Neutral citation number: **[2023] EWFC 58**

Case Numbers: MA22C50056

IN THE FAMILY COURT SITTING AT MANCHESTER CIVIL JUSTICE CENTRE

1, Bridge Street West
Manchester
M609DJ

Date: 23 March 2023

Before

HER HONOUR JUDGE CASE

Between

A LOCAL AUTHORITY

Applicant

And

SB

Respondent (1)

And

FM

Respondent (2)

And

RK

Respondent (3)

And

THE CHILDREN
(via their Children's Guardian)

Respondent (4) and (5)

And

DB and DB

Respondent (5) and (6)

Heard on 15, 16, 17, 20 and 23 March 2023

Representation:

For the Applicant: Miss Harvey, solicitor for A local authority

For the First Respondent: Mr Allen of Counsel, instructed by Bakers Solicitors

For the Second Respondent: Miss Walker of Counsel instructed by Futter Chapman Family Law Solicitors

For the Third Respondent: Mr Cofie of counsel instructed by Duncan Lewis Solicitors

For the Fourth and Fifth Respondents: Mr Bailey of counsel instructed by McAlister Family Law Solicitors

The Fifth and Sixth Respondents represented themselves

APPROVED JUDGMENT

This judgment was handed down remotely at Manchester Civil Justice Centre on 23 March 2023 and by release to The National Archives.

HER HONOUR JUDGE CASE:

1. Having delivered my judgment in respect of the main application, I will now give a separate judgment to deal with the remaining application, namely the mother's application for the discharge of Mr K's parental responsibility in respect of N. I am giving a separate judgment as it is my intention to publish it, so that it can be read alongside the *extempore* judgment which was published in July 2022 as *A Local Authority v S, B & Others* under neutral citation number [2022] EWFC 111.

2. I do not need to say a great deal about the main application here, except perhaps to summarise the conclusions reached, and to touch upon the reasons for the significant delays to the welfare disposal of this case.

3. Shortly after my July 2022 judgment, and at a stage in the proceedings when we were fast approaching the Issues Resolution Hearing, M and N moved from the care of their maternal grandparents to the care of the father of M, Mr M, for reasons which I do not need to go into in this judgment. Mr M already had a positive assessment to care for M. Mr M was swiftly and positively assessed to care for N on an interim basis under Regulation 24. He then put himself forward to be assessed for N as a special guardian. At this stage the Local Authority's contingency plan for N, if Mr M did not receive a positive assessment, was one of adoption.

4. As a result of that factor, together with the issues around siblings being placed together, and the fact that there were three competing family placements for one or more of the children, inclusive of the parents, I decided at the Issues Resolution Hearing that it was necessary for the timetable to be extended, for the special guardianship assessment to be completed, and to allow all matters to be considered together.

5. There was no agreement at the adjourned Issues Resolution Hearing in November 2022, and accordingly the need to find a listing for a multi-day contested hearing delayed matters still further.

6. Although the case was listed for a contested hearing for part of last week and this week, the issues narrowed over the course of the first two days, and it has proceeded on a submissions only basis, with the contested issues being limited to some issues around contact, the nature of the order to secure the placement of N, as well as this issue of parental responsibility.

7. The narrowing of the issues was largely as a result of the mother changing her position to agreeing to the placement of N with Mr M, and the maternal grandparents changing their position to not contesting either of the children's placements. The court has therefore been able to conclude matters on the basis of confirming the placement of N in the care of Mr M, together with her half-brother M, with N's placement being secured under a special guardianship order, and M's under a live-with child arrangements order. There were issues in relation to contact, which I have determined, and the change of surname application in relation to N, which was not contested.

<u>The application:</u>

8. The application I am concerned with now is the mother's application to discharge the parental responsibility of Mr K in respect of N. I considered this application at a case

management hearing on 15 July 2022, at that stage with particular reference to whether I should deal with it at an interim stage, or whether it should await the final hearing. I had at that hearing made the declaration of non-parentage in respect of Mr K not being the father of N. It seemed to me at that interim hearing that the decision as to whether to adjourn the parental responsibility discharge application was dependent upon whether I considered the discharge of parental responsibility to be a welfare decision or whether I considered it to be an automatic consequence of a declaration of non-parentage.

9. I gave a judgment on 15 July 2022, in which I concluded as follows:

a) section 4(2A) of the Children Act 1989 is the only means by which the court can consider removing parental responsibility from a person who has gained it under section 4(1);

b) that it is a welfare-based decision; and

c) the fact that the man in question has been found not to be the biological father will feed into that welfare consideration, but that the discharge of parental responsibility is not automatic. The importance of the lack of a biological link is one which will vary from case to case.

10. The main reason for publishing my judgment had been, as I commented in paragraph 15, the lack of any authority dealing specifically with the situation of the unmarried man who has been named on the birth certificate as father, but is subsequently found not to be such by DNA testing. I noted that on the face of it this is surprising, given how commonly such a situation must arise.

11. I have now had brought to my attention the subsequent judgment of HHJ Moradifar, sitting as a judge of the High Court pursuant to section 9 of the Senior Courts Act 1981, handed down on 9 March 2023, and published under *Re C & A (children, acquisition and discharge of parental responsibility by an unmarried father)* [2023] EWHC 516 (Fam). This judgment covers much of the same ground that I considered in the July judgment, expressly considers my judgment, and comes to different conclusions, not in all matters but in some important respects. This has inevitably meant that I have had to revisit my earlier legal analysis, and consider whether I had in fact fallen into error.

12. By agreement of all the parties I have not heard evidence but have received written submissions in relation to this application.

Legal analysis:

13. The reasoning and conclusions of HHJ Moradifar are set out at paragraphs 9 to 17:

> "Analysis and conclusion
>
> [9] Ordinarily, an application for an adjournment will be considered before the substantive issues. In this instance N's application for an adjournment is intrinsically connected to the legal issues that include the need for a welfare analysis before his parental responsibility is discharged. Therefore, I will

consider his application in the overall analysis of the law. I have quoted extensively from the statutory provisions as there are several relevant threads joining these different statutes. The Act is the primary source for matters concerning parental responsibility. S.2 of the said Act addresses who may acquire parental responsibility for a child and what this entails for the holder of it. Importantly, in this section there is a clear and important distinction in the terms used to describe who may hold parental responsibility. S.2(1) and (2) refer to 'father and mother'. However, the provisions of s.2(1A) and (2A) refer to a 'parent' which reflects the terminology of the Human Fertilisation and Embryology Act (2008) ('HFEA 08'). Part 2 of the HFEA 08 sets out the definitions and who shall be treated as the mother, father and a parent. Further detailed consideration of these provisions fall outside of the scope of the submissions that I have received and this judgment.

[10] S.4 of the Act addresses the 'Acquisition of parental responsibility by father'. Where the father is not married to the mother or in a civil partnership, he may acquire parental responsibility by three routes, registration as the father, parental responsibility agreement or an order of the court. S.4(2A) provides that where a father has acquired parental responsibility under the provisions of s. 4(1) of the Act, he may only cease to have it by an order of the court. The registration of an individual as the father is governed by the provisions of the Births and Deaths Registration Act (1953) ('the BDRA 53'). S.10 of this Act sets out the different routes though which an unmarried father may be formally registered as the child's father. The terminology used in this provision is clear when referring to the father and the mother. S.10ZA of the Act refers to 'father' and 'second female parent', when setting out the registration requirements relating to the HFEA 08.

[11] The submissions by the mother, the local authority and the guardian are founded on the clear references to the term 'father' in the above mentioned enactments. It is argued that the legal framework around the acquisition of parental responsibility by an unmarried father is based on a rebuttable presumption that the 'father' is the biological father of the child. If that presumption is rebutted, the very foundation for the acquisition of parental responsibility is displaced. This in turn gives rise to consideration as to whether the parental responsibly will be void ad initio or whether it ceases on declaration of 'non-parentage' or reregistration. It is submitted that it would be contrary to the intention of parliament and more generally, public policy that the parental responsibility should be void *ab initio*. Mr Kirkwood, having taken the lead on this issue, argues that in circumstances such as this case, where a person such as N, has exercised his parental responsibility in good faith, there may be enumerate

possible difficulties if the legality of his decisions and actions are threatened.

[12] N agrees with the analysis of the other parties in respect of the presumption that informs the acquisition of parental responsibility by an unmarried father. However, Mr Merrigan argues that there is no 'automatic discharge' of the parental responsibility. The Act is explicit by providing [S.4(2A)] that N will only cease to hold parental responsibility if the court orders it so. Thus, the court is tasked with a welfare analysis when faced with what is effectively an application for the discharge of N's parental responsibility. Furthermore, such an analysis is better undertaken at the final hearing where the court will be tasked with analysing the overall welfare of each of the children. So it is that he invites the court to adjourn this application to the Issues Resolutions Hearing which is listed some weeks away. He relies on the analysis in *A local Authority v SB & Ors* as detailed earlier in this judgment.

[13] The relevant term of the statutory provisions clearly refer to a 'father' and when there is a requirement to state otherwise, for example reference to a 'parent', the said provisions meet that requirement. This clearly illustrates the clear intention behind the statutory scheme that has catered for the means by which different individuals with different relationships to the child can acquire parental responsibility which is commensurate with the values of the progressive and modern society we live in. As observed by Theis J, the Act itself does not define the term 'father'. In my judgment, the biological link is the foundation that identifies a man as the father of the child under the aforementioned statutory regime. When that foundation is displaced, the status of that man as the 'father' cannot persist.

[14] There is a greater divergence in the parties' positions as to the impact of a declaration of 'non-parentage' that recognises and gives effect to the rebutted presumption of a biological link between N and C. S.4(2A) is clear in its terms that provide where a father who has acquired parental responsibility via the three routes that are identified in s.4(1), may only cease to have it if the court orders it. In this section there is no requirement for a welfare analysis for a father to acquire parental responsibility through registration. The Act provides for additional routes through which individuals, whether the father or not, with or without a parental biological link, may acquire parental responsibility (see s.8 of the Act). There is no doubt that such an application will be determined by the court by considering the child's welfare as paramount and undertaking an analysis of the child's welfare.

[15] However, in my judgment this does not support an argument that an order under s.4(2A) enquires [sic, 'requires' clearly

intended] a welfare analysis. It lends support to the argument that it does not. The statutory regime is distinct in its approach to the different routes by which parental responsibly is acquired. Where the very legal presumption for the acquisition of parental responsibility by operation of law under s.4(1) does not exist, any welfare analysis is superfluous and would serve no purpose at all. I agree with Mr Kirkwood's sagacious submissions that it would be contrary to public policy and the intentions of parliament to conclude that in such circumstances parental responsibly ceases *ab initio*. Therefore, this raises the argument that a declaration of 'non-parentage' and a subsequent re-registration is all that is required for N to cease to have parental responsibly for C. There is an inherent attraction and neatness to this argument. However, in my judgment, this cannot survive the provision of s.4(2A) of the Act. Its terms are clear by stating that a court order is required. In my judgment it would also be good practice to be clear that parental responsibility has ceased by reference to a particular date especially given the public policy arguments that I have summarised above.

[16] Finally, I turn to the issue of the proposed adjournment. As I have set out earlier in this judgment, the argument for an adjournment is routed in the requirement of a welfare analysis. Such an argument cannot persist in the face of my judgment that in these circumstances there is no room for a welfare analysis. Although C may well be aware of N's position, it is important that these proceedings and the space that the parties occupy within it continue in the correct legal premise. N was made a party to these proceedings and there is no suggestion that his party status should change. It would be important that he should continue to have the benefit of legal advice and representation within these proceedings. However, it would be entirely inappropriate for me to involve myself in the assessments that the Legal Aid Agency must undertake in accordance with its own regulations.

[17] In summary, where a man has gained parental responsibility for a child by being registered as the father of the child, such a registration and the consequential award of parental responsibility by operation of the law is based on the rebuttable presumption that he is the biological father of the said child. If that presumption is rebutted, the foundation for the acquired parental responsibility is displaced. Subsequently parental possibility will be lost by the order of the court that reflects the status of the individual adult and does not require a welfare analysis. By contrast, where there is an application for a parental responsibility order or other orders that would grant parental responsibility to the applicant, the court will be tasked with undertaking a welfare analysis. This is a separate and different route through which parental responsibility may be awarded to

> the instance case. Therefore, I grant the mother's application, order that N shall cease to have parental responsibility for C from the date that this judgment is handed down and invite the Registrar to reflect this on the register."

14. The learned judge was clearly considering a greater range of arguments than those which were made in front of me in July 2022. In particular, he had cited to him two High Court cases which touched upon this question, although in each case the remarks were *obiter*. Neither of these cases were cited to me in July 2022.

15. Judge Moradifar said this at paragraph 7 of his judgment:

> "Turning to the three mentioned cases, in *RQ v PA and another* [2018] 4 WLR 169, Theis J addressed the issue of acquisition of parental responsibility by reference to the status of an individual as the father of the relevant child. In her *obiter* observations she stated:
>
> '33 One matter that is not specifically addressed in either of the written submissions is the position in relation to whether PA had parental responsibility, by virtue of being named on the birth certificate.
>
> 34 Section 4(1) of the Children Act 1989 ("CA 1989") provides as follows:
>
> "Where a child's mother and father are not married to each other at the time of his birth the father can acquire parental responsibility for the child if (a) he becomes registered as the child's father under any of the enactments specified."
>
> The specified enactments include Births and Deaths Registration Act 1953, in practice the unmarried father of the child acquires parental responsibility if the birth is registered naming him as the father. There is no definition of "father" in the CA 1989. Mr Kingerley and Ms Carew jointly submit that the father must in fact and in law be the father to be able to take advantage of this route to obtaining parental responsibility. In this case, it is established pursuant to the relevant provisions of the HFEA 2008, outlined above, that PA is not the legal father therefore the inclusion of his name on the birth certificate as the father cannot be correct in the light of the court's declaration. It follows, therefore, if he is not the father he does not have parental responsibility because section 4 CA 1989 does not apply (to an individual who is not the father). Although not directly relevant to the application this court is being asked to determine, those submissions make logical sense and I accept their analysis.'
>
> Williams J took a similar view on the issue of acquisition of parental responsibility by approaching the issue on the assumption that removal of the mother's name from the birth

> certificate would result in the loss of parental responsibility, *Re G (Declaration of Parentage: Removal of Person Identified as Mother from Birth Certificate) (No 1)* [2018] EWHC 3379 (Fam). I note that both of these cases concerned the provisions of the Human Fertilisation and Embryology Act (2008)."

16. I note that although HHJ Moradifar refers to the views of Theis J and Williams J as being similar, it seems to me that there is a difference.

17. In her obiter remarks, Theis J appeared to accept that an individual who is named on the birth certificate as father, but is not in fact the father, does not acquire parental responsibility under section 4 of the Children Act 1989 in the first place. That would appear to be the effect of the words, "Section 4 Children Act 1989 does not apply". This would mean that even if it appeared that he had parental responsibility, and he believed he held parental responsibility, and made decisions in pursuance of that belief, the appearance would be false. Parental responsibility would in fact have been void *ab initio.*

18. From my reading of *Re G (Declaration of Parentage: Removal of Person Identified as Mother from Birth Certificate) (No 1) [2018] EWHC 3379 (Fam).*, a somewhat different approach was taken by Williams J.

19. Williams J said this:

> 33. "In relation to the outcome, the Guardian's position is that in respect of paternity that the court can and should make a declaration of paternity identifying NG as Naomi's father. In respect of her mother, Ms Roddy adopts a more nuanced position, recognising what the evidence suggests but inviting me to consider the consequences in terms of Naomi's best interests before taking the final decision as to a declaration with the consequences that that might have. The concern that Ms Roddy has is that, given the lack of clarity as to where Naomi currently is ***and the consequences for Naomi of AV being removed from the birth certificate and thus not holding parental responsibilit***y, there might be a sudden and dramatic intervention by state authorities if and when she is located, which might result in the separation of Naomi from AV, her psychological mother, very suddenly in a situation which almost inevitably would be distressing and possibly would result in Naomi being placed in institutional care for a period of time. Thus Ms Roddy invites me to pause, perhaps taking up the suggestion which I myself had floated to gauge the consequences of the making of a declaration in respect of the father both in terms of what impact it has on the ground in respect of the police for instance, but also whether there is any response from AV." (my emphasis)

20. Williams J's judgment was given in a case which was considered under different legislation and under very different circumstances. Without hearing full argument, he appears to have proceeded on the basis that the declaration of non-parentage and

subsequent removal of a wrongly registered mother from the birth certificate would have the effect of removing her parental responsibility. It appears to be for that reason that Williams J decided to pause before making the declaration under section 55A of the Family Law Act 1986. The proposition is therefore that the woman's parental responsibility was voidable rather than void *ab initio*.

21. HHJ Moradifar noted that both of these cases concerned the provisions of the Human Fertilisation and Embryology Act 2008.

22. Both sets of relevant remarks are *obiter*, and the latter set concerns the extremely unusual factual circumstance of a woman who has been incorrectly registered as a birth mother, rather than the much more common factual circumstance of a man who has been incorrectly registered as a birth father. Added to that, the latter case does not relate to section 4 of the Children Act 1989 at all as this section is confined to the position of unmarried fathers, (with the question as to whether it also applies to those named on the birth certificate as such being one of the points under consideration).

23. As I said above, the remarks of Theis J go to the argument that the apparent parental responsibility of a man in the position of Mr K is void *ab initio*. This was not an argument deployed in front of me, and I considered it only briefly at paragraph 33 of my earlier judgment. HHJ Moradifar however considered the position far more fully in his judgment.

24. HHJ Moradifar summarised the arguments for and against the void *ab initio* proposition in paragraph 11 of his judgment. The argument in favour is summarised as follows:

> "It is argued that the legal framework around the acquisition of parental responsibility by an unmarried father is based on a rebuttable presumption that the 'father' is the biological father of the child. If that presumption is rebutted, the very foundation for the acquisition of parental responsibility is displaced."

25. He summarised the argument against thus:

> "It is submitted that it would be contrary to the intention of parliament and more generally, public policy that the parental responsibility should be void *ab initio*. Mr Kirkwood, having taken the lead on this issue, argues that in circumstances such as this case, where a person such as N, has exercised his parental responsibility in good faith, there may be enumerate possible difficulties if the legality of his decisions and actions are threatened."

26. HHJ Moradifar concludes at paragraph 15:

> "I agree with Mr Kirkwood's sagacious submissions that it would be contrary to public policy and the intentions of parliament to conclude that in such circumstances parental responsibly ceases *ab initio*."

27. I would respectfully observe that this must be right.

28. The void *ab initio* interpretation would lead to the presumed father's parental responsibility being immediately thrown into doubt as soon as a mother made a statement casting doubt on his paternity; this has the potential to create widespread uncertainty in relation to the parental responsibility of unmarried fathers. Further, as is alluded to HHJ Moradifar, it opens up the sceptre of a whole swathe of litigation challenging *post facto* the actions and decisions of such a man, who has taken decisions in good faith, believing that he held parental responsibility for a child, in circumstances where he is named on that child's birth certificate as father. Both results must be contrary to public policy.

29. As I set out in my earlier judgement the language used in section 4 (2A) may be of significance.

> "A final point that I explored with counsel is the use of the word "person" rather than "father" in section 4(2A). This would appear to envisage a non-biological father figure, if I can put it that way, being the subject of a specific application under section 4(2A); in other words, section 4 (2A) is not confined to those who are in fact biological fathers but also applies to those who have previously been presumed to be fathers and have acquired parental responsibility by one of the methods set out in section 4 (1). If the contrary were the case, it seems to me one would have expected the draftsman to use the word "father" in section 4(2A) in the same way as occurs in section 4 (1)".

30. For all of these reasons I respectfully concur with HHJ Moradifar in rejecting the "void ab initio" approach, notwithstanding the obiter dicta of Theis J. If that is right, it therefore follows that a man incorrectly named as father on the birth certificate does acquire parental responsibility under section 4 (1) Children Act 1989. The issue is when and in what circumstances does he lose it under section 4 (2A) Children Act 1989.

31. HHJ Moradifar considered and rejected the argument that it is the declaration of non-parentage and the subsequent registration which leads to the loss of parental responsibility:

> "[15] Therefore, this raises the argument that a declaration of 'non-parentage' and a subsequent re-registration is all that is required for N to cease to have parental responsibly for C. There is an inherent attraction and neatness to this argument. *However, in my judgment, this cannot survive the provision of s.4(2A) of the Act. Its terms are clear by stating that a court order is required*. In my judgment it would also be good practice to be clear that parental responsibility has ceased by reference to a particular date especially given the public policy arguments that I have summarised above."

32. I respectfully agree with that reasoning and the conclusion that a separate specific order is required under section 4(2A) of the Children Act 1989 terminating parental responsibility.

33. The fact that HHJ Moradifar does consider a separate order to be necessary is also clear from his final words:

> "[17] In summary, where a man has gained parental responsibility for a child by being registered as the father of the child, such a registration and the consequential award of parental responsibility by operation of the law is based on the rebuttable presumption that he is the biological father of the said child. If that presumption is rebutted, the foundation for the acquired parental responsibility is displaced. *Subsequently parental possibility [sic, 'responsibility' clearly intended] will be lost by the order of the court that reflects the status of the individual adult and does not require a welfare analysis ... Therefore, I grant the mother's application, order that N shall cease to have parental responsibility for C from the date that this judgment is handed down and invite the Registrar to reflect this on the register*."

34. I would also reiterate paragraphs 28 and 29 of my earlier judgment where I also set out the reasons why the declaration itself cannot be the order referred to in section 4 of the Children Act 1989. The second of my two points covers similar ground to the analysis of HHJ Moradifar. I said this:

> "[28] To my mind one of the most important factors is that a declaration of non paternity is a declaration of biological fact rather than a declaration as to legal status. Self-evidently an order under the Children Act 1989 section 4(2A) is the latter. The two orders being so different in character, I find it difficult to see how the order being referred to under section 4(2A) could be the declaration of non-paternity.
>
> [29] Secondly, there is the use of the word 'only' in section 4 (2A),
>
> 'A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders'.
>
> That seems to suggest that an order under subsection (2A) is the only route by which parental responsibility conferred under section 4(1) can be lost. Again, that appears to preclude the possibility of parental responsibility being lost following an order or a declaration made under a completely different piece of legislation."

35. I would reiterate those two points and, given the concurring views of HHJ Moradifar, I do not consider I need to expand on them further.

36. As I have stated, in the points which I have considered this far, HHJ Moradifar's conclusions accord with my own, in particular that a person in the position of Mr K does acquire parental responsibility when named on the birth certificate as father and

the only route by which parental responsibility can be lost is by a separate and explicit order of the court under section 4(2A) of the Children Act 1989. It cannot be implied from the declaration of parentage or re-registration of the birth certificate.

37. For these reasons I conclude, respectfully, that Mr Allen has misread the reasoning of HHJ Moradifar. Mr Allen contended in his written submissions that Mr K's parental responsibility cannot survive the DNA testing rendering it either void *ab initio* or void from the date of the DNA testing. In so arguing, he appears to be under the impression that this was the position taken by HHJ Moradifar. However, for the reasons I have set out, it is clear that this was not the *ratio* of HHJ Moradifar's decision.

38. It is clear that HHJ Moradifar considered but declined to follow the *obiter* remarks of Theis J, (the void *ab initio* approach), or those of Williams J, (the voidable by amendment of the birth register approach). He reached the decision that a separate specific order discharging parental responsibility was necessary.

39. It is clear that both those sets of remarks were obiter, and were not the result of hearing full argument, and it was on that basis, presumably, that HHJ Moradifar did not consider himself bound to follow them, having himself heard full argument on the points.

40. The key area where HJJ Moradifar took a different view from me was with respect to whether the decision under section 4(2A) is a welfare decision or whether, upon the court being satisfied of non-paternity, the order discharging parental responsibility is inevitable.

41. In order to do justice to the learned judge's reasoning, I have quoted from his analysis extensively above. The core of his reasoning is, perhaps, in paragraph 14 of his judgment where he commented upon the fact that the Act provided for different routes through which individuals, whether the father or not, may apply for parental responsibility, and noted that some of those routes required a welfare analysis. He went on to say in paragraph 15:

> "However, in my judgment this does not support an argument that an order under s. 4(2A) enquires [sic, 'requires' clearly intended] a welfare analysis. It lends support to the argument that it does not. The statutory regime is distinct in its approach to the different routes by which parental responsibly is acquired. ***Where the very legal presumption for the acquisition of parental responsibility by operation of law under s. 4(1) does not exist, any welfare analysis is superfluous and would serve no purpose at all.***" (my highlighting)

42. Although HHJ Moradifar does not say so in terms, it seems to me that by these highlighted words he draws the conclusion, or comes very close to it, that although there needs to be a separate order under section 4(2A), such an order will automatically follow once the declaration of non-parentage is made.

43. It is clear that HHJ Moradifar's reasoning goes beyond mere arguments of symmetry, (ie. if a welfare analysis is not required to acquire parental responsibility, it is not required to displace it). Rather, it goes to the root of parliamentary intention. However, before considering this analysis in detail, I must consider whether I am entitled to go

further, or whether I am in fact, as several of the advocates have submitted, bound by the decision of HHJ Moradifar.

44. HHJ Moradifar, who is the Designated Family Judge for Reading, Slough and the Thames Valley, was sitting pursuant to section 9 of the Senior Courts Act 1981, as a Judge of the High Court and, as such, his decisions are binding upon me, ***save insofar as they conflict with higher authority***.

45. I highlight those last few words as I am particularly troubled by the fact that HHJ Moradifar did not consider in his judgment the Court of Appeal authority upon which I relied: *Re D (withdrawal of parental responsibility)* [2014] EWCA Civ 315. Unfortunately, in quoting from my judgment, HHJ Moradifar omits all but the first sentence of paragraph 30 and the whole of paragraphs 31 and 32 in which I consider the effect of this authority. I am unsure why this was.

46. Ms Harvey submits that I can be satisfied that HHJ Moradifar did in fact consider the case, and concluded that it was not relevant, and that it was distinguishable. The difficulty I have with that view is that, despite quoting from my judgment fairly extensively, and despite going into the question of the necessity of a welfare analysis at some length, he does not quote those sections of my judgment which contained the key parts of my analysis with which he disagreed; those were also the only sections of my judgment in which I relied upon appellate domestic authority.

47. I consider it would be speculative to make any assumptions about why the quoted authority was not considered. The fact remains that the key Court of Appeal authority upon which I relied in concluding that an order under section 4(2A) of the Children Act 1989 is a welfare decision is neither cited nor considered in HHJ Moradifar's judgment. Accordingly, it cannot have been, and was not, distinguished. Therefore, it appears to me that it is incumbent upon me to consider again whether or not I was in error in my view that the decision in *Re D* applied to the circumstances in this case.

48. The authority in question is a unanimous decision of the Court of Appeal, and the leading judgment is given by Ryder LJ, with whom Gloster LJ and Arden LJ, as she then was, agreed. It may be helpful to quote more fully from this authority than I did in my July 2022 judgment:

> "[11] The concept of parental responsibility describes an adult's responsibility to secure the welfare of their child which is to be exercised for the benefit of the child not the adult. The all encompassing nature of the responsibility underpins one of the principles of the Act which is the 'no order' principle in section 1(5) CA 1985: the expectation that all other things being equal parents will exercise their responsibility so as to contribute to the welfare of their child without the need for a court order defining or restricting that exercise. That the status relates to welfare not the mere existence of paternity or parenthood is clear from the decision in *Smallwood v UK*.
>
> [12] When a court is considering an application relating to the cessation of parental responsibility, the court is considering a question with respect to the upbringing of a child with the

> consequence that by section 1(1)(b) CA 1989 the child's welfare will be the court's paramount consideration. By section 1(4), there is no requirement upon the court to consider the factors set out in section 1(3) (the 'welfare checklist') but the court is not prevented from doing so and may find it helpful to use an analytical framework not least because welfare has to be considered and reasoned. Given that the cessation of parental responsibility is an order of the court, the court must also consider whether making such an order is better for the child than making no order at all (the 'no order' principle in section 1(5).
>
> [13] The paramountcy test is overarching and no one factor that the court might consider in a welfare analysis has any hypothetical priority. Accordingly, factors that may be said to have significance by analogy or on the facts of a particular case, for example, the factors that the court considers within the overarching question of welfare upon an application for a parental responsibility order (the degree of commitment which the father has shown to the child, the degree of attachment which exists between the father and the child and the reasons of the father for applying for the order) may be relevant on the facts of a particular case but are not to be taken to be a substitute test to be applied (*see Re M (A Child) sub nom PM v MB and M (A Child*) (above) at [15] and [16]).
>
> [14] An unmarried father does not benefit from a 'presumption' as to the existence or continuance of parental responsibility. He obtains it in accordance with the statutory scheme and may lose it in the same way. In both circumstances it is the welfare of the child that creates the presumption, not the parenthood of the unmarried father. The concept of rival presumptions is not helpful, although I entirely accept that the fact of parenthood raises the welfare question, hence the right of a parent (with or without parental responsibility) to make an application under section 8 CA 1989 without permission (see section 10(4)(a) CA 1989. There is also ample case law describing the imperative in favour of a continuing relationship between both parents and a child so that ordinarily a child's upbringing should be provided by both of his parents and where that is not in the child's interests by one of them with the child having the benefit of a meaningful relationship with both. A judge would not be criticised for identifying that, as a very weighty, relevant factor, the significance of the parenthood of an unmarried father should not be under estimated."

49. As I acknowledged in my July judgment, Ryder LJ was clearly and explicitly dealing with the case of a biological father. I took the view that the reasoning was nevertheless directly on point because I was considering the same species of application, namely an application relating to the cessation of parental responsibility pursuant to section 4(2A), as that before Ryder LJ. That was sufficient in my view to consider that the reasoning

of Ryder LJ still applied, notwithstanding that I was considering the position of a man who is not a biological father.

50. In her submissions, Ms Walker submits that it is apparent that Ryder LJ was confining his remarks to biological fathers, not least by virtue of the fact that he distinguishes their position, in particular at paragraph 19, from that of mothers and married fathers, who cannot lose parental responsibility.

> **[19]** It is well established that the provisions of the CA 1989 are compliant with the Convention and that the Act was framed so as to take account of the Convention: *Re S; Re W* [2002] 1 FLR 815 at [109] and *Re S-B (Children)* [2010] 1 FLR 1161 at [6]. *Smallwood v UK* post dated the commencement of the HRA 1998 and accordingly to the extent that differences exist in the statutory treatment of unmarried and married fathers, that difference should be construed as being justified. In any event section 111 ACA 2002 was enacted after the HRA 1998 and in the absence of a permissible challenge on incompatibility grounds, there is no independent merit in this submission.

51. Miss Walker submits that the fact that Ryder LJ was specifically considering unmarried biological fathers (and distinguishing their position from mothers and married fathers) is sufficient to make his reasoning inapplicable to the circumstances of the instant case. Therefore, she submits, the Court of Appeal decision is not on point and I remain bound by the decision of HHJ Moradifar.

52. To my mind, the crucial difference is that an order under section 4 (2A) has no applicability to the position of a mother or an unmarried father. However for the reasons set out above, it ***is*** the route by which an application for discharge of parental responsibility is made when it concerns a man in the position of Mr K. As noted above, this position was accepted by HHJ Moradifar.

53. Therefore, it seems to me that I need to look at the *ratio* underpinning Ryder LJ's analysis. His view is explicitly founded on the fact that an application relating to the cessation of parental responsibility is a question with respect to the upbringing of a child. Indeed, having regard to Ryder LJ's reasoning, one might even say that an order terminating parental responsibility is the quintessential question with respect to the upbringing of a child. It is an overarching decision which alters the composition of the small group of adults in a child's life who are charged with all decision making for the child, save for any decision which is directly determined by the court,. I reflect on the fact that the latter group of decisions are of course are a miniscule proportion of the total number of welfare decisions on topics small and large which are daily made on behalf of children by adults.

54. An order discharging Mr K's parental responsibility under section 4 (2A) would have the effect of removing him from the group of decision-makers for N in exactly the same way as would an order discharging the parental responsibility of a biological father.

55. I conclude, therefore, that such an order must be an order with respect to the upbringing of a child.

56. The reference to the court "considering a question with respect to the upbringing of a child" refers of course to the opening words of section 1 of the Children Act 1989. If the decision whether or not to discharge the parental responsibility of Mr K is such a decision, then, as was expressly set out by Ryder LJ in paragraph 12 above, the consequence will be that the child's welfare will be the court's paramount consideration.

57. In that event, other requirements of section 1 of the Children Act will come into play, including the no delay principle, and the no order principle. As Ryder LJ said, there is no ***requirement*** upon the court to consider the welfare checklist, although the court may find it a useful analytical framework, not least because welfare has to be considered and reasoned. Crucially, Ryder LJ added that, "Given that the cessation of parental responsibility is an order of the court, ***the court must also consider whether making such an order is better for the child than making no order at all, the no order principle in section 1(5)"*** (my emphasis)

58. I find it impossible to reconcile these words, not least those highlighted words, with the conclusion reached by HHJ Moradifar that an order discharging parental responsibility should automatically follow from a declaration of non-parentage.

59. There are other *dicta* which are difficult to reconcile with the approach of HHJ Moradifar. At paragraph 14 Ryder LJ said this:

> "An unmarried father does not benefit from a 'presumption' as to the existence or continuance of parental responsibility. He obtains it in accordance with the statutory scheme and may lose it in the same way. In both circumstances it is the welfare of the child that creates the presumption, not the parenthood of the unmarried father."

60. I find it difficult to reconcile these words with the following words of HHJ Moradifar: "Where the very legal presumption for the acquisition of parental responsibility by operation of law under section 4(1) does not exist, any welfare analysis is superfluous, and would serve no purpose at all".

61. Before leaving this issue, I deal with a further point made by Ms Walker, which relates to the language used by Ryder LJ in paragraph 11. Ms Walker points to the wording, including "their child" and "parents" as distinguishing features. However, Ryder LJ was defining parental responsibility in this section. The concept of parental responsibility is similar in nature, no matter who exercises it, whether it be a Local Authority, a special guardian, who may or may not be a relative, or a parent, natural or adoptive. Again, these distinctions do not, to my mind, go to the heart of Ryder LJ's reasoning.

62. That being the case, despite careful reflection, I am unable to distinguish, in relation to this specific question, between the position of a biological father and that of a man who was named as father on the birth certificate, but whose paternity has been disproved by DNA testing. Once the position has been reached, as it clearly was by HHJ Moradifar, that an order is necessary under section 4(2A) of the Children Act 1989, before the parental responsibility of a man in the position of Mr K can be discharged, I can discern

no logical principle, applying the analysis of Ryder LJ, for distinguishing between the position of a biological father and a person in Mr K's position.

63. Several of the written submissions have touched upon the issue of parliamentary intention, such being that section 4(1) was intended as a mechanism to confer parental responsibility solely upon a child's biological father. It is those principles which HHJ Moradifar clearly had in mind when he said, "The biological link is the foundation that identifies a man as the father of the child, under the statutory regime. When that foundation is displaced, the status of that man as the father cannot persist", and later, "Registration and the consequential award of parental responsibility by operation of law is based on the rebuttable presumption that he is the biological father of the said child. If that presumption is rebutted, the foundation for the acquired parental responsibility is displaced. Subsequently, parental possibility [sic, 'responsibility' clearly intended] will be lost by the order of the court that reflects the status of the individual adult".

64. Of course, I accept that the clear intention of parliament was to convey parental responsibility only on biological fathers pursuant to section 4(1) of the Children Act 1989. The fact that that was the intention does not preclude the possibility that parliament, through the parliamentary draughtsmen, had foresight about the likelihood of errors occurring, and how they should be corrected.

65. It is worth remembering that a father acquiring parental responsibility by being registered on the birth certificate was not part of the original Children Act 1989, it was added as one of the amendments made under the Adoption and Children Act 2002. At the same time section 4(2A) was inserted. Prior to these amendments, there had been no express provision for the removal of parental responsibility from an unmarried father.

66. Parliament decided to add to the previous methods by which an unmarried father could acquire parental responsibility, the third route of birth registration. That was to be acquired by the simple act of a joint signing of the Register by the mother and putative father, without proof of paternity. Whilst there were some inherent safeguards within this process, such as the penalties for perjury, against deliberate misstatements on a birth certificate, there are no safeguards against honest mistake. Accordingly, when considering the entirety of the general population, it was entirely foreseeable that there would continue to be, as realistically there always have been, errors as to paternity on the birth register arising from mistakes made in good faith, as well as some errors made from misstatements not made in good faith.

67. An important change made by the amendments, therefore, was that the registration of the unmarried father now carried legal consequences for the child who was registered, in that the father acquired parental responsibility by the simple act of joint registration at birth.

68. It would therefore be logical, in my judgment, to conclude that parliament intended to provide within section 4 Children Act 1989, as amended, a complete scheme for the gaining and discharging of parental responsibility when acquired by one of the three methods referred to within section 4(1) including where the parental responsibility was gained on a false premise. In my view this is what they did.

69. I reiterate the significance of the language used by again quoting from my previous judgment:

> "A final point that I explored with counsel is the use of the word "person" rather than "father" in section 4(2A). This would appear to envisage a non-biological father figure, if I can put it that way, being the subject of a specific application under section 4(2A). In other words section 4(2A) is not confined to those who are in fact biological fathers, but also applies to those who had previously been presumed to be fathers and had acquired parental responsibility by one of the methods set out in section 4(1). If the contrary were the case, it seems to me one would have expected the draughtsman to use the word "father" in section 4(2A) in the same way as occurs in section 4(1)."

70. None of the written submissions engaged with this part of my earlier judgment as to why the word "person" was chosen, if it were not to deal with a situation such as that in which Mr K finds himself.

71. Of course, the possibility of mistake as to paternity could apply to any of the three methods set out in section 4(1) Children Act 1989. There is no formal requirement for proof of paternity where paternity is not in dispute.

72. It would have been open to parliament to distinguish between the method and criteria to be applied to applications to dismiss parental responsibility based on proof of non-paternity and applications based on welfare grounds in respect of biological fathers. No such distinction is provided.

73. In those circumstances, the natural construction of section 4(2A) Children Act 1989, bearing in mind the consequences with respect to the upbringing of a child to which I have alluded earlier, must be that an application under section 4 (2A) is to be construed in accordance with the principles of the Children Act as set out in section 1. To my mind this brings us back to the *ratio* of Ryder LJ in *Re D.*

74. In terms of any policy argument about the superfluity of a welfare analysis, I note that the range of actual situations where a judge might be considering an order under section 4(2A) Children Act are very wide. It is likely to include men who had little or no relationship with the children in question. However, it may very well also include men who could be termed "psychological fathers" to the children concerned, who may have been living with or having very extensive contact with them throughout their childhoods.

75. The approach of HHJ Moradifar would mean that the court would be compelled to discharge parental responsibility under section 4(2A) whenever a declaration of non-paternity were made. Of course, in some circumstances the court might nevertheless be able to reinstate parental responsibility if a section 8 order was made. However, a section 8 order may not always be in the child's best interests. Indeed, there may be cases where the above approach is simply not open to the court, for example, in respect of a child who is 16 or over, where the making of section 8 orders is heavily restricted. By contrast parental responsibility lasts until 18.

76. In any event, it scarcely seems compatible with the no order principle for the court to be forced into making two orders to achieve a result which could be reached by simply declining to make an order.

77. For all of the above reasons, I consider that the reasoning of Ryder LJ does apply to the instant case and therefore I am bound by the decision of the Court of Appeal in *Re D*. On that basis, I must decline to follow HHJ Moradifar in this one respect. I conclude that the decision that I make today is a welfare-based decision.

78. Before concluding my analysis of the law, I should make one correction and one clarification of my earlier judgment:

79. First the correction: In paragraph 30, I said that the whole of section 4 is subject to the principle that the child's welfare is paramount. That was inaccurate. I meant to refer to section 4(2A). What I meant to convey was that an order terminating parental responsibility under section 4(2A) is subject to the principle that the child's welfare is paramount, irrespective of the route by which it was gained under section 4(1), the three routes being registration on the birth certificate, parental responsibility agreement, or court order.

80. Secondly the clarification: I note that HHJ Moradifar referred on a number of occasions to whether a "welfare analysis" was required. It may be that the phrase was adopted by counsel from my judgment. In my conclusions on the law in paragraph 35 of my first judgment, I referred to the decision that the court had to make as being "welfare-based". In paragraph 36 I said this:

> "These then are my reasons for concluding that the application made by mother must be subject to a welfare analysis, and therefore it should be dealt with in the final evidence of all parties particularly the Local Authority and the Guardian, and should be considered at the final hearing."

81. Those words were directed very much to the circumstances of this particular case. It was certainly not my intention to suggest that in every case where there is an application to discharge parental responsibility in respect of a person who has been proved to be not the biological father there was a particular analytical framework which needed to be applied, still less particular evidential requirements which would need to be followed.

82. I summarised my view in paragraph 35 as being:

> "The fact that the man in question has been found not to be the biological father will feed into that welfare consideration, but that the discharge of parental responsibility is not automatic. The importance of the lack of a biological link is one which will vary from case to case."

83. It was my intention within that judgment to summarise my legal analysis by concluding that a welfare-based decision is required in respect of every application under the Children Act 1989 section 4(2A), in which the paramountcy principle and the no order principle and no delay principle will need to be applied. As Ryder LJ said, whether to

use the welfare checklist as an analytical framework will be a matter for the judge in any individual case.

84. Likewise, of course, case management decisions about what evidence is required will be a matter for the judge in each case. As I stated earlier, the factual circumstances in which this question may arise are likely to be very wide-ranging. Whilst some cases will require a very careful weighing of the welfare factors, there may be others where all the welfare factors point to discharge.

The factual background:

85. I have set out the facts in my main judgment. Suffice it to say that I have now made a special guardianship order in favour of Mr M that secures N in Mr M's care, where she has been living since July 2022, together with her half-brother M. I will henceforth refer to M as her brother as N has lived with him for most of her life, and I have no doubt that she simply sees him as her brother.

86. I have accepted the Local Authority's recommendation that Mr K should have contact, but this should be on the basis of approximately three times a year and supervised by Mr M. I have not made an order to that effect, but I have accepted that the recommended levels of contact should be recorded on the face of the order. The recordings will also reflect that the level of contact is not set in stone, and that Mr M will be able to respond to N's changing needs.

87. The level of contact has been set at that level which reflects the positives, namely that N enjoys contact with Mr K, that Mr K remains committed to her, that Mr K gets on with Mr M, and supports the placement. However, it also reflects the fact that there are risks associated with Mr K, in particular his excessive alcohol use, as demonstrated by hair strand tests, along with testing positive for exposure to cocaine. Both these results suggest that Mr K's lifestyle choices may be risky. He had a negative viability assessment in respect of care. Any more frequent contact than three times a year would put a burden on Mr M in terms of the supervision of contact.

88. Finally, Mr K's contact had to be seen in the light of the overall recommended level of contact which I have also accepted, namely monthly for mother, and six times a year for the maternal grandparents. I have accepted that the contact levels need to be seen as a whole. Any greater contact from Mr K would risk impinging on N's school and social activities, family life and, as Ms Walker submitted, the very crucial downtime, when the children can simply be at home, relaxing or choosing for themselves how to spend their time.

89. Mr K did not contest the change of name application. The mother's application to change N's surname has been amended to M-B rather than B. This is also M's surname. I find that to be in accordance with her welfare, and I have made that order.

90. Before going any further, I do need to address an issue raised in mother's skeleton. It was suggested for the first time that the naming of Mr K as father on the birth certificate was a sham arrangement for immigration purposes. Although the mother has previously suggested that Mr K has been partly motivated to retain parental responsibility by virtue of his immigration status, she has never made this particular allegation before. It is a very serious allegation, and not only against Mr K, it also

implicates Ms B herself. If the allegation were proved, it would put her at risk for investigation and prosecution for perjury.

91. I cannot proceed on the basis of this allegation being true without hearing evidence, and to do so at this late stage would risk substantial unfairness to Mr K.

92. A further consideration is whether it is necessary to determine the allegation.

93. Balancing all of these matters, and with particular reference to the very late stage at which it was raised, I informed the parties that I intended to proceed at this stage on the basis that the allegation is unproven and to be set on one side. If I decide that, but for this allegation, the welfare analysis points to Mr K retaining his parental responsibility, I will hear further submissions at that stage as to the way forward. If I decide that putting this allegation on one side, the welfare analysis in any event points to discharge of Mr K's parental responsibility, it is not necessary to determine it for the purposes of this application. In that event, it will be for Ms B to decide for herself whether she wishes to pursue this matter elsewhere.

94. I invited submissions from the advocates as to this proposed approach as a preliminary issue before handing down judgment, and they all indicated that they were content with it.

Applicability of welfare checklist to the facts of this case:

95. a) The ascertainable wishes and feelings of the child concerned, considered in the light of her age and understanding.

N is too young to have a view on the issue of parental responsibility. The evidence suggests that she enjoys contact with Mr K, but does not see him as a father figure. The Local Authority describes the way that N sees Mr K as being akin to an uncle. She is very settled in Mr M's care.

96. b) Her physical, emotional and educational needs.

The evidence suggests that N has been less affected than her elder brother by the sometimes neglectful and inconsistent parenting that the children experienced at the hands of their mother. There is no evidence that she has special needs. She has the usual physical, emotional and educational needs of a child of her age. She does have a need to maintain relationships with all the adults in her life who are important to her, whilst also being shielded from emotional harm.

97. (c) The likely effect on her of any change in her circumstances.

There would be no immediate change if the court discharged Mr K's parental responsibility, and clearly there would be no change if it did not. Going forward, if the court were to discharge Mr K's parental responsibility, decision-making would rest with Mr M primarily, and with N's mother. This would undoubtedly simplify decision-making for Mr M than if he had to consult two others about important decisions for N. The discharge of Mr K's parental responsibility is therefore likely to have a beneficial effect upon Mr M's ability to take decisions as special guardian for Ns benefit.

98. d) Age, sex, background, and any characteristics of hers which the court considers relevant.

N is a girl aged 2 and a half. She is a child of dual heritage, with a white British mother and a father who is believed to be of black African origin, albeit the identity of N's father is not known. Although it is not known from which country N's father originated, N will be exposed to Mr M's culture. He is also black African, hailing from Cameroon. In addition, Mr M is well integrated into British society by virtue of the length of time, namely 13 years, that he has lived, studied and worked here, always legitimately. The relevance of these factors is that Mr M is as well placed as anyone (given the uncertainty as to the identity and background of N's father) to meet N's identity needs. N does not have any identified unmet cultural needs in Mr M's care which could be met by Mr K.

99. (e) Any harm which she has suffered or is at risk of suffering.

There is no evidence that N is at risk of suffering any harm in the care of Mr M. There is evidence that N could be at risk of harm in the care of Mr K unless her contact was supervised or at least monitored.

100. f) How capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting her needs.

The evidence suggests that Mr M is fully capable of meeting N's needs. The evidence suggests that the mother is not currently fully capable of meeting all of N's needs, although she is capable of meeting her needs during contact, particularly when she is well in her mental health. The evidence suggests that Mr K likewise is not capable of meeting N's needs, although he is capable of providing her with enjoyable experiences during contact. He has had a negative viability assessment as a potential carer for N, with concerns around excessive alcohol use in particular, and with minimisation of the same being an additional concern.

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

The range of powers that I am considering are either to make the order discharging parental responsibility or not to make the order, leaving Mr K's parental responsibility intact.

Discussion:

102. The precise extent of Mr K's contact with N historically remains somewhat unclear. The Local Authority submit that after being discharged from the mother and baby unit, N has spent the majority of her life in Stockport, other than brief occasions when she has lived in Luton, including two months from November 2021 to January 2022. Despite the lack of clarity, what is clear is that Mr K has continued to reside in Luton since N's birth and that, at the very least, N has spent significant periods in Stockport, prior to proceedings being issued in February 2022.

103. Accordingly, her contact with Mr K is likely to have been lacking in consistency, but it was clearly extensive enough for the two of them to develop a relationship such that N enjoys seeing him, and contact has been observed to be of good quality. It is however

noted that she does not specifically ask after him, and in the Local Authority's view she sees him as something akin to an uncle.

104. I accept that there are a number of points in Mr K's favour. He clearly has a real interest and affection for N. It is his case that he regarded her as his daughter until DNA testing. For the reasons I have set out earlier, I am proceeding for present purposes on the basis that that is correct.

105. What is not in doubt is that Mr K has remained committed to N, as has been evidenced by his fortnightly travelling to Stockport from Luton within these proceedings when he was thought to be N's father. Since N's move to Peterborough, and Mr K's DNA testing, his contact has reduced to monthly, but he has been equally committed to travelling from Luton to Peterborough. I accept that he is deeply interested in N's welfare. He is supportive of the placement with Mr M, and is unlikely to undermine it.

106. On the one hand, although I have concluded that the discharge of parental responsibility of a man in the position of Mr K is a welfare-based decision, nevertheless the fact that Mr K is not N's biological father is clearly relevant to the decision. It cannot be ignored that he gained his parental responsibility on a false premise. Further, Mr K is not in fact in the position of the psychological parent that I referred to earlier in my legal analysis. He is strongly committed to N, but as far as N is concerned, although she enjoys seeing him, he does not have a particular significance for her.

107. The special guardianship order which I have made today is a permanence order for N. Her future lies in the family unit with Mr M and her brother M, and to a lesser but important extent with her mother and extended maternal family and Mr M's extended family. The level of contact at three times a year to Mr K reflects that. It is likely that her relationship with Mr K will lessen in significance over the years. This is particularly the case as there are risks associated with Mr K.

108. As the Local Authority have submitted, there is no obvious benefit to Mr K retaining parental responsibility. I have also concluded that there are clear disadvantages as demonstrated by the evidence emerging from the viability assessment and hair strand testing. There is evidence of excessive alcohol use which Mr K minimises, and concerns about exposure to cocaine. These issues give rise to concerns about his lifestyle.

109. The Local Authority also have concerns about the extent of his understanding about the mother's mental health issues, which is relevant as there appears to be some sort of ongoing relationship with the mother from time to time.

110. Although Mr M will hold enhanced parental responsibility for N which goes with a special guardianship order, he will nevertheless need to consult the mother about all important matters. Adding another adult into that decision-making process, whose role in N's life is going to be peripheral, is unlikely to be of any benefit to N.

111. Finally, Mr K does not need parental responsibility in order to have contact with N. Mr M and the other parties were all in agreement to him having supervised contact at the recommended level of three contacts a year. The only dissent to that was Mr K himself, who sought contact at once per month. However, I have no reason to think that Mr M

will not promote the recommended contact. As previously stated, the two men get on well together.

112. Applying the principle that N's welfare is my paramount consideration, the principle that I should not make an order unless it is better to make the order than to make no order, and having considered welfare under the framework of the welfare checklist, I have concluded that it is in N's best interests for Mr K's parental responsibility for her to be discharged.

113. It follows that there is no need for me to hear submissions on how to deal with the allegation that he was named on the birth certificate as a sham.

Conclusion

114. I make an order discharging Mr K's parental responsibility for N, and that will be effective as of today's date.

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(This judgment has been approved by the Judge.)