# Westminster City Council v RA & Ors [2005] EWHC 970 (Fam)

Case No: FDOC00320

**IN THE HIGH COURT OF JUSTICE**
**FAMILY DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL
26/05/2005

B e f o r e :

**THE PRESIDENT**

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**Between:**

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| **WESTMINSTER CITY COUNCIL** | **Applicant** |
| **- and -** | |
| **R A** | **First Respondent** |
| **-and-** | |
| **B AND S (by their childrens' guardian)** | **Second and Third Respondents** |

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**Mr Alistair Perkins (instructed by Creighton and Partners) for the Applicant**
**Mr Gary Crawley (instructed by Moss Beachley Mullem and Coleman) for the First Respondent**
**Miss Siobhan Kelly for the Second and Third Respondents.**
**Hearing date: 10th May 2005**

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**HTML VERSION OF JUDGMENT**

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**Sir Mark Potter P.:**

**Introduction**

1. In this matter the Westminster City Council applies for Interim Care Orders in relation to two siblings, a girl, B (aged 5) and a boy, S (aged 3 months) under S 31 of the Children Act 1989 (Part IV). The application is dated 14 April 2005. It comes before me in these circumstances.

2. The application was issued late on 13 April 2005 (stamped as received on 14 April 2005) in the Inner London Family Proceedings Court at Wells Street in circumstances where the two children were in hospital and the Council was concerned that, upon discharge into the care of the mother, she would be unable to cope with their health and general care requirements.

That remains the position. The first hearing was listed for 19 April 2005 but was not effective because the Council's initial social work statement had only been received by the Court that morning and the Council agreed to an adjournment without an order until 21 April 2005 on the basis that the children were in any event not going to be discharged from hospital until early the following week. On 21 April 2005, the Council received the mother's statement, unsigned, which indicated that she welcomed the assistance of Social Services, and would cooperate in their finding her suitable accommodation, and in arranging for her to attend the Brunel Family Centre for a parenting assessment as soon as the children were discharged from hospital. The final paragraph stated:

> "I am aware that the local authority have made an application for an Interim Care Order. I will not oppose that application on the basis that the children are not removed from my care, however I would ask this Honourable Court to consider making a Supervision Order so as to satisfy Social Services that I am able to care for the children."

3. Nonetheless, on arrival at court, counsel for the mother, Mr Crawley, who appears for her today, indicated that he considered the Council's application was 'ultra vires' and in breach of the mother's rights under the European Convention on Human Rights (ECHR) on the basis that, despite opportunity, there had been no multi-disciplinary meeting held by the Council to which the mother had been invited before care proceedings were commenced and/or the Interim Care Plan (proffered to the Court on that day) was made. Counsel also made clear that (despite the statement of the mother quoted above) she objected to an Interim Care Order being made in any event, although she would agree to a Supervision Order. As there was no time to hear the application, the hearing was adjourned to 4 May 2005. At that point, because it appeared that the children were to be discharged from hospital the following week, the mother agreed neither to oppose nor consent to the Council's application and an Interim Care Order was made until 4 May 2005. On that day, the skeleton argument of counsel was served only 15 minutes before the hearing and the case was immediately transferred to the Principal Registry of the Family Division whence it was transferred to the High Court in the light of the 'ultra vires' point taken. The Interim Care Order was not renewed at that stage because the children were still in hospital and not yet due for release. Upon the mother's undertaking not to remove them, the matter was relisted on 9 May, the anticipated discharge date for the children being 15 May.

**The background**

4. In order to consider the 'ultra vires' point, it is necessary to set out in a little detail the parties' background and the involvement of the Council.

5. The mother is an Iraqui born in Kuwait and the father is Algerian. In 1998 they married when the mother was only 15 and at school in East Ham, having come to this country in 1997. It was a secret marriage because her parents had other plans and would not have approved. The mother therefore left London with the husband and went to Leeds, as she believed, to meet his family. However, there she was effectively made prisoner in a one-bed flat with no window and no contact with the outside world, whether by telephone or directly. She was physically abused. Her parents did not report her missing. When she was pregnant with B (born 12 March 2000) she was not allowed out of the flat or to seek any medical attention. B was delivered at home by an old Arab woman. B's birth is not registered anywhere in the United Kingdom.

6. Shortly after B's birth, the mother realised that she was not normal. She was not using her arms and legs properly, had no appetite and could not look at people properly. She had difficulties feeding and with movement. However, the mother continued unable to leave the house. The father would take B out twice a week. The mother is unaware what, if any, medical treatment the father sought for B, though she believes B may have had an operation on her eyes. Leeds Health Authority have no record of B. The mother says that the father was violent to her throughout the marriage and that he deliberately hit her causing her to miscarry

twice subsequent to B's birth. The father blamed the mother for having a 'sick' child. However, he was very loving, and never violent, towards B.

7. In June 2004 the husband brought the wife and B back to London, saying that it was time to build bridges with the mother's family. Having arrived in London the father told the mother he did not want her any more. He went off with B, leaving the mother at the Edgware Road tube station in an area where members of her extended family were known to reside. She waited for three hours for the father and B to return. She then started to walk and saw a man she recognised as her uncle who took her to her parents. At this time she was pregnant with S although the father was not aware of this. She made no attempt to find B, nor did she report her missing. She states that she was not concerned for her welfare because the father had always been a very attentive and caring father so far as B was concerned.

8. During her pregnancy, the mother became known to Social Services. She was initially referred to St. Mary's Hospital ante-natal department in November 2004 because of their concerns about her feelings of depression, her history of domestic violence and her unsatisfactory housing situation. After initial assessment, her case was allocated to a Children and Families' social worker, Ms Keane. She was encouraged by Ms Keane to report B missing. She failed to do so however.

9. The day following S's birth on 2 February 2005 Mr A-D (the mother's natural cousin) met Ms Keane in the post-labour ward at St. Mary's Hospital, claiming to be S's father and that he wished to marry the mother. S had some immediate health problems, including severe reflux and dry skin. He also had cataracts, which were removed at operation. Save when in hospital, S is in the day-to-day care of the mother.

10. On 31 March 2005, Ms Keane was informed by the mother's family that B had reappeared in the care of a man known only as Mohammed who stated that the husband was sick of caring for B and wanted to return her.

11. B was examined on 1 April 2005 and admitted to St. Mary's Hospital with serious medical problems. She has been diagnosed as suffering from Sekel Syndrome, a form of dwarfism. She suffers from dwarfism with poor growth, Microcephaly, and Global Development Delay. She has severe feeding difficulties. She has a squint with visual impairment. There are also concerns over her hearing.

**The Involvement of the Council**

12. For the purposes of the ultra vires point raised, the relevant events in relation to contact and communication with the mother in respect of the children have all taken place since the Child Protection Medical examination of B and S on 1 April 2005, following which they were admitted as in-patients. At that time it was unclear what the health needs of B were and what, if any, medical treatment she had previously received.

13. Following the child protection medical, Ms Keane consulted her manager and was advised that, given the severity of B's health needs and the uncertainty about the intentions and whereabouts of the father, agreement should be obtained from the mother that she would not discharge the children from the hospital over the weekend or allow anyone else to come to remove them and that, if she did, the police would be called. It was decided that consideration would need to be given to convening a Child Protection Conference as well as obtaining legal advice in relation to the lack of proof of anyone holding Parental Responsibility for B, and whether legal proceedings should be initiated.

14. Ms Keane saw the mother with an interpreter at hospital on 1 April 2005. She make clear the Council's concerns about B's presentation and health needs, and informed her of the discussion and attitude of the Council as set out above. The mother agreed that she would not remove or allow anyone else to remove either child from the ward over the weekend. Ms Keane advised the mother that further discussions would be necessary between the Social

Services Department and the family, that the police Child Protection Team had been informed and they too might wish to talk to her and her family. The mother said that she understood and was in agreement with Social Services, because she wanted B to be 'helped'.

15. Ms Keane again met the mother on 4 April 2005 at hospital, where the mother expressed concern that S had also been admitted to hospital. Ms Keane told her that a Child Protection Strategy meeting would be held next day, the purpose of which was for all professionals involved in the childrens' care to discuss the concerns of the police and welfare teams and to look at what steps should be taken to ensure the safety of the children. Ms Keane said she would let the mother know the outcome of the meeting immediately afterwards and the mother was in agreement with that course.

16. On 5 April 2005, the Council held both a Child Protection Strategy meeting and a Legal Planning meeting. At the former, there were discussions relating to investigation by the Police Child Protection Team and the Council by way of interview and discussion regarding the circumstances surrounding B's history and reappearance in the family, as well as the mother's relationship with both the father and Mr A-D, with whom she was now in a relationship. It was decided that continued joint investigation under s.47 of the Children Act was required. It was agreed that a Review Strategy meeting would be held on 15 April 2005.

17. On 6 May 2005 Miss Keane again met the mother on the hospital ward and informed her of the outcomes of the Strategy meeting, the concerns of the police and the need for further discussion. That was necessary in the light of the new development that, Mr A-D (who had previously wished to assist the mother in caring for the children) had become aware that S had additional health needs and he no longer wished to continue his relationship with the mother. Ms Keane told the mother that there was evidence that B had suffered significant harm, that the Council were working within the Children Act 1989, but were unclear at that stage what steps needed to be taken to protect the children. Ms Keane said that the Council would wish to undertake an assessment of the mother's ability to parent her children and to meet their needs. The mother stated that her family would help her to care for both children.

18. On 6 April 2005, Ms Keane met her manager and the Senior Child Welfare Manager. The latter recommended that care proceedings should be initiated in respect of both children while a parenting assessment was undertaken.

19. On 8 April Ms Keane met the mother on the ward and informed her that the Council believed that they should share Parental Responsibility of B and S and undertake an assessment of her parenting for reasons already discussed. Ms Keane said that the Council believed that B and S should be placed in foster care while this parenting assessment was undertaken. The mother became upset and angry at this indication and Ms Munro (Ms Keane's supervisor) advised her to consult a solicitor about this, making clear that the Court would need to approve any such step.

20. On 11 April 2005 a further management meeting took place at which it was agreed that, rather than pursuing the suggestion of foster care, a Residential Parenting Assessment would be more appropriate in the light of the mother's attachment to S, to whose needs she had previously attended; her apparent attachment to B; the need to assess her parenting skills in relation to the two children together; and the difficulties of obtaining a specialist local foster placement for two children with such complex health needs.

21. On12 April 2005 Ms Keane and Ms Munro met the mother to discuss the changed proposal. They made clear that they would be applying to the Court for an Interim Care Order to share parental responsibility for the children. The mother stated that she was in agreement with this plan and said she "just wanted to be with her children". She was again advised to contact her solicitor to discuss this. She was told that the new recommendations would be presented to the Westminster Placements Panel on 13 April 2005 to seek their approval and she would be kept informed of the outcome of all discussions.

22. On 13 April 2005 the social workers attended the Placement panel and requested permission for a Residential Parenting Assessment of the mother to be undertaken. The panel acknowledged the concerns in relation to B's history and the possible reappearance of the father, but considered that a Community Based Assessment, with a tight package of support and monitoring, would be more appropriate than a Residential Assessment, as it would enable a better understanding to be gained of the mother's parenting ability.

23. At about 7 pm following the meeting of the Panel, a faxed application for an Interim Care Order was made to the Court. It is date stamped 14 April 2004 by the Court.

24. On 14 April, Ms Keane met the mother and informed her of the outcome of the Placement Panel Board and that the Council were pursuing their application for an Interim Care Order, but that their plan was now that the children would be placed with the mother in the community. She was told that it would be necessary for the social workers to get permission from the Director of Social Services and to liaise with the Housing Department to identify and obtain suitable accommodation for the mother and the children. The mother expressed agreement with this plan and said she would work with the Council and health professionals in meeting her children's needs in the community.

25. On 14 April 2005, a multi-disciplinary meeting was convened to discuss the medical and social concerns in relation to the children. This meeting was attended by the mother. It was made clear in discussion that B was not yet medically fit for discharge and further investigations were necessary to ascertain her feeding and developmental needs. The plans of the local authority were discussed and the mother was given an opportunity to give her view about the plans. She did not indicate any disagreement but said that she was anxious that the children were discharged from hospital soon.

26. On 15 April 2005, Ms Keane met the mother's older brother at the hospital and discussed the Council's plans in relation to the children. He said that he was in agreement that the children should be placed with the mother and understood the reasons why the Council were requesting a parenting assessment. However, he stated that he was not in agreement with the matter being placed before the Court.

27. On 15 April 2005, a Review Strategy meeting was convened and chaired by the Westminster Child Protection Advisor. It was (a) agreed that the children should not be discharged from hospital prior to a pre-discharge planning meeting and a court hearing of the application for an Interim Care Order (b) that a Child Protection Conference was unnecessary as legal proceedings had been initiated (c) that all the professionals required to be satisfied that the plan for a community-based assessment took into account any risks in relation to the children (d) that the police should continue their enquiries of the Home Office in relation to the mother's application for indefinite leave to remain in the United Kingdom (e) that the police would interview family members separately to try to ascertain further information about B's reappearance in the family.

28. The chronology of the proceedings before the Court to date has already been outlined at paragraphs 2-3 above.

29. In parallel with the proceedings, on 25 April 2005, a Work Agreement meeting was convened at the Brunel Family Centre, attended by the mother and her sister when the details of the proposed Parenting Assessment contained in a lengthy 'Placement with Parents Agreement' dated 25 April 2005 were discussed with the mother, who was given an opportunity to express her views and ask any questions she wished. The mother said she would go through the agreement with her solicitors before signing it, which she did on 27 April 2005.

30. Later that day, a Pre-discharge Planning meeting was convened by the Council at which the view was expressed that, subject to the mother being confident with B's feeding regime and the tenancy for the accommodation chosen for her being completed, the children would both

be discharged on 28 April 2005. Since that time however there have been setbacks in the health and care of the children who are currently expected to be discharged on 13 May 2005.

31. There are before me full and detailed Interim Care Plans in similar terms in respect of both children, in which the aim of the Plan is to allow B and S to reside with her mother; for a parenting assessment to be carried out and the need for any further assessments to be identified and undertaken; to test the mother's ability to parent the two children in the community, given the complex medical and care needs of B and the medical needs of S; to assess what support the mother and children need to remain living together and to test whether the mother will actively engage with support. The assessment period is to begin immediately following B's discharge from hospital, the mother and children living in satisfactory residential accommodation which has now been found for them.

**The 'Ultra Vires' point**

32. Shortly stated, the 'ultra vires' point is this. Mr Crawley submits that, because of the failure of the Council prior to the issue of its care proceedings, to involve the mother in a multi-disciplinary case conference in order to arrive at and/or recommend an agreed Care Plan for B and S as the subjects of the Council's concern, the Council has acted in breach of the mother's rights under ECHR Article 6 and Article 8, the appropriate sanction for which is for the Court to refuse to make an Interim Care Order. He submits that, in the circumstances, for the Court to make such an order as opposed to dismissing the application, or at least making 'no order', would be to endorse what he dubs an 'ultra vires' application and to involve the Court itself in breaching the mother's Convention rights.

33. In support of this argument Mr Crawley relies on the HMSO publication 'The Children Act 1989. Guidance and Regulations. Volume 1 Court Orders (1991), at paragraph 3.10 of which provides:

> "Full inter-agency co-operation including shared information and participating in decision-making is essential whenever a possible care or supervision case is identified. The local authority should lead by example and be prepared to make full use of the new provisions on co-operation between agencies in section 47 (investigations) and 27 (exercise of Part III functions). *A multi-disciplinary, multi-agency case conference should always be held, based on the principles and arrangements set out in 'Working Together' and local guidelines on joint planning and co-operation, and it should seek to recommend an agreed course of action. Parents, the child (if of sufficient age and understanding) and others with a legitimate interest in the child's future should be involved wherever possible.* Involvement will be more than just attendance; families should be able to participate in the decision-making process and they will need to be kept informed of decisions as they are made, the reasoning behind those decisions and their likely consequences. No decision to initiate proceedings should be taken without clear evidence that provision of services for the child and his family (which may include an accommodation placement voluntarily arranged under section 20) has failed or would be likely to fail to meet the child's needs adequately (see paragraphs 3.19 and 3.20 on significant harm) and there is no suitable person prepared to apply to over care of the child under a Residence Order." (emphasis added)

34. Mr Crawley relies also on a passage in the Cleveland Report at page 246, paragraph 4(e) which states:

> "Parents should be informed of case conferences and should be invited to attend for all or part of the conference unless, in the view of the chairman of the conference, their presence will preclude full and proper consideration of the child's interests".

35. Mr Crawley submits that in this case the Council had sufficient time to convene a case conference, but (as he puts it) chose not to tell the mother about it until after the event or to

invite her to it. In the event the Council failed to draw up a Care Plan or to make it available by the time the matter came before the Court on 21 April; nor was the Authority in a position to produce to the Court any form of 'Working Together Agreement'.

36. As to the alleged breaches of the mother's human rights, Mr Crawley puts it in this way. Mr Crawley acknowledges that, if he is correct in his submission that breaches of the ECHR were involved in the procedures followed by the Council prior to the issue of proceedings, it is not a case for judicial review; such breaches can and should be dealt with by the Court in the course of exercising its jurisdiction to examine the merits of the decision: See *Re BL (Care Proceedings: Human Right Claims)* [2003] EWHC 665 (Fam), [2003] 2FLR 160 per Munby J. at paragraphs [25], and [29] – [32], as affirmed by Wall LJ in *Re V (Care Proceedings: Human Rights Claims)* [2004] EWCA Civ 54, [2004] 1FLR 944 at paragraphs [95] – [98]. Nonetheless, Mr Crawley submits, that the human rights arguments should not be left for disposition in the ordinary course of the care proceedings; because the breach is so clear and flagrant the application should effectively be dismissed at this stage of the proceedings, leaving the Council to start again if it thinks it necessary and appropriate in a situation where the mother is in fact willing to cooperate under the terms of the Placement with Parents Agreement of 25 April 2005 without the need for court involvement.

37. I am bound to say that I regard the procedural points raised by Mr Crawley as both unmeritorious on the facts and misconceived in law.

38. So far as the actions of the Council are concerned, it is not, and cannot be, suggested that, in proceeding as they have, the Council have acted outside their statutory powers and duties in relation to child welfare or other than in a bona fide manner in relation to the care of B and S. The highest it is put is that, in exercising their powers and duties, the guidelines which I have quoted above have not been followed and that, in failing to hold the multi-disciplinary conference, the absence of which gives rise to Mr Crawley's complaint, the Council has infringed the mother's Convention rights under Article 6 and Article 8.

39. Since it is not suggested by Mr Crawley that, in the course of the proceedings themselves, the mother has been unfairly treated or received other than a fair hearing, this case involves consideration only of Article 8. I cannot do better in that respect than quote selectively from the judgment of Munby J. in *Re G (Care: Challenge to local authority's decision)* [2003] EWHC 551(Fam) [2003] 2FLR 42 paragraphs [31] – [36].

> "[31] The fundamental rules articulated by the court as long ago as 1988 in *W v United Kingdom* (1988) 10 EHRR 29 at paragraphs 63-64:
>
> > 'The decision-making process must therefore ……. be such as to secure that [the parents'] views and interests are made known to and duly taken into account by the local authority and that they are able to exercise in due time any remedies available to them …….. What therefore has to be determined is whether, having regard to the particular circumstances of the case and notably the serious nature of the decisions to be taken, the parents have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests. If they have not, there will have been a failure to respect their family life and the interference resulting from the decision will not be capable of being regarded as 'necessary' within the meaning of Art 8.'
>
> [34]….. So procedural fairness is something mandated not merely by Art 6 but also by Art 8. To an extent – and whilst the care proceedings themselves are on foot – Arts 6 and 8 march side by side ……..
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> [35] But in relation to the procedural requirements imposed by Art 8, it also important for local authorities to appreciate, as I said in *Re L* at paragraph [88], that:

> 'The protection afforded ….. by Art 8 …… is *not* confined to unfairness in the *trial* process… Art 8 guarantees fairness in the decision-making process at *all* stages of child protection.' (Original emphasis).
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> [36] So Art 8 requires that parents are properly involved in the decision-making process not merely before the care proceedings are launched and during the period when the care proceedings are on foot (the issue which I was concerned with in *Re L …*
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> [37] I make no apology for repeating here what I said in *Re L (Care: Assessment: Fair Trial)* [2002] EWHC 1379 Fam, [2002] FLR 730 at paragraphs [149] and [151] …..
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> '…… The State, in the form of the local authority, assumes a heavy burden when it seeks to take a child into care. Part of that burden is the need, in the interests not merely of the parent but of the child, for a transparent and transparently fair procedure at all stages of the process – by which I mean the process both in and out of court…… ' "

40. The observations of Dame Elizabeth Butler-Sloss in the Cleveland Report on which Mr Crawley relies, as well as his quotation from Vol 1 of the Children Act Guidance and Regulations were an early articulation of the requirement for fairness and the opportunity for parents to be heard, focussed on the usual practice of local authorities in child care cases. While the passage quoted above from paragraph 3.10 of that Guidance does not specifically, say so, it plainly anticipates that a 'multi-disciplinary, multi-agency case conference will be held *prior* to proceedings. However, the important thrust of it is that 'families should be able to participate in the decision-making process and they will need to be kept informed of decisions as they are made, the reasoning behind those decisions and their likely consequences.'

41. Furthermore, every child care case with which a local authority is concerned falls to be considered in the context of the particular situation faced by the local authority and the circumstances immediately surrounding the necessity to make decisions in respect of the child.

42. Looked at in the round, I see no substantial basis for criticism of the course taken by the Council in this case.

43. So far as the Council were aware on 1 April 2005, they were concerned with a cooperative mother in agreement with the Council's intentions, including the possibility of initiating proceedings (see paragraphs 13-14 above).

44. On 4 April 2005, on being informed that the Child Protection Strategy Meeting would be held next day to consider the steps to be taken and that she would be informed of its outcome, the mother agreed to that course (see paragraph 15 above).

45. Following the mother's expression of concern on 8 April on learning that the Council considered that the children should be placed in foster care (see paragraph 19 above), the Council changed its proposal (see paragraph 20 above) and, when on 12 April the mother was informed of the Council's intention to seek an Interim Care Order for Shared Parental Responsibility, she indicated that she was in agreement with that Plan on the basis that the children would be with her while the Parental Assessment was carried out (see paragraph 21 above). In those circumstances the Council had good reason the believe that the mother agreed with their proposed course of action and would agree with the decision of the Placement panel on 13 April when it approved a Community Based Assessment of the mother's parenting skills with a package of monitoring and support. At the stage when proceedings were issued later that evening, the Council had received no indication from the mother, nor had they any reason to suspect, that she would object to the proposal put forward, indeed, she expressed her agreement when told of it next day on 14 April (see paragraph 24 above).

46. Later on 14 April, at the multi-disciplinary meeting held in order to discuss the way forward once the children were ready for discharge from hospital, the mother still gave no sign of disagreement, her only concern being that, upon discharge, they should be placed in her care. It is apparent that the first occasion that any objection was voiced to the Council's proposed course was when the mother's older brother intervened and stated his objection to the involvement of the Court on the day *after* proceedings had been commenced (see paragraph 26 above). Even then, the unsigned statement delivered on behalf of the mother indicated her acceptance of the position. One can only speculate what caused the mother to change her view by the time counsel appeared on her behalf at the first effective hearing on 21 April 2005.

47. Thus, although it is technically correct that a multi-disciplinary meeting of the kind referred to in the 1991 Guidance quoted was only held the day after issue of proceedings, it is not suggested that the mother objected to the proposals as they then stood. Indeed, it is clear that, prior to the issue of proceedings on 13 April, she had expressed her acceptance and, at the multi-disciplinary conference which followed such issue, she made no objection of any kind. Nor, prior to the issue of proceedings, or at any time before 21 April was she treated unfairly or in any way or deprived of the opportunity to say what she thought should be done. I find no hint or suggestion of procedural unfairness to support Mr Crawley's submission that, prior to proceedings, there was any breach of the mother's Article 8 rights. Nor (if indeed it is alleged) do I find any suggestion of such breach or irregularity in the conduct of the proceedings.

48. One aspect of Mr Crawley's argument has been to complain of the Council's failure to draw up a care plan and to suggest that the Council was remiss in failing to obtain the input of the mother into such a plan when it was unaware whether or not she would cooperate. I have already indicated my view that the Council were justified in considering that the mother's attitude was one of acceptance of their proposals. However, it is worth making two further points. There is no guidance or practice direction which compels the local authority to prepare and file a care plan before or with an application under s.31 of the 1989 Act. The *Protocol for Judicial Case Management in Public Law Children Act Cases* itself suggests at paragraph 18 of Appendix F that interim care plans should be prepared, filed and served so as to be available to the court at the Case Management Conference occurring between Day 15 and Day 60. In this case a hand-written Interim Care Plan was produced, signed, on behalf of the Council on 26 April 2005, the day following the signing by the mother of the Placement with Parents Agreement. The two separate and comprehensive Care Plans drawn in respect of each child were dated 29 April 2005. Thus, by the time the matter came successively before the Family Proceedings Court and the Principal Registry, all was in order for the case to be dealt with under the terms of the Protocol. Instead, it was transferred to the High Court on the basis of what I can only assume was a perceived difficulty arising from the misnomer applied to the legal point taken.

49. For the reasons I have set out, this case never was, nor should it have been treated as, a case involving any 'ultra vires' exercise by the Council of its powers and duties under the 1989 Act. Put at its highest, it simply involved an argument of procedural unfairness prior to proceedings giving rise to an arguable breach of the mother's Article 8 rights under the ECHR. The position in relation to such cases has been made clear in the decisions which I have already cited at paragraph 36 above.

50. Human Rights Act complaints arising before the making of a final care order can, and normally should, be dealt with in the care proceedings by the court dealing with those care proceedings when the full merits of the care plan, as opposed to its bare lawfulness, fall to be debated. It is neither necessary nor desirable for the family proceedings court or the Principal Registry to transfer proceedings to a superior level of court merely because a breach of Convention rights is alleged. In my view, no very detailed examination of the statements and skeleton arguments in this case was necessary in order to see the straightforward, yet insubstantial nature of the complaint raised against the Council and the fact that it did not of itself justify transfer to this Court.

51. That is sufficient to dispose of the point which gave rise to the transfer of the proceedings. However, as an additional or alternative argument, Mr Crawley has also shortly submitted that the evidence filed to date is insufficient to show that there are reasonable grounds for believing that the threshold criteria set out in s.31 of the 1989 Act are met in respect of B and S. In this respect I have also heard short argument from the Council and the guardian.

52. I am in no doubt that, as at the date of the hearing before me, the threshold criteria are established. Both children have acute medical needs which will require close care and attention following their discharge from hospital, when it was anticipated at the date of hearing to take place on Friday 13 May. It was the view of the Multi-Disciplinary Strategy meeting at St. Mary's Hospital on 5 April 2005 that the failure of the mother and father to ensure comprehensive treatment for B earlier in her life may have impacted upon her functioning and life expectancy and constitutes neglect. There are also concerns regarding the credibility of the mother and doubts concerning her earlier failure to take proactive steps to locate B which, in the light of B's condition, she should have treated as a matter of urgency. These matters have not been fully resolved.

*53.* The position is still also unclear as to the help available to the mother in caring for B and S on their release and the likely situation which might be presented by a return on to the scene of the father. In addition, the immigration status of the mother is uncertain, as is the participation of members of her family and their attitude to the intervention of the welfare services. It is clear to me that unless an Interim Care Order is made which enables the children to be discharged into the care of the mother under a close regime of monitoring and support, the mother's ability to look after them would be seriously in question. Prior to the return of B she had been able to care for S in his then state. However, in the light of the very close care and attention which the mother will need to give to B, coupled with the deterioration in S's own condition, which justified his hospitalisation at the same time as B, this is no longer the case. Without the care and support to be provided under the Care Plan it is neither likely nor reasonable to expect that the mother, with such (uncertain) assistance as the family may provide would be able to cope. If she could not, the children would be likely to suffer significant harm. Because of the general uncertainty surrounding the position of the mother and her family and the possibility of medical emergency befalling the children, it is necessary to provide the Council with the ability swiftly to take decisions on the basis of shared parental responsibility. The intervention of the Council and the order sought are thus both appropriate and proportionate. Accordingly, I approve the Interim Care Plans placed before me and make an Interim Care Order in favour of the Council for the purposes therein set out, subject to further consideration at a hearing on 26 May 2005 in the light of an anticipated application by the guardian for a section 38(6) direction that there be a residential parenting assessment of the mother.