if, after three months, it is not successful, then that should be her 'last chance'. Her preference is for J being placed with her, but in default she would prefer long-term foster care to adoption. She also proposed long-term care with her sister (but see Paragraph 57(d) above for the negative assessment of her sister).
62. The Guardian gave evidence and provided a written report dated 11 October 2018. Although she had made arrangements to travel to Ireland to meet the mother, J, his MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title foster carers and the Irish social work team, she was unable to undertake the visit because of ill-health. She makes the following points:
 - a. J has no understanding of these proceedings or why he is a looked after child. He has lived with his foster carers all his life and has had contact with his mother for limited periods three times a week. He has experienced uncertainty and delay because of the issues over jurisdiction. She considers that the delay he has experienced is totally unacceptable. I agree;
 - b. he needs a permanent home in a loving family who will be able to support him adjusting to the loss he will experience moving away from his foster carers. He will have no understanding of why he cannot remain living with them and the Guardian concludes that he may experience rejection, abandonment and possible guilt and it is likely that these will express themselves in his behaviour; she says he is robust and resilient, affectionate and playful. He eats well. He is a good sleeper and is a lovable and sociable little boy. He has met

his half- brother R, and has a toy truck which R gave him when they met; c.

- d. she considers that any family who J lives with will need to have specific skills to support him make the transition away from his foster carers. Therapeutic intervention will be likely needed;
 - e. having considered the evidence from the previous proceedings, the assessments in Ireland and the mother's current position, the Guardian does not believe that the mother is capable of resuming care of J. She considers that he would remain at risk of significant harm should he be returned to his mother, both because she failed to protect R but also because she remains dishonest, lacks empathy for R and has only recently commenced one part of the intensive therapy recommended by Dr Kelly-Keogh. She considers that the mother has demonstrated very little, if any, progress since 2015 and thus she does not recommend any adjournment to review the mother's progress in six months' time; she does not support placement of J in long-term foster care because it will not give him the forever family that he so needs. She considers that adoption is necessary and proportionate given the risks his mother poses and the advantages that adoption has over any other option; f.
 - g. she concludes that a placement order with the prospect of an adopted family is the best option for J. If a placement cannot be found within six months then consideration should be given to long term fostering. Conclusions Section 38(6) application.
63. The main difficulty that the mother faces in relation to her application for a section 38(6) assessment is that there is no unit identified which can, or will, undertake such an assessment. The mother and baby unit in Ireland, which is where the mother proposes that the assessment be carried out, has not confirmed either to the mother directly, to her solicitors, to the local authority or to the CFA that they will carry out such an assessment. The proposal made by the mother is pure speculation without any evidential foundation at all. There is thus no information about how they would carry out an assessment, the costs, the timescales, or anything else that would enable me to consider the application in the way that the Children Act mandates I should. All counsel accepted that it is in effect a precondition to a section 38(6) assessment that a MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title resource has been identified who are able to carry out the assessment and who have provided the information that is required by the statute. In those circumstances the mother's application simply cannot get out of the starting blocks. Part of the difficulty arises from the cross-border issue. The mother is in Ireland, as is J. The unit is in Ireland, and the CFA are proposing to consider placing B-R at the unit but will not do so if this court were to consider placing J there and, of course, the process of seeking to obtain information from an Irish unit by English solicitors involves an unfamiliar interface. On a practical level this highlights the difficulties which arise in article 15 transfer cases where the child does remain in the court of original jurisdiction. It also, on a human level, illustrates the impossible position that the mother has found herself in, indeed has placed herself in, by fleeing to Ireland when heavily pregnant and where the child has subsequently become the subject of Welsh proceedings; and she has then had a further

child who has become the subject of Irish proceedings. The outcome is that the mother's section 38(6) application is dismissed because there is no basis upon which I could properly make an order for the assessment of J and the mother at any unit. Had the jurisdictional issue not been in play in Ireland, I wonder whether the mother would have been considered for a mother and baby unit in Ireland in 2015 or 2016, in which case J's story might have been different. However, this again illustrates one of the consequences of fleeing from one jurisdiction to another; the jurisdictional limbo which can then arise has real-life consequences in terms of the options which may be available to the courts and the timeframes within which they are implemented. Had the mother not fled to Ireland, but had remained in Wales, perhaps she and J would have entered a mother and baby unit in July 2015 and who knows where we would be now. However that is not what happened. I dismissed the mother's application. Threshold

64. I have distilled from the threshold document what I consider to be the essential elements above. The mother accepts that she failed to protect R. However she also remains in the pool of possible perpetrators of the very serious injuries that R sustained. There is nothing in the evidence that I have read or heard that would provide any basis for revisiting that conclusion. The evidence of Dr Kelly-Keogh is that the mother presents significant risks to any child who she was caring for, both in relation to the risk of the mother embarking on abusive relationships but also in her own inability to empathise with a child and to behave in an attuned way to a child. The evidence is that the mother has only just commenced therapy and thus will have made little, if any, progress since 2016. It is clear from her recent statement that she remains in denial about the circumstances of R's injuries and has little insight into her own problems. There is nothing in her statement that suggests she has gained any insight over the last three years. I'm satisfied that, as at July 2015, J was at risk of suffering significant harm from his mother as a result of the parenting that she would have given to him being not that which it would be reasonable for a parent to give.
65. The threshold being crossed, what outcome is in J's best interests? Given no other relative is available to care for J and the Irish foster carers cannot do so, the only options are either a return to the mother or being cared for by the local authority. Given that the mother does not pursue an immediate return but rather seeks an adjournment in order to allow her to undertake therapy, it is that option which is the one which I must now consider. The alternative options are under the auspices of a care order with two possible options, namely long-term foster care, or adoption. MR JUSTICE WILLIAMS Approved Judgment Outcome Double-click to enter the short title
66. In reaching my conclusions in respect of these issues, I bear in mind very much that J's welfare is the paramount consideration and I take into account the section 1(4) adoption welfare checklist. I also very much have in mind that adoption should only be authorised where nothing else will do, in the sense that it is required by the child's overriding welfare interests because there is no other realistic placement option for the child. In undertaking a holistic evaluation, I take into account all of the evidence that I have read and in particular

those factors I have set out in this judgment. I bear in mind the arguments addressed to me on behalf of the local authority, the mother and the Guardian.

67. Adjourning the matter to a further assessment has the potential advantage to J of his being able to live with his mother in the future. This would be a huge advantage to him. It is probably what he would want. It would enable him to maintain a relationship with his younger brother B-R (assuming B-R were placed with the mother) and also the wider maternal and possibly paternal families.
68. If that were a realistic option, it would not only be preferable to adoption but it would be disproportionate to pursue adoption.
69. Adoption has the undoubted disadvantage of permanently severing J's ties with his mother and his extended family. Although some contact may be possible between J and R and, depending on what happens to B-R, those relationships will be bound to be limited. On the other hand, adoption has the advantage of providing J with a forever family. He is at an age where he could be expected to make that transition, notwithstanding the very considerable sense of loss he will experience as a result of leaving the foster carers to whom he has grown so attached.
70. Long-term foster care would provide him with the possibility of a forever family but not of the sort an adoptive placement would entail. It would allow the maintenance of a greater degree of relationship with his mother and the extended family but that would come with a far greater risk of placement breakdown, given we are looking at a 15 year period.
71. In the 3 ½ years since the mother was found to have been in the pool of possible perpetrators of the very serious injuries that R sustained, or to have failed to protect him, there is little evidence that she has changed. Indeed immediately after she fled from Wales to Ireland with her unborn child and as a result of her actions J has found himself in limbo for the last three years and three months. When she arrived in Ireland she was dishonest with the authorities there. The assessment of Dr Kelly-Keogh in 2016 identified various areas of the mother's functioning which were of serious concern and which required extensive therapy to address. By the time Dr Kelly-Keogh saw her she had had 35 sessions of counselling, but she had not even begun to address the serious issues which underpinned the concerns over the safety of a child with her. Dr Kelly-Keogh was concerned in 2016 that she had not begun to unpack those issues. It is clear that the mother has not made much, if any, progress in the two years since, in addressing them. Although therapy was not funded by the CFA, it does not appear that the mother has made any independent efforts through any source to obtain that sort of therapeutic input. AM, the Irish social worker, said the mother did not think she needed any. It was only as a result of her becoming pregnant with a MR JUSTICE WILLIAMS Approved Judgment Double-click to enter the short title third child, and the CFA's further involvement, that she has made any progress in a therapeutic context. That is against a backdrop of her having embarked upon a further relationship with a man who she says has been physically and sexually abusive to her and has conceived a

child with him. Given that this was a principal concern both in the 2015 proceedings and in Dr Kelly-Keogh's report, it suggests that the mother has not taken on board, to any extent at all, the concerns about her choice of partners and her choice of fathers to her children. It is clear from her statement that she continues to be in denial about the circumstances of R's injuries and the circumstances in which she came to Ireland. That is a very poor starting place for making significant progress in therapy. It would be essential, both for assessment within the mother and baby unit, but more importantly for therapy, that the mother is honest about what has happened in the past. No progress or no significant progress can be expected without honesty on the mother's part. Given the extent of the concerns about the mother it seems to me that she faces a long road ahead in terms of therapy before she could potentially put herself in a position to care for J. I do not believe that at the completion of the remainder of the 24 EMDR sessions that she will be in any position to offer to care for J. Given the very serious concerns about J being placed in another interim placement there is in my view no merit at all in any consideration being given to his placement with the mother, even if some positive progress were made in six months. If she does make positive progress in the next 3 to 6 months, she might be in a position where B-R can be placed with her on more than simply an assessment basis. I do not expect, given the deep-rooted concerns not only about safety but about her attunement with children and ability to recognise their needs, that there is any prospect at all of her being able to take on the care of B-R and J at that stage. It seems to me that the earliest that one might expect the court to be in a position, even to assess whether the mother could resume care of J, would be in about a year's time. Given that 3 ½ years have passed since the judgment in R's case of His Honour Judge Gareth Jones and the lack of progress that the mother has made in addressing the concerns that arose then; and given that over two years have passed since Dr Kelly-Keogh filed her report and the mother has made no real progress in addressing those issues, the prospect that she will make rapid progress so as to place herself in a position, even in a year's time to potentially offer a home to J, is optimistic to say the least.

72. Thus one is looking at probably 6 months (at the minimum) to 12 months of more delay in order to allow the mother the opportunity to make progress in therapy. Given the probability of significant progress is modest, and that huge progress would be required in order to put herself in a position to realistically be able to care for J at that stage, the probability is that in a year's time this court would still be looking at an alternative long-term outcome for J. It would require progress of a magnitude which appears to be wildly optimistic on the basis of her past track record to put herself in a position to be able, then, to care for J. That would then mean that J would be facing a permanent placement away from his mother but would be a year older and would be a year more attached to his foster carers, and a year less probable in terms of a successful adoption.
73. Balancing all of those factors leads me to the clear conclusion that J's welfare requires that a decision be taken today and that no further delay be permitted. Particularly delay with only a wholly speculative prospect of success. J has been in care for far longer than he should have been. I do not intend to ascribe blame for this but the MR JUSTICE WILLIAMS

Approved Judgment Double-click to enter the short title reality is that he has lived his formative years in a home that was known to be a short- term home and has developed secure attachments to individuals who were never intended to be his long term carers. For him to stay in that placement for very much longer will mean that his attachment to them will grow even stronger and it will be even less understandable to him when he comes to move from them. He very much needs a long-term placement and is at a very important age. The only realistic long- term home available to him at the moment is either in long-term foster care under a care order or with an adoptive family under a care order. The benefits to him of an adoptive placement far outweigh the disadvantages of that, or the advantages of him being in a long-term foster family. He desperately needs a forever family. He currently will be able to make that transition, albeit not without cost. Any further delay I think would be unconscionable and would mean moving him in a way which would in itself result in truly significant emotional harm being experienced by him. Whilst I have some sympathy for the mother personally in that the resources have not been offered to her previously to enable her to make progress in addressing her difficulties, at the same time she must bear significant responsibility for this situation. It was she who chose to flee to Ireland to avoid local authority involvement. J should not pay the price of giving the mother a further opportunity. Giving her a further opportunity leaves J in limbo and with no real prospect of the delay leading to it being viable to place him with the mother on a permanent basis within any sort of reasonable timescale. In particular J's needs, the likely effect on J throughout his life of ceasing to be a member of the mother's family, his age, the harm which he is at risk of suffering and the relationship he has with his mother are all factored into this. In this holistic evaluation the most prominent features on the landscape are the risks that his mother continues to pose to him and which are as large as before and are so far unaddressed, his age and the prospect of successful long-term placement, the absence of any deep or meaningful relationship with any other relatives and the likely effects on him of ceasing to be a member of his original family and becoming an adopted child.

74. I therefore agree with the submissions of the local authority and of the Guardian and will refuse the mother's application for an adjournment of the decision-making in relation to J. Having ruled out adjournment as a realistic option at the present time the only realistic option for J is a care order on the basis of a plan for adoption. As it happens this is not simply the only realistic option, it is far and away the best option for J, given the situation he finds himself in. Making a care order and placement order is both necessary and proportionate. I consider that his welfare requires that the mother's consent be dispensed with. I do not need to dispense with his father's consent as his father does not have parental responsibility for him.
75. That is my judgment.

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