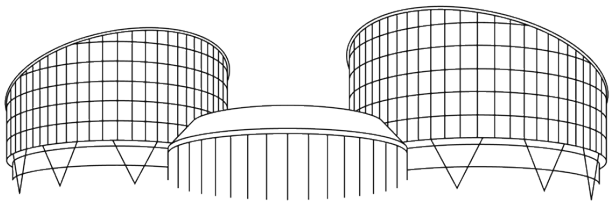

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF Y.C. v. THE UNITED KINGDOM

(Application no. 4547/10)

JUDGMENT

STRASBOURG

13 March 2012

FINAL

24/09/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Y.C. v. the United Kingdom,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 21 February 2012,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 4547/10) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a British national, Ms Y.C. ("the applicant"), on 16 January 2010. The Vice-President of the Section granted the applicant anonymity (Rule 47 § 3 of the Rules of Court).

2. The applicant, who had been granted legal aid, was represented by Pardoes Solicitors, a firm of solicitors based in Bridgwater. The United Kingdom Government ("the Government") were represented by their Agent, Mr M. Kuzmicki, of the Foreign and Commonwealth Office.

3. The applicant alleged a violation of Article 8 as a result of the refusal of the domestic courts to assess her as a sole carer for her son and their failure to have regard to all relevant considerations when making a placement order.

4. On 19 July 2010 the Vice-President of the Section decided to give notice of the application to the Government. It was also decided to grant priority to the application (Rule 41 of the Rules of Court) and to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The background facts

5. The applicant was born in 1962 and lives in Bridgwater.

6. The applicant's son, K., was born on 21 April 2001. The father of the child is P.C. P.C. is partly incapacitated due to breathing and circulation problems and sometimes uses a wheelchair. The parents were in a relationship for around fourteen years and are not married.

7. In 2003 the family came to the attention of social services as a result of an "alcohol fuelled" incident between the parents. Thereafter, incidents of domestic violence escalated from the end of 2007 with the police being called to the family home on numerous occasions. The parents resisted the involvement of social services. The local authority offered them assessments at Turning Point in respect of their use of alcohol but these were declined. Although in many instances the applicant was the victim of assaults by P.C., she was on one occasion arrested for assaulting him and on another occasion K. injured her while defending his father from an attack by her. On 3 June 2008 P.C. was arrested and taken into custody when K. was injured in the course of a violent incident between his parents.

B. The domestic proceedings

1. The emergency protection order application

8. On 4 June 2008 the local authority applied to the Family Proceedings Court for an emergency protection order ("EPO" – see paragraph 92 below) in respect of K. The application was heard the same day.

9. The court made an EPO, limited in time to 10 June 2008, for the following reasons:

> "There is significant risk of further harm – emotional and physical abuse if [K.] is not removed from his current environment. We are concerned about the mother consuming alcohol to excess when in sole charge of [K.] and further possible violent conflict when father is released probably on bail tomorrow. This is in light of previous domestic violent incidents between the parents in [K.]'s presence, which could lead to further physical harm to [K.].

10. The court took into account K.'s right to respect for his family life but considered that he should be protected and placed in a safe environment.

2. The care proceedings before the Family Proceedings Court

a. The interim care orders and preparation for hearing

11. On 5 June 2008 the local authority applied for a care order (see paragraph 93 below) in respect of K., with interim care orders (see paragraph 95 below) as requested. In its application, the local authority referred to the high level of police involvement in the family due to incidents of domestic violence and alcohol abuse and the need for a full assessment to be undertaken.

12. On 6 June 2008 the applicant attended a meeting where she informed the local authority that she had separated from P.C. She then had a contact session with K. and after the session, was observed walking with and talking to P.C.

13. A hearing took place on 10 June 2008 and an interim care order ("ICO") was made, to expire on 8 July 2008.

14. K. was placed in the care of foster parents, with frequent contact with the applicant and P.C. A guardian was appointed for K. In her Initial Analysis and Recommendation report, dated 23 June 2008, she described K. as a "very traumatised little boy". She strongly recommended the appointment of a psychologist as soon as possible.

15. As P.C. contested the proposed renewal of the ICO, a contested ICO hearing was fixed for 8 July 2008.

16. The applicant and P.C. attended Turning Point to assess their alcohol dependency. Reports were prepared, on 30 June 2008 in respect of the applicant and on 1 July 2008 in respect of P.C. It was found that neither party was dependent on alcohol. In the applicant's report, it was noted that she acknowledged the existence of a long, abusive relationship with P.C. that had involved the use of alcohol and that she had talked about the difficulty of dealing with the recent loss of her mother. The report recommended bereavement counselling, emotional support and activities to help the applicant rebuild her self-esteem and confidence to be able to cope with the changes occurring in her life.

17. At the contested ICO hearing on 8 July 2008 the court had sight of the guardian's report and heard evidence from the guardian, three social workers and P.C. It made a further ICO, to expire on 5 August 2008, referring to the history of domestic violence and noting:

> "We understand that [P.C.] and [the applicant] are currently residing at different premises but we are not convinced that they have separated on a permanent basis ...
>
> We have had sight of the Turning Point reports in which it is reported that [P.C.] and [the applicant] are not alcohol dependent; however we are not convinced that they will not continue to drink to excess in the future. Further counselling in respect of their alcohol consumption will benefit both parties as would domestic violence counselling.

> We are pleased that [the applicant] has made efforts to access help from various agencies ..."

18. The court noted that the guardian supported the renewal of the ICO and continued:

> "... [K.] should not be returned to either parent until each has been assessed for their parenting ability and receive any necessary support. ..."

19. It considered K.'s right to respect for his family life and concluded that the making of the ICO was a proportionate response to the situation.

20. Further ICOs were made on 5 August 2008, 2 September 2008, 30 September 2008, 28 October 2008, 11 November 2008, 2 December 2008, 15 December 2008, 12 January 2009, 9 February 2009 and 9 March 2009.

21. In the meantime, K. was examined by D.I., a psychologist, who produced an expert report dated 13 August 2008.

22. As to K.'s perceptions of his mother and father, the report noted that he both loved and feared his parents and that his main concern was the arguing and shouting that he associated with his parents. Regarding the possible psychological implications of the domestic violence and alcohol abuse he had witnessed, D.I. described the emotional damage suffered by a child growing up in an "invalidating environment". He noted that K. demonstrated some of the characteristics of such damage, but was also showing signs of resilience.

23. In terms of therapeutic work which should be undertaken with K., D.I. said that K.'s main need was to have a stable and safe environment with predictable relationships where he could play and grow in self-esteem, and have experiences which developed happy feelings and a sense of self efficacy. D.I. noted that K. appeared to be experiencing this in foster care and at school and commented:

> "[K.'s] parents would do well to consider the positive effects that [K.'s] relationship with them can have upon his development and sense of identity should they address the issues that underlie their violence and drinking."

24. He highlighted the need to focus on K.'s sense of identity and his emotional development, problem solving, cognitive functioning, self-esteem and social competence.

25. The social worker appointed to K. carried out a formal parenting assessment of the applicant from July to September 2008, based on five sessions between the applicant and social workers and observations of the supervised contact sessions with K. When the assessment began the applicant was living alone at the family home. She told the social worker that she had ended her relationship with P.C. and she would not consider re-establishing it unless he changed his behaviour towards her and his relationship with alcohol. All the meetings took place while the applicant was separated from P.C. However, on 13 August 2008 P.C. confirmed to the

local authority that he had moved back into the family home and was once again in a relationship with the applicant. The applicant subsequently informed that court that she and P.C. had reconciled. She explained that they had been together for a long time and that the relationship had, with the exception of the previous twelve months, been strong and stable.

26. In an undated parenting assessment report in respect of the applicant completed after the applicant's reconciliation with P.C., the social worker noted that she had discussed with the applicant domestic violence and controlling behaviour, and the support that she could access. When asked how she would manage situations in the future if she was no longer in a relationship with P.C. and he came to visit, the report noted:

> "[The applicant] said she would allow him in for a coffee. [The applicant] then added that she would not allow alcohol in the house and would throw him out if this happened. [The applicant] was not able to reflect on her past experiences involving [P.C.] and was unrealistic in her responses in regard to this."

27. The report recorded that although the applicant admitted that she became more argumentative after drinking, she did not consider that the arguments had had any impact on K. or that her parenting ability had been impaired after drinking. She continued to receive support from Turning Point and attended weekly.

28. The social worker commented on the fact that on each of the visits, she had found the applicant's home to be in good order, clean and tidy. She observed that the applicant demonstrated a strong loving bond towards K. and that she offered him appropriate affection. However, observations of K.'s behaviour and responses suggested that he had developed an insecure attachment. The applicant's knowledge of the dietary needs of a child were found to be adequate, although in practice it appeared that they ate convenience foods rather than fresh vegetables and that the applicant allowed K. too many unhealthy snacks. The social worker also raised some concerns regarding the applicant's ability to address and treat signs of illness in K. and the lack of attention paid to K.'s dental care. She noted that the applicant showed poor knowledge of the need for visual stimulation, interaction and setting appropriate routines and that she had difficulty interacting with K. and keeping him occupied for any length of time.

29. The social worker considered that the applicant deferred to P.C. on the majority of issues, apparently because she was afraid of the repercussions of challenging him. The applicant was unable to recognise that the behaviour she described was abusive and that it would have a detrimental effect on K. She unintentionally put K. at risk because her perception of parenting did not afford her the ability to identify risk, make decisions and set appropriate boundaries for K. The report concluded:

> "[The applicant] has informed me that she is in a relationship with [P.C.] and that their intentions are to parent [K.] together. [The applicant] cannot be considered a protective factor within the relationship. The Local Authority are concerned about the

> significant risk that this will place on [K.] if in the care of his parents in terms of all aspects of his development, safety and security.
>
> It is therefore the view of the Local Authority that should [K.] be returned to the care of [the applicant and P.C.] he would be [at] risk of further significant harm."

30. An undated parenting assessment report of P.C. indicated that a significant concern was that he displayed aggression, intimidation and controlling behaviours when not under the influence of alcohol.

31. Alcohol tests of the applicant and P.C. from samples collected on 30 September and 11 September respectively showed no evidence of frequent excessive alcohol consumption.

32. The social worker prepared further statements for the court following the parenting assessment reports. In a statement dated 21 September 2008, it was noted that K. had become upset on occasions during contact with the applicant and said that he wanted to go home.

33. Between October 2008 and January 2009 the applicant and P.C. attended a Time to Talk parent support group and had three one-to-one parenting sessions.

34. D.I. also carried out a full psychological assessment of both parents and produced an addendum report dated 3 February 2009. In his report, D.I. noted:

> "... [K.] told me when asked that he wants to go home, that his mum likes him and added that his dad takes him out and gives him presents ..."

35. D.I. observed that K. displayed fewer characteristics of emotional trauma than in the previous meeting. When questioned about his relationships with his family he indicated strong positive feelings for his parents, and in particular for his mother.

36. D.I. commented that both parents had told him that they had maintained their abstinence from alcohol, but he said that this would only be tested if they were challenged by situations which mirrored the original issues which prompted them to turn to alcohol. As to their ability to prevent further domestic violence, D.I. referred to incidents of aggressive behaviour by P.C. which he had personally witnessed and noted that this did not "augur well for someone who considers that their aggression is due only to drinking behaviour". He considered that he had insufficient details of P.C.'s history to make a more accurate prediction. He criticised the parents' lack of self-awareness and noted that there was still work to be done in this regard. In terms of the parents' ability to engage meaningfully with professionals, D.I. commented only on P.C., making reference to problems encountered in this respect. Similarly, in so far as their commitment to the care of K. was concerned, D.I. referred to certain indications of P.C.'s level of commitment, with no specific examples of the applicant's conduct, while making the overall assessment that he was not convinced that the parents

had fully taken on board what they needed to learn from their mistakes and what new parenting behaviour they were going to practise.

37. As regards the aspects of each parent's psychological profile that were likely to assist or hinder their parenting of K., D.I. explained that serious limitations were placed on his assessment of P.C. by his lack of cooperation. In respect of the applicant, he explained:

> "[The applicant's] profile ... is characterized by prominent compulsive, narcissistic and histrionic patterns. This does not imply that she has a personality disorder but does have patterns of behaviour that need addressing ... These patterns need to be addressed by [the applicant] in counselling to address bereavement and domestic violence. Otherwise they will have an impact that hinders good enough parenting. [The applicant's] love for [K.], her physical parenting to date, participation in the Time to Talk programme and her declared abstinence from drinking thus far are to be praised and built upon."

38. D.I. noted that K. appeared to see the applicant as the main source and object of his love, but cautioned that K. might be idealising the situation at home as he was no longer there. He continued:

> "... [K.] is attached to both his parents. He stated a strong preference to return home. [K.] is less attached to his father than his mother ..."

39. In terms of therapeutic intervention required, D.I. considered that the applicant needed to address her role in the fighting with P.C., with discussion about her drinking, her lack of assertiveness and her inability to impose boundaries on K.

40. On 20 February 2009 the social worker filed her final statement on behalf of the local authority with the court. She indicated that since K. had been taken into care in June 2008, there were no recorded domestic incidents and that both parties had informed her that they were still abstaining from alcohol.

41. She reported that both the applicant and P.C. had "continued to work with professionals to a limited extent". She gave examples of P.C.'s unwillingness to work with the local authority and how the applicant often found herself in the middle of conflicts between the two.

42. As to K's own views, she noted:

> "... When I have tried to ask [K.] how he would feel about going home he has changed the subject."

43. In her analysis and conclusions, she noted:

> "In a very simplistic form it may appear that [K.] is in the care of the local authority due to his parents drinking and violence and as the parents have self reported that there have been no further incidents and we have no evidence to say there are then [K.] should return home. However there are a significant number of other factors which evidence that there remain extensive concerns."

44. She referred to attempts by the local authority to conduct a parenting assessment prior to K.'s removal into care, which had been unsuccessful as

a result of the parents' failure to engage. She also referred to the separation of the applicant and P.C. in 2008, which she considered not to have been genuine from the very outset. She raised concerns about K.'s health, and notably his lack of immunisations and bad dental condition, which she noted appeared to some extent to result from P.C.'s difficult behaviour. She explained that her professional opinion was that P.C. had engaged only superficially in the parenting assessment and had failed to recognise or accept his shortcomings and their impact on his parenting. She continued:

> "We acknowledge that [the applicant] is in a very difficult position and we have seen that she has made efforts to work with the local authority but is often stuck in the middle of the conflict [P.C.] has with the department. She has been successful in persuading [P.C.] to comply with some issues, but on occasions she has been unable to share information with him until she has chosen the right time as she predicted 'he will blow'. However [the applicant] is a very vulnerable woman who is not strong enough to separate or manage on her own. She is aware of the conflict [P.C.] creates with others and tries to be the 'peacemaker' ..."

45. As to the parents' abstinence from drinking, she noted that it was not possible to predict whether this would continue, partly because of their failure to participate in any meaningful assessments, and she referred in this regard to P.C.'s refusal to provide relevant information. Similarly, as regards the likelihood of further incidents of domestic violence occurring, she noted that past behaviour was the best predictor, and that P.C. had a history of violence in previous relationships. He had done minimal work to address concerns and nothing which could give the local authority confidence that K.'s needs would be met appropriately. She continued:

> "... [T]he level of cooperation and lack of awareness in my professional opinion is sadly lacking and has not given the local authority any information which enables them to make a decision that it is appropriate for [K.] to return to his parents. The court could consider that a further opportunity is given to [the applicant and P.C.] to undertake that assessment. However it has been made very clear to them during the court process that this information is essential in informing the court care plan and it is unlikely that [P.C.'s] attitude is likely to change in the short term and we cannot delay planning for [K.] any further. [The applicant and P.C.] have been aware of the seriousness of this case from the outset and despite the possibility of their son not being returned to their care they remain resolute in their attitude and lack of acknowledgment of the issues. [P.C.] in particular has deflected the issues away from his parenting of [K.] and the issues within the family focussing on acrimonious relationships with professionals and losing sight of [K.'s] needs."

46. In her professional opinion, K. had an idealised view of returning home, seeing the opportunity for treats and presents with the ability to manipulate his parents into giving him all he wanted with few boundaries and controls. He maintained his strong desire to have supervised contact to ensure that the arguments between his parents did not recommence.

47. In conclusion, she repeated her view that K. would suffer significant harm if he returned home as their drinking and violence were likely to reoccur. Neither parent had engaged in any meaningful assessments which

would indicate a positive outcome were K. to return home. The parents were committed to one another and P.C. had shown no ability to work in partnership with the local authority. She considered that K. was of an age where there was a very limited time window for achieving legal permanence and long-term fostering with ongoing parental contact would not be in his best interests, given his parents' level of negative influence in his life. She was of the view that K. needed the opportunity to form attachments with long-term carers without the placement being undermined by his parents. She therefore concluded:

> "The local authority respectfully recommends to the court that [K.'s] long term interests can be best met through adoption preferably with some form of contact with his parents. [K.] is only 7 and deserves the opportunity to live in a family where he will be legally secure, developing positive attachments without feeling disloyal to his parents. He needs to be with a family who can exercise parental responsibility and make decisions in [K.'s] life without the negative influence of the birth parents."

48. She asked the court to make a care order and a placement order in respect of K.

49. On 17 March 2009 the applicant filed a statement in response. The statement noted:

> "I can confirm that not only have there been no reported incidents between myself and my partner [P.C.], but also there have been no actual domestic incidents ... I confirm that we do not consume alcohol and although we have indicated that we would be willing to undergo further testing when we have met on contact appointments the same has never been pursued ..."

50. She refuted several aspects of the social worker's statement, noting:

> "... It often feels like whatever we are being asked to do we are then asked to do more. I certainly do not agree that I have only worked with professionals to a limited extent."

51. She concluded that while she and P.C. had hoped that K. could be returned to their joint care, they both recognised that the social services' opinion of P.C. was so damaged that their only chance of parenting might be to do it separately. The applicant indicated that for this reason, she and P.C. were thinking of separating so that she could parent K. on her own. She requested the court not to make a placement order and to return K. to her care.

52. A statement from P.C. confirmed the absence of any domestic incidents and the fact that neither he nor the applicant had consumed any alcohol. No mention was made of the possibility of separation.

53. The guardian's Final Analysis and Recommendations report was dated 30 March 2009. It was based on full consideration of the welfare checklist (see paragraph 97 below). In the section of her report dealing with recent developments, she indicated that the status of the relationship between the applicant and P.C. was not clear as they had recently informed the authorities that they had separated. The report also referred to

information regarding a violent domestic incident at the home on 14 March 2009 when the police were called. The applicant had told the police that P.C. had hit her, although he denied it. The guardian explained that the information had been received after the report had been prepared in draft, but noted that the incident added "cogent testimony" to the detail of her report.

54. The guardian compared K. as she then saw him with his condition in the summer of 2008 and reported that he had grown in confidence and settled in all aspects of his placement. He presented as happy and settled, embracing family life in his carers' home and making very good progress at school.

55. As to K.'s wishes and feelings, in November 2008 he had appeared confused about returning home. He had felt safe with his carers and gave mixed messages about whether he wished to stay with them or return home. He was firm in his view that he did not want contact with his parents without social workers being present. In March 2009 he indicated that he wanted to go home to live with his parents. When questioned about how that would work since he wished to have supervised contact with them, he replied that social services would also be there. She observed:

> "These statements clearly demonstrate what [D.I.] has stated in 'that [K.] both loves and fears his parents – his father more so'. He wants to go home but wants the safety net of social workers being in his home to protect him."

56. The report continued:

> "In my opinion [the parents] both needed to access treatment programmes for their drinking and violence, they would also have to begin to discover, reflect and recover from the underlying issues that led to the drinking and violence in the 1st place ..."

57. The report went on to consider in more detail P.C.'s behaviour and history.

58. The guardian also commented on the parenting assessments conducted, noting in respect of the applicant that she appeared to lack understanding of the impact of arguments on K. and of alcohol on her parenting ability, and that she failed to see that P.C.'s behaviour towards her was abusive and controlling. The guardian considered the crux of the issue for reunification to be that the parents had not engaged in or completed treatment programmes for alcohol or domestic abuse, noting that P.C. refused to accept that he was a perpetrator. She concluded:

> "There can be no delay for K. His parents have sadly not even begun to do the work that is needed to support and assist them with their fundamental problems/difficulties and the underlying issues that predispose their drinking and violence. Without the input they need I would expect their behaviour to revert to type, especially in the case of [P.C.], which would fundamentally seriously impact on K. causing him further significant harm if he was returned to their care."

59. She recommended that the court endorse the local authority plan for a care order with a plan for adoption.

b. The hearing before the Family Proceedings Court

60. A four-day hearing took place before the Family Proceedings Court between 6 and 9 April 2009. It had before it applications by the local authority for a care order and for a placement order.

61. At the start of the hearing, the court was presented with a new case on behalf of the applicant. In a position statement dated 5 April 2009, she said that on 14 March 2009 she had discovered that P.C. had been to a pub and had drunk two pints of beer. She had remonstrated with him for drinking when they were so close to having K. returned to them and he had pushed her into a chair and slapped her. She had called the police. She said that the relationship with P.C. was over, and that from the guardian's report she had learned new information about domestic violence in P.C.'s past relationships. She was planning, with the help of a recent inheritance, to rent a property near her sister, with the support of her sister and P.C.'s adult son, P.G. The applicant asked to be given a chance to prove that she could safely parent K. on her own, away from parental conflict, and requested a section 38(6) assessment of her as a sole carer (see paragraph 96 below). She proposed that K. be assessed with her by an independent social worker who would address K.'s relationship with the applicant, the applicant's parenting abilities and the management of any risks to K. In the interim, she sought a further ICO.

62. In a brief written statement dated 8 April 2009, P.G. said that he intended to sign a joint lease shortly, move in with the applicant and support her as much as he could.

63. The court heard oral evidence. Notes were taken by the clerk and a transcribed note of evidence has been provided to the Court by the respondent Government. However, it is in note form, with no clear distinction drawn between questions asked by counsel and responses made by witnesses. The notes are therefore of limited assistance in identifying the exact nature of the oral evidence given and any conclusions drawn from them should be treated with caution.

64. It appears from the notes that, in his oral evidence, D.I. expressed concern regarding the lack of evidence of a change in parenting skills by the applicant. Some discussion of adoption took place with him. He appeared to agree that if K. could be rehabilitated to the applicant's care, in circumstances in which his needs were properly met by her, then that would be a better solution than adoption. The notes suggest that he referred to K.'s age and the greater difficulties encountered in seeking to place an older child for adoption. However, he seems to have expressed pessimism about the prospects for change in the applicant's behaviour, and indicated that his preference was for K. to stay with his foster placement on a long-term basis,

although he appeared to recognise that this was not an option. He commented that the applicant had been entirely cooperative with him. His views on the value of a further assessment of the applicant are not clear.

65. The notes suggest that the social worker did not believe that the applicant's separation from P.C. was genuine. She expressed the view that the applicant was so entrenched in domestic violence and her self-esteem was so eroded that she would be unable to separate properly from P.C. She added that in any event the local authority had already carried out a parenting assessment; a further assessment would unsettle K., disrupt his placement and delay the matching process.

66. The notes confirm that the applicant gave an account of the incident of 14 March 2009. She explained that she had subsequently asked her social worker for help in separating from P.C. She accepted that her statement of 17 March 2009, in which she had said that there had been no further violent incidents, was untruthful. She said she was too scared to tell anyone. She indicated that she had not drunk alcohol since June 2008, nor had she been violent towards P.C. She reiterated that she had decided to move to a new house close to her sister and that P.G. was going to move in with her to assist. She had a fund of GBP 37,000 which she would use for the benefit of K. She would apply for an injunction to prevent P.C. from visiting her, and his contact with K. would have to be supervised. She said that she would undergo any programmes or assessments by a social worker, and that she was willing to see the guardian and D.I. again. She concluded that she had no intention of resuming a relationship with P.C. if K. were returned to her. She had discovered from the guardian's report how he had treated his older children. She asked for the opportunity to be assessed as a sole parent for K. and accepted that K. would have to remain in care while the assessment took place.

67. Finally, the guardian gave evidence. The notes indicate that she opposed any further assessment of the applicant. It appears that she did not think that the separation was genuine. In any case, whether the separation was genuine or not was immaterial because in order for the applicant to keep herself and K. safe, her personality had to change. It seems that the guardian gave evidence to the effect that a quarter of the children placed for adoption the previous year were K.'s age. She appears to have expressed concern that any work with the applicant to address her issues would require long-term psychological input. She recommended adoption and indirect contact with the parents until they came to terms with the adoption.

68. At the conclusion of the evidence and submissions on 9 April 2009 the court reserved its decision. On 15 April 2009 it handed down judgment. Commenting on the parenting assessments, the court indicated that in its view the contact sessions had generally gone well. It observed:

> "... We note that [K.] is not distressed when he returns from contact with his parents and understand that during contact he does ask his parents when he can come home and whether they have stopped drinking."

69. The court found that the threshold criteria for the making of a final care order (see paragraph 93 below) had been established, in light of the parents exposing K. to domestic violence and alcohol misuse causing him emotional and physical harm. It considered its range of powers and the need for a care order, referring to section 1 of the Children's Act 1989 (see paragraph 97 below) and emphasising that the child's welfare was the paramount consideration. It continued:

> "In determining the child's welfare we have considered the welfare checklist. We have referred to the welfare consideration in the Children's Guardian's report and consider this to be comprehensive. We accept the welfare aspects but consequent upon the late position statement by mother, dated 5 April 2009, reach a different conclusion. The Guardian's report does not address [the parents'] separation. ... At this juncture we believe that this separation is genuine and this therefore leads us into considering whether [the applicant] is capable of meeting [K.'s] needs, which includes protecting him from [P.C.]. This information is not before the court and puts us in great difficulty in deciding whether a care order should be made. The only way to achieve this information would be by making a s.38(6) direction [for an assessment], however this needs to be balanced against a further delay for [K.].
>
> In considering our range of powers we could make an interim care order with a s.38(6) direction for [the applicant] to undergo a parenting assessment as a sole carer for [K.]. We are told that the assessment would take at least three months and realistically five months, before the case can be properly considered again by the court. This delay must be weighed against [K.'s] best interests. Any delay is considered in law to be prejudicial unless it is planned and purposeful."

70. After examining domestic case-law on the circumstances in which a parenting assessment was appropriate, the court continued:

> "... We therefore believe in fairness to [the applicant] she should be given one last opportunity to have her parenting ability assessed in respect of [K.].
>
> ...We accept that [K.] needs a secure and stable environment in which to develop and have his needs met but this must be weighed up against him losing the opportunity to be brought up within his birth family, particularly his mother. He is 8 years old next week and has memories of his parents and has continuously asked when he can return to live with them. Although we are sure that he is scared of the domestic violence, through the parents' separation and an injunction against [P.C.] this risk can be managed.
>
> We have considered the human rights issues. We believe that making an interim care order with a s 38(6) direction is necessary and a proportionate response given that neither parent is at present capable of caring for [K.] and that it will provide the court with further crucial information before reaching a final decision ..."

71. The court recorded that this option was not recommended by the guardian, and explained why it disagreed:

> "The reasons why we have gone against the Guardian's recommendation are that we believe that a delay of 5 months is acceptable in this case provided that it is purposeful and could prove to be in [K.'s] best interests, should the assessment be positive as this will allow him to be raised with his birth mother, with whom [D.I.] has clearly stated [K.] has a very strong bond. This assessment will provide us with valuable information when reaching our final decision and we intend to return for the final hearing."

72. The court accordingly made a direction for a section 38(6) assessment and made a further ICO in respect of K.

3. The appeal to the County Court

73. The local authority and the child's guardian appealed the decision of the Family Proceedings Court, arguing that there was no sufficient basis for the proposal that the applicant would be able to parent K. well enough on her own; that the proposed assessment would duplicate earlier assessments; and that the prospects of any assessment being favourable were too poor to justify the harm to the child of disruption and delay. They argued that the court ought to have made a final care order on the evidence before it. In their notices of appeal, they specifically sought a final care order and a placement order.

74. On 2 June 2009 the social worker lodged a further statement with the court. She confirmed that K. had been informed of the separation of his parents and appeared to have accepted the situation, noting that he seemed more relaxed during contact sessions with his mother and made no reference to having contact with his father. The social worker also confirmed that the applicant had moved to a new address, on the basis of a joint tenancy agreement with P.G., but indicated that P.G. had not actually yet moved into the property. The applicant remained in direct and indirect contact with P.C., and the social worker noted that she appeared to be confused about his behaviour towards her.

75. The statement indicated that the applicant had been informed of the support she could access in order to develop her parenting skills, but observed that to date she had not accessed such support. The applicant had also spoken with a domestic violence worker, although a planned meeting had not taken place as there was some confusion over the venue and had not been rescheduled. The social worker reported that contact sessions between the applicant and K. had been broadly positive. However, she considered that the applicant had demonstrated that she was unable to make a clean break from P.C., which remained a concern to social services.

76. The case came before the County Court on 5 June 2009. By that time, the applicant and P.G. had signed a lease on a property and the applicant had moved there. The judge considered extensive written and oral argument from the local authority and the guardian in support of the appeal. He took into account a substantial skeleton argument submitted by the

applicant, who was represented by counsel at the hearing. He also had before him the various reports prepared for the hearing before the Family Proceedings Court and the note of oral evidence prepared by the clerk (see paragraph 63 above). He reserved his decision to 16 June 2009.

77. In the interim, on 6 June 2009, the court issued an order allowing the appeal. In its second paragraph, the order stated:

> "The Judge is satisfied that the conditions for making a care order exist and accordingly make a placement order, dispensing with the consent of the parents under SS.22(3)(b) and 52 of the Adoption and Children Act 2002."

78. On 16 June 2009 the judge handed down his judgment on the appeal. He summarised the relevant reports and the oral evidence as recorded in the notes by the clerk, commenting:

> "10. ... [T]he justices [in the Family Proceedings Court] heard first oral evidence from [D.I.], and then from [the social worker] in support of the local authority's application. Their evidence is recorded in notes kept by the justices' clerk. I should observe that these notes are quite difficult to follow and there is sometimes little distinction between questions put and answers given. It is however clear that, when questioned about the mother's proposal to be assessed as a sole care for [K.], both witnesses were unsupportive. [D.I.] said it was necessary to consider [K.'s] needs now, and that a promise was not the same as change. He said that the mother's contact had not demonstrated a change in parenting skills. He was struck by the guardian's report, acknowledging that although the parents loved their child and wanted to change, they could not change. He said that [K.] was insecurely attached to both parents. He said that he was not recommending returning [K.] to his parents as it would cause him emotional and developmental damage. He said that his preference would be for [K.] to stay with his foster placement on a long-term basis, but it appears that he recognised that this was not an option. [The social worker] expressed the view that the mother's self-esteem was so eroded that she would not be able to separate properly from the father. She said that it was unclear whether the proposed assessment would be residential or in the community, but that in any event the local authority had already carried out a parenting assessment. She said that a further assessment would unsettle [K.], disrupt his placement and delay the matching process."

79. The judge summarised the evidence of the applicant and P.G. before turning to the evidence of the guardian, in respect of which he noted:

> "13. ... Again it was clear from her evidence that she opposed the further assessment of the mother. She said that she did not think that the mother could separate from the father simply by moving house, as he had a lot of power and control over her. But whether or not the separation was genuine was immaterial because in order to keep herself and [K.] safe her personality needed to change. This could only happen with long term psychological support. She agreed with [D.I.] that everything would <u>not</u> be fine if the mother separated because she would return to the father."

80. The judge acknowledged that the decision of the Family Proceedings Court was reached after hearing oral evidence from the principal witnesses over a period of several days. He further acknowledged that the course of action selected by the Family Proceedings Court was one that was open to it. He continued:

"17. The temptation for a court to give directions for further evidence, often in the form of a s.38(6) assessment, is often strong. The decision to do so must always be taken in the best interests of the child. The proposition that the '... court needs all the help it can get' has an immediate attraction, but the help must always be directed at achieving the right outcome for the child. Often there is the disadvantage of delay, and it is necessary accordingly to consider the possible outcomes of an assessment. In the present case the justices justified the delay as it retained the prospect of what they regarded as the best outcome for [K.] – rehabilitation to his family. But that outcome depended on the assessment being able to demonstrate that the mother had the capacity to parent [K.] in the long term. Given that the justices' findings contain the phrase 'neither parent is at present capable of caring for [K.]', it is necessary to give consideration as to how the proposed assessment would proceed. If it was envisaged that [K.] would remain with his foster parents and spend increasing periods of visiting contact with his mother the report, 'if successful', would merely state that the mother had given all the signs of being able to care for her son, at least in the contact situation. If it was envisaged that there would be a phased return to the mother, with increasing periods of staying contact, then the report would be able to speak with greater confidence of the mother's capacity to parent her son. In either case however [K.] would be exposed to a degree of disruption of his foster placement, and to the risk of emotional harm should the assessment break down. In both cases the duration of the assessment would be too short to enable the report writer to give any sufficient guarantee that the mother would not, as predicted by the local authority and the guardian, resume her relationship with the father in due course."

81. He continued:

"18. I have come to the conclusion that the evidence about the mother was clear. [D.I.] regarded the mother's separation from the father as a promise of change, not change itself, and it was his view that there was no change in her parenting skills. The assessment of the mother would never have been able to provide evidence that would be sufficient to justify the refusal of a care order and the decision to return [K.] to his mother, given her shortcomings and the real risk that she would be unable to maintain her separation from the father. In reality the only effect of postponing the decision to make a care order was to delay, and therefore to jeopardise, the process of finding an alternative long term placement for [K.] by way of adoption ... In these circumstances the decision of the justices must be categorised as wrong, and must be set aside ..."

82. He therefore allowed the appeal, indicated that he was satisfied that the conditions for making a care order existed and accordingly made a placement order, dispensing with the consent of the parents, under sections 22(3)(b) and 52 of the Adoption and Children Act 2002 ("the 2002 Act" – see paragraphs 99 and 101 below). He added:

"I have come to the above conclusions independently of information which I was given at the outset of the hearing before me about P.G.'s failure so far to join the mother at her new accommodation, her further contact with the father at public houses, and her taking of small quantities of alcohol. Nonetheless this information tends to confirm the pessimistic view expressed about the mother's inability to separate from the father.

... I do not propose that the judgment be formally given at a court hearing, although if there is anything that requires my further attention in court, an appropriate hearing can be arranged."

83. On 2 July 2009 K. informed the applicant that he was not happy with the decision of the judge and that he wanted to come home.

4. The appeal to the Court of Appeal

84. The applicant sought leave to appeal the judgment of the County Court, arguing that as there had previously been no care order in place, the judge should not have made a placement order without having due regard to the responsibilities placed on him by section 1 of the 2002 Act (see paragraphs 103-104 below). In particular, she contended, the judge should have considered the child's ascertainable wishes and feelings regarding the decision and the relationships which he had with relatives and any other relevant person.

85. Permission to appeal was refused on the papers on 18 September 2009 on the ground that the County Court judge had been sitting in an appellate capacity, that he had reached a conclusion that was clearly open to him and that he had explained his conclusion most clearly. The applicant renewed her request for leave. An oral hearing subsequently took place on 28 October 2009.

86. On 24 November 2009 the Court of Appeal handed down its judgment on the request for leave to appeal. In relation to the applicant's complaint that the County Court had failed to take into account relevant considerations, and in particular had failed to have regard to the welfare checklist, the judge delivering the opinion of the court noted:

> "Her proper remedy in my judgment was to take advantage of the judicial offer in the final sentence of the [County Court] judgment ... She could have asked the judge to clarify the order that he was making and to indicate in his judgment how he arrived at such a conclusion. She could equally have asked him for permission to appeal. None of those things were done in the county court and a notice of appeal was filed in this court ..."

87. He continued:

> "... it seems to me on fuller investigation that [the applicant's case] lacks merit. First of all, the judge was reviewing a decision from the magistrates who had, I suspect out of understandable sympathy for the mother, held off the local authority's application with an order under Section 38(6). But it is hard to see how that application was justified on the facts and circumstances, and [the County Court's] decision to set aside an order which stood on flimsy legal foundation is hardly open to challenge. Nor do I think in the end that there is any substance [to the complaint] that he dealt with the outcome in too peremptory a fashion. After all, the mother's legal team knew from the form of the notices of appeal to the circuit judge precisely what the local authority sought to gain from the hearing. It was quite open to [counsel for the applicant] to submit to the judge that he should not make a placement order even if he were persuaded to make a care order, since there was insufficient material to enable him to carry out the Section 1 review. It seems that she did not make that submission prior to judgment and, as I have already observed, she ignored the opportunity to make it immediately on receipt of the written judgment and to ask the judge to reconsider the order of 6 [June]."

88. He concluded that there was no error of law in the County Court's decision and dismissed the application for permission to appeal.

5. Subsequent events

89. A final supervised contact between K. and the applicant took place in December 2009.

90. K. was placed with a prospective adoptive parent on 18 January 2010.

91. On 5 May 2010 the applicant made an application to the court for contact with K. pursuant to section 26(3) of the 2002 Act (see paragraph 102 below). This was refused on 16 September 2010. No court decision has been submitted to the Court but it appears that there were ongoing concerns about the level of the parents' separation. In a statement to the court the social worker said that K. was forming a positive attachment to his prospective adopter and that he had unhappy memories of his life with his parents. In her professional opinion direct contact would undoubtedly cause K. stress and anxiety which would impact on the stability of his placement. The guardian filed a report along similar lines. It is unclear whether the applicant sought leave to appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Child care proceedings

1. Emergency protection orders

92. Section 44(1) of the Children Act 1989 ("the 1989 Act") gives a court the power to make an EPO in respect of a child living with his parents if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by the person applying for the order.

2. Care orders and interim care orders

93. Section 31 of the 1989 Act empowers a court to make an order placing a child in the care of the local authority or putting him under the local authority's supervision. Pursuant to section 31(2), such an order can only be made if the court 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; or

(ii) the child's being beyond parental control."

94. Section 37(1) allows a court considering whether to make a care order to direct the local authority to undertake an investigation of the child's circumstances.

95. Pursuant to section 38(1), a court can make an ICO where an application for a care order is adjourned or where directions under section 37(1) have been given. Before making such an order, the court must be satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2). ICOs are limited in time: the first order may last no longer than eight weeks and subsequent orders no longer than four weeks.

96. Section 38(6) provides that where the court makes an interim care order, it may give such directions as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child.

97. When a court makes an order under the 1989 Act, section 1(1) provides that the child's welfare shall be the court's paramount consideration. Section 1(2) establishes a general principle that any delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of the child. Section 1(3) provides that the court should have regard in particular to;

"(a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

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

(g) the range of powers available to the court under this Act in the proceedings in question."

3. Placement orders

98. Section 21(1) of the Adoption and Children Act 2002 ("the 2002 Act") provides for the making of a placement order by the court authorising a local authority to place a child for adoption with prospective adopters.

Pursuant to section 21(2), the court may not make a placement order in respect of a child unless:

> "(a) the child is subject to a care order,
>
> (b) the court is satisfied that the conditions in section 31(2) of the 1989 Act (conditions for making a care order) are met, or
>
> (c) the child has no parent or guardian."

99. Section 21(3) permits the court to dispense with the parents' consent to the making of a placement order. Section 52 provides:

> "(1) The court cannot dispense with the consent of any parent or guardian of a child to the child being placed for adoption or to the making of an adoption order in respect of the child unless the court is satisfied that–
>
> (a) the parent or guardian cannot be found or is incapable of giving consent, or
>
> (b) the welfare of the child requires the consent to be dispensed with."

100. Section 21(4) provides that a placement order continues in force until it is revoked or an adoption order is made in respect of the child.

101. Section 22(3)(b) of the 2002 Act allows a local authority to apply for a placement order in respect of a child who is subject to a care order.

102. Section 26(3) permits the parent of child to make an application for contact with a child in respect of whom a placement order has been made. Section 27(4) provides that:

> "Before making a placement order the court must–
>
> (a) consider the arrangements which the adoption agency has made, or proposes to make, for allowing any person contact with the child, and
>
> (b) invite the parties to the proceedings to comment on those arrangements."

103. Section 1(2) of the 2002 Act provides that the paramount consideration of the court or adoption agency must be the child's welfare, throughout his life. Section 1(3) requires courts and adoption agencies to bear in mind at all times that, in general, any delay in coming to a decision relating to the adoption of a child is likely to prejudice the child's welfare. Section 1(4) sets out, in the following terms, a list of matters to which courts and adoption agencies must have regard when exercising their powers:

> "(a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
>
> (b) the child's particular needs,
>
> (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,

(e) any harm (within the meaning of the Children Act 1989 ...) which the child has suffered or is at risk of suffering,

(f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including–

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child."

104. Section 1(6) provides:

"The court or adoption agency must always consider the whole range of powers available to it in the child's case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so."

4. Adoption orders

105. Section 46 of the 2002 Act provides for the making of an adoption order, transferring parental responsibility for the child to the adopters. Under section 47, an adoption order can only be made in the absence of the parents' consent where the child has been placed for adoption pursuant to a placement order.

B. Clarifications of aspects of a judgment

106. It is the established practice of family courts for the judge to invite representations as to any factual errors in the judgment. The practice was described by the Court of Appeal in *Re T (Contact: Alienation: Permission to Appeal)* [2002] EWCA Civ 1736, as follows:

"In a complex case, it might well be prudent, and certainly not out of place, for the judge, having handed down or delivered judgment, to ask the advocates whether there are any matters which he has not covered. Even if he does not do this, an advocate ought immediately, as a matter of courtesy at least, to draw the judge's attention to any material omission of which he is then aware or then believes exists. It is well established that it is open to a judge to amend his judgment, if he thinks fit, at any time up to the drawing of the order. In many cases, the advocate ought to raise the matter with the judge in pursuance of his duty to assist the court to achieve the overriding objective ... ; and in some cases, it may follow from the advocate's duty

not to mislead the court that he should raise the matter rather than allow the order to be drawn. It would be unsatisfactory to use an omission by a judge to deal with a point in a judgment as grounds for an application for appeal if the matter has not been brought to the judge's attention when there was a ready opportunity so to do. Unnecessary costs and delay may result."

107. This passage was cited with approval by the Court of Appeal in *Re M (fact-finding hearing burden of proof)* [2008] EWCA Civ 1261. The judge in that case added:

"I wish to make it as clear as possible that after a judge has given judgment, counsel have a positive duty to raise with the judge not just any alleged deficiency in the judge's reasoning process but any genuine query or ambiguity which arises on the judgment. Judges should welcome this process, and any who resent it are likely to find themselves the subject of criticism in this court. The object, of course, is to achieve clarity and – where appropriate – to obviate the need to come to this court for a remedy.

This process applies in cases involving children in both public and private law as much as it applies in any other case. I very much hope that in the future this court will not be faced with matters which are plainly within the province of the judge, and are properly capable of being resolved at first instance, and immediately after the relevant hearing."

C. The statutory checklists and Article 8 in childcare cases

108. The statutory checklists are set out in section 1(3) of the 1989 Act, in respect of care order, and section 1(4) of the 2002 Act, in respect of placement and adoption orders (see paragraphs 97 and 103 above).

109. In *EH v London Borough of Greenwich & Others* [2010] EWCA Civ 344, decided on 9 April 2010, the Court of Appeal was asked to consider whether the judge had erred in failing to refer explicitly to the statutory checklists in the 1989 and 2002 Acts and to Article 8 of the Convention when making a care and placement order. Mrs Justice Baron, delivering the lead judgment, noted:

"61. The judge was making a very draconian order. As such, he was required to balance each factor within the checklist in order to justify his conclusions and determine whether the final outcome was appropriate. Accordingly, because this analysis is entirely absent, his failure to mention the provisions of the Children Act and deal with each part of Section 1(3) undermines his conclusions and his order."

110. As to Article 8, she continued:

"64. In a case where the care plan leads to adoption the full expression of the terms of Article 8 must be explicit in the judgment because, ultimately, there can be no greater interference with family life. Accordingly, any judge must show how his decision is both necessary and proportionate. In this case what the judge said was '*removing the children from their Mother without good reason ... would be a tragedy for them, quite apart from the mother'*. With all due respect to him, this does not demonstrate that he had Article 8 well in mind. Whilst he decided that the experts

apparently proffered no other solution it is apparent from the manner in which this case unfolded that they did not have the opportunity to make recommendations upon the additional evidence which, I remind myself, amounted to one sighting of the Father and Mother together in the street. Consequently, it was even more incumbent upon him to consider precisely why the family bond should be broken."

111. Baron J considered that the judge should have turned his mind to each of the provisions set out in section 1(4) of the 2002 Act when considering whether to make a placement order, and not truncated his considerations in one paragraph. She continued:

"69. ... By so doing he specifically failed to address these children's particular needs and the likely effect on them (throughout their lives) of their ceasing to be a member of their original family. They have an established attachment to a loving mother who, with targeted assistance, might be able to provide some form of future mothering."

112. Finally, on the established practice of family courts for the judge to invite representations as to any factual errors in the judgment, and the failure of the mother in that case to do so, the judge considered that the omissions in the judgment could not have been put right following that route.

113. Lord Justice Wall noted:

"95. ... There is no more important or draconian decision than to part parent and child permanently by means of an adoption order. It follows, in my judgment, that if this is the course which the court feels constrained to follow, the process whereby it is achieved must be both transparent and must comply with both ECHR and the relevant statutory provisions.

96. Once again, these are not hoops imposed by Parliament and the appellate judiciary designed to make the life of the hard-pressed circuit judge even more difficult than it is already. They are not boxes to be ticked so that this court can be satisfied that the judge has gone through the motions. They are important statutory provisions, bolstered by decisions of this court which require a judge fully and carefully to consider whether the welfare of the child concerned throughout his life ... requires adoption."

114. He considered that, however experienced the judge, it was wholly inadequate to deal with these crucially important issues in a sentence or two, as the judge in that case had done, observing:

"98. ... The judge does not mention either Act (the Children Act 1989 and the Adoption and Children Act 2002) nor does he make any reference to the rights enjoyed by both parents and children under ECHR, nor does he mention proportionality. In my judgment, these are serious defects which vitiate the judgment and mean that this appeal must be allowed.

99. The answers to the criticisms I have made are, as I understood them; (1) all these matters were put to the judge so he must have had them in mind; and (2) all the professional and expert evidence was to the effect that if the mother was a liar, and had lied to the judge about her relationship with the father, adoption was inevitable – therefore the judge was entitled to take a short cut.

100. In my judgment, neither defence meets the criticism ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

115. The applicant complained that the domestic courts’ refusal to order an assessment of her as a sole carer for her son and their failure to have regard to all relevant considerations when making a placement order violated her right to respect for her family life as provided in Article 8 of the Convention, which reads as follows:

> “1. Everyone has the right to respect for his private and family life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

116. The Government contested that argument.

A. Admissibility

117. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

a. The applicant

118. The applicant argued that in failing to grant an assessment of her as a sole parent and in failing to have regard to all relevant factors before making a care and placement order in respect of K. the domestic authorities violated her right to respect for her family life. She emphasised that the Family Proceedings Court had heard live evidence from the parties and had ordered that an assessment be carried out. In overturning this decision, the County Court did not have the benefit of hearing live evidence. It had before

it a typed note of evidence before the Family Proceedings Court prepared by the clerk (see paragraph 63 above). However, this note was so inadequate as to give rise to confusion on key pieces of evidence regarding whether K. should remain in foster care or be placed for adoption. In deciding that there should be no assessment of the applicant, the County Court made no reference to her Article 8 rights.

119. The applicant also argued that the making of the placement order was fundamentally flawed as the correct procedure had not been complied with. She considered that the placement proceedings had been informally added to the proceedings in the Family Proceedings Court and that, as a consequence, important procedural safeguards had not been observed.

120. She further contended that before making a placement order, the court was obliged to consider section 1 of the 2002 Act (see paragraphs 103-104 above). The Family Proceedings Court did not do so because it decided to order that a section 38(6) assessment be carried out and so was not required to examine the request that a placement order be made. In overturning that decision, the County Court judge focussed the majority of his judgment on whether the Family Proceedings Court was right to order that an assessment be conducted. Having concluded that it was not, the judge then simply made a placement order (see paragraph 82 above). He did not set out his reasons with reference to the criteria stipulated in section 1(4) of the 2002 Act (see paragraph 103 above).

121. The Court of Appeal did not rectify the errors made by the lower court. It indicated that any complaint about the peremptory nature of the order should have been made to the County Court judge (see paragraph 86 above). In particular, it did not address the appeal ground regarding consideration of the section 1(4) criteria, save to say that omissions should have been brought to the attention of the judge (see paragraph 87 above).

122. The applicant disputed that any omissions could be remedied by an application for contact or for revocation of the placement order. She highlighted that K. had now been placed with a prospective adopter and that the court had quite properly given precedence to the new bonds that had started to form in that placement.

123. The applicant concluded that the placement order had allowed K. to be placed with a prospective adopter, thus leading to the severing of links with his natural family, without a proper and reasoned explanation being provided. There had therefore been a violation of Article 8 of the Convention.

b. The Government

124. The Government considered that the decisions taken in the case were proportionate and fell within the State's margin of appreciation given that, at each stage, all relevant circumstances were taken into account and cogent reasons were given for the decision reached. They emphasised that

the domestic courts had had direct contact with the persons concerned and that it was not the role of this Court to substitute itself for the domestic authorities.

125. The Government disputed the applicant's contention that the correct procedures had not been followed prior to the making of the care and placement order by the County Court. In particular, it was clear from the evidence before the Court that the applicant was well aware before the hearing in the Family Proceedings Court that the local authority was seeking a care and placement order.

126. The refusal of the County Court judge to allow an assessment of the applicant as a sole carer was based on a thorough analysis of the expert evidence, which included evidence of K.'s own wishes and feelings. The decision was founded on the judge's conclusion that the applicant's separation from P.C. was unlikely to be maintained; that a further assessment of the mother while K. remained in local authority care could not provide the evidence required to displace expert conclusions that the applicant lacked the parenting skills necessary to care for the child; and that any delay would therefore not be in K.'s best interests.

127. The Government further contended that the County Court judge did have regard to all relevant considerations before deciding to make the placement order. In particular, he had before him and took into account evidence as to K.'s wishes and feelings and gave extensive and cogent reasons for his conclusion that a placement order should be made. The Court of Appeal also gave proper reasons for dismissing the applicant's appeal.

128. The Government made a number of submissions in support of their position. First, they contended that the local authority, D.I. and the guardian had all made efforts to ascertain and assess K.'s wishes and feelings about whether he should return to his parents. In each case he had indicated that although he wished to see his parents he would be scared unless social services were present. Second, the County Court judge had concluded that the separation of the applicant and P.C. was not genuine; in these circumstances there was no point seeking K.'s views as to the possibility of return to his mother alone. Third, there was nothing on the face of the County Court judgment to indicate that the judge had left K.'s wishes out of account in reaching its decision. Fourth, there was nothing to suggest that the decision would have been different had the applicant submitted that he lacked sufficient information to make a placement order. Fifth, the applicant could have, had she so wished, made that submission by taking advantage of the judge's invitation (see paragraph 82 above). Sixth, considering the evidence as a whole, it was clear that each decision had been taken because on the basis of expert evidence the courts considered that returning K. either to his parents or to the applicant alone would cause harm and would not be in his best interests. Finally, the Government pointed out that before any

final adoption order was made the court would be obliged again to consider the matters set out in section 1 of the 2002 Act. They further noted that the applicant could have applied, with the leave of the court, to have the placement order revoked at any time before a placement was made.

129. The Government therefore invited the Court to find that there had been no violation of Article 8 of the Convention.

2. The Court's assessment

130. There is no doubt that the decision to refuse a further assessment and to make a care and placement order in the present case constituted a serious interference with the applicant's right to respect for her family life within the meaning of Article 8 § 1 of the Convention. It must therefore be determined whether the interference was justified under Article 8 § 2, namely whether it was in accordance with the law, pursued a legitimate aim and was necessary in a democratic society.

131. As to the lawfulness of the actions of the domestic courts, the Court notes that the applicant, in her submissions, made reference to alleged failures on the part of the authorities to comply with the relevant procedures for the making of a placement order (see paragraph 119 above). However, the Court is satisfied, on the basis of the evidence before it, that the correct procedures set out in the applicable legislation were followed and that the County Court judge was entitled to make a placement order in the case. The applicant also complained that the domestic courts did not have regard to section 1(4) of the 2002 Act when making the placement order (see paragraph 120 above). While the Court does not rule out that such a complaint could give rise to the question whether the measure was "in accordance with the law" within the meaning of Article 8 § 2, it observes that the applicant in the present case did not argue that any issue as to the lawfulness, in Article 8 terms, of the measure arose. In the absence of any submissions on the matter the Court is therefore of the view that this complaint is more appropriately considered in the context of the necessity and proportionality of the measure. The Court therefore accepts that the actions of the domestic authorities were "in accordance with the law".

132. It is further not disputed that the measures pursued the legitimate aim of protecting the rights of others, namely those of K. The Court must therefore examine whether the domestic authorities' actions were necessary in a democratic society.

a. General principles

133. The Court's case-law regarding care proceedings and measures taken in respect of children clearly establishes that, in assessing whether an interference was "necessary in a democratic society", two aspects of the proceedings require consideration. First, the Court must examine whether, in the light of the case as a whole, the reasons adduced to justify the

measures were "relevant and sufficient"; second it must be examined whether the decision-making process was fair and afforded due respect to the applicant's rights under Article 8 of the Convention (see *K and T. v. Finland* [GC], no. 25702/94, § 154, ECHR 2001-VII; *R.K. and A.K. v. the United Kingdom*, no. 38000/05, § 34, 30 September 2008; *T.S. and D.S. v. the United Kingdom* (dec.), no. 61540/09, 19 January 2010; *A.D. and O.D. v. the United Kingdom*, no. 28680/06, § 82, 16 March 2010; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134, 6 July 2010; and *R. and H. v. the United Kingdom*, no. 35348/06, §§ 75 and 81, 31 May 2011).

134. The Court reiterates that in cases concerning the placing of a child for adoption, which entails the permanent severance of family ties, the best interests of the child are paramount (see *Johansen v. Norway*, 7 August 1996, § 78, *Reports of Judgments and Decisions* 1996-III; *Kearns v. France*, no. 35991/04, § 79, 10 January 2008; and *R. and H.*, cited above, §§ 73 and 81). In identifying the child's best interests in a particular case, two considerations must be borne in mind: first, it is in the child's best interests that his ties with his family be maintained except in cases where the family has proved particularly unfit; and second, it is in the child's best interests to ensure his development in a safe and secure environment (see *Neulinger and Shuruk*, cited above, § 136; and *R. and H.*, cited above, §§ 73-74). It is clear from the foregoing that family ties may only be severed in very exceptional circumstances and that everything must be done to preserve personal relations and, where appropriate, to "rebuild" the family (see *Neulinger and Shuruk*, cited above, § 136; and *R. and H.*, cited above, § 73). It is not enough to show that a child could be placed in a more beneficial environment for his upbringing (see *K and T.*, cited above, § 173; and *T.S. and D.S.*, cited above). 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 (see *Neulinger and Shuruk*, cited above, § 136; and *R. and H.*, cited above, § 73).

135. The identification of the child's best interests and the assessment of the overall proportionality of any given measure will require courts to weigh a number of factors in the balance. The Court has not previously set out an exhaustive list of such factors, which may vary depending on the circumstances of the case in question. However, it observes that the considerations listed in section 1 of the 2002 Act (see paragraph 103 above) broadly reflect the various elements inherent in assessing the necessity under Article 8 of a measure placing a child for adoption. In particular, it considers that in seeking to identify the best interests of a child and in assessing the necessity of any proposed measure in the context of placement proceedings, the domestic court must demonstrate that it has had regard to, *inter alia*, the age, maturity and ascertained wishes of the child, the likely

effect on the child of ceasing to be a member of his original family and the relationship the child has with relatives.

136. The Court recognises that, in reaching decisions in so sensitive an area, local authorities and courts are faced with a task that is extremely difficult. Further, the national authorities have had the benefit of direct contact with all the persons concerned, often at the very stage when care measures are being envisaged or immediately after their implementation. There is therefore a need to allow them a certain margin of appreciation in deciding how best to deal with the cases before them and it is accordingly not the Court's task to substitute itself for the domestic authorities but to review, in the light of the Convention, the decisions taken and assessments made by those authorities in the exercise of their margin of appreciation (see *K and T.*, cited above, § 154; *A.D. and O.D.*, cited above, § 83; *Neulinger and Shuruk*, cited above, § 138; and *R. and H.*, cited above, § 81). However, it must be borne in mind that the decisions taken by the courts in this field are often irreversible, particularly in a case such as the present one where a placement order has been made. This is accordingly a domain in which there is an even greater call than usual for protection against arbitrary interferences (see *B. v. the United Kingdom*, 8 July 1987, § 63, Series A no. 121; *X v. Croatia*, no. 11223/04, § 47, 17 July 2008; and *R. and H.*, cited above, § 76).

137. The margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, such as, on the one hand, the importance of protecting a child in a situation which is assessed as seriously threatening to his or her health or development and, on the other hand, the aim of reuniting the family as soon as circumstances permit (see *K and T.*, cited above, § 155). The Court has indicated that the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for in respect of any further limitations, such as restrictions placed by the authorities on parental rights of access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life, as such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed (see *K and T.*, cited above, § 155; *R.K. and A.K.*, cited above, § 34; and *A.D. and O.D.*, cited above, § 83; *R. and H.*, cited above, § 81). The making of a placement order in respect of a child must be subject to the closest scrutiny.

138. As to the decision-making process, what has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests and have been able fully to present their case (see *Neulinger and Shuruk*, cited

above, § 139; and *R. and H.*, cited above, § 75). Thus it is incumbent upon the Court to ascertain whether the domestic courts conducted an in-depth examination of the entire family situation and of a whole series of factors, in particular of a factual, emotional, psychological, material and medical nature, and made a balanced and reasonable assessment of the respective interests of each person, with a constant concern for determining what would be the best solution for the child (see, *mutatis mutandis*, *Neulinger and Shuruk*, cited above, § 139). In practice, there is likely to be a degree of overlap in this respect with the need for relevant and sufficient reasons to justify a measure in respect of the care of a child.

139. The need to involve the parents fully in the decision-making process is all the greater where the proceedings may culminate in a child being taken from his biological parents and placed for adoption (*R. and H.*, cited above, § 76).

b. Application of the general principles to the facts of the case

140. The applicant's complaint comprises two aspects. First, she complains about the refusal of the domestic courts to order an assessment of her as a sole carer, which she contends constituted a disproportionate interference with her Article 8 rights. Second, she complains that the reasons given for making a placement order were inadequate.

141. The Court observes at the outset that the decision as to whether K. should be raised by the applicant or by another family was effectively taken at the stage at which the placement order was made. The possibility of revoking the placement order and the prospect of a future evaluation by reference to the criteria in section 1 of the 2002 Act (see paragraph 103 above) in the context of an application for an adoption order under section 46 of the 2002 Act (see paragraph 105 above) cannot be relied upon as providing any kind of safeguard in the proceedings leading to the making of placement order in respect of K. In particular, once K. was placed with a prospective adopter, he began to establish with her new bonds and his interest not to have his *de facto* family situation changed again became a significant factor to be weighed in the balance against his return to the applicant's care (see *W. v. the United Kingdom*, 8 July 1987, § 62, Series A no. 121; and *K and T.*, cited above, § 155).

142. It is not disputed that the threshold criteria enabling the court to make a placement order – namely that there were reasonable grounds for believing that K. was likely to suffer significant harm because of inadequate care – were met. The immediate question for the domestic courts in the applicant's case was whether to make such an order or whether to order a further assessment which could result in K. being returned to the applicant's care.

143. The Court's starting point is the judgment of the Family Proceedings Court. Although that court did not reach any conclusion as to

whether a placement order ought to be made, in its judgment it explained that it accepted the welfare aspects of the Guardian's report, before indicating that it had reached a different conclusion as a result of the applicant's late position statement (see paragraph 69 above). It accordingly ordered a further assessment.

144. The County Court subsequently overturned the order of the Family Proceedings Court and made a placement order. The applicant does not dispute that she was advised that the local authority and the guardian were seeking a placement order from the County Court. It is therefore for this Court to assess whether the County Court's reasons were relevant and sufficient, by reference to the general principles set out above.

145. The Court observes that the County Court judge began by emphasising that any decision to order a further assessment had to be in the best interests of the child (see paragraph 80 above). In identifying K.'s best interests, the judge noted that any further assessment would entail a degree of disruption to K.'s foster placement and a risk of emotional harm should the assessment break down. He considered that the duration of the assessment would be too short to provide sufficient guarantees that the separation of the applicant and P.C. would last (see paragraph 80 above). He reached the conclusion that "the evidence about the mother was clear" and that an assessment of the applicant would never be able to provide evidence that would be sufficient to justify the refusal of a care order, given her shortcomings and the real risk that she would resume her relationship with P.C. Thus the only effect of the decision to order an assessment was to delay and jeopardise the prospect of finding a long-term placement for K (see paragraph 81 above).

146. The judge was clearly of the view that the resumption of the applicant's relationship with P.C. entailed a risk to K.'s well-being. His conclusion that such resumption was likely and his negative view as to the consequences for K. do not appear to be unreasonable having regard to the history of the case and the various reports prepared in the context of the proceedings, which made frequent reference to P.C.'s controlling nature and the difficulties encountered by the applicant in asserting herself (see paragraphs 29, 30, 39, 44 and 58 above). While, as the Court has explained above, it is in a child's best interests that his family ties be maintained where possible, it is clear that in K.'s case this was outweighed by the need to ensure his development in a safe and secure environment (see paragraph 134 above). In this regard the Court observes that attempts were made to rebuild the family through the provision of support for alcohol abuse and opportunities for parenting assistance (see paragraphs 27 and 33 above). When the applicant indicated that she had separated from P.C., she was given details of domestic violence support that she could access (see paragraph 26 above). It appears that she did not access such support and ultimately reconciled with P.C. on that occasion. The reports prepared

by the social worker, the guardian and D.I. highlighted the difficulties encountered in trying to assist the family to address concerns as a result of the parents' failure to engage with the authorities and, in particular, P.C.'s uncooperative stance (see paragraphs 36-37, 41, 44-45, 47 and 58 above).

147. The Court acknowledges that, in refusing the further assessment and instead making a placement order, the County Court judge did not make express reference to the relevant considerations arising under Article 8 of the Convention (see paragraph 135 above) or to the various factors set out in section 1 of the 1989 Act and section 1 of the 2002 Acts (see paragraph 82 above). However, as outlined above, it is clear that he directed his mind, as required under Article 8 of the Convention, to K.'s best interests and that, in reviewing the applicant's application for a further assessment, considered whether in the circumstances rehabilitation of K. to his biological family was possible. He concluded that it was not. In reaching that decision he had regard to various relevant factors and made detailed reference to the reports and oral evidence of the social worker, the guardian (whose report was based on full consideration of the welfare checklist) and D.I., all of whom identified the various issues at stake (see paragraphs 78-81 above). Further, the Court notes that the applicant was invited by the judge to bring to his notice anything that required his further attention in court (see paragraph 82 above), but that she failed to seek any clarification from him as to the reasons for his decision.

148. It is also of relevance that the applicant was able to seek a further review of her case by the Court of Appeal. In this regard, the Court observes that the Court of Appeal has recognised the need for a careful balancing act to be conducted by reference to section 1 of both the 1989 and 2002 Acts and to Article 8 of the Convention (see paragraphs 109-114 above). It was satisfied in the applicant's case that the judge had reached a conclusion which was fully merited on the evidence.

149. In the circumstances of the case, the Court considers that the decision to make a placement order did not exceed the margin of appreciation afforded to the respondent State and the reasons for the decision, taking into account the concerns expressed by the judge regarding the applicant's ability to separate from P.C., were relevant and sufficient. It is further satisfied that the applicant was given every opportunity to present her case and was fully involved in the decision-making process.

150. There has accordingly been no violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

151. In her written submissions to the Court dated 18 May 2011, the applicant alleged for the first time that there had been a violation of Article 13 as a result of the decision of the Court of Appeal.

152. The Court observes that the judgment of the Court of Appeal was handed down on 24 November 2009. The applicant's complaint under Article 13 was therefore lodged outside the six-month period stipulated in Article 35 § 1 of the Convention. In any event the Court reiterates that the effectiveness of the remedy for the purpose of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *K and T.*, cited above, §§ 198-199; and *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 289, 21 January 2011). There is no indication that Court of Appeal would not, in general, fulfil the requirements of an "effective remedy" within the meaning of Article 13. The complaint must accordingly be declared inadmissible pursuant to Article 35 §§ 3 and 4.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 13 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge De Gaetano is annexed to this judgment.

L.G.
T.L.E.

DISSENTING OPINION OF JUDGE DE GAETANO

1. I regret that I am unable to share the views of the majority in this case on the question of the alleged violation of Article 8. To my mind the most unorthodox way in which the placement order was made by the Taunton County Court, and the cavalier way in which the applicant was refused permission to appeal by the Court of Appeal, cumulatively lead to a violation of Article 8. The majority decision, by invoking, as it does in § 149, the concept of the "margin of appreciation", also raises a serious issue as to the extent to which this Court should defer to the judgments of domestic courts, especially when these do not purport to be in any way dealing with Convention matters.

2. We are here dealing with the placement for adoption not of a new-born or an infant, but of an 8 year-old boy who, up to the age of seven, had lived with his parents, even if in a highly dysfunctional environment. The placement order, as opposed to long-term fostering, may in effect have been the best solution for the boy, but that is entirely beside the point. What had to be assessed here is whether the "important or draconian decision...to part parent and child permanently by means of an adoption order" (to use the expression found in para. 95 of the Court of Appeal's judgement in *EH v. London Borough of Greenwich and Others*, referred to in § 109) was supported by cogent reasons emanating from the same decision (in this case, the decision of the County Court). As was stated by this Court in *Saviny v. Ukraine* (18 December 2008, no. 39948/06), at § 49,

> "...notwithstanding a margin of appreciation enjoyed by the domestic authorities in deciding on placing a child into public care, severing family ties means cutting a child off from its roots, which can only be justified in very exceptional circumstances...A relevant decision must therefore be supported by sufficiently sound and weighty considerations in the interests of the child, and it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child has been made."

See also §§ 67 and 81 of *Kutzner v. Germany* (26 February 2002, no. 46544/99), and *passim Moser v. Austria* (21 September 2006, no. 12643/02) and *Kurochkin v. Ukraine* (20 May 2010, no. 42276/08). More significantly the Court of Appeal itself has, in *EH v. London Borough of Greenwich and Others*, already referred to, laid down very stringent requirements as to the *contents* of a court decision placing children in care or for adoption (see §§ 109 to 114 of the majority decision) – although it must be said that this judgment was delivered on 9 April 2010, that is four months *after* the applicant was refused leave to appeal (on 24 November 2009). Regrettably the Court, in its majority judgment, has given no weight whatsoever to this April 2010 judgment of the Court of Appeal.

3. Although before the Family Proceedings Court there was both an application for a (full) care order and an application for a placement order, that court in effect dealt *only* with the former, and then only to the extent of ordering an interim care order with a direction for further assessment. In the judgment of the Family Proceedings Court there is no specific reference to section 1(3) of the Children Act 1989, but there is at least a reference to section 31(2) of the same when that court states:

> "Before we make care orders we have to be satisfied that the threshold criteria is met. That is we have to be satisfied that the child has suffered, or is likely to suffer significant harm and that the harm, or the likelihood of harm, is attributable to the care given to him, or likely to be given to him if the orders were not made, not being what is reasonable to expect a parent to give."

There is no reference whatsoever, whether direct or oblique, to the provisions of the Adoption and Children Act 2002, under which a placement order may be made. The reference to the "welfare checklist" in the part of the Family Proceedings Court judgment quoted in § 69 is clearly a reference to the checklist under the 1989 Act, to wit section 1(3).

4. The local authority and the guardian appealed. Both specifically sought from the County Court a final care order *and* a placement order. The judgment of the County Court of 16 June 2009 is strange, to put it mildly. After rehearsing all the evidence – including that which was before the first court – in nine typed pages and with sole reference to the making of a care order, that court goes on to say in para. 16 of its judgment:

> "However the complaint in the present case is that the justices were wrong not to have made a care order at the conclusion of the hearing because all the evidence to support the making of a care order was present, and because delaying their decision was detrimental to K.'s better interests."

In para. 17 there is again no reference whatsoever to the 2002 Act. Then, by some sort of side-stepping movement (or convoluted lateral thinking), the last part of para. 18, which is in effect the end of the substantive part of the judgment, cryptically says:

> "In reality, the only effect of postponing the decision to make a care order was to delay, and therefore to jeopardise, the process of finding an alternative long term placement for K. by way of adoption...In these circumstances the decision of the justices must be categorised as wrong, and must be set aside. The appeal will be allowed. I am satisfied that the conditions for making a care order exist and accordingly I make a placement order, dispensing with the consent of the parents under ss.22(3)(b) and 52 of the Adoption and Children Act 2002."

This is the first and only reference to a placement order in the County Court's judgment and the first and only reference to the 2002 Act. There is no reference, specific or otherwise, to the checklist in section 1(4) of the 2002 Act. There is no reference to the rights enjoyed by both parents and children under the Convention, to Article 8 or to any principle of proportionality. Whatever the guardian may have analysed and

recommended in her report (§ 53), it was for the judge to apply independently his mind to the relevant and sufficient considerations and to show unequivocally in the judgment that he had done so.

5. The Court of Appeal and the majority judgment of this Court (see § 147) come to the rescue with an act of faith – *praestet fides supplementum*. Although the decision of the Court of Appeal dismissing permission to appeal characterised the County Court judge's interim order (referred to in § 77) as having been made "in bizarre form", the Court of Appeal nonetheless somehow assumes that the judge had at some stage applied his mind properly in considering all the matters mentioned in section 1(4) of the 2002 Act:

> "Nor do I think in the end that there is any substance [in the argument] that he dealt with the outcome in too peremptory a fashion. After all, the mother's legal team knew from the form of the notices of appeal to the circuit judge precisely what the local authority sought to gain from the hearing. It was quite open to [counsel for the appellant] to submit to the judge that he should not make a placement order even if he were persuaded to make a care order, since there was insufficient material to enable him to carry out the Section 1 review. It seems that she did not make that submission prior to judgment and, as I have already observed, she ignored the opportunity to make it immediately on receipt of the written judgment and to ask the judge to reconsider the order of 6 July [*recte*: 6 June]."

The same gratuitous assumptions are made by the Court in § 147.

6. Whatever the failings (if any) of the applicant's legal team before the County Court, the fact remains that the judgment of that court did *not* expressly spell out relevant and sufficient reasons for the measure that was being taken by the making of the placement order. The issue is not merely one of form or procedure: there can be no more draconian measure in the context of the relationship between parent and child than an order which permanently severs family ties. The need for safeguards against arbitrary, or even merely unjustified or unnecessary interference, is compelling (see § 136), and one such safeguard is the provision of clear and detailed reasoning in the judgment demonstrating not only that the child's best interest and other factors have been weighed in the balance, but also that the domestic criteria for the making of the relevant order have been carefully considered and scrupulously applied. The County Court judgment is lacking in all this.

7. It should also be borne in mind that the Court declared the complaint in respect of Article 8 admissible (and with that I agree). This means that whatever remedies were available to the applicant as are mentioned in the Court of Appeal's decision of 24 November 2009, these were relevant, if at all, at the domestic level, but should not been taken into consideration by this Court. In any case, the "remedy" of requesting the judge to, as it were, beef up his reasoning after the judgment has been delivered (which seems to be more than just correcting mere factual error, spelling mistakes, numbers etc), thereby allowing the judge to "make up" for substantial mistakes even

in his assessment of the facts or of the law, seems a very odd way of administering justice.

8. Finally, the doctrine of the margin of appreciation, and the concomitant doctrine of *quatrième instance*, when applied to judicial decisions mean no more and no less than that the domestic courts' decisions will, as a rule, not be queried as to the evaluation of the facts and evidence before them or as to the interpretation of domestic law. These doctrines do not mean or imply, nor should they be applied in such a way as to suggest that they so mean or imply, that this Court is absolved from its supervisory duty of ensuring that domestic courts' judgments meet, in form or in substance, all the Convention criteria. These doctrines should be applied evenly across the board, and irrespective of whether the legal or judicial system concerned can trace its lineage back to the post-Soviet era or to the meadow at Runnymede.