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Judgment: approved by the Court for handing down | *Delivered:* **21/2/2017**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

Between

DM

Appellant

and

EM

Respondent

and

A HEALTH AND SOCIAL CARE TRUST

Respondent

(Appeal: risk of sexual harm)

KEEGAN J

Introduction

[1] This is an appeal from a decision of His Honour Judge Miller QC sitting at the Family Care Centre on 17 December 2015 wherein he made a care order in relation to the child, NM, who was born on 27 February 2013. DM is the father of NM. EM is the mother of the child. EM withdrew her appeal, having been refused public funding, but she supports DM's appeal. The other respondent is the relevant Health and Social Care Trust.

[2] The appellant was represented by Mr Brolly BL. EM was represented by Mr Cleland BL. Ms Louise Murphy BL appeared on behalf of the Trust and Ms Rosie Ryan BL appeared on behalf of the Guardian ad Litem. I am grateful to all counsel for their oral and written submissions. I have anonymised this judgment to protect the interests of the child. Nothing should be published which would identify the adults or the child in any way.

[3] This matter comes before the court by way of an appeal notice of 29 December 2015. The notice sets out a number of grounds of appeal as follows:

(i) That the learned judge erred in law when he failed to set out any reasons or evidence which led him to conclude that he was satisfied that the appellant harboured real and undisputed paedophile tendencies on balance to children younger than 10 years of age, contrary to the conclusion of Val Owens that the appellant's past offending raised clear concerns that he had an underlying sexual interest in adolescents between 13 and 16 years and a possible sexual interest in younger children although the evidence for that is more limited.

(ii) That the learned judge erred in law when he elevated his well-founded belief on the evidence of probability that prior to NM's removal into care she had considerable unsupervised and unauthorised contact with the appellant.

(iii) That the learned judge erred in law when he failed to set out any reasons or evidence which led him to conclude that he was satisfied that the appellant posed a real sexual risk to his daughter when Val Owens refused to quantify the extent of the risk posed by the appellant and thereafter stated in her report dated 1 May 2015 that although sexual risk to NM may not be evidenced it was not possible to eliminate it completely.

(iv) That the learned judge erred in law when he failed to set out any reasons or evidence which led him to ignore the refusal of the criminal court to grant an Interim Sexual Offences Prevention Order to the PSNI in late 2014 and thereafter its refusal to grant the substantive Sexual Offences Prevention Order to the PSNI in early 2015, to which the same civil standard of proof is applicable and thereafter relied upon the appellant's continued stressing of the fact that he was not subject to any court order restraining him from associating with any child other than his own evidence of his lack of insight.

(v) That the learned judge erred in law when he failed to set out any reason or evidence to dismiss the absence of any convictions against the appellant since 2011 in his conclusion that the appellant was unable to manage the sexual risk determined by the court.

(vi) That the learned judge erred in law when he failed to consider the appellant's engagement with social workers and contact workers on a day to day basis, his engagement with Dr Livingstone, his extensive engagement with Val Owens and Stuart Whyte and thereafter gave insufficient weight to the hostility of the relevant Trust social workers towards the appellant in his conclusion that the appellant would be unable to work with the Trust if NM was to be returned to his care.

(vii) That the learned judge erred in law when he ruled that the appellant's contact with his daughter should be reduced in a phased manner to once per month

notwithstanding that viability kinship assessments were still being undertaken by the Trust in respect of the paternal family and a decision regarding permanency for NM could not be taken at that time.

(viii) In light of the foregoing, that the learned judge erred in law when he made a care order with a care plan of permanence/non-rehabilitation in respect of the aforementioned child.

[4] There was no issue in this case in relation to appellate principles which flow from the Supreme Court decision of Re B [2013] UKSC 33. In essence the test is whether or not the trial judge was wrong. In addition this case was conducted upon submissions and no party made an application for oral evidence.

Facts

[5] The case before the Family Care Centre for a care order was commenced on 28 March 2013. There was also an application for a freeing order commenced on 13 October 2015. Ultimately, the freeing order was not pursued as the child was placed in kinship care. I understand that that remains the position although during the course of this appeal hearing I was told that there may be some issues with the placement. The parents of this child are married and this is their only child.

[6] The Trust became involved in the lives of these parents on 12 November 2012. At that stage there was a referral to the Gateway team by the Probation Board of Northern Ireland. This was regarding a request for a pre-birth risk assessment in relation to an unborn child due to the fact that it was reported that at that time DM had 23 convictions for sexual offences and that he was subject to a notification requirement under the Sexual Offences Act until 10 April 2014.

[7] On 26 February 2013 a pre-birth child protection case conference was convened. The child's name was added to the Child Protection Register at birth under the categories of potential sexual abuse and potential physical abuse. NM was born the following day. It is instructive to note that the child protection plan at this stage provided that the baby could remain living with the mother on the basis that DM did not live with the family. This appeared to be an agreed position. There was further support emanating from a family group conference which took place on 3 March 2013 and a plan gradually developed to allow the mother and baby to live with the paternal grandmother in her accommodation.

[8] Following the construction of this plan NM was discharged from hospital and the plan began to operate from 5 March 2013. The early signs of co-operation did not last because on 14 March 2013 the parents indicated that they no longer intended to adhere to the child protection plan. As a result the Trust commenced proceedings for a care order.

[9] Shortly thereafter on 24 April 2013 DM was found guilty of a charge of exposure and was imprisoned. DM was therefore physically removed from the home environment and he remained a sentenced prisoner until December 2013. The mother continued to care for the child with supports. The Trust sought an interim care order on 16 September 2013 but on that date an interim supervision order was granted and that order remained in place for some time.

[10] From the outset of these proceedings the Trust made a case that the mother and indeed the father would be assessed in terms of risk. This was obviously interrupted with the father's imprisonment. But nonetheless an assessment programme was set in train involving the assistance of Ms Val Owens, Independent Social Worker, and Mr Stuart Whyte, Independent Social Worker. This plan of assessment continued after the father's conviction for exposure was quashed by the Court of Appeal and his release from prison on 18 December 2013.

[11] It is clear to me that extensive assessment work took place over many months in this case. This work was undertaken by Ms Owens and Mr Whyte who are experienced practitioners. I note that during the period of assessment that the Trust reported difficulties with the parents' engagement and their adherence to the safe care plan. In particular, during the course of this appeal, I heard submissions in relation to the social workers experiencing problems in accessing the property.

[12] The care order application was listed on 9 June 2014. Prior to this, the interim supervision order had remained in place notwithstanding the highlighted difficulties. I note from the papers that a breach of the safe care plan was reported to have taken place on 25 April 2014. This involved an unannounced visit to the family home when DM was found by the social worker to have been in the home. DM accepted this but said that he was collecting various items. This obviously raised the Trust's concerns and the incident was examined when the matter came to court on 9 June 2014. On that date the Trust applied for an interim care order.

[13] It is important to note that the threshold criteria was agreed by the parents on 9 June 2014 at that hearing. The agreement was expressed in the following terms;

> The Trust submits that on the date of intervention being the 16th day of September 2013 (being the date that an interim public law order was first made) that NM (the child) was likely to suffer significant harm (sexual and physical harm) and that such harm is attributable to the parenting likely to be given to her, not being what it would be reasonable to expect. In this respect the Trust relies upon the following facts:
>
> (i) The father has a series of convictions for sexual offences as follows:

(a) indecent behaviour on 21 August 2007 (conviction date: 30 July 2008);

(b) 18 offences of making and possessing indecent photograph or pseudo-photographs of children on 18 July 2007 (conviction date: 10 November 2009);

(c) indecent behaviour on 1 September 2009 (conviction date: 26 October 2012).

(ii) The father has failed to abide by all requirements placed upon him as a result of his convictions which has resulted in additional convictions as follows:

(a) breach of Interim Sexual Offences Prevention Order on 23 December 2008 (conviction date: 12 March 2010);

(b) breach of Interim Sexual Offences Prevention Order on 15 January 2009 (conviction date: 27 February 2009);

(c) sexual offender failing to notify police of change of address and time on 21 January 2009 (conviction date: 12 March 2010);

(d) breach of Interim Sexual Offences Prevention Order on 25 March 2009 (conviction date: 15 September 2009);

(e) sexual offender failing to register with police on 6 August 2011 (conviction date: 20 February 2012).

(iii) The father has further received an adult caution for indecent behaviour on an additional occasion.

(iv) The father has been subject to a Sexual Offences Prevention Order.

(v) The father was a schedule 1 offender and subject to registration on the sex offenders register for 5 years until 10 November 2014.

(vi) In 2009 the father was subject to threat in certain areas. The mother and father sold the property they

owned in a particular area due to being intimidated out of the area.

(vii) The father continues to deny his responsibility for all offences save for the making of indecent images despite his conviction.

(viii) When complaints were made against the father that he was later convicted of, the mother believed his account and provided statements in support of him. She did not properly consider information provided by PSNI and probation and at times endorsed the father's minimisation of his offending.

(ix) The mother allowed young people aged 14, to consume alcohol in their home and the father allowed the young people to remain in his home having consumed alcohol.

(x) The parents were each previously subject to a harbouring notice.

(xi) In advance of NM's birth, the father's criminal history resulted in a significant number of house moves since 2009 which would not be conducive to offering a baby a stable environment.

(xii) At times the mother has presented in an aggressive fashion with social services.

(xiii) The parents were unable to accept or recognise the risks assessed by professionals that needed social work intervention.

(xiv) On 14 March 2013 the parents indicated that they no longer intended to adhere to an interim child protection plan implemented following registration of NM's name on the Child Protection Register under the categories of potential sexual abuse and potential physical abuse on 26 February 2013."

[14] The threshold criteria was comprised in a written document which was signed and witnessed by both parties and approved by Order of the court on 9 June 2014. It is significant to note that on that date Her Honour Judge Smyth did not make an interim care order despite the Trust application. The learned judge made an interim supervision order and attached a penal notice. It is clear to me that the

parents were under no illusions that this lesser Order provided an opportunity for them to prove that they could work with social services but they were warned that the court could take a different view if there was a breach of the conditions. In other words the parents had another chance and the child remained in the care of her mother.

[15] Unfortunately, the parents squandered their chance as they could not abide by the terms of the supervision order. On 5 July 2014 the parents travelled to Bundoran in Co Donegal and booked into a hotel with NM and the paternal grandparents for a holiday until 7 July 2014. This only came to the attention of the Trust on 8 July 2014. The circumstances of this incident make alarming reading in that the parents lied and tried to cover up this clear breach of the plan. As a result the Trust proceeded to court on 11 July 2014. On that date the breach of the plan was admitted, however the parents asked that the child not be removed into foster care. After a hearing, His Honour Judge Sherrard decided that the child should be removed into foster care and the child was made the subject of an interim care order. The child has remained in care since that date.

[16] The remaining issue of care planning then came to be heard by Judge Miller in 2015. The case was heard over a period of 5 days from 9-13 November 2015. During that hearing the learned judge heard considerable evidence and received legal submissions. He then delivered his written judgment in December 2015. This is a comprehensive ruling.

[17] Prior to the determination of the care order application the outcome of the various pieces of work being undertaken by the parents were available to the court. In summary, this included comprehensive reports from Ms Owens and Mr Whyte. It is clear that these reports were designed to deal with risk management in this case. As the risk had been accepted in the threshold criteria, this issue clearly had to be addressed. Part of the work was also an assessment as to whether EM could be a protective parent. A further overarching consideration in this case, given the history, was whether or not both parents could co-operate with the Trust and whether or not the Trust could place confidence in these parents to abide by any safe care plan.

[18] It is clear from the above that a comprehensive plan of work was set in place for this family. This is not a case where the door was closed to the family rather the issue of risk having been identified a process of risk assessment took place. Ultimately the question in this case was whether or not the risk could be managed.

The reasoning of the trial Judge

[19] In his decision the judge sets out the background to the case. He also sets out the evidence. In particular, the judge summarises the evidence of Ms Owens who had worked along with Mr Whyte. At paragraph 22 of his ruling the judge says:

> "In terms the conclusion of this work was that although each parent had engaged with the process, this was only to a limited degree. DM acknowledged that his offending presented a risk and highlighted steps he had taken to manage that risk. Nevertheless, significant concerns remained as to his level of insight and understanding of his offending and its impact. For her part whereas EM did show some understanding of the risk her husband posed and could point to specific instances where she had challenged him, Ms Owens had no confidence EM had the capacity to maintain such a challenge. In terms DM was more intelligent, articulate and possessed a more forceful personality. It was Ms Owens' view that in any discussion his view would prevail. I pause at this stage to comment that there are clear indications in the papers that EM is a person who has been dominated by DM and at various stages there has been a query about her mental health and her functioning."

[20] The judge goes on to refer to an inability to co-operate with social services at paragraph 23. He refers to the Donegal episode in July 2014. He also refers to an incident in June 2015 when the parents presented at court with a baby in a pram. This was after issues were raised about the parents babysitting without the knowledge or permission of the Trust. The judge recounts that neither parent would name the child or its mother and that EM then tried to leave the court precincts only being stopped by a police officer when she entered the lift. It subsequently came to light that the parent of the child was unaware of DM's criminal convictions. The learned judge quotes the view of Miss Owens that this is a demonstration of lack of insight.

[21] The judge records that EM did not give evidence at the hearing and so neither the Trust nor the guardian was given an opportunity to challenge her case as made out in the statements. In my view the judge correctly remarks upon the difficulty with this approach. The court was denied the chance to assess EM's capacity as a protective parent. This is an extremely important factor in any case of this nature and it appears to me very difficult for a court to make any real assessment of this type of issue without fully assessing a person in EM's position through the medium of evidence.

[22] DM did give evidence. At paragraph 32 onwards of his judgment, the judge sets out in detail his assessment of that evidence. It is instructive to note that at paragraph 34 the judge states:

> "Although DM was articulate and showed a level of intelligence he seemed to be utterly fixated with what could almost be considered a battle of wills with the

> social workers involved with the family. During the course of this appeal the case was made on behalf of the father that the Trust had effectively had a closed mind towards him and then had over-reacted to his behaviour on numerous occasions. It seems to me that this perpetuated the theme of the father's approach to this case which was focused on a critique of trust actions and a vindication of himself."

[23] The judge also refers to DM's insistence that he was not subject to any court order restraining him with any child other than his own. Most pertinently, at paragraph 41 the learned judge assesses DM's attitude to risk which is not favourable. I have also read the transcript of DM's evidence and in particular his cross-examination. Having done this I agree with the judge's assessment that time and time again during his oral evidence he sought to downplay the significance of his previous convictions. It was only upon close cross-examination by Ms Murphy that DM was prepared to admit the nature of his convictions involving an acceptance that the indecent images of children were of girls of approximately 14 years or older although some of the images were of children who could have been 10 years or younger. I have noted from the transcript the fact that DM considered the breaches of the SOPO as technical in nature and that the convictions for indecent behaviour were limited to acts of urinating in public rather than the case made by the Trust that they involved masturbating in the proximity of young children.

[24] The judge then considered the report on DM from his work at Alderwood. I have also read this report which is instructive in my view given that during this work DM did not develop any clear risk prevention plan. The judge refers to the evidence of Ms Owens and Mr Whyte which again sets out concerns about DM in terms of his acknowledgement of risk, his prevention plan and his lack of co-operation with social services. Ultimately the assessment was not positive in relation to the potential of DM being reunified with the family. There was also a criticism of DM for recording professionals without their knowledge during the assessment work.

[25] The judge sets out the evidence from the Guardian ad Litem. He refers to difficulties with contact. The judge then refers to legal considerations before articulating his conclusions. In that regard a focus of this hearing has been paragraph 53 of the judge's reasoning and in particular his assessment at paragraph 53 in relation to DM where he stated:

> "I have already made clear my view that he used every opportunity to minimise and dilute the various offences and breaches of order and I am satisfied that he is a man capable of distorted thinking and of a devious manipulative disposition. He harbours real and undisputed paedophile tendencies and on balance I am

> satisfied that those extend to children younger than 10 years of age. Even if I was not satisfied on the specific point, however, I would be alarmed to think that this court could repose confidence that if NM was returned to his care DM would develop and maintain an effective risk management plan so as to minimise any risk to her as she grows older. For this to occur he would have to demonstrate a commitment to change and to work with the Trust and other bodies in a way which he has singularly failed to do up to this time."

Submissions of the Parties

[26] Mr Brolly, (who did not appear at the lower court) on behalf of DM, stridently argued that there was 'confirmation bias' in this case on the part of the Trust and the judge. He said that it was effectively impossible for DM to satisfy the authorities that he was not a risk. Mr Brolly said that DM was not deemed a risk in the criminal court. When I questioned Mr Brolly on the issue of the agreed threshold Mr Brolly said that he was not making any case about the threshold. He accepted that DM had signed the threshold, and that he was not resiling from it. However, rather inconsistently, Mr Brolly also said that his case was that DM was not a sexual risk. Mr Brolly characterised the decision in this case as an over-reaction on the part of the judge. He said that the making of a care order was "immoral, perverse and entirely unreasonable".

[27] Mr Brolly argued that as a matter of law DM does not meet the test in relation to a reasonable possibility of harm. Mr Brolly was very vocal in criticising Ms Owens' report and her methodology. He also referred to the fact that after DM's conviction in 2013 had been quashed the criminal court refused a SOPO. The argument was made that this child is a happy child who has been forgotten about whilst trivialities in relation to contact and other matters have been held against the parents. Mr Brolly argued that the care order should be rescinded and that the child should return to the care of the family including DM.

[28] Mr Cleland, appearing on behalf of EM, accepted the difficulty that he had in arguing the case in that EM did not give evidence before the lower court. He did however say that she supported the appeal. Mr Cleland accepted that there was no issue regarding threshold that it had been properly signed and that he was not making any point about that.

[29] Ms Murphy, on behalf of the Trust, pointed out that the judge at the Family Care Centre had observed the witnesses and had heard this case in detail over a period of days and had provided a considered judgment. Ms Murphy made the case that much of the argument now before the court in terms of the methodology or the bias of the witnesses had not been made at the lower court. Ms Murphy relied upon the fact that a signed threshold was before the court which accepted risk. She said

that the Trust were open minded in this case given the fact that various assessments were conducted to see if risk management could be effective. Ms Murphy said that DM's previous offences were significant and that he admitted this himself in the transcript.

[30] Ms Murphy deftly referred me to various parts of the transcript in relation to DM's evidence which involved him accepting the ingredients of his offences including him accepting allowing a 14 year old to drink alcohol in his house, accessing images of young children and indecent exposure when children were in the vicinity. It is apparent from the transcript that Ms Murphy also cross-examined DM effectively about other matters including marital infidelity and his lack of co-operation with social services.

[31] Ms Ryan, for the Guardian ad Litem, indicated that the guardian was in support of the Trust's case. She also submitted that the critique of Ms Owens and her methodology was not merited. In particular Ms Ryan referred to the fact that Ms Owens had said that the models used in her report were as a clinical guide given the nature of the criminal offences.

Consideration

[32] It is important to note at the outset that these are family proceedings. The welfare of the child is the paramount consideration pursuant to Article 3 of the Children (Northern Ireland) Order 1995. The care order application involves a two stage process. In this case the first stage was conceded in terms of the threshold criteria. The threshold criteria acts as a statutory filter to ensure that state intervention is not arbitrary. There is a clear legal test to be met upon evidence. If the threshold is not met a public law order cannot be made.

[33] The issue of likelihood of harm is part of the consideration under Article 50. This involves a consideration of the risk of the child suffering significant harm in the future. The test has been examined before our highest courts on numerous occasions. However, the exposition of it in Re H and others (Minors) (Sexual abuse: Standard of Proof) 1996 AC 563 has withstood scrutiny and the test of time. In essence, to satisfy the test in relation to likelihood of significant harm the particular harm (in this case sexual and physical harm) must be based upon facts. There must then be a real possibility of future harm to the child emanating from those facts.

[34] In this case the threshold document clearly stipulates the type of harm at issue, namely sexual and physical harm. In my view every threshold document should contain such certainty. It is important to note that both parents had legal advisers when signing this threshold and both agreed to it. Actually, neither is saying that they want to appeal against it, in my view recognising the difficulties they would have with that given the passage of time. It is startling therefore that Mr Brolly now says that his client does not accept any risk.

[35] Once risk is accepted in these cases the issue is management of risk. Parents can and often do achieve rehabilitation if risk can be managed. However, parents cannot sit on the fence in relation to this issue. Either the matter is contested and a court makes a determination or it is accepted. If risk is not accepted rehabilitation is more difficult. Probably the most difficult area is when risk is accepted, as here, in the threshold criteria and then resiled from. That in my view leads to an impossible situation for professionals working with families. It points to the fact that there is not a true acceptance and that often is an insurmountable difficulty in the rehabilitation process. In my experience a tactical acceptance is invariably found out.

[36] In this case, the Trust, after the threshold was agreed, did embark upon a risk management programme over a considerable period. The central tenet of this was an examination of sexual risk. The real question for the judge at the second stage was whether the identified risk could be managed safely leading to rehabilitation. I see nothing dishonest or unethical in this process. It is a fact that this type of process is part and parcel of many family cases. The outcomes vary depending on the nature of the engagement.

[37] In my view the second stage under Article 50 does not emanate from the Re H test but is satisfied through an application of the welfare checklist tests in particular the issue of harm and capacity of parents. I highlighted this point during the hearing. I note that the judge refers to Re H in his ruling in relation to the care plan drawing upon the submissions of counsel. That reference is confusing however I do not consider that this in itself undermines the findings of the learned judge.

[38] After the threshold is met the onward route to adjudication involves consideration as to whether a care order should be made applying the Article 3 tests, looking at the care plan, and applying an overall proportionality exercise pursuant to Article 8 of the European Convention on Human Rights. There must also be specific consideration of contact arrangements. In this case the judge references the legal considerations in paragraph 49 of his judgment. Whilst he does not isolate out each section I consider that he covers all of the relevant areas. I bear in mind the fact that the arguments of the father in relation to matters of confirmation bias and the methodology of the expert were not made before the judge.

[39] The real question is has the judge in his assessment reached a valid view in relation to risk as he sets out at paragraph 53. That deals with issues of harm and capacity and the parent's ability to work with professionals. The judge has reached a conclusion that there is a risk and that this extends to young children. He also goes on to refer to the breach of safe care plan and the fact that the mother is not a safe carer. These are the issues at the heart of this challenge.

[40] Having considered the submissions and read the papers in this case, I consider that the learned judge was entitled to reach the conclusions which he did. I reject the submissions made by Mr Brolly that the decision is outwith the judge's

discretion. The judge was entitled to weigh up all the evidence including the evidence of Ms Owens and his impressions of DM in reaching this conclusion. I do not consider that the conclusion reached is perverse. This is an entirely inaccurate submission on the basis of the previous convictions of DM and the absence of a risk management plan. My reasoning is supported by the fact that DM actually comes to this court saying that he is no risk at all. In my view that points to the fundamental problem with DM's case.

[41] Whilst I commend his industry, I entirely disagree with Mr Brolly's categorisation of this case. It seems to me that the purpose and aims of the Children Order have been overlooked in his analysis. The legislation is designed to protect children and it places the welfare of the child at its core. In my view, the argument in this case is aimed towards DM achieving personal vindication rather than a full appreciation of the welfare of this child.

[42] The fact of the matter is that any court would validly consider that DM poses a risk on the basis of his past convictions and his breaches of protective court orders in association with his lack of appreciation of the risk and his lack of a risk management plan and his lack of cooperation. DM and EM were also offered a comprehensive programme of work. A court could have no confidence in EM as a protective parent, particularly as she did not give evidence to a court. DM does not recognise any risk. So it seems to me that having recognised this combination of persuasive factors, a court in the circumstances of this case is left with no option other than to look at a plan for care of this child outside of the family home.

[43] Mr Brolly made much of the issue of 'confirmation bias.' This is an interesting academic argument which was not before the lower court. Nonetheless the concept is fairly obvious. In my view it points to the fact that everyone should recognise that pre conceptions exist. But every case must be determined on evidence. In this case there is nothing that makes me think the case has been determined other than on evidence. The argument is misplaced.

[44] I understand the point made by Mr Brolly that the Trust was hard on the parents about relatively trivial matters. The learned judge does make reference to this. I consider that Mr Brolly made some ground in relation to this issue however there is a context to it. This case is framed by the fact that the parents have not been cooperative. I do have some sympathy for EM in relation to this because it appears to me that DM has exhibited a controlling manner. I can also see some positives from the time when EM parented without DM however a case for EM to parent as a single carer is not being made to the court. In any event there is a very real question mark about DM's ability to abide by exclusionary rules on the basis of his track record. I agree that this results in a sad scenario whereby the child is separated from her parents. However the parents must take responsibility for this as events have been shaped by the very real child protection concerns at the heart of this case which they have not been able to assuage.

[45] I do welcome a healthy debate in any family case about the methodology employed by experts. Mr Brolly has pursued this in relation to Ms Owens. Unfortunately she was not fully cross examined about her methods and therein lies a lesson for practitioners. However I cannot see that any injustice is done in the case by this failing. Ms Owens refers to the sexual abuse models she uses as a clinical guide. She may not be strident in her final assessment but understandably she cannot rule out a risk to NM on the basis of DM's assessment. I can see no fundamental error in that. The fact of the matter is that NM has not been abused but this case is about DM's propensity given established facts. I do not accept the argument that the risk dissipates because the offences were non-contact. Also, I do not consider that the date of the last conviction in 2011 neutralises the risk.

[46] In any event, the expert assessment whilst important is only part of the picture and the judge has clearly made his own assessment on the basis of all of the evidence before him including his assessment of DM. The trial judge is uniquely placed to make that assessment having heard the evidence. The disposition of the criminal court is only one factor. The family court, deciding on the balance of probabilities, is entitled to reach its own view. I bear in mind that the judge had the benefit of hearing the evidence and assessing the witnesses.

[47] I may not have expressed the finding in paragraph 53 in exactly the same way as the learned judge did however I do not consider that the overall decision of the judge was wrong. In my view the judge was entitled on the evidence to find that DM posed a risk to NM. It must be borne in mind that the assessment is of a likelihood of future harm. It is also an assessment of risk to this particular child within a family setting. A further stark fact is that DM does not recognise any risk at all having unequivocally accepted it in the threshold criteria. I therefore cannot see how DM could work effectively with statutory agencies. The judge refers to this in the second part of his analysis at paragraph 53 where he says that he cannot find a commitment to change or to work with professional bodies.

[48] I reject the suggestion of Mr Brolly that DM could never 'meet the test.' The reasoning here is confused. Firstly, the test for likely harm is enshrined in law. Secondly, DM accepted it. Thirdly, DM did not satisfy anyone that the risk could be managed. It is quite wrong, having failed the risk assessment for DM to go back and try to unpick the threshold and argue impossibility. He may have an individual grievance in relation to that but this case is focussed on a child. A further distinguishing feature of this case has been a lack of co-operation by the parents. That is not an isolated incident and that again raises concerns in terms of working forward.

[49] Accordingly, I do not consider that any of the grounds set out in this appeal are made out. This case was decided on its own particular facts. I do not consider that the judge was wrong in making a care order in this case. In particular, in relation to the specific grounds my conclusions are as follows:

(i) In relation to Ground 1 the judge was entitled to reach his overall conclusion on my reading of the papers. The report from Ms Owens and her evidence is one part of the case which he assessed. The judge reached his conclusion looking at the evidence as a whole including the evidence of DM.

(ii) Ground 2 was not pursued with any vigour but in any event I consider that the learned judge was entitled to form such a view.

(iii) It seems to me that the judge was careful in setting out the risk in this case and I do not disagree with his findings in relation to that.

(iv) I accept that the judge did not specifically set out the divergence from the criminal court decision making in not making a SOPO. However, that does not render his decision wrong. It must be borne in mind that the family court consideration under the Children Order and the criminal court consideration are entirely different matters. Whilst there may be a similar test applied in terms of the burden of proof the overriding considerations are different. In particular the Family Court has to assess whether a proximate relationship is appropriate with a parting child.

(v) I do not accept the point that an absence of conviction since 2011 thereby renders the case as having no risk.

(vi) I consider that the learned judge was correct having looked at all of the evidence in this case to make the finding he did in relation to the hostility to social workers. In a case such as this which involves high risks, co-operation is essential in terms of working forward.

(vii) In relation to this case I consider that the contact arrangements were not unreasonable and were within the range with which the judge could decide.

(viii) I do not consider that the judge was wrong in law in making a care order on the facts of this case.

Conclusion

[50] In the light of the foregoing, I dismiss this appeal.