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Case No: NE23C50082

IN THE FAMILY COURT AT NEWCASTLE UPON TYNE

Barras Bridge
Newcastle upon Tyne
NE1 1QF

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Before:

DEPUTY DISTRICT JUDGE LOOMBA

Between:

A LOCAL AUTHORITY

Applicant

- and -

(1) MOTHER (M)

Respondents

(2) FATHER (F)

(3) A CHILD

(Through her Children's Guardian)

MS MARGARET SWEETING (instructed by **A Local Authority**) appeared for the **Applicant**
MS TORY PUTNAM (instructed by **Bridge McFarland LLP**) appeared for the **First Respondent**
MS HELEN SCOURFIELD (instructed by **Sills and Betteridge**) appeared for the **Second Respondent**
MR KIERAN RAINEY (instructed by **Ben Hoare Bell LLP**) appeared for the **Children's Guardian**

Approved Judgment

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DEPUTY DISTRICT JUDGE LOOMBA:

1. The court is concerned with two applications today: an application for a care order pursuant to section 31 of the Children Act 1989, and that application is dated 7th February 2023; and an application for a placement order pursuant to section 22 of the Adoption and Children Act 2002, and that application, I understand, is dated 30th May 2023.
2. The child that the court is concerned with is A, whose date of birth is 23rd January 2023 and is therefore now almost seven months old. The local authority in this case is A Local Authority. The first respondent mother of A is M, and the second respondent father of A is F. Of course, A herself is a party through her Guardian.
3. In this case the local authority is represented by Ms Sweeting of counsel. The first respondent mother is represented by Ms Putnam of counsel. The second respondent father is represented by Ms Scourfield of counsel, and A is represented by Mr Rainey of counsel.
4. At the very outset of the hearing yesterday I was informed that the parents did not wish any evidence to be heard, either from the local authority or from themselves and therefore the matter proceeded on submissions. I have read all the relevant documents in this case. I had the benefit of Ms Sweeting's excellent opening note, which has assisted me greatly, and I have had the submissions of the parties yesterday to enable me to determine these applications.
5. The test that the court has to apply in relation to the care order is whether the threshold in section 31 has been crossed. If I am satisfied that the threshold is satisfied in this case, then I have to consider the welfare principle as set out in section 1 of the Children Act 1989. If I grant a care order, then I have to consider the application for a placement order, and again the principles that apply there are set out in section 1(2) of the 2002 Act which are similar to the considerations in section 1 of the Children Act. Applying those principles, I am invited to dispense with the consent of the parents pursuant to section 52 of the 2002 Act on the basis that the child's welfare requires the consent to be dispensed with.
6. The position of the parties in this case is that the local authority of course pursues its applications for a care order and a placement order. The first and second respondent adopt the same position, in that they oppose the local authority's applications, and they would seek a return of A to their care. The Guardian's position is that she supports the local authority's applications for a care order and a placement order. A at the present time is in foster care and has remained there. In fact, I am told that it is a foster-to-adopt placement.
7. By way of background, the parties have been in a relationship. This is the mother's eighth child and the father's sixth child. More immediately, there were proceedings in relation to the parties' older child, B, who was born on 10th October 2021, and he was the subject of a final care order and placement order made by His Honour Judge Loveridge as recently as 25th July 2022. There is an extensive threshold document that results from that hearing, including welfare findings that were sought by the local authority, and those threshold and welfare findings were made by His Honour Judge Loveridge in July of last year. Those are repeated for the purpose of today's hearing,

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given that those proceedings were concluded as recently as July of 2022. In addition, the local authority has produced a threshold and welfare document in relation to both the mother and the father that I will come to presently.

8. The parents have each responded to the revised threshold as is set out in the documentation provided by the local authority, and I really need to consider them in a little bit more detail in just a moment. The concerns in this case are very longstanding, the mother's previous children all being removed from her care and being the subject of care and placement orders. As far as the father is concerned, I understand one child was a looked-after child, but they are not the subject children and so I will not consider them in any great detail. As I said, I have heard no evidence in this case and therefore the first matter that I should consider is the issue of threshold.
9. The law on this matter is set out in section 31(2) of the Children Act 1989, which provides that:

"A court may only make a care order or supervision order if it is satisfied –

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him".

That is the basis on which the local authority has created its threshold document.

10. The first thing I have to consider is the threshold that is now pleaded as against both the mother and the father. The threshold document of course incorporates all the extensive findings made by His Honour Judge Loveridge in July 2022 and those remain the threshold that the local authority relies on in this case, but, because those have already been the subject of findings by the learned judge, I do not really need to go into them again, and I will confine myself to the threshold as pleaded for the current proceedings.
11. The first matter is in relation to the mother's hair strand testing. Those results were produced by Forensic Testing Service on 20th March 2023, and they indicated that the mother had used cannabis on an almost daily basis during the time period of October 2022 to early March 2023. The mother had declared to FTS that she had not used cannabis in the 12-month period prior to the sample collection. However, she did declare having been passively exposed to cannabis during this period. The local authority alleges that, since A was born on 23rd January 2023, she was therefore exposed to cannabis use *in utero* and M continued to misuse cannabis in the knowledge that she was pregnant, and this could pose a risk to the baby's health.
12. The mother denies cannabis use in her response to the threshold. She says that did not smoke cannabis throughout her pregnancy and had in fact not smoked cannabis for many years before that. She says that she was living in previous accommodation where the residents would smoke cannabis and therefore, she could have been subjected to exposure to cannabis due to passive exposure. She also suggests that she received some vape oil from a friend and the friend told her that the liquid in the vape oil contains

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CBD oil and that she was unaware that that was the case as the bottles had no label on them.

13. The local authority's evidence is not challenged either by the mother or the father and therefore I cannot accept the submissions made by Ms Putnam on behalf of the mother that she was only exposed to passive cannabis use. The report from FTS is quite clear. It refers to use of cannabis rather than exposure. No attempt has been made by the mother or the father to seek clarification from FTS as to whether her passive exposure could be an issue in this case, and certainly they have not been called to give evidence. Therefore I am satisfied that that aspect of the threshold is proved.
14. The threshold document against the mother also refers to the father knowing of M's cannabis use but did not seek any help in that regard. That of course is a matter that goes to the father rather than the mother. Again, just repeating what has been said earlier, the mother has taken illegal drugs and her drug use poses a risk to the safety of any child in her care going into the future. Her dishonesty surrounding her drug use poses a risk in terms of receiving support and safeguarding measures being implemented in a timely fashion, and there has been a lack of openness and honesty in respect of her drug use, both by the mother and by the father.
15. There is a pattern regarding cannabis misuse by the mother in two sets of proceedings, the position being that cannabis was very much an issue in the B proceedings. Again the mother in those proceedings denied using cannabis but that she was only exposed passively to the use of cannabis by others. His Honour Judge Loveridge made a clear finding about that, and it is the same pattern which is repeating itself now.
16. The mother, of course, does not accept that she is being dishonest in relation to her cannabis use as she does not accept active use of cannabis in any event. The mother goes on to say that she will engage in any support and safeguarding measures that the local authority wants to implement. Again, on the basis that no evidence has been challenged, I find that that aspect of the threshold has also been satisfied.
17. The allegation against the mother is that the parents have not made the necessary changes since the older children were removed from their care and the historic issues are still active issues. In that regard, what the local authority relies on is that the parents have a new home through Your Homes Newcastle. However, it is not suitable for a child because, during the social work assessments, it was observed that the home had minimal furniture and no gas or electricity supply. That is not accepted by the mother. Of course, the local authority is entitled to rely on that as part and parcel of the threshold because that was indeed the case when the parents had moved in. But I accept that the parents had only just moved in and that the local authority have no current concerns as there is sufficient furniture in the property and the gas and electricity has now been connected. So I am satisfied that that threshold pleading existed at the time the proceedings had been commenced but is no longer a current concern for the local authority.
18. The local authority say that the parents have not consistently engaged with children's services. In that regard, the parenting assessment sessions were missed and the support that the local authority had put in place has not been able to be implemented. In September 2002 it is said that the mother and the father both attended children's services' office and advised the social work team manager that they would not be engaging with the children's social care.

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19. Between the months of September and November 2022 the social worker was unable to engage the parents. The parents were not present for arranged statutory visits and did not attend the initial child protection conference in October. That is not accepted by the mother. She says that she has engaged with all the sessions and has found them to be very useful. She accepts that she did not engage with children's social services consistently between September and November 2022, and the account that she gives, which is a bit difficult to follow, is that she had to attend a police interview in relation to neglectful care she received from her father and stepmother, and the social worker, because of her own commitments, was unable to arrange alternative appointments. But the mother says she has engaged with social services since that time.
20. The local authority say that the mother has continued to use cannabis and provided a positive toxicology test in October for cannabis use during her pregnancy. A was therefore exposed to cannabis use *in utero*. I have already dealt with that, and I am satisfied that, both in these proceedings and in the proceedings concerning B, there was extensive use of cannabis by the mother.
21. The local authority say that the parents have been in contact with D, who is the previous partner of the mother and was indeed an abusive partner of the mother.
22. Midwifery services reported that D was present during the parents booking an appointment, and the parents had said that D has been at their address; that association with D would pose a risk of physical and/or emotional harm to A should he be present during such encounters due to his previous violence and adverse relationship dynamics between him and M. That is not accepted by the mother. She says that the only contact that she has with D is through Facebook, only occasionally receiving annual letterbox contacts in relation to their children. She does, however, accept that there was a chance encounter in the local café with F, and during the time that she was at the café the midwife called and was asking questions in relation to D as he was in the same café engaging in a conversation with F. However, she stresses that this was a chance meeting and not by any means pre-arranged. I see absolutely no reason why professional midwifery services would give an account if there was no substance in that. However, the first respondent does accept the risks associated with D if he were to come into contact with A. So I am satisfied that that aspect of the threshold is also satisfied.
23. In relation to the welfare findings in the current proceedings, the local authority say that the child would be placed at the risk of significant emotional harm and neglect if she were to be rehabilitated to her parents' care. The risk factors identified in the last set of proceedings continue to be present, and neither the mother nor the father would be able to provide A with the same consistent care that she requires throughout her childhood.
24. The mother and the father have been unable to demonstrate insight or understanding into the concerns and/or the risk that they present to A and the ongoing risk factors are identified in the parents' inability to work openly, honestly, consistently and constructively with the local authority to enable meaningful and effective change. The mother does not accept it. She says that A would be very well looked after in the care of herself and the father and, furthermore, she states that she engaged with the parenting assessment, engaged with all the work recommended and she found the work to be very useful and informative.

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25. Again, none of this evidence has been challenged and I am satisfied that A continues to be at risk of significant harm if she were rehabilitated to the care of the parents. They do not have the current insight and they have not learnt from their past experiences, not just with B but also with their other children.
26. In this context, I note that not only have the mother and the father failed to engage with the local authority, but they have also not engaged in any meaningful way with the Child's Guardian. Mr Rainey submitted on behalf of the Guardian that, although there was some initial contact with the Guardian, the Guardian was unable to contact them meaningfully in relation to preparing a final report and certainly has not been able to contact them between the IRH and the final hearing.
27. The local authority says that, whereas they have provided extensive support to the parents, they remain unable to consistently implement their learning from the teaching sessions following the PAMS assessment and demonstrated limited insight into the needs of A throughout the remainder of her childhood. The parents continue to require a high level of prompting and would struggle to adjust to A's changing needs as she grows. Again, these are matters which are not the subject of any challenge by the parents evidentially, although they do not accept it. The mother says that during her contact with A she has regularly changed and fed A and done so without being prompted, and indeed she was the one who initiated the right size of nappy for A when she arrived for contact.
28. It is not the local authority's case that contact is in any way lacking, which the parents have attended regularly, but these risk factors continue to exist. The local authority says the risk factors are associated with M's vulnerability and the level of co-dependency in the parental relationship; that neither parent would be able to offset the other's deficits in respect of their parenting capacity to a good enough level. Again, there is a denial of this by the mother and she says she is not dependent on F. The fact that they chose to leave this hearing yesterday together with the fact that they have not attended to hear this judgment, even though the local authority had agreed to provide a facility for them to do so, does demonstrate their dependency upon each other. Absent any challenge to the local authority's evidence, I am satisfied that aspect of the threshold is also met.
29. It is said that the parental history is complex and risk factors are long-standing in respect of both parents' previous parenting and the current risk factors pertaining to A. Neither parent accepts the harm that their elder children have suffered in their care, and they continue to minimise risk factors. The mother accepts that her older children did suffer harm in her care, but she says now that she has engaged with all the work and support offered to make the necessary changes to ensure that A would not be placed at the same risk should she be in the care of the parents. That is notwithstanding the very recent conclusion of the proceedings concerning B, which I understand was also dealt with on submissions rather than on any evidence being heard. I have not had the benefit of any evidence from the mother in that respect to tell me what changes she has made to ensure that A would not be put at risk in the same way.
30. I have to say that, going back to 2011, there was a fact finding hearing conducted by Her Honour Judge Hudson in relation to mother's older child where mother remained and was not eliminated from a pool of perpetrators in respect of non-accidental injury and for failure to obtain medical attention for those injuries.

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31. The local authority says there is persisting dishonesty and avoidance as to professional engagement by M and F and they are likely to fail to engage to a sufficient level without further support or intervention which could be offered to assist in the care needed for their daughter. Again, the mother says she has engaged well with the professionals, and she says that she would be willing to engage with them in whatever way that they want going into the future and will engage with the local church community and health visitors.
32. Again, in relation to the dishonesty about drug use, the fact that between September and November the mother failed to engage with the local authority is all indicative, in my judgment, as to the avoidance of professional engagement with the parents and I am satisfied that that aspect of the threshold is met in this case.
33. The local authority says that there is a lack of clarity in respect of the parents' physical and mental health needs due to their failure to consistently engage with professionals. The local authority does not allege that there is any problem with her physical or mental health at the present time, but simply that there is a lack of clarity about it. The mother does not accept that. She says that their mental health is stable, and she has been taking appropriate medication for a couple of years which has helped to stabilise her mood. She would also state that she regularly engages with her GP and crisis helpline if she feels that her mental health is deteriorating. That is not something which has been challenged by the local authority and indeed the local authority themselves could have obtained that information from the mother's medical personnel if need be. So I have some reservations about finding that part of the threshold as having been established.
34. It has been said that there is a risk of domestic abuse occurring within the relationship and A being exposed to some physical harm. That is not accepted by the mother, and she says that there is no domestic abuse in her relationship with this father. I have to say that during the B proceedings I think it was said that there was an allegation made by the mother that she had been physically and sexually assaulted by the father. There was an investigation in relation to a possible rape allegation as against the father, which he denied, and the mother subsequently withdrew that allegation. That does, in my judgment, give the local authority cause for concern as to the possibility of further abuse, whether that did actually happen in the past. The fact that the allegation was made and the fact that it was withdrawn clearly shows a degree of volatility in that relationship.
35. There is no practical support which is available which would ensure A's safety in the care of her parents and any plan would rely on the parents' ability to work collaboratively and honestly with all the professionals involved, and there is extensive information which highlights that the parents cannot be relied upon to act in the matter now or in the future. Again, that is not accepted by the mother. She feels that there have been deficiencies in the way that the local authority has worked with her and with the father and she has not always been kept fully informed about the proceedings. Therefore, I also find that aspect of the threshold is satisfied in this case.
36. As far as the father is concerned, many of the matters, say the local authority, are the same as are alleged against the mother. Therefore, I do not propose to go into it in the same detail as I have done in relation to the mother.
37. The first matter that is alleged as against the father is in relation to the suitability of the current home that they have occupied, I think, since January 2023. I have already said

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that I am satisfied that that is correctly pleaded by the local authority at the time that the proceedings were commenced but is not a current concern.

38. The local authority say that the parents have not consistently engaged, and it seeks a finding against the father in that respect in relation to what they said to social services in September 2022, their non-engagement between the months of September and November 2022, and again I have already found that that aspect of the threshold is satisfied when dealing with the mother's responses to the local authority's threshold.
39. It is said that the mother has continued to use cannabis and expose the child to cannabis *in utero*, and the father quite rightly says that is a response for the mother.
40. The next matter that the local authority seeks to rely on is that the parents have been in contact with D. I have already dealt with that in the context of the mother's response, and I am satisfied in that regard that that aspect of the threshold has been satisfied. Again, in relation to the midwife reporting that D was present during the booking appointments, that again I have already dealt with, although the father, just like the mother, accepts that any association with D would be detrimental to A's welfare.
41. As far as the welfare findings as against the father are concerned, again it is said that the child would be placed at the risk of significant emotional harm and neglect if she was to be rehabilitated to the parents' care, and the last set of proceedings raised concerns which continue to be present. Of course, both these parents were also the parents of B. I have already said that I am satisfied as to this aspect of the threshold.
42. Just like with the mother, the local authority relies on the fact that the mother and the father have been unable to demonstrate insight and no understanding of the concerns or risks that they present to their daughter. The ongoing risk factors are the parents' inability to work openly and honestly and constructively with the local authority to enable any meaningful change to be brought about. Again, I have satisfied myself when dealing with the mother's responses that that aspect of the threshold is satisfied in this case.
43. Again, the welfare finding against the father is the same as is sought against the mother: that, whilst intense support has been offered, the parents remain unable to consistently implement their learning from the teaching sessions and demonstrate limited insight into the needs of A throughout the remainder of her childhood. They continue to require a high level of prompting and struggle to adjust to A's changing needs as she grows. Of course, as Ms Putnam rightly points out, every parent must struggle with the changing needs of their children, but the concerns in this case are heightened further because of historical matters going back many, many years in relation to previous children. I am satisfied that that aspect of the threshold is also satisfied.
44. The next matter that the local authority relies on as against the father are the risk factors associated with the mother's vulnerability, but the father says that that is denied, but I have already indicated my finding in relation to that. The parental history is complex and risk factors are long-standing in respect of both of the parents' previous parenting and the current risk factors pertaining to A, and neither parent accepts the harm that their other children have suffered in their care, and they continue to minimise risk factors. I have already dealt with that in the context of the mother's response to the threshold and satisfied myself that that aspect of the threshold has been established.

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45. Again, as against the father, the local authority says there is persisting dishonesty and avoidance as to professional engagement of both the mother and the father and they are likely to fail to engage at a sufficient level if further support and intervention could be offered to assist the care and needs of their daughter. The father denies that, but I have already said that I am satisfied as to that.
46. The local authority says there is a lack of clarity in respect of the parents' physical and mental health needs due to their failure consistently to engage with professionals and the father says he has engaged openly with the professionals. Again, I make the same observations I did in relation to the mother; that I am not quite sure what the local authority's concerns are in relation to their physical and mental health needs, and indeed those concerns could have been explored more fully by the local authority.
47. There is a risk of domestic abuse occurring within the relationship and A being exposed to such emotional and physical harm. For the reasons that I have already given in relation to the mother's allegation against the father and the subsequent withdrawal of that, I am also satisfied that there is such a risk.
48. The local authority in the case of the father also says there is no support realistically available that could ensure A's safety in the care of the parents. Any plan would rely upon the parents' ability to work collaboratively and honestly with the professionals involved, and there is extensive information which highlights that the parents cannot be relied upon to act in this manner now or in the future. It is not accepted by the father, who says he is willing to work with professionals.
49. Again, I have already made my observations in that regard and therefore I am satisfied that, save for some concerns I have about issues raised by the local authority in relation to the possible physical or mental health of the parents, I am satisfied that the matters alleged in the threshold document, both in respect of section 31 and in respect of the welfare findings sought by the local authority in this case, are all satisfied sufficient to cross the threshold as set out in section 31 of the Act.
50. I must therefore consider the welfare aspect of this case. Whenever the court determines any question with respect to the upbringing of a child, the child's welfare will be the paramount consideration. Of course, where A lives going into the future is very much a matter that goes to her upbringing. I also have to consider the general principle that any delay in determining issues concerning the child is likely to prejudice the child's welfare. This child has been in foster care since her birth. In fact, she is an adopt-to-foster placement and it is imperative that her future is determined now.
51. I am also mindful of the principle that, unless the contrary is shown, the involvement of the parent in the life of a child concerned will further the child's welfare. I have to say that involvement of course does not just mean direct involvement. It means any form of involvement, and in this regard the local authority's proposal is that, if I grant the applications, then there will be two contact visits after this week and then one contact visit in the second and third week following that, and then a final goodbye visit in Week 4. Thereafter the involvement of the parents will be on the basis of annual letterbox contact. I am pleased to note that some arrangement has been made whereby direct contact, if I were to grant the applications, will be continued between B and A, who are full siblings of course.
52. Because this is a contested application even though done on submissions, I have to consider the matters set out in section 1(3) of the Children Act 1989. I have to consider

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the ascertainable wishes and feelings of the children concerned. Of course, she is too young to express any wishes and feelings, but, as far as I can gather from the Guardian's report in this case who is there to look after A's interests, she is well settled in her current placement.

53. I must consider her physical, emotional and educational needs, and I am satisfied that they are all being met in her current placement and will continue to be met with a continued placement with her current foster carers in the event that she is ultimately adopted by them.
54. I have to consider the likely effect of any change in circumstances. If I were to refuse the local authority's application and accede to the parents' request that they be allowed to resume the care of A or if she were to be rehabilitated to their care, then she would go back to the same environment with all the difficulties that they present which I have already referred to in relation to the findings that I have made and in relation to threshold and welfare.
55. I must consider her age, sex, background and any other characteristics. She is a very young female child, and I am not told of any other characteristics that I need to consider.
56. I have to consider the harm that this child has suffered or is at risk of suffering. Of course, A has not suffered any harm because she has not been in the care of the parents, but what is of real significance here, and is the nub of the matter really, is the risk of harm going into the future. I have already identified that, if she were to be placed back with the parents, then those risks exist to a considerable degree.
57. I must consider how capable each of the parents are, and in relation to any other person with whom the question arises, to look after or provide the care that the child needs. I have considered the parents' inability to provide the care to the standard that this child, or any child, requires, and I have done that by extensively referring to the threshold and welfare findings.
58. I have to consider the range of powers that are available to me under the Act, because I do not just have to do what the local authority ask me to do, but the court can make such orders as it thinks fit.
59. Having considered all those matters, I am of the clear view that the future of this child does not lie with her parents and therefore I will make a care order placing A in the care of A Local Authority.
60. I then must consider the placement application, and very similar considerations, as are set out in section 1(3) of the Children Act, apply here.
61. The paramount consideration is the child's welfare, but where it differs slightly from the Children Act proceedings is that the child's welfare must be considered not just here and now, but throughout her life. Again, the same delay principles apply here that I have already referred to. Again, the court, and indeed the local authority, must have regard to the following matters.
62. The child's wishes and feelings. I have already referred to that.
63. The child's needs. I imagine she has the same needs as any seven-month-old child has and they are being met by her carer at present.

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64. The likely effect on A throughout her life of having ceased to be a member of the original family and become an adopted person. An inevitable consequence of any placement order and subsequent adoption is that the child ceases to have any direct contact with the birth family except in a very few numbers of cases. That will no doubt be appropriately dealt with by appropriate life story work being done with her and going into the future.
65. I have already mentioned her age, background, and any other characteristics that I need to consider.
66. I have already dealt with the harm that the child is at risk of suffering.
67. I have to consider the relationship that the child has with relatives, with any person who is a prospective adopter with whom the child is placed and with any other person in relation to whom the court or the local authority consider the relationship to be relevant.
68. I have to consider the likelihood of any such relationship continuing and the value of it to A, the ability and willingness of any of the child's relatives or of any person to provide the child with a secure environment in which the child can develop and otherwise meet the child's needs and the wishes and feelings of the child's relatives or any such person regarding the child.
69. The likelihood of any direct relationship existing with the parents following the making of any placement order. It is simply an inevitable consequence of the order that such a relationship cannot continue in that way, but no doubt the indirect post-box contact that the local authority are proposing will continue and will be of value to A, especially as she grows up.
70. The parents of course have the willingness to look after A, but they do not, regrettably, have the ability to do so, in my judgment. I have considered, of course, the parents' wishes and feelings. They would want A to be placed with them, but, regrettably, in my judgment that is not possible.
71. There is no religious, racial, cultural or linguistic issue that arises in this case which I have to consider.
72. Therefore, having considered all of the matters set out in section 1(4), I am satisfied that the parents' consent under section 52 of the Act should be dispensed with on the basis that the child's welfare requires that to happen, and I grant the local authority's application for a placement order. I conclude the proceedings accordingly.

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(This judgment has been approved by the Judge.)