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## Re D (A Child) (No 3) [2016] EWFC 1

**Care proceedings in which Munby P sets out key principles to consider in cases involving parents with learning disabilities.**

Munby P considered the case of a child, D, who was previously the subject of care proceedings, concluding in 2012, which resulted in a full care order with a care plan to remain at home with his parents. Both parents had learning difficulties, as did the child, and the child was supported in his parents' care with intensive professional input.

New proceedings were then issued in early 2014 when the local authority concluded the parents were no longer able to safely parent D. Under the pre-existing 2012 care order the local authority sought to remove the child from the parents' care, so the case came before the courts on the parents' injunctive application to prevent this. The local authority then applied for a recovery order. The parents' application did not succeed and the local authority was granted a recovery order, so the proceedings continued from April 2014 with D placed in foster care.

Thereafter, progress was delayed due to issues with public funding for the parents and due to a possible alternative carer coming forward and then withdrawing from consideration. Thus the final hearing only took place in November 2015, with the local authority and guardian inviting the court to sanction D's adoption and the parents seeking his return to their care.

### Facts

The central issue in the case was that each of the parents, as well as D, suffered from learning difficulties that affected the parents' capacity to care for D and also meant that D's needs were more significant than usual.

A package of support had been in place since the end of the 2012 proceedings but in early 2014 the Local Authority concluded this was not working. There was in fact no acute incident or substantial change in the family circumstances or the parents' abilities or engagement. This point was of central concern, the parents arguing with some force that it did not make sense and was not fair for the local authority to change its stance without a relevant change in the facts. Munby P noted at [125] *'the parents are today...the same parents as they were in...2012.'*

Ultimately, though, Munby P concluded that the care plan devised and implemented in 2012, which the guardian at the time described as *'courageous'* in its ambitions to support D remaining with his parents, *'turned out to be too courageous...the local authority's expectations of the parents had turned out to be unrealistic.'* [160] This became increasingly apparent as time went by and it was in early 2014 that the local authority *'admitted defeat'*. The court accepted the position of the local authority and the guardian that it was not in fact possible to put in place a package of support that would *'bridge the gap'* between what the parents were able to offer D and what D needed. [155]

### Principles

Although the fundamental analysis at the heart of the case was a familiar and simple one – whether there was a package of support that could keep D safe in his parents' care in the long-term – it was nonetheless an immensely difficult analytical process, one Munby P described as *'by some margin the most difficult and unusual care case I have ever had to try.'* [123]

There are a number of important points of principle either highlighted or endorsed in the judgment, as to how to approach cases where the parents have learning difficulties:

1. Munby P endorsed at [25] what is said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

"...It is not enough to show that a child could be placed in a more beneficial environment for his upbringing..."

2. Munby P endorsed at [26] the well-known passage from Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

"society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... 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."

3. Munby P highlighted for the first time at [27] 'the profoundly important of observations' of Gillen J, as he then was, sitting in the Family Division of the High Court of Justice in Northern Ireland, in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8. Gillen J set out in 8 paragraphs some key points of principle that 'must be taken into account by courts when determining cases such as this involving parents with a learning disability particularly where they parent children who also have a learning disability.'

Munby P entirely endorsed those 8 paragraphs, to the extent that he appended them in full to the end of his judgment, saying at [28] '*I commend his powerful words to every family judge, to every local authority and to every family justice professional in this jurisdiction.*'

Key points emerging from those 8 paragraphs are as follows:

a. People with a learning disability are individuals first and foremost and each has a right to be treated as an equal citizen...courts must take all steps possible to ensure that people with a learning disability are able to actively participate in decisions affecting their lives. [164.2]

b. Parents with learning difficulties can often be "good enough" parents when provided with the ongoing... support they need. The concept of "parenting with support" must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties. [164.4]

c. Judges must make absolutely certain that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence that would not hold up against normal parents. Their competences must not be judged against stricter criteria or harsher standards than other parents. [164.4]

d. Too narrow a focus must not be placed exclusively on the child's welfare with an accompanying failure to address parents' needs arising from their disability which might impact adversely on their parenting capacity. [164.5]

e. The court must also take steps to ensure there are no barriers to justice within the process itself. Judges and magistrates must recognise that parents with learning disabilities need extra time with solicitors so that everything can be carefully explained to them...The process necessarily has to be slowed down to give such parents a better chance to understand and participate. This approach should be echoed throughout the whole system including LAC reviews (emphasis added). [164.6]

f. All parts of the Family justice system should take care as to the language and vocabulary that is utilised. [164.6]

g. The courts must be careful to ensure that the supposed inability of parents to change might itself be an artefact of professionals' ineffectiveness in engaging with the parents in appropriate terms. [164.6]

h. A shift must be made from the old assumption that adults with learning difficulties could not parent to a process of questioning why appropriate levels of support are not provided to them so that they can parent successfully...The concept of "parenting with support" must move from the margins to the mainstream in court determinations. [164.7]

If it is possible to extract one principle above the others from Gillen J's 8 paragraphs it is perhaps the importance of the concept of '*parenting with support*.' Munby P addresses this specifically at [152], saying the concept is '*crucial*', and represents the positive and broad obligation upon the state to provide the specific support that is needed for parents to retain the care of their child(ren).

The question would then become whether the parents, if provided with all the necessary support and services, would be able to provide their child(ren) with adequate care and parenting in a setting which promotes their welfare and does not cause harm. [153]

4. Per [142-3] there is a risk of getting lost in semantics in cases where a child has unusual needs, and where focus is put on whether the child needs '*good enough*' parenting or '*better than good enough*' parenting. Munby P preferred not to rely on this distinction and instead explained that in circumstances where a child has needs beyond those of a normal child then what constitutes '*good enough*' parenting, for that particular child, is different from what it might be in other cases.

5. Potential arguments for future consideration for practitioners (although not successful in the circumstances of this case they were nonetheless favourably endorsed by Munby P at [156]) were made on behalf of the mother and are set out at [116 -119]. In essence, their focus is on the point that a child should not be removed simply because the package of support in place is so extensive that a substantial amount of the practical parenting tasks are shared with professionals. '*Reasonable adjustments*' may be very extensive, but '*the fact that such adjustments are made, and that such parents may be receiving a high level of help and support, does not, they say, mean that they are not bringing up their children.*'

6. Munby P also commented on the importance of intermediaries to assist the parents, to the point where, in this case, the hearing would not have been fair without their input. [20]

Summary by [Matthew Richardson](#), barrister, [Coram Chambers](#)

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Neutral Citation Number: [\[2016\] EWFC 1](#)

Case No: [SN14C00004](#)

**IN THE FAMILY COURT**

**Sitting at SWINDON**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14 January 2016

**Before :**

**SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION**

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**In the Matter of D (A Child) (No 3)**  
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**Ms Deirdre Fottrell QC** (instructed by Withy King) for the father (a protected party acting by the Official Solicitor as his litigation friend)

**Ms Sarah Morgan QC and Ms Lucy Sprinz** (instructed by Goodman Ray) for the mother

**Ms Hayley Griffiths** (instructed by the local authority) for Swindon Borough Council

**Mr Kambiz Moradifar** (instructed by Stone King LLP) for the child D

Hearing dates: 9 and 30 November, 1, 3 and 4 December 2015  
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**Judgment**

*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.*

**Sir James Munby, President of the Family Division :**

1. This is a desperately sad and worrying case. It has had, as I must shortly describe, a most unusual, unfortunate and convoluted history. But the underlying issue in this case can be stated in a single sentence. Should a little boy, D, live with his parents, or, if they cannot adequately look after him, should he, as the local authority, Swindon Borough Council, argues, be adopted outside the family.

2. The issue could hardly be of more profound significance for both D and his parents. For the child, an adoption order, as I had occasion to remark ([\*Re X \(A Child\) \(Surrogacy: Time Limit\)\*](#) [2014] EWHC 3135 (Fam), [2015] 1 FLR 349, para 54) "has an effect extending far beyond the merely legal. It has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious, consequences." For the parents it means the permanent loss of their child. Whatever the ultimate decision, D and his parents will have to live with the consequences for the remainder of their lives, in D's case, given his age, potentially into the 22nd century.

3. What makes this case so difficult and so poignant is the fact, truth be told, that the case is in court only because of the parents' learning disabilities and that when the case was first tried, in November 2012, that was not seen as an obstacle to the local authority's plan, approved by the court, for D to live with his parents. What has happened? What has changed? Why is the local authority now proposing something so very different?

**The history of the proceedings: from December 2011 to January 2015**

4. The history of this part of the proceedings can be traced through a sequence of judgments all of which are available, anonymised, on the BAILII website. The first was a judgment of Baker J on 23 May 2014: [\*Re DE \(Child under Care Order: Injunction under Human Rights Act 1998\)\*](#) [2014] EWFC 6, [2015] 1 FLR 1001. The second was a judgment of Her Honour Judge Marshall on 9 June 2014: *Re D (A Child)* [2014] EWFC B77. The third was a judgment I delivered on 31 October 2014: [\*Re D \(Non-Availability of Legal Aid\)\*](#) [2014] EWFC 39, [2015] 1 FLR 531. The fourth was a judgment I delivered on 7 January 2015: [\*Re D \(Non-Availability of Legal Aid\) \(No 2\)\*](#) [2015] EWFC 2, [2015] 1 FLR 1247. For present purposes it is the judgments given by Baker J and by Judge Marshall that are important.

5. For the background I can do no better than to quote from Baker J's judgment (paras [2]–[6]):

"[2] D was born on 11 December 2011 and is therefore now aged 2½. His mother was assessed in 2012 as being on the borderline of a mild learning disability. His father was found to have a more significant cognitive impairment, with an IQ of around 50. In the earlier proceedings described below, a psychological assessment concluded that he lacked capacity to conduct litigation. He has, however, managed to function successfully in his adult life, with some assistance from local authority adult social services. He has worked in the same job for over 12 years and has contributed towards the financial support of the family.

[3] When D was born, the local authority started care proceedings under s 31 of the Children Act 1989. After he was discharged from hospital, D and his parents underwent a 16-week residential placement in a local authority foster placement which was completed successfully. Afterwards, the family moved into a new home with a package of support from the local authority and other agencies. They have extended family on both sides to whom they are close, and a network of friends. They attend a local church. In the summer of 2012, the parents were married.

[4] At the final hearing of the care proceedings, the local authority's care plan, dated [28 September 2012] recorded that D had been in his parents' care since birth and was settled, happy and developing. It recommended that D remain in their care under a full care order. That order would be subject to review after a year when it was thought it might be appropriate to move to a supervision order. The plan

specified the level of professional support to be provided for the family. It further provided that, if the placement broke down, D would move initially to a foster placement. The local authority would then carry out a viability assessment of his maternal grandparents to see if they were able to look after him, although an assessment carried during the care proceedings had concluded that they were not.

[5] The care plan was endorsed by the children's guardian. In her final report, she indicated that, while she supported what she described as the local authority's "courageous attempts" to try to enable D to be looked after [by] his parents, she was "not yet entirely confident that they will be able to provide D with the safe, emotionally attentive care that he will need on a long term basis". She identified "a number of risk factors in D's care circumstances which can be monitored but not removed or effectively counteracted by the considerable support and monitoring resources that have been and are continuing to be provided". She thought that, as D becomes more mobile, these risk factors would be more difficult to manage.

[6] On 7 November 2012, District Judge Cronin made a care order on the basis of the local authority's care plan. The order included an undertaking by the local authority not to remove D from the care of his parents without giving 7 days' notice in advance, unless an emergency situation should arise."

I should add that the part of the care plan referred to by Baker J in para [4], went on to say that "if ... the outcome of the ... assessment is that [the maternal grandparents] are still not viable carers for D, then the local authority will seek permanence for D through adoption."

6. So far as material for present purposes, subsequent events can be stated quite shortly. On 31 March 2014 the local authority gave the parents notice that they intended to remove D on 25 April 2014. On 11 April 2014 the father filed an application seeking the discharge of the care order in accordance with section 39 of the Children Act 1989. On 22 April 2014 the local authority filed an application for a recovery order pursuant to section 50 of the 1989 Act. Both applications came before District Judge Goddard on 24 April 2014. During the hearing an oral application was made for an injunction to restrain the local authority removing D. The district judge refused the application for an injunction and made the recovery order. D was removed from his parents the following day, 25 April 2014. He has been in foster care ever since.

7. On 29 April 2014 the father filed a notice of appeal. The appeal came on before Baker J on 16 May 2014. He remitted the application for an injunction for hearing by Judge Marshall, but declined to direct D's return to his parents in the interim. The hearing before Judge Marshall took place on 29–30 May 2014. She declined to order D's return to his parents. On 17 July 2014 the Court of Appeal (Black LJ) refused the father's application for permission to appeal Judge Marshall's order.

8. A case management hearing took place before Judge Marshall on 29 July 2014. The order made on that occasion recited that: "This is a case where permanent placement outside the family must be considered as a possible outcome". In addition to making arrangements for interim contact, Judge Marshall directed that the local authority's application for a placement order in accordance with section 22 of the Adoption and Children Act 2002 was to be issued by 28 October 2014. She directed that expert evidence be obtained from an independent social worker, Helen Randall, in a report to be provided by 30 September 2014. On 23 September 2014 Judge Marshall directed that the matter was to be listed before me in London on 8 October 2014.

9. Ms Randall reported on 26 September 2014. Her report is unfavourable to the parents. Ms Randall said that she was unable to recommend that D be cared for by his parents, that there were no suitable family or friends able or willing to care for him and that her recommendation was that D be adopted. On 28 October 2014, the local authority filed a placement order application under section 22 of the 2002 Act.

10. The matter first came before me on 8 October 2014. By then the proceedings had become, as they continued for some time to be, bogged down in issues about public funding for the parents. It was in relation to those matters that my two previous judgments were directed. I need say no more here about that, except to remind the reader of the mother's anguish following a further hearing before me on 2 December 2014 (see Re D (No 2), para 22) that D had not even been mentioned during the course of the submissions and discussions in court on that occasion. "It doesn't", she said, "seem right that so much time has to be taken up about the legal aid when it should be about D." Who could possibly disagree? I said at the time, and I repeat, Is this

really the best we can do?

### **The history of the proceedings: from January 2015 to December 2015**

11. I have referred to Ms Randall's report dated 26 September 2014. I need at this point to identify a number of other important documents to which particular reference has been made and which constituted the essential material when what was supposed to be the final hearing began before me on 9 February 2015. First, there was the report of the children's guardian, CM, dated 23 October 2012, which was before District Judge Cronin and the local authority's care plan dated 28 September 2012 which was approved by District Judge Cronin. Then there were reports on D from Dr JK, a consultant paediatrician, dated 6 March 2014 and 30 June 2014 (there is now a more recent report dated 17 April 2015). There was an autism diagnostic report on the mother dated 16 September 2014 by SEQOL. There was a viability assessment focusing on the parents' parenting of D, dated 30 January 2015, prepared by LE of A+bility. There were statements of MB, who had been D's social worker, dated 20 May 2014, 16 October 2014 and 20 November 2014. There was a statement from TG, who had been the mother's social care worker, dated 20 August 2014. There were statements of a family nurse, CP, dated 9 July 2014, and of the health visitor, LW, dated 17 July 2014. There were statements of the mother dated 29 May 2014 and 22 December 2014. There were two statements in support of the parents from Mrs P (I shall explain below who she is).

12. The final hearing on 9 February 2015 had scarcely got under way when there was a most unexpected development. MC, who had been acting as the parents' advocate, put herself forward as a prospective carer for D under the umbrella of a special guardianship order. It was apparent that this required careful investigation. So the hearing had to be abandoned, though not before I had heard the evidence of GS, the group manager of the local authority's family placement services. I gave further directions. In particular I directed that a special guardianship report was to be prepared by the Cambridge Centre for Attachment. The report, by Dr BG and JK, is dated 15 May 2015. Their supplemental report is dated 16 June 2015. Those reports, which were positive in their support of MC's application, needed to be read in conjunction with a special guardianship support plan dated 1 June 2015 prepared by the local authority. The mother had put in a further statement. Finally, there was a report dated 22 June 2015 from the guardian, CM.

13. When the final hearing resumed before me on 22 June 2015, the position was therefore as follows. The proceedings under section 31 of the 1989 Act had come to an end on 7 November 2012 when District Judge Cronin made a care order. The proceedings under section 50 of the 1989 Act had come to an end on 24 April 2014 when District Judge Goddard made a recovery order. The injunction proceedings had come to an end on 17 July 2014 when the Court of Appeal refused permission to appeal from the order made by Her Honour Judge Marshall on 9 June 2014. There were three extant matters: the father's application under section 39 of the 1989 Act; the local authority's application under section 22 of the 2002 Act; and MC's application for a special guardianship order. In fact, only the first and third of these were being pursued, for both the local authority and the guardian were at one in supporting MC's application for a special guardianship order in the event that D could not be reunited with his parents. In other words, the local authority was no longer pursuing a plan for adoption. So the issue lay as between the parents on the one side, seeking, by means of the father's application under section 39 of the 1989 Act, to have D returned to their care and, on the other side, the local authority and the guardian, arguing that D should not be returned to his parents' care and that his interests would best be served by my making a special guardianship order in favour of MC.

14. During the hearing I heard evidence from the mother.

15. At the end of the hearing, on 24 June 2015, I reserved judgment. There was then a further most unexpected, and in the event most unsettling, event. Only a few days later, MC suffered a further family bereavement. Initially, it was thought that this would not disturb, even if it might lead to some reconsideration of the timescales involved in, D's possible placement with MC. Whilst there was this continuing uncertainty, it seemed to me inappropriate to finalise the judgment on which I had started. On 11 August 2015 MC's solicitor wrote explaining why, after much careful consideration, MC had sadly had to conclude that, in the circumstances she was now having to deal with, she was not in a position to offer D the care and attention he needed and that she had accordingly, with regret, reached the conclusion that she should withdraw her application for a special guardianship order. It was, she believed, the best decision for D.

16. I invited the advocates to convene an advocates' meeting to discuss the way forward. Following this,

there was a directions hearing before me on 5 October 2015, at which I gave directions for yet another final hearing. Previously fixed judicial commitments meant that, unhappily, this could not take place until 30 November 2015, though I was able before that to hear on 9 November 2015 the evidence of a witness, the independent social worker, Ms Randall, who would not otherwise have been available.

### **The history of the proceedings: the final hearing in November 2015**

17. It was in these unhappy circumstances that the third final hearing began before me in November 2015. The mother was represented, as before, by Ms Sarah Morgan QC and Ms Lucy Sprinz, and the father by Ms Deirdre Fottrell QC. The local authority was represented, as before, by Ms Hayley Griffiths and the guardian by Mr Kambiz Moradifar.

18. By now, the available options had reduced. There was no longer any application for a special guardianship order. No-one was suggesting, or, in my judgment, could sensibly have suggested, that long-term fostering was a realistic option for a child of D's age. So, what was left was the father's application under section 39 of the 1989 Act and the local authority's revived application, supported by the guardian, under section 22 of the 2002 Act. So the issue lay as between the parents on the one side, seeking, by means of the father's application under section 39 of the 1989 Act, to have D returned to their care and, on the other side, the local authority and the guardian, arguing that D should not be returned to his parents' care and that his interests required that he be adopted.

19. I have referred above to the fact that the mother has a learning disability and that the father has a more significant cognitive impairment. Each has had the benefit of an exceptionally able, committed and dedicated legal team – in the case of the mother, not merely Ms Morgan and Ms Sprinz but also Ms Jemma Dally of Messrs Goodman Ray; in the case of the father, not merely Ms Fottrell but also Ms Rebecca Stevens of Messrs Withy King – and, in addition, the invaluable assistance throughout the hearing of an intermediary. I have been anxious to ensure that the hearing was conducted throughout at a pace and generally in a manner which suited the parents and which enabled them to participate fully and effectively at all stages. We had breaks whenever either parent asked for one.

20. It is no reflection at all on the legal teams if I emphasise that the assistance of the intermediaries was not merely invaluable but, in my judgment, essential, if justice was to be done, as in the event I am confident it was. Without the help of their lawyers and their intermediaries, there is no way in which these two parents could have had a fair hearing. I shall have to return in due course, in a fourth and final judgment, to pick up, from where I left off in *Re D (Non-Availability of Legal Aid) (No 2)* [2015] EWFC 2, [2015] 1 FLR 1247, the unedifying story of the battle these parents had to fight to obtain from a grudging state the assistance which was essential if justice was to be done.

21. By the time of this final hearing, there were further materials before the court. There was a statement dated 28 October 2015, from D's current social worker, PL. He has also prepared the local authority's final care plan dated 29 October 2015. The guardian's final addendum report was dated 26 November 2015. There was another statement from the mother, dated 27 November 2015.

22. During the course of the hearing I heard oral evidence from (in this order) Ms Randall, from PL, from Mrs P, from LE, from TG, from the mother, from MB, and from the guardian. I also had available the transcripts of the evidence given by GS on 9 February 2015 and by the mother on 22 June 2015.

23. It will be noticed that the father has neither filed any written nor given any oral evidence. I entirely understand why. It is absolutely no reflection on him – his absolute love, devotion and commitment to his son is just as fierce and determined as his wife's – and I do not draw any adverse inferences. How could I? So far as concerns the evidence, the mother has written and spoken for both of them. In court – and I have now had the opportunity of watching them both for many days since my first involvement with the case in October 2014 – they have throughout functioned as a team, with the mother, understandably and appropriately, acting as the voice of the team.

### **The law**

24. I can take the law quite shortly, for it is not in dispute. D's welfare is paramount. Since the local authority

is pursuing an application for a placement order, it has to satisfy me that 'nothing else will do': see [\*In re B \(A Child\) \(Care Proceedings: Threshold Criteria\)\* \[2013\] UKSC 33](#), [2013] 1 WLR 1911, [2013] 2 FLR 1075, and [\*In re B-S \(Children\) \(Adoption Order: Leave to Oppose\)\* \[2013\] EWCA Civ 1146](#), [2014] 1 WLR 563, [2014] 1 FLR 1035. The parents refuse to consent to D's adoption. If their consent is to be dispensed with, the local authority has to satisfy me that D's welfare "requires" it: section 52(1)(b) of the 2002 Act. That is stiff test for the local authority to meet: see [\*Re P \(Placement Orders: Parental Consent\)\* \[2008\] EWCA Civ 535](#), [2008] 2 FLR 625. In addressing all these issues I must have regard to the 'welfare checklist' in section 1(4) of the 2002 Act. At the end of the day, D's welfare *throughout his life* is the paramount consideration: section 1(2).

25. In a case such as this it is vitally important always to bear in mind two well-established principles. The first is encapsulated in what the Strasbourg court said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

"family ties may only be severed in very exceptional circumstances and ... 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 (emphasis added)."

26. The second is encapsulated in the well known passage in the judgment of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

"society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent ... 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."

27. This leads on to the profoundly important of observations of Gillen J, as he then was, sitting in the Family Division of the High Court of Justice in Northern Ireland, in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8, para 5. So far as I am aware, his decision has never been reported, but the transcript is freely available on the BAILII website.

28. Gillen J referred to a number of papers and reports, including "Finding the Right Support", a research paper from Bristol University's Norah Fry Research Centre funded and published by the Baring Foundation in 2006. He continued:

"A reading of these documents leads me to set out a number of matters which I feel must be taken into account by courts when determining cases such as this involving parents with a learning disability particularly where they parent children who also have a learning disability."

He then set those matters out in eight numbered paragraphs. Although lengthy, they are so important that they require quotation in full. Accordingly, I set them out in an Annex to this judgment. I respectfully agree with everything said by Gillen J. I commend his powerful words to every family judge, to every local authority and to every family justice professional in this jurisdiction.

29. Gillen J's words require to be read in full, but two passages set the tone:

"(2) People with a learning disability are individuals first and foremost and each has a right to be treated as an equal citizen. Government policy emphasises the importance of people with a learning disability being supported to be fully engaged playing a role in civic society and their ability to exercise their rights and responsibilities needs to be strengthened. They are valued citizens ...

(4) This court fully accepts that parents with learning difficulties can often be "good enough" parents when provided with the ongoing emotional and practical support they need. The concept of "parenting with support" must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties ... judges must make absolutely certain that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence

that would not hold up against normal parents. Their competences must not be judged against stricter criteria or harsher standards than other parents."

30. All that said, as I made clear in [\*In re R \(A Child\) \(Adoption: Judicial Approach\)\* \[2014\] EWCA Civ 1625](#), [2015] 1 WLR 3273, para 44:

"Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders. The fact is that there are occasions when nothing but adoption will do, and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs."

### **The context**

31. Before turning to consider the evidence as a whole, I need first to set the context.

32. The local authority's plan, endorsed by the court in November 2012, was for D to be cared for by his parents. That remained the local authority's plan as late as 3 February 2014. By 19 March 2014 the local authority had changed its mind. It is necessary to explore why.

33. I should explain at this point who the key individuals are who have worked with the family. MB was D's social worker from November 2011 until May 2015. She was a most impressive witness who had plainly gone out of her way to do everything possible to maintain D's placement with his parents. D and his parents were lucky to have the assistance for so long of so dedicated a social worker who, if she will allow me to say so, exemplified everything that is best in the profession. More recently, since May 2015, and therefore after D's removal from his parents, his social worker has been PL. TG was mother's social care worker from July 2012 until early 2014. She again was an impressive witness who, as was evident, had done everything possible to support and encourage the mother. CP is a family nurse and health visitor who was the family's nurse from September 2012 until January 2014. LW is a health visitor who had a brief involvement with the family in early 2014. AP was until early 2014 the social work team manager for the family. MR took over that role in early 2014. AS is a solicitor in the local authority's legal department.

34. Mr and Mrs P are remarkable people. To say that they have been good friends and neighbours of the family is seriously to understate all they have done to help, befriend and assist the family. They, and Mrs P in particular, have gone far out of their way to provide the family, and mother in particular, with practical, emotional and moral support. They have been, and they suggest that they can in future be, a vital part of the family's support network. Their significance is exemplified by the role allotted to Mrs P in the A+ability assessment (see paragraph 52 below).

35. By the autumn of 2013 the local authority was becoming concerned. On 5 September 2013, there was a meeting between MB, TG, CP and AP "to measure progress from previous meeting and highlight concerns." Their concerns overall ("How worried are we? 0 being worst and 10 being best") were measured as follows: CP 3, MB, 4 and TG 5. On 8 October 2013, there was another meeting between the same four professionals "to decide whether we continue to support D with his parents or consider other permanence options in light of increased concerns around D's slow progress in his development." Amongst the concerns identified were a "decline in D's development", the mother "distancing herself from professionals" and the fact that she "does not see that D is falling behind and ... does not see the need for change [and] is not motivated to do anything differently." The decision of the meeting was "to continue to support family for a period of 3 months following LAC review when a definite decision will be made as to whether or not other permanency options should be considered." This was carried forward at the next LAC review on 22 October 2013, which decided that there should be an updated core assessment to "assist professionals in determining D's permanent living situation."

36. The core assessment was undertaken by MB between 16 and 27 January 2014 and signed off by AP on 29 January 2014. MB's recommendation was for additional support. AP rightly observed that the parents' progress in their parenting ability "cannot be measured alongside similar parents without a learning need." She identified the "main area of difficulty" as "the emotional responsiveness/attunement between" D and his mother "as this is not easily taught nor replicated." Her opinion was that between the mother, the father and additional support offered, D "will receive parenting that is 'good enough' whilst having the opportunity to

remain within his birth family."

37. The recommendations in the core assessment were implemented at the LAC review on 3 February 2014, which was also attended by the father's social worker, BM. A seven-point action plan was identified: (i) D to attend the child minder five morning a week<sup>1</sup>; (ii) the mother and father to be referred to an NCPCC safe care course for work with identifying risks for up to 26 weeks; (iii) CSCW to link in with the NSPCC and build on the work they are doing; (iv) the mother to have an ADOS assessment with SEQOL; (v) exploration of parenting support from SEQOL; (vi) referral to Swindon Support Services for a worker to help with the father's practical skills; and (vii) the father to be supported by his new social worker. Only (i) and (ii) were implemented, and in the event the NSPCC decided, as recorded in the minutes of a LAC review on 19 June 2014, that "it was not the right time to start any work with the family due to the existing levels of support offered to the family." The responsibility for implementing (vi) and (vii) was, as recorded in the minutes of the LAC review, specifically given to BM, with BM to "action" (vi) "this week." That did not happen.

38. The minutes recorded that the next LAC review, which "will review the child's overall progress and standards of safe parenting with the additional family support put in place", would take place in four months. "The support plan will continue to stay in place and it will be reviewed at the next LAC review." Importantly, the minutes also recorded that "The parents have continued to engage with professionals and the professionals stated that [the mother] is listening and taking advice easier now."

39. Thus the position on 3 February 2014.

40. Together with CP, the new health visitor, LW, visited the parents on 14 February 2014. LW describes the visit in her witness statement dated 17 July 2014. She comments that the mother's parenting "did not have any impact on D" who continued throwing his toys around, including at LW. She expresses concern about the "lack of boundaries/parenting set in the house."

41. MB visited the parents on 4 March 2014. There is nothing in her record of the visit to suggest any change in the local authority's thinking, though she records the mother as saying that "she does not like the new Health Visitor".

42. On 6 March 2014, MB received the report of the consultant paediatrician, Dr JK, who had seen D at clinic the day before. By then he was 2 years and 3 months old. Dr JK said that D was "putting on weight excessively" and described her concerns about his development: "He seems to be making poor developmental progress across the board and I think his gross motor development is now delayed as well." Dr JK referred to recent tests, showing that D has chromosomal imbalances of "unknown significance" but which "have in the literature (very few cases) been associated with learning difficulties plus and minus behavioural problems." She said:

"I continue to have serious concerns about [the mother's] ability to care for D and promote his development and now that he is putting on weight excessively to look after his general health."

43. On 12 March 2014 MB visited the parents again, to discuss Dr JK's report. She arranged to meet the parents at the Swindon Advocacy Movement Service offices on 19 March 2014, when their advocate RH could be present, to share Dr JK's report and "share some of my worries."

44. At the meeting on 19 March 2014, the parents were handed a letter from MB dated 19 March 2014, which I should set out in full:

"I am writing to you because I am very worried that you are not able to look after D and give him what he needs. I am so worried about D that I am thinking that he may need to be looked after by other carers. These are my worries –

1. I am worried because I sometimes see D come to you, and you do not respond to him. I am worried that D is not getting the cuddles he needs. I am worried that you do not speak to D enough and you do not give him enough praise.

2. I am worried because D is falling behind in his development. I am worried that you do not help

D progress in his development. This is because professionals have shown you how to play with D and told you how to help D learn to improve his speech, but you do not provide D with enough play and talking to when you are at home.

3. I am worried because I and other professionals visiting your home have seen D hitting, throwing and shouting. The Family Nurse has helped you to show D that he must not do this. I am worried because you have not been able to provide consistent guidance to D and he does not know that this is wrong. I am worried that D does not understand from you what he is and is not allowed to do.

4. I think you need to think more about D's safety when you are out and about. I am worried that you do not always look after D when you are out and about or in the home, for example, when he was able to get into the road. I am worried that you do not always notice what he is doing in the home, for example, picking up a kitchen knife during a visit from a child social care worker and D jumping on chairs. D could be hurt.

5. I am worried that you have had lots of advice and support from professionals and my worries for D are still present. I am worried that you are not able to look after him and give him what he needs so that he can reach his full potential.

6. I am also very worried that I have received information that you have taken D to see [his uncle G] without the permission of the Children Services. I have previously shared my concerns with you that D may not be safe with G and have only recently repeated this concern to you.

7. I am worried that D is developmentally delayed and may have additional learning needs and this means he will need lots more care than a parent would normally be expected to provide. Over the past two years, you have both needed a lot of extra support to help you care for D. Even with this support, you have continued to find it hard to give D what he needs so that he is growing as well as he could be.

I want to let you know that I am going to be meeting with someone from our legal team to talk about placing D with other carers. I also want to give you the opportunity to have a think about this letter and tell me how you think you may be able to help me not to be worried about D any more."

45. On 27 March 2014, a legal planning meeting was held, attended by MR, MB and AS. The minutes record that "Children Services has such serious concerns for D and his safety that he should be removed from his parents' care and placed with a foster carer, with a view to Adoption" and make clear that the concerns are those set out in the letter of 19 March 2014. It was in accordance with the decisions taken at this meeting that the local authority sent the letter dated 31 March 2014 to which I have already referred (paragraph 6 above).

46. There is a further point to be noted. Both before me, as previously before Judge Marshall, and indeed to an extent, as we have seen, in the letter dated 19 March 2014, emphasis has been placed on a number of incidents when, although in fact he suffered no physical or other harm, D was exposed to risk. Six have been identified: an occasion, when he was about 18 months old, and recorded by TG in her note of a visit to the mother on 6 June 2013, when the mother had allowed D to climb the stairs, without following him to catch him if he fell (she was at the top of the stairs taking a photograph of D on her phone <sup>2</sup>); an occasion, recorded by a social worker in her note of a visit to the mother on 12 April 2013, when D came out of the kitchen with a table knife in his hand: "nothing happened, so I got the knife out of D's hand. [Mother] continued to look at Face Book" <sup>3</sup>; two occasions when, as recorded in the minutes of the professionals' meeting on 8 October 2013, D had "'escaped' from [mother], once whilst at coffee morning and once whilst at home D went next door" (further details of the first incident were recorded in TG's note of a meeting with the mother on 24 July 2013); an occasion when the mother threw a remote control which narrowly missed D; and an occasion, recorded in TG's note of a visit on 24 December 2013, when she noticed that a finger on D's left hand looked red and swollen (apparently, his finger had been trapped in the kitchen drawer a few days before when the mother shut the drawer without realising D's finger was in the way <sup>4</sup>). It will be appreciated that each of these incidents, known to the local authority and recorded by it in careful detail, *preceded* the core assessment in January 2014 and the decisions of the LAC review on 3 February 2014.

47. Concerns have also been expressed about risks that D's uncle G might pose to D. Particular reference was made to D being at a family gathering on 8 March 2014 where G was also present. MB records, in her note of her visit to the mother on 4 March 2014, the mother saying she would like to attend this family gathering with D: "I said I would have to give it some thought and could not say 'yes'." In the event, D went to the family gathering, a fact reported to MB by the NSPCC on 13 March 2014. MB refers to this in her statement of 20 May 2014, saying "This concerned me because I have shared my concerns in relation to G with [the mother] and she has always rejected my concerns. I am unsure as to why [she] cannot accept the risks."

48. I have gone through this material (most of which was not available either to Baker J or to Judge Marshall<sup>5</sup>) in some detail because it brings out a number of important points.

i) First, at some time between 3 February 2014 and 19 March 2014 the local authority fundamentally changed its view of the case. Why? No clear answer to this is provided by the local authority's records, and I have no evidence on the point from MR, or, indeed, from anyone other than MB. Judging from what MB said in her letter of 19 March 2014, in her statements dated 20 May 2014 and 16 October 2014, and in her oral evidence, it would seem that what triggered this fundamental change was a combination of the concerns which had been growing since 2013, the report of LW of what she and CP had seen on 14 February 2014, the report from Dr JK dated 6 March 2014 and, not least, a reappraisal of the case by a new pair of eyes, the recently involved MR. And I cannot help wondering whether the implications of the seven-point action plan approved on 3 February 2014 were not also beginning to sink in – not, I emphasise, the financial implications, rather the implications in terms of what it showed about the mother's need for yet further support and assistance.

ii) As I have already noted, each of the incidents where, as the local authority would have it, D had been placed at risk of physical harm, was known to the local authority and recorded by it in careful detail before the core assessment in January 2014 and the decisions of the LAC review on 3 February 2014. So, at that time, these incidents were not considered sufficiently grave, either individually or collectively, as to justify D's removal.

iii) Neither the report of what LW and CP had seen on 14 February 2014 nor the report from Dr JK dated 6 March 2014 brought to light matters significantly out of line with what was already known.

49. Before both Baker J and Judge Marshall the local authority placed significant emphasis on the incidents referred to in (ii). It is apparent from reading her judgment that this material weighed heavily in Judge Marshall's analysis and in her decision that D should not at that stage be returned to his parents. Given the much fuller picture which is now available to me, these are matters which I must approach, as I do, afresh and without reference to Judge Marshall's analysis.

### **The evidence**

50. I start with the evidence, largely uncontroversial, about D and his parents as people.

51. First, the mother. It is common ground that she is on the borderline of a mild learning disability. The SEQOL report dated 16 September 2014 concluded that she does not fulfil the diagnostic criteria for an autism spectrum condition but "has a number of features of autistic thinking in terms of a preference for routines and some difficulties with flexibility of thinking." The report noted that she:

"was greatly helped if she had an activity clearly modelled to her and where she was given clear guidance and some repetition on how to compete a task ... She responds well to situations where pressure is reduced, she is given lots of encouragement, modelling and her strengths are clearly highlighted."

52. The A+bility viability assessment dated 30 January 2015 assessed both parents in accordance with the PAMS parent handbook. Each parent was assessed by reference to two profiles: the child profile and the parent profile. Under the child profile, the areas assessed were: feeding; healthcare – general; healthcare – hygiene; parental responsiveness; stimulation; guidance and control; responsibility and independence. The scores could be poor, adequate or good. The mother was assessed as poor in all areas except the first, where

the assessment was adequate/poor. The father scored rather better, being assessed as good at stimulation, adequate at responsibility and independence, and adequate/poor at feeding. Under the parent profile, the areas assessed were: household routines; time telling; telephone skills; travel skills; budgeting; shopping; cooking; washing; general safety; safety outside the home; safety abuse – physical, emotional and sexual; parents mental healthcare; parents physical healthcare; relationships and support. In many areas the mother was assessed as being adequate (seven) or good (two). Of note, she was assessed as being poor in the areas of general safety (she "found it difficult to think about what she might do in certain situations, other than ask her neighbour for help") and safety outside the home (she "gave a very basic answer to road safety "Look both ways"). The father was assessed as adequate in five areas though poor in the others (including in the areas of both general safety and safety outside the home). In summary, it was pointed out that both parents have difficulties with the areas of feeding, healthcare (general and hygiene), parental responsiveness, guidance and control, shopping, cooking, general safety and safety outside the home. On the other hand it was noted that in some areas where one parent has difficulties the other has a strength, so that they therefore complement each other. One example, borne out by much evidence, is the father's skill in playing with D.

53. The A+bility assessment went on to consider how much support the parents would require if they were to resume looking after D. A "high level of professional support" would be needed throughout a transition period whose timescale was "difficult" to predict, depending in part on "how well [the parents] respond to professional input, guidance and advice in order to achieve a good enough level of parenting." The assessment set out proposed timetables of support for, respectively, weeks 1-6, 7-12, 13-18 and 19-24. I need not go into the details. What was proposed initially was significant support for much of the day, seven days a week, with significant daily input from Mrs P, moving gradually to a re-balancing of the support with a shift from A+bility to Mrs P. Looking "into the future", the assessment indicated that the parents:

"will struggle with parenting D as he gets older. Setting appropriate boundaries, negotiating and compromising were flagged up as particularly difficult areas. These are essential skills when parenting children, not just at that given time but in relation to life skills that D will need to learn for his future. Therefore support would need to be long term to ensure the best outcomes for D."

54. In her oral evidence, LE, the author of the A+bility assessment, elaborated but did not depart from what it had said.

55. I have already (paragraph 42 above) referred to Dr JK's report on D dated 6 March 2014. In her report dated 16 June 2014, after D had been removed from his family, she said:

"D's developmental progress was poor between 9 and 18 months. He made more progress with a significant amount of time at a child minder but has made more progress in the short time in foster care."

She added:

"D will need extra support from carers who have some expertise in working with a child in whom there are concerns about his development. I suspect that D's development will be at the lower end of the normal range."

56. In her most recent report dated 17 April 2015, Dr JK said that D's development "remains delayed around the two year level. He is making progress with gross motor skills." She noted "particular concerns around speech and language." She added: "Certainly one of his chromosomal deletions which he has inherited from his mother has been known to be associated with variable degrees of speech and language delay, learning and behavioural difficulties."

57. CP, the family's nurse from September 2012 until January 2014, had some 32 face-to-face meetings with the parents. In her witness statement dated 9 July 2014 she described many of these meetings. Her overall impression, which is consistent with various incidents she describes, was that

"despite moments of positive interaction between D and his parents, [they] are not always able to identify and anticipate [his] needs in relation to his development and safety ... As D gets older this will have a significant impact on his development and academic progress. I would be concerned that as D

progresses through his school years he will not get the support and appropriate level of stimulation he needs to meet his potential ... During my work with the family much of the parenting I observed has been very reactive and shown poor responsiveness to D. [Mother] appears unable to anticipate or be in tune with his needs consistently both physically and emotionally."

58. LW, as I have said, was D's health visitor for a short time in early 2014. I have already described (paragraph 40 above) her account of the visit she and CP made to the family home on 15 February 2014.

59. I turn now to the social work evidence.

60. In her witness statement dated 20 May 2014, MB summarised her involvement with the family, her increasing concerns during 2013 and the events of 2014. She concluded with these observations:

"It is none other than sad that the Local Authority in fulfilling its duties to D have had to remove him from the care of his parents. The last 2½ years have in fact been directed to avoiding what has happened. I think in retrospect there are point where D would have been removed and possibly should have been, and in making this decision the Local Authority have been strongly guided by the dimensions of parenting capacity in relation to the child's developmental needs.

... A high level of services has been provided to the parents as a result of their learning needs including regular advice and support from the Swindon Advocacy Movement. Unfortunately, the last 2½ years of support and advice has not brought forth the required parental behaviours to promote D's physical and social development."

61. In her statement dated 16 October 2014, MB said this:

"The concerns that the Local Authority had prior to the removal of D from his parents care would remain should D return to their care.

In addition, with greater independence, the less that D's parents will be able to keep him safe from hazards inside and outside of the home, and they are likely to be less able to keep up with his developmental needs.

Although D is presenting calmer, more discriminate in who he seeks comfort from, more able to concentrate on play and interacting socially with other children, it is in my view that he would quickly return to his former behaviours if placed in his parents care, and he could potentially become beyond parental control."

Evaluating D's welfare, she said this:

"D, in my view would not be safe nor have his needs met to an adequate standard if he were placed with his parents in the community. The concerns and reasons for the removal of D from his parents remain.

It is in my view that long term fostering is not a viable option for D due to his age. Long-term fostering would not allow for D to achieve a sense of permanency. He would live with the uncertainty of potential placement break down and multiple moves. This could potentially be traumatic for D and would likely impact on D's sense of self-worth, and his developmental progress.

... Mr and Mrs P are well intentioned people who have devoted their lives to helping others via their work at their church, and through their fostering. They are very busy people and work on several projects linked to the church, and at time this means that their availability is 'spread thin'. The level of support that Mr and Mrs P would realistically be able to provide, is not sufficient for D to be able to live in a shared care arrangement. Furthermore, shared care arrangements are only likely to be successful when all carers share the same values and principles of parenting.

[Mother] finds it hard to accept advice and very much likes to be able to do things as she believes they should be done. I understand that there are times whereby [she] has not been happy with Mr and Mrs P and their lack of support, thus leading to periods of disharmony between them. Further to this, [mother]

gives considerable weight to her mother's advice, which can often be in conflict with the advice given by Mr and Mrs P. For these reasons I do not see this as a realistic option."

62. MB elaborated this in an addendum statement dated 20 November 2014:

"I have considered the option of D returning to his parents' care, which would enable D to grow up in the family in which he was born and maintain a strong sense of identity. [The parents] have some strengths as parents for D and indeed they love him very much. However, sadly, whilst D and his parents were supported to live in the community, D suffered and was at risk of suffering significant harm. It is in my view that even with continued support, it is likely that D will continue to suffer significant harm if placed back in their care. Therefore, in my view, D returning to his parents care is not a viable option."

63. In relation to post-adoption contact, MB said this:

"The purpose of contact is to enable D to continue his relationship with his parents, but I am concerned that, at times, he has experienced confusion and distress during contact. I am concerned that [mother] has appeared to prioritise her mother's wishes and feelings over D's need for calm and enjoyable contact whereby his parents are focused upon him and his needs. D's parents are role models and he will benefit from experiencing them and his family being able to resolve conflicts in a calm neutral manner. It is in my view that [the grandmother's] presence in the contact, at times, significantly reduces the quality of D's contact with his parents and can potentially increase his distress.

... I have considered future contact for D in the event that the court agrees with the Local Authority that Adoption is the plan which would secure D's future. It is in my view that in order for direct contact to be successful, D's parents will need to accept and support his placement or there is a risk that D's placement will be undermined and D will experience confusion and conflict within himself, which could prevent him from settling and fully accepting the placement himself. Sadly, I have great concern about any further direct contact between D and his parents for this very reason as I anticipate that [they] will not be able to accept D being placed for Adoption. It is for this reason that I cannot recommend future direct contact for D and parents. However, I have considered D's need to understand his identity and life story. For this reason, I will be recommending bi-annual letterbox contact for D and his parents throughout his future, and for [his grandparents] to include a letter with [the parents'] letterbox contact once per year, with [their] agreement."

64. In her statement dated 28 January 2015, MB set out details of the extensive package of support that the local authority could provide should D be returned to his parents. She was clear, however, that this level of support would not address the local authority's concerns about D's care, given the high level of support that both he and his parents need. She added: "Whilst in the care of his parents, D and his parents were provided with a high level of support, but D found this confusing as so many people were involved and he was unable to form attachments."

65. MB's commitment to the family shone through her oral evidence. She was, she said, desperate in 2012 to keep D with his parents. We "wanted this to work." She did not hide her frustration and disappointment at the lack of engagement by the local authority's adult services. She saw her role with the parents as being to encourage, not dictate.

66. TG's evidence was particularly illuminating for its detailed and empathetic account of TG's work over many months with the mother. It therefore merits extensive quotation. Her work with the family was intense, for she describes having seen D in excess of 80 times between July 2012 and early 2014, with her visits lasting between 60 and 90 minutes.

67. In her statement dated 20 August 2014, TG described the work she undertook:

"Initially my visits were to focus on, and support [mother] in particular with establishing routines for D. General daily routines that included D's wake up time, meal times, playtime, nap times and a bedtime routine. Through discussion, D's patterns were established and a written plan was devised. The plan would be revisited during subsequent visits to discuss its appropriateness and incorporate changes as D's

needs changed.

[Mother] would openly tell me that she was not referring to the written plan as she would forget or not be able to find it. We discussed other methods that [she] may find more helpful and accessible. I suggested picture prompts, displayed around the house but [she] stated that she would not like this; I further suggested [she] keep a daily diary of D's routine to support her in being able to see D's emerging patterns and to support [her] awareness as D's needs change; e.g. nap times changing.

Initially, [she] would maintain a diary for a few days, and we would discuss the routine during subsequent visits. This soon waned with [her] openly telling me that she would "forget" or "couldn't be bothered".

A further focus of support was around safety. I had a number of discussions with [her] around safety within the home and out in the community. During these discussions [she] was always able to give a fluent recount of potential hazards and how to manage these hazards; however, this knowledge seemed not to transfer into practical terms and during visits I would have to advise [her] of hazards such as scissors, pens, or batteries on the floor. Out on walks, it was necessary to advise [her] of obstacles such as walls, lamp posts and to advise caution when approaching roads as [she] would allow the front wheels of the pushchair into the road."

68. TG continued:

"[Mother] asked for support around managing D out in the community on foot; she explained that D would not hold her hand; [she] observed whilst I demonstrated through role modelling, a consistent approach, using verbal prompts — "D hold my hand" — stopping walking every time D let go of my hand, repeating the verbal prompt and only moving forward when he complied. D, typically, did not want to hold my hand, preferring to walk independently; however, we were alongside a road and it would not have been safe to allow him the independence so I maintained a consistent approach. [Mother] stated that she "gives up" when D objects to holding her hand, adding that she found it easier to put him in his pram – however, after watching me she felt she knew how to manage this better and would practice."

69. TG then turned to consider the mother's "capacity to provide safe parenting":

"In my professional opinion of [her] capacity to provide safe parenting for D; when [she] engaged with me, in discussions, play activities and practical activities, I observed there to be some progress 'in the moment' when [she] would act upon advice or suggestions that I had made in her 'safe handling' of D. However there were many times that I found it necessary to intervene and advise [her] of potential hazards whether it was unsafe objects within D's reach or alert [her] to the fact that her mother's dogs were 'baring their teeth' in response to D lying on top of them. I observed [her] reaction to such hazards as being 'slow to respond' and differing in the sense of urgency from my own,

In addition I observed [her] to be unresponsive to professional concerns if she did not share those concerns. For example, [she] held the belief that her mother's dogs "love D and would never hurt him". This indicated to me, a lack of awareness that a dog's response to pain/threat may be to bite, despite the dogs baring their teeth in warning. Furthermore, when in the garden, D would run up the drive and I would have to prompt [her] to chase after D, or get him myself to prevent him from running into the road."

70. She summarised her conclusions as follows:

"In my opinion, any progress made 'in the moment', I observed on future visits not to have been maintained and believe it to be most unlikely to have been applied consistently between my visits. For example, when on more than one occasion, when visiting the home of maternal grandparents, I had to repeatedly prompt [mother] to respond regarding the dogs. I also observed [her] to be 'easily distracted' which clearly impacted on her ability to supervise D safely at times; an example of this was the occasion when she and D were at the Children's Centre. [She] told me that she had asked a young child to 'look after' D and was herself chatting and having a cup of tea, not noticing that D had left the centre

until alerted by her mother. D on that occasion was found in the road – thankfully unharmed.

I also observed [her] inability to anticipate D's actions on occasions, along with her being slow to respond physically, I would predict that [she] would be unable to consistently avoid problematic or dangerous situations for D.

In my opinion, [she] did not agree with the concerns of Professionals regarding D's developmental delay, as her attitude towards providing stimulating, play and interaction with D was not applied due to her finding it "boring" or not having the time."

71. In her oral evidence, TG described the 'modelling' techniques she used with the mother. At times, she felt, the mother was making progress, at other times not. She recalled a discussion when the mother was unable to accept that there were any difficulties with D. She said that the mother's response to the incident on the stairs was it being 'trouble' for her, rather than possible danger to D. She recalled the mother's objection to the suggested use of picture prompts as being that it would make her feel "stupid."

72. In his statement dated 28 October 2015, PL updated matters. He reported that D had been seen by the disability learning team and that his assessment for autism spectrum disorder was due to start shortly. He described D's speech as improving well and his behaviour at playgroup as quite active. He reported on D's contact with his parents, noting that the contact supervisors had on occasions highlighted concerns which, although infrequent, were significant and revealing of the parents' relationships with and understanding of D. He summarised this as the parents continuing to show emotional detachment from D, manifested on occasions in their threatening to terminate contact early, shouting at D, behaving impatiently, and displaying irritability and petulance. PL summarised the advice from the local authority's adoption team as being, in effect, that D would not be difficult to place, given the availability of adopters suitable for children of his age and with his characteristics. That corresponded with the evidence I had previously heard from GS.

73. PL prepared the final care plan, also dated 28 October 2015. It proposed that D be adopted and that, following judgment, there should be a further two fortnightly contacts, followed by two at monthly intervals, the last being the 'farewell' contact. Post adoption, the plan was for twice yearly 'letterbox' contact for the parents and once yearly for D's maternal grandmother.

74. In his oral evidence, PL said that D would need a specialist adoptive family and confirmed that the local authority had such adopters. During the course of the hearing it was also confirmed that the local authority will, throughout D's minority, fund specialist workers skilled at supporting parents with learning disabilities with letterbox contact.

75. The report of Ms Randall, the independent social worker, is a long, detailed and compelling piece of work. It requires to be read in full. Here I can only draw attention to some of the more important passages. She commented that:

"D is being negatively affected by the inability of these parents to meet his needs. Despite considerable daily professional support his well being was becoming compromised and his development was falling behind. The standard of support provided is in my opinion, in accord with the needs of parents with learning difficulties. The professionals used simple language and modelled the tasks. They gave positive encouragement and [the parents] liked and engaged with those working closely with them. At times D's care was just good enough and at others it was not. Both parents can be resistant to advice and would prefer to be left alone. They have now taken against the social worker and the foster carer who they blame for the removal of D."

76. She set out her conclusions and recommendations in a long passage which I must set out in full:

"The commitment and love by [the parents] for D is accepted by all involved. [They] love D deeply and wish to protect him from any difficulties in the future and keep him within their family. They share a common life history and want D to have a chance to do well and enjoy his childhood with them. They have consistently attended contact. There have been positives and good times enjoyed by the family in the past

The learning difficulties and special needs of the parents, in principle, should not rule them out from playing a key role in D's parenting if he can be kept safe and thrive in their care. It is understandable that the professionals have persevered in their efforts to assist and enable these parents to care for D.

The patterns of parenting in the past, the individual difficulties for each parent, the lack of change in their style of parenting as D is growing up, makes it too risky for me to recommend that either [parent] could care for D and meet his needs.

I do not underestimate the profound difficulties for both [the parents] and the impact of their limited cognitive abilities on their parenting capacity. D has complex special needs and he will require better than good enough parenting in order to achieve his potential.

I have considered the principles of "Every Child Matters" to be healthy, stay safe, enjoy and achieve and learn how to be a responsible adult with a reasonable lifestyle, within their family. It is vital that D has the chance to go through his childhood being safely parented, feeling secure and loved with appropriate role models, boundaries and encouragement to achieve his potential.

D and his parents have shared a common family experience and culture. The impact of separating him from his family, needs to be balanced against the benefits and weaknesses in returning to live with his parents and their right to family life.

For D to be safe in the care of his parents – they would need to live with, for example, foster carers who would take responsibility for D's care for many years to come. The support these parents will require to ensure D is properly parented would be immense and would restrict their day to day life. Sadly even if the parents would accept such a plan, in the current climate of cuts in services and frequent changes of professionals, it would be a risk to D and unrealistic that such support would be available over a very long period of time.

The alternatives are long-term foster care for D or adoption. Long term foster care, even if the parents work with the foster carers, is risky and I suspect it would be challenged by the parents. Even with an exceptional placement the chances of it being very long-term are problematic. Mr and Mrs P are not offering such a placement. Adoption is the last resort but will provide permanency, stability and security for D and meet his primary attachment and care needs. It will be very distressing for the parents who in my view are just too limited and vulnerable to be able to parent D. They are unlikely to understand or agree that they cannot care for D to a good enough standard.

I do not recommend any further assessments nor that any resources available would be sufficient to ensure that [the parents] can safely care for D and meet his needs throughout his minority."

77. Addressing various specific issues, she made a number of observations which I need to set out. She said:

"[Mother's] difficulties in adapting seem to me to stem from her innate learning difficulties and character traits. For this to be managed, support for her in her parenting will need to be constantly on hand. She will need firstly to recognise and say what the problem is, secondly to accept she needs help and thirdly to act on the advice. [She] resents advice and can be resistant which is to the detriment of D."

78. Under the heading 'Guidance and Boundaries' she said:

"They struggle to anticipate that D is challenging and he will find new ways to behave e.g. running off, grabbing a knife or running up stairs. It is their job to step in and prevent this before it either happens or becomes established. The PAMS material tests the ability of the parents to see and react to a picture of a situation that has happened or may happen. Both parents are able to do this. However they do not seem to have the capacity in a live situation, to connect this to what D may do and keep him safe. I am concerned that D's challenges will escalate and [mother] may lose control and dealing inappropriately with D.

I am concerned about [her] scepticism and criticism of the social workers and other professionals who

she says are no help. If D is to live with his parents, the history of this family will mean the Local Authority should be involved in the safeguarding of him in the immediate future, which will require a positive and open working relationship between both parents, the health and educational professionals and the social workers.

I have found [mother] to be defensive, to challenge and to become preoccupied with what others advise, such that she avoids her need to reflect and change her style. This will be hard as she is rigid in her thinking but seems to me to be as much to do with her character and personality rather than just her learning difficulties. Whatever the cause, it hampers her learning from the modelling and discussions. She believes that she has been unfairly treated and not offered the support she would like. It may be that she just does not have the capacity to anticipate and be flexible and too much is expected of her."

79. She commented:

"Regarding keeping D safe ... In my view ... and unrelated to any deliberate action by the parents, D is at significant risk of being unsafe in the care of his parents."

80. Addressing the question of what support would enable the parents to provide D with adequate care for the rest of his minority, she said this:

"In reality there was little more that could have been offered to support D and his parents in the community. The lack of an Adult social worker for [father] was not, in my view a contributory factor. The next stage of care would have been for D to be all day at a Nursery/Childminder 5 days a week plus evening support or for the parents and D to live with carers – to be on hand for 24 hour support.

Both these situations would not have provided D with the significant primary attachment he needs to experience as a young child in order for his emotional well being. It would not be the parents who are providing adequate care for D but others. I predict that [the parents] would find such a level of support an imposition and would struggle to accept or work with those providing the care. As D grows his needs will be more challenging and it is unrealistic for the Local Authority to be able to provide 24 hour available support for parents and D."

81. Addressing the question of whether the parents have the capacity to acquire and develop the necessary parenting skills, she said:

"I am concerned not only that this capacity to be responsive and to read D's changing needs is so limited in [mother] but she has resorted to frustrated outbursts when D becomes difficult. On two occasions when I have attended contact [she] has flared and without intervention I am concerned how she would have dealt with D.

Mr and Mrs P are more positive regarding both parents. They feel when [mother] is in the right frame of mind she is prepared to learn and can make progress. They have observed [the parents] complementing each other in their skills with D and working together. They are also very aware of the limitations of each parent.

[Mother's] strategies for managing D are good in theory but I note the reports in the past of her ignoring him when he cries or is bored. I am concerned that she has not been able to keep him safe and does not multi task. When at home as the only responsible parent there will be times when for example he is challenging or the telephone goes, someone is at the door or the cooking needs attention and [she] will struggle to watch D. He is a vulnerable child with little sense of danger.

These parenting skills are very hard to learn because they are largely instinctual. [Mother] is rigid in her thinking and this restricts her ability to accommodate the everyday subtle changes that children make as they grow and develop. She has been a helpful carer for her dad but his needs are predictable and practical.

It was significant that she told me *"I changed when I am told what to do"*. She resents advice, which is in part due to her frustration at not being able to think flexibly.

I do not doubt that [her] motivation to care for D is high but she also struggles to accept that her previous parenting caused significant concern. She resented suggestions she could organise her days differently to allow more time for D. She challenges advice and prefers to do things her own way.

**In summary** I do not consider that [either parent] has the ability to acquire and develop the parenting skills in order to make the necessary changes to meet D's developmental needs and well being in the immediate and long-term future."

82. Ms Randall's opinions and recommendations were carefully probed when she gave oral evidence. In all matters of substance they remained unaltered. She described the mother as resisting help and advice, struggling to absorb what she was being told and not able to learn. She recalled the mother saying she was "fed up with people coming to the house and telling us what to do" and saying "don't tell us what to do." She described her lack of success in contacting the father's social worker and remarked that the "gap" for father was being filled by the mother and Mr and Mrs P "if it was being filled at all." She said that in her opinion D needs better than good enough parenting.

83. What is very clear from the mother's various statements is the unqualified love and commitment both she and her husband have for D. She believes passionately that, with appropriate support, they can and should be allowed to look after D, both now and throughout his childhood. What is also very clear (see for example the mother's statement of 22 December 2014) is the very great help the mother has received from Mrs P, both practical and in assisting the mother to understand better what is and will in future be needed of her in her parenting of D: "she was able to teach me things in a way that I could understand." It is no criticism of TG that the mother plainly found Mrs P's help more useful. There is an interesting, and revealing, comment by the mother in the same statement:

"[TG] talked me through a routine that worked when she was there, but did not work for me when I put this into practice. I therefore asked [Mrs P] to help me. She was able to teach me a routine that worked really well at home."

84. The mother recognises and acknowledges her, and her husband's, difficulties but says that they have always sought help when they need it and worked hard with professionals. She also says that she has become more independent and more confident. With the right kind and level of support she believes that they can learn to look after D and provide him with good enough parenting. What they have in mind is support in accordance with the A+ ability assessment with significant and long-term input from Mrs P. The mother sees her own mother's involvement with D "as his grandmother", not as a carer for D or as someone providing her and her husband with support as they care for him.

85. Although at times (though not always) speaking warmly and appreciatively of both MB and TG, the mother does complain that the support she and the father have received from the local authority has not always been adequate or "tailored to people with the issues that [the father] and I have." As she put it in the witness box on 22 June 2015, "We weren't given the right support that we need, thus I've asked for more support, and it was not given to us until it was too late."

86. The mother's statements deal in detail with her responses to the various concerns raised by the local authority and others. I do not propose to go through all of this, but can assure the parents that I have it all very much in mind. There are however five points to which I draw attention:

i) First, the mother points out that, with the sole exception of the occasion when D's finger was caught in the drawer, D has *never* come to any physical harm while in his parent's care. She says that she understands safety issues and that "there are many times that I have acted appropriately to protect D from harm and to do this I have had to act quickly and instinctively." For example, they have put up safety gates and she makes sure that all harmful cleaning products are out of his reach.

ii) She points out, with appropriate and understandable vehemence, that the knife to which reference has been made was not a sharp kitchen knife but an ordinary dinner knife.

iii) She was adamant in the witness box that although on occasion she had raised her hand to D she did

not slap him – "I would never slap him."

iv) She says that she has always acted appropriately in seeking medical assistance for D when needed. On the occasion when D's finger was trapped in the drawer she took the view that it was not a serious incident and, although initially painful, not such as to require medical attention.

v) In relation to contact she says (statement 27 November 2015) that "I can find it hard when D is grumpy at contact ... sometimes I struggle to hide my disappointment when he is in a grumpy mood ... I admit that I could deal with it better ... it is something I would like help to work on."

87. In her oral evidence the mother spoke with great dignity and appropriate passion. Her, and her husband's, love for and pride in D shone through her evidence. She accepted that D has problems. She recognised that she has difficulty multitasking – "I told you, I can't multitask" – explaining how for example she could not focus on D when MB was talking to her. She was frank and expressive when asked about how she reacted to criticism or advice: "it depends on how they talk to me – not speak to me as if I am stupid; I want to be treated as an adult, not as someone who is thick and can't do nothing."

88. Mrs P is a qualified teacher with experience teaching adolescents with learning difficulties. She and her husband have been foster carers; at one stage they were D's foster carers. Mrs P is involved in many projects with her church and in the community. She arranged for the mother to start working with her in the charity shop she runs. In her first statement Mrs P said this:

"Since she has been working with me at the shop, I have seen some real changes in her. She has more confidence and is far more independent and not as reliant on her family. She has become more socially aware, is more amenable and has matured a lot. She now has an attitude where she gets on with things; I feel she can apply these changes in herself to her care for D."

Very similar observations were made by another worker in the shop who, in a statement dated 1 June 2015, said how over the last few months they had seen the mother transform into a "confident adult" and "blossom." Mrs P went on to make clear her, and her husband's, commitment to support the parents as part of a multi-agency package, working together with A+bility.

89. In her second statement, made after she had become aware of the outcome of the A+bility assessment, Mrs P said that the assessment was generally in line with her views. She said she would commit to the level of support being proposed by A+bility. She agreed that the parents would need intensive support but expressed her confidence that with the right support they would be able to learn how to do things for D in an appropriate way and learn how to be able to read his cues. Over time, she said, the support they needed would decrease. With the right level of support, she said, "I believe that [they] are capable of raising D."

90. That remained Mrs P's stance in her oral evidence. Challenged about one of the occasions when D had run away, she said she had no concerns about his general safety. She described the mother as having come on tremendously and become a woman. She said that MB had "wanted these parents to succeed."

91. I turn finally to the evidence of D's children's guardian. She has been involved throughout all the litigation. So far as material for present purposes I need add nothing to Baker J's summary (see paragraph 5 above) of what the guardian had said in her report dated 23 October 2012, except to observe that her measured evaluation of what the future might hold has been borne out by subsequent events.

92. The guardian's final report is dated 26 November 2015. It is insightful and humane, sensible and, in my judgment, realistic. She knows and understands the family very well.

93. The guardian was, in my judgment rightly, critical of the "inconsistent" service the father had received from the local authority's adult services – for my own part I would use a stronger and more critical word – and described how, very recently, and only "after considerable pressure from Swindon Advocacy Service", funding agreement had "finally been achieved" with regard to the allocation of five hours a week of personal support for him. However, and in agreement with Ms Randall, she said that even if the father had received more support "this would not have been sufficient to enhance his parenting ability sufficiently for him to be able to look after D as a secondary carer." In contrast, she made clear that in her opinion the local authority's

children's services "could not have done more to support and monitor D's care when he lived with his parents."

94. In her account of D's current circumstances, the guardian made a number of revealing observations. She recorded the mother as having attended contact "in a consistently reliable manner" but the father as having "felt the need for breaks from contact during recent weeks." In relation to the mother she said this (based largely on the contact records, *not* her own personal observation of contact):

"In general, [she] continues to struggle to manage D's practical and emotional needs. The quality of contact is determined by her mood which can be difficult to manage for the contact supervisors as well as D. Although there are some positives in the mother child contact experience, there is also tension, maternal frustration, verbal combat and an inability to set and maintain the consistent behavioural boundaries which D needs.

[She] needs to be supported and encouraged at all times. Contact supervisors have to intervene with regard to practical tasks (dealing with messy nappies and D's now more challenging conduct).

[She] places emotional pressure on D when seeking emotional reassurance as, for example, when she has told him he had upset her by saying that he wanted his [foster] carer."

In relation to the father, she said this:

"[He] continues to enjoy playing with D. During this year, he has struggled to keep up with D's development, increased mobility, more assertive personality and more challenging behaviour. [His] ability has remained the same whereas D has moved forward in this respect."

She reported D as having "flourished in his excellent foster home and ... made some developmental progress."

95. The guardian expressed her overall analysis as follows:

"Despite many months of supervised and supported contact, I do not believe that [the parents] or either of them on their own should be given responsibility for D without being accompanied by a responsible adult or a professional worker. I am unable to include [the maternal grandmother] in any list of responsible adults who might be available.

In essence ..., D's care needs are over and above those of other children of his age. He needs particularly attentive care from a permanent carer or carers with whom he can establish and maintain a close, secure emotional attachment relationship and who can provide him with safe, stable care.

The considerable supervised contact time for D and his parents has provided a helpful opportunity to appraise parental ability over a long period within a safe and supported care environment.

Unfortunately, parental capacity appears to have remained static if not diminished whereas D's developmental and behavioural needs have increased / changed."

96. The guardian elaborated this in her careful analysis of 'strengths and risk factors in the family system' which I need not set out but which I have very much in mind. She drew attention to the undoubted fact that the parents love D and that they have been consistent in their wish to look after him. She noted that Mr and Mrs P continued to be supportive, despite their own busy lives. Amongst the risk factors she noted were that the mother "struggles to manage certain of D's practical needs [and] to demonstrate consistent emotional warmth to D and finds his behaviour difficult to manage"; that the father "does not have the capacity to take responsibility for D without support and supervision [and that] his ability has been stretched by D's developmental progress"; that the mother "finds it difficult to work with professionals [and] resists professional intervention, advice and guidance"; and that the parents "have been unable to adapt and keep up with D's changing care needs, [mother's] limited ability to do this being of critical concern."

97. The guardian added her agreement with Ms Randall's view that "we must not expect more from [the

mother] than she can manage ... and she may have reached her limit in the parenting task."

98. She made clear that she supported the local authority's plan for adoption and post-adoption contact, adding that if this proved impossible then long term fostering would have to be considered. She said:

"I am absolutely clear that D's care needs are not able to be met by [the parents] or by [the mother] on her own ... I do not believe that [they] would be able to look after D unless a responsible adult was with them at all times. Although Mr and Mrs P are available to provide some support, this would not be the 24/7 wrap around support that these parents would need."

99. She added this:

"If that was provided, I would then question who was looking after D and with whom he should establish and maintain his closest emotional attachment relationships.

Prior to leaving parental care, D and his family were receiving so much support that D was being looked after by others for increasing amounts of each day. This may have assisted his parents but will not have met D's emotional needs."

100. In her oral evidence, the guardian reiterated how the local authority had really wanted the parents to succeed. She described the mother as finding support difficult if it involves criticism or challenge and thought she would not be able to work in partnership with a foster carer. She said that, because of his own difficulties, D would need additional support both through childhood and as a young adult. He needs a steady, calm and consistent future.

### **The local authority's case**

101. The local authority's case, reduced to its essence, is clear and simple. Relying upon all the expert and other evidence, the local authority says that D is a child with additional needs who needs more than good enough parenting; that the parents, because of their own difficulties, are unable to meet his specialist needs and to provide the stimulation and skilled parenting he needs; that they are unlikely to be able to keep up with D's developmental needs, so that he might regress in their care, undoing the progress he has made in foster care; and that the level (and duration) of the support that would be required if D were to return to his parents would not provide him with the love and consistency of care that primary carers could provide. As Ms Griffiths put it, D needs to be parented by a 'parent', not by professional carers. The local authority also has continuing concerns about the parents' ability to ensure D's safety and about their limited ability fully to embrace the support of professionals.

102. The local authority's case is, in the event, as we have seen, supported by the guardian.

### **The parents' case**

103. The parents make common cause. In large measure, therefore, their submissions overlap and complement each other. It is convenient to start with the father.

104. Ms Fottrell, who it must be remembered acts on behalf of the father but also takes instructions from the Official Solicitor, expresses their deep concerns about what, with every justification, she calls the "notable deficit" in the support being given to the family by the local authority in relation to its failure to provide the father with the adult support services to which, as it eventually conceded, the father was entitled. As she submits, this impacted on the family in two ways: first, the father has not had the support he required, and thus continued to struggle with day to day tasks for himself; and, secondly, this meant that the mother was overburdened by being required to support him – which must have impacted on her ability to look after D. This is not, Ms Fottrell says, a small point, for it undermines the local authority's case that the parents were fully supported when D was living at home. It is not enough for the local authority to assert that it was committed to D remaining at home and that it provided support. The key issues, she says, are (i) whether the local authority offered the right support and (ii) whether it was entitled to expect, as it did, that the support could be reduced and eventually withdrawn. Her answer to each is clear: No.

105. Ms Fottrell identifies what she suggests are two fundamental flaws at the heart of the local authority's case. First, she says, there is an inherent contradiction given that the nature of the parents' learning disabilities is, as she puts it, inherent and unchanging, a fact known to everyone when the original order was made: so the need for ongoing support on an indefinite basis underpinned the care plan approved the court in November 2012. It is therefore, she submits, unfortunate and somewhat harsh for the local authority and the guardian now to be saying that the parents have failed to 'improve' their parenting. She suggests that this goes to demonstrate either that the support envisaged was not provided to the extent required or that the local authority's expectations of the parents were either unclear or unrealistic.

106. Secondly, she challenges the assertion that D needs better than good enough parenting: it is, she says, circular and dangerous and runs the risk of a parent with learning difficulties being held to a different and more onerous standard. It would, she suggests, exclude a parent with learning difficulties who requires support from being able to parent their child if the child also has learning difficulties. She points to what Gillen J said in *Re G and A* and observes, correctly, that the court has to comply with both Article 8 and Article 14 of the Convention. It cannot be right, she says, for the court to sanction a local authority's intervention in the family life of a parent with disability in a way which would be discriminatory under Article 14. Moreover, as she points out, there is a *positive* obligation on the State under Article 8 and that, she submits, in a case such as this, imposes a broad obligation to provide such support as will enable the child to remain with his parents.

107. More generally, Ms Fottrell aligns herself with the submissions put forward on behalf of the mother, to which I now turn. Before doing so, I should mention two other important points made by Ms Fottrell. She challenges the assertion that the parents need support round the clock – a proposition, she submits, not made out on the evidence. And she points out that D has never suffered any physical injuries. Insofar as there are said to have been what can be characterised as 'near misses', she poses the question: Are these the kind of incidents, familiar to every parent, where the reaction is 'there but by the grace of God ...? Or were they, in truth, disasters waiting to happen where by some miracle nothing did happen?

108. In conclusion, Ms Fottrell submits that, with the right package of extensive support provided by a combination of Mrs P and the professionals, the parents will be able to care for D safely and appropriately, as the court had intended in November 2012.

109. Ms Morgan and Ms Sprinz on behalf of the mother submit that with a robust inter-agency package of support tailored to their particular needs, including that identified by A+ability and what is offered by Mr and Mrs P, the parents will, despite their disabilities, be able to look after and care adequately for D. They point to the exceptional level of knowledgeable support that can be provided by Mrs P, one of whose great strengths is that she knows and understands the mother so well.

110. They make the same point as Ms Fottrell. The parents' needs were known to the local authority, to the guardian and to the court when the care plan was approved in November 2012. Their needs were not going to change. They were always going to need assistance. They were what they are. And D's needs and the challenges he would present as he grew older were obviously going to change. It was a fundamental tenet of the care plan that a robust and suitable tailored package needed to be provided to address these realities. This is emphatically *not* the kind of case where a care plan has been made on one basis but where the parents' circumstances have changed. On the contrary, these parents, with all their deficits, are the parents who, if provided with proper support, were 'good enough' when the care order was made. Moreover, as they emphasise, these are the parents who were still being assessed by AP, the team manager, as late as 29 January 2014 (see paragraph 36 above) as being able to provide 'good enough' parenting.

111. Of course, as they acknowledge, D's welfare is paramount. But this does not mean that he must be removed from his parents' care to safeguard his welfare. It means, they say, that, in order to safeguard his welfare, his parents must be supported and provided with the assistance that they, because of their particular deficits, need in order to care for him. They pray in aid both what Hedley J said in *Re L* and what Gillen J said in *Re G and A*.

112. Comparing the support identified in the care plan with the support actually provided, Ms Morgan and Ms Sprinz point out that, although initially what was provided was broadly in line with the care plan, the frequency of the professional support to be provided by TG and MB was subsequently reduced – something

which, they suggest, Ms Randall was not aware of. The support to be provided by Mr and Mrs P was never put on a formal basis. The recommendations of the LAC review on 3 February 2014 (see paragraph 37 above) remained in large part unimplemented. And the right level of support for the father was not made available.

113. Ms Morgan and Ms Sprinz submit that if the recommendations of the LAC review on 3 February 2014 had been promptly and properly implemented, and if the proper support had been made available for the father, there would have been no need to remove D. As they point out, during the seven week period between 3 February 2014 and 19 March 2014 (see paragraphs 32 and 48 above) the local authority not only did not put in the services identified at the LAC review; it completely changed its view of the case.

114. Their case is, at root, that the local authority's approach as at 3 February 2014 was, and remained, the right one; that the local authority should not have changed course; and that what is now needed is to implement the care and support arrangements carefully and correctly identified by the local authority as at 3 February 2014. But the point in fact, they say, goes further. The failure, for example, to follow through the recommendation in relation to the SEQOL assessment (see paragraph 37 above), means that once the assessment was finally provided in September 2014 (paragraph 51) it was too late to implement it, because by then D had been removed. So the conclusions and recommendations could not be factored into the way in which professionals worked with and supported the mother *while she was caring for D*.

115. Ms Morgan and Ms Sprinz acknowledge that the mother has had her difficulties with MB and the foster carers and they do not shy away from some of the things the mother has said about professionals. But they urge me to remember the context. What after all is a parent likely to think about the social worker who has advocated the removal of her child or about the foster carer who is doing what the parent herself wants to do? And they urge me to accept TG's appraisal of the mother as someone who can – and, they say, will – work with professionals if they are there to assist, support and advise, rather than to assess and monitor, and who treat her as an adult and a mother rather than, as she perceived it, as if she is "stupid."

116. Moving to the heart of the case, Ms Morgan and Ms Sprinz challenge the assertion that the level of support the parents need carries with it the danger that people other than the parents will in truth be bringing D up and acting as his parents. There are, they suggest, two aspects to this: Is this really the case? And, even if it is, to what extent does it matter? In relation to the second point they caution against the risk of making a value judgment (as opposed to coming to a judgment) if it is, in truth, based upon no more than the *circumstances* in which the particular parent – these parents – come to need help. They submit that what matters is that the child has a clear and secure knowledge of who his or her parents are. The fact that some parents either need or *choose* to have assistance with the way in which their children are brought up does not, they say, alter that.

117. Here, as they rightly say, the parents *need* help. But how, they ask, do these parents, with their particular difficulties, differ from the parent physically disabled by Thalidomide, or the parent who is blind, or a parent with a brain injury as distinct from a learning disability, who may not be able to see or to react quickly to some risk to which their child is exposed. What such parents need, they submit, is that a reasonable adjustment is made for the deficits in their parenting which arise from their own inherent difficulties rather than from neglect or failure or indifference. The fact that such adjustments are made, and that such parents may be receiving a high level of help and support, does not, they say, mean that they are not bringing up their children. Why, they ask rhetorically, should it be any different for *these* parents with *their* difficulties?

118. They suggest that the true approach is best illustrated by those parents who *choose* to have assistance, for example, parents working long hours who employ a live-in nanny not merely to look after the children while their parents are at work but also to help with the daily beginning and end-of-day routines, or parents who send their children away to boarding school (and will therefore not see their children for days or possibly weeks on end), or the parents moving in circles where, even today, there is a domestic staff cooking the meals and where the children may eat separately from their parents. No doubt, they say, in all these cases the parents hope for continuity throughout the child's childhood, but, as they point out, that is not the real world. Nannies move on, staff change, teachers leave, so the children are exposed to differing professionals providing care for them at differing stages during their childhood.

119. The point, they say, is that if one steps back and considers not the *circumstances* which bring about this

help with or delegation of parental care but the *experience* of the child in these various examples it does not differ markedly, if at all, from what D's experience would be under his parents' proposals – except that he would probably have rather *more* parental care. They stress that these are not flippant points. They are made to underline the submission that it is easy to criticise, easy to buy into the notion that there is a way in which parents in care proceedings are expected to take sole unassisted responsibility for parenting and that if they do not or cannot then it is not good enough.

120. Ms Morgan and Ms Sprinz conclude with two further submissions. They reject the guardian's approach that the parents will need 24 hour wrap-around support. That is not what the mother is seeking, nor is it what she, or the father or D need. Finally, they suggest that there has been an undue emphasis on risk, particularly in relation to D's *safety*. Quite apart from the fact that all the incidents relied upon predated the local authority's volte face, they point out that risk cannot be eradicated from children's lives, although of course it can and should be reduced. They urge a sense of proportion: of course, a child can fall and poke himself in the eye with a dinner knife, but so too with a pencil, a crayon or a toy. The parents can learn to manage by modelling, which the mother, they say, will accept and learn from. Moreover, as they point out, risks change through time: road safety with a small child becomes internet safety with an older child; bath-time is hazardous for a very small baby but the risk diminishes over time to nothing for the older child. The parents, they urge, with proper training and support will be able to manage the changing risks. The mother, as they point out, has changed in her view of D's needs and limitations. Earlier on, she was unwilling to accept that there was anything wrong or that he had any difficulties; in her evidence, she was able to acknowledge that that this was not so, saying that "it's on both sides of his family, so it's not that surprising."

121. With proper support, they submit, D's parents will be able to care for and look after him adequately. They point out that whoever looks after D will need help and support. They urge me to be rigorous in my *Re B-S* analysis, carefully evaluating and balancing the benefits to D of returning to his home to be looked after by devoted parents who love him very much and who have done and always will do their very best to care for him, accepting him and loving him as he is, against what they suggest are the unknowns and perils of adoption, particularly for a child with D's characteristics. My assessment of what the parents propose for D must, they submit, be based upon the full support package proposed, that is, with input from A+bility, the local authority, other professionals and Mr and Mrs P. Adoption, they say, is not a panacea. I should be cautious about accepting the local authority's rather sanguine view as to the ease with which suitable adoptive parents will be found – a view based, they suggest, on a limited understanding by that part of the local authority of D's particular needs and complexities. They urge me to feed into my evaluation the risk that D may not be adopted and thus end up remaining in foster care.

122. At the end of the day, as they rightly observe, it is not my task to find a 'better' family for D if, in truth, his parents, with proper support and assistance, can provide him with good enough parenting. I must be vigilant not to countenance social engineering.

## **Discussion**

123. This is by some margin the most difficult and unusual care case I have ever had to try.

124. The central reality is that these are parents who the local authority, the guardian and the court agreed in November 2012 were able to provide their son D with good enough parenting. That conclusion was endorsed by the local authority on 3 February 2014 after careful evaluation and in the light of a very careful core assessment completed as recently as 29 January 2014. Yet within little more than six weeks, by 19 March 2014, the local authority had performed a complete about turn and concluded that D had to be adopted.

125. It is a very striking fact that this drastic change in the local authority's stance was not driven by any fundamental change in the parents or the sudden emergence of anything previously unknown about them. The parents' needs were known to the local authority, to the guardian and to the court when the care plan was approved in November 2012. Their needs were not going to change. They were always going to need assistance. As Ms Morgan and Ms Sprinz put it, they were what they are. Turning the point round, the parents are today, just as they were in March 2014, the same parents as they were in November 2012.

126. What is also very striking is that, as I have already highlighted, the incidents raising safety issues on which the local authority has since placed such weight, both before Judge Marshall and now before me, had

all taken place before 3 February 2104, were all well-known to the local authority and had all been taken into account by the local authority in coming to its decision on 3 February 2104. Moreover, the additional information which came to the attention of the local authority between 3 February 2014 and 19 March 2014 – the report of what LW and CP had seen on 14 February 2014 and the report from Dr JK dated 6 March 2014 – could not of itself have justified such a drastic volte face. As I have already observed, none of this brought to light matters significantly out of line with what was already known.

127. In these very striking circumstances the local authority's case requires a more than usually rigorous analysis and an exceptionally high degree of anxious scrutiny.

128. Before proceeding further I need to clear the ground by stating my conclusions on a number of matters which, although all very important, are in truth, as I find, peripheral to what, in my judgment, are the ultimately central and critical issues.

129. In my judgment, the failure of the local authority to provide the father for so long with the level of support which it ultimately acknowledged he needed, and the inadequately fitful engagement of the father's social worker – matters of which, from their very different perspectives, MB, the guardian and the Official Solicitor were all justifiably very critical – were utterly lamentable. The very striking contrast between the level and quality of the services provided by the local authority's children and adult services redounds as much to the credit of the one as to the discredit of the other. Matters are only made worse by the complete invisibility in court of those involved in or responsible for the local authority's adult services and the consequential absence of either proper explanation or adequate apology for these serious failings.

130. The question, however, is whether, and if so to what extent, these lamentable failings have in fact impacted on the parents' ability to care for D. Ms Fottrell, Ms Morgan and Ms Sprinz submit that the impact was not just felt by the father but also went to and adversely affected the mother's ability to look after D. The guardian and Ms Randall take a rather different view, though focusing more on the question of the extent to which additional support would have enhanced the *father's* ability to act as secondary carer. My conclusion, in the light of all the evidence, is that at worst all this would have had no more than a marginal impact on the parents' ability to look after D. The gap between what was actually provided to the father and what ought to have been provided, significant though it was, would not have sufficed to bridge what in my judgment was, as I shall explain, the very large gap between D's needs and what the parents were actually able to do for him.

131. There is no gainsaying the factual point made by Ms Morgan and Ms Sprinz about the reduction in the frequency of the professional support provided to the family by MB and TG. I am not persuaded, however, that this had any significant impact on either the mother's ability to care for D or her opportunities to acquire additional skills to enable her to do so. Nor, even if she was unaware of it, does this impact in any significant way upon Ms Randall's analysis and conclusions. Both MB and TG were very keen – almost desperate – to see the mother succeed. They had poured much professional skill, time and effort into that endeavour. They would not have reduced their input if they had thought that it might prejudice the mother and her ability to look after D, and there is nothing to suggest that it reflected a decision imposed upon them by others to which they objected. Again, the gap between what they had previously been providing to the mother and what was now being provided would not have sufficed to bridge what, as I have said, was in my judgment the very large gap between D's needs and what the parents were actually able to do for him.

132. Given what I have seen and read about Mrs P's forceful and dynamic personality and approach, I am likewise unpersuaded that the omission to put on a more formal basis the support she and her husband were to provide can have had any real impact 'on the ground'.

133. Complaint is made that inadequate steps were taken by the local authority to implement the other parts of the seven-point action plan agreed on 3 February 2014 prior to its about turn on 19 March 2014. It is not clear why nothing more effective was done to implement the decisions in relation to SEQOL – a matter pursued only *after* D had been removed. Given the course of events, however, it can now only be a matter of speculation as to how matters would, or might, have turned out had SEQOL been promptly involved and had the local authority not changed tack on 19 March 2014. I am, however, far from persuaded that prompter recourse to SEQOL, or, indeed, prompter implementation of the other parts of the seven-point action plan, would have made that much difference, either then or subsequently.

134. I turn to a number of points of cardinal importance.

135. First, the question of D's physical safety. It is important both to keep this in perspective but at the same time also to understand the real focus of the local authority's concerns. I start with two obvious but important points. The parents have never done nor, I am satisfied, would they ever dream of doing anything to harm D. And the fact is that, with the sole exception of the occasion when his finger was trapped in the drawer – something that could happen to any child in the care of the most attentive and careful if momentarily distracted parent – D has *never* suffered any physical harm while in their care. Moreover, the specific incidents to which the local authority understandably draws attention are none of them, viewed in isolation, anything particularly out of the normal; indeed, probably familiar, if we are honest about it, to any parent. On occasions, children do escape. On occasions they find things which may cause them injury if they fall over. On occasions they make more or less perilous journeys up or down potentially dangerous staircases. On occasions parents, in exasperation, throw things.

136. I should add that I reject any suggestion that the parents have ever been other than caring and diligent in making sure that D receives appropriate medical treatment whenever the need arises. I accept the mother's explanations as to why, and in my judgment quite reasonably, she took the view that D did not need medical attention after his finger was trapped in the drawer. Whatever she may have said to TG, and the words TG reports are capable of more than one meaning, I reject any suggestion that this was a deliberate attempt by the mother to cover up. She would, I am confident, always have put her child's safety first. That is simply the kind of mother she is.

137. So what is the real focus of the local authority's concern in relation to safety? Looking to the various views expressed by A+bility (paragraph 52 above), by MB (paragraph 61), by TG (paragraphs 67-70), and by Ms Randall (paragraphs 78-79, 81), all of which are to much the same effect and point in the same direction, and which I have no hesitation in accepting, the problem is a group of difficulties the mother has: in anticipating possible risks (particularly if they are novel); knowing how to react quickly and effectively in the face of potential hazard; not always being able to anticipate or control D's actions; not being able to transfer past experiences or training into practical precautions next time round (as TG put it, progress 'in the moment' tended not to be carried through over time); not being able to bring her theoretical awareness of risk to bear effectively when confronted with a live situation; and not being able to multitask in situations where she might be distracted from her focus on D. TG's description (paragraph 67) of the contrast between the mother's fluent explanations and her inability to translate this into practical terms is striking and illuminating, as indeed is the whole of TG's evidence on the issue of danger.

138. In my judgment, these are very real and very worrying concerns. The cumulative weight of all the professional opinion on the point is compelling in identifying and evidencing just why the professionals are, and in my judgment rightly, so concerned. Not just for the here and now but also for the future, as D, who Ms Randall describes as a child with little sense of danger, becomes more challenging and finds himself exposed to new and different forms of danger.

139. The local authority's concerns about D's uncle G are, in my judgment, of only peripheral significance. They are part of the overall picture but that is all. They are, in my judgment, a frail and insecure base upon which to build any substantial case against the mother's ability to look after and protect D.

140. Next, the question of the mother's reaction to professional guidance and support. I am acutely conscious both of what the mother said in the witness box (paragraphs 83 and 87) and of the powerful points (paragraph 115) made by Ms Morgan and Ms Sprinz. The context is of course vital. And I do not think that the mother sets out to be difficult with professionals or those trying to support and assist her. But the detailed reports by MB (paragraph 61), by TG (paragraphs 69-70), by Ms Randall (paragraphs 75, 77, 78, 80-82), and by the guardian (paragraph 96), all of which I accept, demonstrate all too clearly the difficulty the mother has in accepting guidance, advice or support when it does not fit in with her own views. This is not the mother's fault. It is not because she wants to be difficult or challenging. It is, as Ms Randall perceptively commented (paragraphs 77, 78, 81) something which stems from the mother's learning difficulties, her personality and character traits and the rigidity of her thinking. But whatever the reasons for it, the effects are clear and the implications for the mother's ability to work with outsiders, both now and in the future, obvious. I do not overlook Mrs P. Her remarkable ability to work with the mother is testament to Mrs P's personality and skill,

but even that relationship has had its ups and downs.

141. Next, the question of the degree of support proposed to be provided for the parents. The guardian, as we have seen, contemplates that the parents will need 24 hour wrap-around support. The parents make clear that that is not what they are seeking, nor, they submit, is it what they need. I am not sure that the guardian was going quite so far as to suggest the need for literally round-the-clock support but the point in the final analysis is, in my judgment, of limited significance. For, on any view, the kind of package contemplated by A+bility and proposed by both the parents and Mrs P would necessitate, and, even on the very best assumptions, necessitate well into the future, a very high level of intensive support throughout much of the waking day.

142. Finally, the question of whether D needs 'good enough' parenting or 'better than good enough' parenting. There is, I think, a risk of this becoming mired in semantics. The reality is clear and simple. As Ms Randall put it, D has complex special needs (paragraph 76). The guardian expressed the same view when she said that D's care needs are over and above those of other children of his age (paragraph 95) and said that, because of his own difficulties, D will need additional support both through childhood and as a young adult (paragraph 100). I agree with those assessments.

143. Ms Randall went on to express the view that in these circumstances D will require 'better than good enough' parenting in order to achieve his potential (paragraphs 76, 82). Although this is a conventional way of expressing it, the real point surely is this. What is required is parenting which is 'good enough', not for some hypothetical average, typical or 'normal' child, whatever that means, but for the particular child and having regard to *that* child's needs and requirements. Where, as with D, the child has needs over and above those of other children of his age, then what is 'good enough' for him may well require a greater level of input. D, in my judgment, plainly will. That is the point, and that is what is relevant, and in this case highly relevant. The descriptive label is merely that, a convenient form of professional shorthand. I make clear that in coming to this conclusion and in expressing myself in this way I have very much had in mind and taken into account Ms Fottrell's submissions.

144. We are now at the central core of the case. Can the parents, with appropriate support, provide D with the necessary care not just today and tomorrow but throughout his childhood? There is unanimous scepticism, to put it no higher, on the part of *all* the professionals, whatever their particular professional disciplines. That is not, of course determinative, because I have to come to my own view on the totality of the evidence, both professional and lay. But it is nonetheless a striking feature of the case.

145. I have already set out all the relevant material but it is convenient to highlight the key passages again.

146. Dr JK expressed her "serious concerns" about the mother's ability to care for D and promote his development (paragraph 42) and contrasted his poor progress while in his parents' care with the progress he had made in a short time in foster care (paragraph 55). He would, she said, need "extra support" from carers with some expertise in working with such a child. A+bility indicated that the parents would "struggle" as D gets older, so that long term support would be needed (paragraph 53). CP, basing herself on many meetings with the family, described the parents as not always able to identify and anticipate D's needs, expressed her concerns that he would not receive the support and stimulation he needs, and noted the mother's inability to anticipate and be in tune consistently with either his physical or his emotional needs (paragraph 57). LW noted that the mother's parenting did not have any impact on D and expressed concern about the lack of boundaries set in the house (paragraph 40).

147. MB commented that 2½ years of support and advice had not sufficed to produce the parenting required to promote D's physical and social development (paragraph 60). Her assessment was clear: D's needs would not be met to an adequate standard if placed with the parents, the support that Mr and Mrs P would realistically be able to provide would not be sufficient to enable him to live at home, and potentially D might end up beyond parental control (paragraph 61); whilst D and his parents had been supported he nevertheless had suffered and was at risk of suffering significant harm and, even with continued support, it was likely that he will continue to suffer significant harm if placed back in their care – so, returning D to his parents care is not, in MB's view, a viable option (paragraph 62); and even the high level of proposed support would not meet her concerns (paragraph 64). She added that D had found the high level of support previously provided "confusing" as so many people were involved and this had impacted on his ability to form attachments

(paragraph 64).

148. TG noted that the mother did not agree with the concerns of professionals about D's developmental delay, and she commented adversely on the mother's approach to providing stimulation for D (paragraph 70). PL commented about the parents' emotional detachment from D (paragraph 72).

149. Ms Randall was similarly bleak in her assessment: D was being negatively affected by the inability of his parents to meet his needs and, despite considerable daily professional support, his well being was becoming compromised and his development was falling behind (paragraph 75); the patterns of their past parenting, the individual difficulties of each parent, and the lack of change in their style of parenting made it too risky to recommend that either parent could care for D (paragraph 76); the support the parents will require to ensure D is properly parented would be "immense" and it is unrealistic to imagine that the necessary support would be available over the very long period of time involved (paragraph 76); support at the required level would not provide D with the significant primary attachment he needs, it would mean that others, rather than the parents, would in reality be caring for him, and the parents would struggle to accept and work with those providing the care (paragraph 80); in summary, neither parent has the ability to acquire and develop the necessary parenting skills or make the necessary changes to meet D's developmental needs and well being either in the immediate or in the long-term future (paragraph 81). In her oral evidence she described the mother as resisting help and advice, struggling to absorb what she was being told and not able to learn (paragraph 82).

150. The guardian's view was to very much the same effect: the mother continues to struggle to manage D's practical and emotional needs and needs to be supported and encouraged at all times (paragraph 94); neither parent should be given responsibility for D without being accompanied by a responsible adult or a professional worker; parental capacity appears to have remained static if not diminished (paragraph 95); the mother struggles to manage some of D's practical needs and to demonstrate consistent emotional warmth to D and finds his behaviour difficult to manage; and the parents have been unable to adapt and keep up with D's changing care needs, the mother's limited ability to do this being of critical concern (paragraph 96). She added that the mother may have reached her limit (paragraph 97). She was clear in her overall evaluation: she said that she was "absolutely clear" that D's care needs are not able to be met by the parents, or by the mother on her own; that they would not be able to look after D unless a responsible adult was with them at all times; and the support Mr and Mrs P could provide "would not be the 24/7 wrap around support that these parents would need" (paragraph 98). If that level of support was provided, she would question who was looking after D; while he was still at home, the family were receiving so much support that D was being looked after by others for increasing amounts of each day: "This may have assisted his parents but will not have met D's emotional needs" (paragraph 99).

151. Mrs P expressed a different and more optimistic view. The parents would need "intensive support" but with the right support they would be able to learn how to do things for D in an appropriate way and learn how to be able to read his cues. With the right level of support, "I believe that [they] are capable of raising D" (paragraph 89).

152. The proper approach in these circumstances is that mapped out by Gillen J in *Re G and A*. The concept of "parenting with support" is crucial. As Ms Morgan and Ms Sprinz correctly submit, parents must, in principle, be supported and provided with the assistance that, because of their particular deficits, they need in order to be able to care for their child. As Ms Fottrell put it, the *positive* obligation on the State under Article 8 imposes a broad obligation on the local authority in a case such as this to provide such support as will enable the child to remain with his parents. This principle is not challenged by the local authority in the present case, nor does the local authority seek either to toll the bell of scarce resources or to argue that there are others with even more pressing claims than D and his parents.

153. But this all assumes that the parents, if provided with all the necessary support and services, *will* be able to provide D with adequate care and parenting in a setting which promotes his welfare and does not cause him harm. And it is at this point, fundamentally, that the local authority and the guardian part company with the parents.

154. Ms Fottrell, Ms Morgan and Ms Sprinz join in submitting that, with the benefit of the right package of extensive – what they accept will need to be very extensive and intensive – support, with all the right input

from A+bility, from the local authority and other professionals and from Mr and Mrs P, the parents *will* be able to provide D with adequate care, today, tomorrow and well into the future, indeed throughout the remainder of his childhood.

155. In response, the local authority and the guardian make three essential points, with each of which I am, sadly, at the end of the day, driven to agree:

i) The first is that the proposed package will simply not work, is simply not sustainable for as long as it would have to be maintained in place to meet D's needs. Despite the best intentions of the parents, they have, the mother in particular, great difficulty in accepting guidance, advice or support when it does not fit in with their own views. The experience of what happened between November 2013 and March 2014 is, unhappily, an all too likely predictor of what will happen again. I am driven to conclude that the parents – through absolutely no fault of their own – will simply not be able to maintain over the 'long haul' the effective working partnership with the support team which is essential if the package is not to collapse.

ii) The second is that, even if the package can somehow be maintained, the gap between what the parents can offer D and what he needs is very large indeed and, sadly, in my judgment, simply too large to be capable of being bridged by even the most extensive support package. I refer, without further citation, to what I have already set out (paragraphs 145-149). I am driven to this conclusion after the most careful consideration of all the evidence, including, of course, the important evidence of Mrs P, which points in the other direction.

iii) The third is that even if a sustainable package could be devised which was in one sense capable of bridging the gap, it would not in fact be promoting D's best interests. His parenting would, in reality, become parenting by his professional and other carers, rather than by his parents, with all the adverse consequences for his emotional development and future welfare identified by MB, by Ms Randall and by the guardian.

156. In relation to this last point I must, of course, address the powerful and perceptive submissions of Ms Morgan and Ms Sprinz (paragraphs 116-119). There is much in what they say with which I agree. And in many cases their analysis would indeed point in the direction to which they would have me go. But at the end of the day the outcome will always be case specific, dependent upon the particular, and often, as here, unusual, facts of the particular case. In the present case there are, in essence, two reasons why on this point I am unable to follow Ms Morgan and Ms Sprinz. The first is that this is only one of three quite separate reasons why, as I have said, no sustainable and effective package can be devised – so this particular point is not, in fact, decisive. The second reason flows from their submission (paragraph 116) that what matters is that the child has a clear and secure knowledge of who his parents are. But that, in the light of what MB, Ms Randall and the guardian have all told me, would at best be very questionable here.

157. I confess that I have struggled hard to try and find some proper basis upon which I could conscientiously have come to a different conclusion. But at the end of the day, and for all the reasons I have given, I am driven, however reluctantly and sadly, to the conclusion that D must be adopted. I am satisfied that 'nothing else will do'; that D's welfare throughout his life requires that he be adopted; and that his parents' very understandable refusal to consent to his adoption must be dispensed with. I make clear that in coming to these conclusions I have had very much in mind what has been said by Ms Morgan and Ms Sprinz about the risk that D may not be adopted (paragraph 121). I see no reason, however, not to accept the local authority's evidence on the point.

158. I shall, accordingly, dismiss the father's application and make the placement order sought by the local authority. For the reasons given by the local authority and by the guardian I agree that, once D is adopted, there should be only 'letter box' contact and that it should be at the level proposed. I invite the local authority in conjunction with the guardian to formulate more precisely for my consideration, in the light of what was said during the hearing and as matters now stand, the arrangements for ongoing contact in the interim before D is adopted.

159. Standing back, I return to the questions I posed at the outset: Given that these are parents who the local authority, the guardian and the court agreed in November 2012 were able to provide their son D with good

enough parenting, given that that conclusion was endorsed by the local authority on 3 February 2014 after careful evaluation and in the light of a very careful care assessment completed as recently as 29 January 2014, What has happened? What has changed? Why is the local authority now proposing, and why am I agreeing to, something so radically different?

160. The answer, in my judgment, is to be found in a telling phrase used by the guardian and a question posed by Ms Fottrell. As long ago as November 2012 the guardian had described the local authority's plan as "courageous". The sad reality is that it turned out to be too courageous. Ms Fottrell, as we have seen, posed the question of whether the reason D was removed in March 2014 was because the necessary support had not been provided by the local authority or because the local authority's expectations of the parents had turned out to be unrealistic. In my judgment it was the latter. Despite the very intensive support provided by the local authority, it gradually became apparent, contrary to everyone's hopes and expectations, that the parents were not able to manage. Matters came to a head in March 2014 when, in effect, if one wants to put it this way, MB admitted defeat and realised that her, and her colleagues', hopes and expectations were not going to be, in reality could not be, achieved.

161. This, as I said at the outset, is a desperately, indeed, a wrenchingly, sad case. D's parents are devoted to him and have always wanted to do, and have done, their very best for him. They would never harm him, and have never done so. They are not in any way to blame. They are not to be criticised. It is not in any sense their fault. They have struggled against great odds to be, as they would want to be, the best possible parents for D. But ultimately it has proved too much for them. Their own difficulties are simply too great. My heart goes out to them.

162. Before concluding there is one final point I need to make. Criticism has been made, as we have seen, of the local authority's failure to disclose to Judge Marshall some of the materials relating to the local authority's decision-making between January and March 2014, of the way in which, it is said, the parents were simply presented with a *fait accompli* on 19 March 2014, and of the local authority's failure to implement the seven-point plan agreed on 3 February 2014. It is submitted that this involved breaches of the parents' and D's rights under Article 8. Applying the relevant principles to which I have already referred, and assessing matters overall, I do not agree. The local authority can, to the extent I have previously indicated, properly be criticised in certain respects, but that does not mean that Article 8, though undoubtedly engaged, has actually been breached: see *Re L (Care: Assessment: Fair Trial)* [2002] EWHC 1379 (Fam) [2002] 2 FLR 730, paras 129, 240-242.

## **Conclusion**

163. I shall, accordingly, dismiss the father's application and make the placement order sought by the local authority.

## **Annex**

164. Extract from the judgment of Gillen J in *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2006] NIFam 8, para 5:

"(1) An increasing number of adults with learning difficulties are becoming parents. The Baring Foundation report records that whilst there are no precise figures on the number of parents with learning difficulties in the population, the most recent statistics come from the First National Survey of Adults with Learning Difficulties in England, where one in fifteen of the adults interviewed had children. Whatever the figure it is generally recognised that their number is steadily rising and that they represent a sizable population whose special needs require to be adequately addressed. The Baring Foundation report refers to national policy in England and Scotland committing government to "supporting parents with learning disabilities in order to help them, wherever possible, to ensure their children gain maximum life chance benefits." Nonetheless the courts must be aware that surveys show that parents with learning disabilities are apparently more likely than other parents to have their children removed from them and permanently placed outside the family home. In multidisciplinary jurisdiction such as the Family Division, it is important that the court is aware of such reports at least for the purposes of comment. It is important to appreciate these currents because the Children Order (Northern Ireland) 1995 places an emphasis on supporting the family so that children can remain with them and obligations

under disability discrimination legislation make public services accessible to disabled people (including parents with learning difficulties). Moreover the advent of the Human Rights Act 1998 plays an important role in highlighting the need to ensure the rights of such parents under Articles 6 and 8 of the European Convention of Human Rights and Fundamental Freedoms ("the Convention").

(2) People with a learning disability are individuals first and foremost and each has a right to be treated as an equal citizen. Government policy emphasises the importance of people with a learning disability being supported to be fully engaged playing a role in civic society and their ability to exercise their rights and responsibilities needs to be strengthened. They are valued citizens and must be enabled to use mainstream services and be fully included in the life of the community as far as possible. The courts must reflect this and recognise their need for individual support and the necessity to remove barriers to inclusion that create disadvantage and discrimination. To that extent courts must take all steps possible to ensure that people with a learning disability are able to actively participate in decisions affecting their lives. They must be supported in ways that take account of their individual needs and to help them to be as independent as possible.

(3) It is important that a court approaches these cases with a recognition of the possible barriers to the provision of appropriate support to parents including negative or stereotypical attitudes about parents with learning difficulties possibly on the part of staff in some Trusts or services. An extract from the Baring Foundation report provides a cautionary warning:

"For example, it was felt that some staff in services whose primary focus was not learning difficulties (eg in children and family teams) did not fully understand the impact of having learning difficulties on individual parents' lives; had fixed ideas about what would happen to the children of parents with learning difficulties and wanted an outcome that did not involve any risks (which might mean them being placed away from their family); expected parents with learning difficulties to be 'perfect parents' and had extremely high expectations of them. Different professionals often had different concepts of parenting against which parents were assessed. Parents' disengagement with services, because they felt that staff had a negative view of them and 'wanted to take their children away' was also an issue, as were referrals to support services which were too late to be of optimum use to the family – often because workers lacked awareness of parents' learning difficulties or because parents had not previously been known to services".

(4) This court fully accepts that parents with learning difficulties can often be "good enough" parents when provided with the ongoing emotional and practical support they need. The concept of "parenting with support" must underpin the way in which the courts and professionals approach wherever possible parents with learning difficulties. The extended family can be a valuable source of support to parents and their children and the courts must anxiously scrutinize the possibilities of assistance from the extended family. Moreover the court must also view multi-agency working as critical if parents are to be supported effectively. Courts should carefully examine the approach of Trusts to ensure this is being done in appropriate cases. In particular judges must make absolutely certain that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence that would not hold up against normal parents. Their competences must not be judged against stricter criteria or harsher standards than other parents. Courts must be acutely aware of the distinction between direct and indirect discrimination and how this might be relevant to the treatment of parents with learning difficulties in care proceedings. In particular careful consideration must be given to the assessment phase by a Trust and in the application of the threshold test.

(5) Parents must be advised by social workers about their legal rights, where to obtain advice, how to find a solicitor and what help might be available to them once a decision has been taken to pursue a care application. Too narrow a focus must not be placed exclusively on the child's welfare with an accompanying failure to address parents' needs arising from their disability which might impact adversely on their parenting capacity. Parents with learning disabilities should be advised of the possibility of using an advocate during their case eg from the Trust itself or from Mencap and clear explanations and easy to understand information about the process and the roles of the different professionals involved must be disclosed to them periodically. Written information should be provided to such parents to enable them to consider these matters at leisure and with their advocate or advisers. Moreover Trusts should give careful consideration to providing child protection training to staff

working in services for adults with learning disabilities. Similarly those in children's services need training about adults with learning disabilities. In other words there is a strong case to be made for new guidelines to be drawn up for such services working together with a joint training programme. I endorse entirely the views of the Guardian ad Litem in this case when she responded to the "Finding the Right Support" paper by stating:

"As far as I am aware there are no 'family teams' in the Trusts designated to support parents with a learning disability. In my opinion this would be a positive development. The research also suggests that a learning disability specialist could be designated to work within family and childcare teams and a child protection specialist could be designated to work within learning disability teams. If such professionals were to be placed in the Trusts in Northern Ireland they could be involved in drawing up a protocol for joint working, developing guidelines, developing expertise in research, awareness of resources and stimulating positive practice. They could also assist in developing a province-wide forum that could build links between the Trusts, the voluntary sector and the national and international learning disability community."

(6) The court must also take steps to ensure there are no barriers to justice within the process itself. Judges and magistrates must recognise that parents with learning disabilities need extra time with solicitors so that everything can be carefully explained to them. Advocates can play a vital role in supporting parents with learning difficulties particularly when they are involved in child protection or judicial processes. In the current case, the court periodically stopped (approximately after each hour), to allow the Mencap representative to explain to the parents what was happening and to ensure that an appropriate attention span was not being exceeded. The process necessarily has to be slowed down to give such parents a better chance to understand and participate. This approach should be echoed throughout the whole system including LAC reviews. All parts of the Family justice system should take care as to the language and vocabulary that is utilised. In this case I was concerned that some of the letters written by the Trust may not have been understood by these parents although it was clear to me that exhortations had been given to the parents to obtain the assistance of their solicitors (which in fact was done). In terms therefore the courts must be careful to ensure that the supposed inability of parents to change might itself be an artefact of professionals ineffectiveness in engaging with the parents in appropriate terms. Courts must not rush to judge, but must gather all the evidence within a reasonable time before making a determination. Steps must be taken to ensure that parents have a meaningful and informed access to reports, time to discuss the reports and an opportunity to put forward their own views. Not only should the hearing involve special measures, including a break in sessions, but it might also include permission that parents need not enter the court until they are required if they so wish. Moreover the judges should be scrupulous to ensure that an opportunity is given to parents with learning disabilities to indicate to the court that something is occurring which is beyond their comprehension and that measures must be taken to deal with that. Steps should also be taken throughout the process to ensure that parents with learning disabilities are not overwhelmed by unnecessarily large numbers of persons being present at meetings or hearings.

(7) Children of parents with learning difficulties often do not enter the child protection system as the result of abuse by their parents. More regularly the prevailing concerns centre on a perceived risk of neglect, both as the result of the parents' intellectual impairments, and the impact of the social and economic deprivation commonly faced by adults with learning difficulties. It is in this context that a shift must be made from the old assumption that adults with learning difficulties could not parent to a process of questioning why appropriate levels of support are not provided to them so that they can parent successfully and why their children should often be taken into care. At its simplest, this means a court carefully inquiring as to what support is needed to enable parents to show whether or not they can become good enough parents rather than automatically assuming that they are destined to fail. The concept of "parenting with support" must move from the margins to the mainstream in court determinations.

(8) Courts must ensure that careful consideration is given to ensuring that any decision or judgment is fully explained to such parents. In this case I caused a copy of the judgment to be provided to the parties at least one day before I handed it down to facilitate it being explained in detail before the attendance at court where confusion and consternation could be caused by a lengthy judgment being read which the parents could not follow at the time."

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<sup>1</sup> The rationale for this was explained by MB in her statement dated 20 May 2014 as being "to ensure that D had several hours per week whereby he would receive stimulation and appropriate responses to his needs." She added: "It was hoped that this would offer him some experiences that would compensate for the difficulties that his parents had in meeting his needs consistently in the home."

<sup>2</sup> The incident came to light when TG saw the photograph on her visit on 6 June 2013. Her note records the mother as acknowledging that "she had not wanted me to see the photo and that she intended to delete the evidence."

<sup>3</sup> The same note records both the mother and the father commenting that D might swallow the wheels of a toy he was playing with.

<sup>4</sup> TG recorded her concern that the mother had not thought it necessary to take D to the GP or A&E. "What worries me? [She] may avoid seeking medical advice for D – she said "if I take him to A&E, you will find out."" I note that the minutes of a previous LAC review on 28 May 2013 recorded, in contrast, how, shortly before, D had suffered a bump to his head and how the parents had "acted in a responsible manner" in taking D to hospital and ensuring that he received medical attention.

<sup>5</sup> Ms Morgan and Ms Sprinz submit that the local authority's failure to disclose this material to Judge Marshall and the way in which the parents were simply provided with a *fait accompli* on 19 March 2014 both amounted to a breach of the local authority's positive procedural obligations under Article 8, relying for this purpose on my judgment in *Re G (Care: Challenge to Local Authority's Decision)* [2003] EWHC 551 (Fam), [2003] 2 FLR 42. Be that as it may, in assessing whether there has been a breach of the procedural obligations under Article 8 "one has to evaluate the process or the proceedings (as the case may be) 'considered as a whole', assessing matters 'overall' and 'having regard to all circumstances'": see *Re L (Care: Assessment: Fair Trial)* [2002] EWHC 1379 (Fam) [2002] 2 FLR 730, paras 129, 240-242. So, in the final analysis, this is something for me to determine today and in the light of matters as they now stand.

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  - [Disability](#)
  - [learning disability](#)
  - [local authority](#)