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IN THE FAMILY COURT

(Sitting at Milton Keynes)

No. MK18C00023

Magistrates' Court and Family Court Hearing Centre
301 Silbury Boulevard
Witan Gate East
Central Milton Keynes
MK9 2AJ

Thursday, 1st November 2018

Before:

HER HONOUR JUDGE VENABLES

(In Private)

B E T W E E N :

(1) F

(2) M

Applicants

- and -

(1) OXFORDSHIRE COUNTY COUNCIL

(2) THE CHILDREN (through their Guardian)

Respondents

MS M SAVVIDES appeared on behalf of the First Applicant.

MR D CLARK (instructed by Hecht Montgomery Solicitors) appeared on behalf of the Second Applicant

MR O POWELL (instructed by Oxfordshire CC) appeared on behalf of the First Respondent.

MR JASON GREEN appeared on behalf of the Second Respondent.

J U D G M E N T

(Transcript prepared without the aid of documentation)

JUDGE VENABLES:

- 1 Today the court is concerned with the four youngest children of F and M and they are: V, born in 2008; W, born in early 2012; X, born in late 2010; and Y, born in October 2013. The parents have one other child, Z, who was born in 2005. F has other adult children who have not been the subject of process. The parents have each applied to discharge the care orders made in November 2016 and to resume care of their four youngest children.

- 2 The parents are now separated but remain friends. Mother now lives in Cheshire and Father remains in Oxfordshire. All five of their children were the subject of care proceedings in 2016. On 18th November 2016 the court gave judgment and sought to make care orders and placement orders for the three youngest children and a special guardianship order for V, in favour of the maternal aunt. Z was made the subject of a special guardianship order to the maternal grandparents on 24th March 2017. The local authority care plan for W in November 2016 was for him to be placed in a specialist adoptive placement to meet his heightened medical needs. The plan for X and Y was for them to be placed together for adoption after a move to a bridging placement.

- 3 Currently V lives with foster carers in Cheshire. His placement with the maternal aunt broke down because of her concern about the strain V's placement was having on her own family. X and Y remain in their short-term foster placement. W has been returned to his father's care as recently as last week under a reunification plan.

- 4 In February 2018 F lodged his application for discharge of the care orders. Within a few days of issue, it became clear that the local authority had not properly issued the placement applications, contrary to indications given to this court during the trial in November 2016. It

appears that the original documents were defective. This court determined that the placement orders it purported to make in November 2016 were void *ab initio*. The issue of revocation of such orders fell away. The focus of these proceedings has thus been on the applications to discharge the extant care orders.

5 On 8th March 2018 M issued her own application for discharge of the care orders.

6 The local authority were unable to find suitable adoptive placements during the period when they believed the placement orders were extant. On 14th March the court recorded the local authority's commitment to review their care plans and to confirm whether they still sought placement orders. The local authority reflected and does not now pursue placement orders in respect of any of the children. Indeed, the local authority are now open to returning all four of the children to parental care, subject to assessment of M and a programme of work for Y and X. They propose V joins W with Father and Y and X be considered for placement with Mother.

7 There are, however, significant differences of timing, placement permutations and preconditions that require the court's consideration in the context of this discharge application. The children's guardian, Miss Brown, favours the plan of the local authority in substance, whilst expressing some concern about the built in delays.

8 I make clear at the outset that both parents have made extraordinary progress since November of 2016.

9 The applicant father in these proceedings appears by Miss Savvides; the mother by Mr Clarke, although today she attends by Miss Hoare to receive this judgment; the local authority by Mr Powell; and the guardian by Mr Green.

10 I have read the two large court bundles and the additional bundles with the contact logs. I have also considered the very helpful written submissions of counsel. I had an opening note from both the local authority and from Father's counsel. I shall borrow from those documents from time to time. I make clear that where there are any factual matters in issue it is my determination that prevails and, of course, I shall in those instances apply the civil standard.

11 I have heard evidence from Dr Dawn Dr Bailham, child psychologist, Eileen O'Connor, independent social worker, Robert Sharp, social worker for Y and X, Josie Marsh, social worker for V and W. I have from heard from Mother, I have heard from Father, and I have heard from the guardian.

12 **The law:** The test upon an application for discharge was set out in Re S (Discharge of Care Order) [1995] 2 FLR 639 at 643. As Waite LJ put it:

"Section 39 of the Act allows the court to discharge a care order on the application of (inter alias) a parent. Here the jurisdiction is discretionary from the outset (there being no obligation on the parent to satisfy the court that the threshold requirements no longer apply). The issue has to be determined by the court in accordance with s 1 of the Act, which (by s 1(1)) makes the child's welfare the court's paramount consideration"

The burden of showing that the welfare of the child requires revocation of the order is on the person applying for the discharge: Re MD and TD (Minors)(No 2) Fam Law 489.

In considering any harm which the child has suffered or is at risk of suffering, the risk to be considered will normally focus on recent harm and an appraisal of current risk; conclusions reached at an earlier hearing will be of marginal relevance and historical interest only, but earlier conclusions may be examined afresh in the light of new evidence : Re MD and TD

13 In the recent judgment of Mostyn J in *GM v Carmarthenshire County Council* [2018]

EWFC 36, he said this of applications to discharge:

“Parliament expressly granted a person with parental responsibility the unfettered right to seek the discharge of a care order. In granting that right Parliament must be taken to have intended the right to have a meaningful content. Parliament must surely have intended that a parent who had lost a child to care by virtue of unfitness or incapacity must be given the chance to turn his or her life around and to reclaim the child.”

14 He observed that there is no formal presumption in favour of the natural parent but the application of the welfare checklist must be read compatibly with the principle of proportionality and as well as the Art.8 rights. In his analysis of proportionality, he distilled Lady Hale’s examination of a number of Strasberg authorities, as follows:

“i) The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by article 8 of the Convention (*Johansen v Norway* (1996) 23 EHRR 33, among many others).

ii) Measures which deprive biological parents of the parental responsibilities should only be applied in exceptional circumstances and can only be justified if they are motivated by an overriding requirement pertaining to the child's best interests (*R and H v United Kingdom* (2012) 54 EHRR 2).

iii) A care order should in principle be regarded as a temporary measure, to be discontinued as soon as circumstances permit, and that any measures implementing

temporary care should be consistent with the ultimate aim of reuniting the natural parents and the child. The positive duty to take measures to facilitate family reunification as soon as reasonably feasible will begin to weigh on the responsible authorities with progressively increasing force as from the commencement of the period of care, subject always to its being balanced against the duty to consider the best interests of the child (*K and T v Finland* (2001) 36 EHRR 18).”

15 Keehan J in *YZ v Leicester City Council & Ors* [2018] EWHC 2262 similarly observed the Art.6 and 8 rights of the parents, noting that where there was tension between the rights of the parent and the child, the rights of the child prevail.

16 I am mindful that the local authority plan previously endorsed by this court was for three of these four children to be permanently placed outside the family: the court being satisfied that orders of last resort were necessary on the facts of the case as then presented. I am also conscious that this court’s decision was endorsed by the Court of Appeal who refused the parent’s permission to appeal.

17 It therefore makes all the more remarkable the extraordinary progress both parents have made since the orders of November 2016. In order to see the progress, it is important to refer back to the judgment of November 2016 in which I made a number of significant findings, as have been referenced in the opening note of the local authority.

h “The antipathy to working with professionals, which, in the extreme form I find to be within the S household, must be damaging not only to the children’s emotional health in terms of their exposure to anger, frustration, and aggression, but is also undermining of the children’s need to work co-operatively with Social Care for their own protection” [JUD12]

i All five children have some level of enhanced need and delay [JUD13]

j. In my view, the children's innate medical and psychological health has been exacerbated by their exposure to domestic abuse within the household and the dysregulated emotional presentation of both Mother and Father [Jud14]

k. The parents' difficulties in managing their behaviours has impacted on their ability to work constructively with significant professional figures... [JUD14]

l. the level of animosity and open hostility towards social workers is, in my experience, unusual and must in part explain the changes in personnel working with them [Judge 14-15]

m. Neither Mr nor Mrs S could acknowledge any reason for the continuing concerns of the Local Authority for the children, saw themselves only as victims of the system. They showed no insight as to the impact their behaviour separately and together might have on the children or those endeavouring to support them.[JUD15]

18 Since I gave that judgment, the parents have separated. M now lives in Cheshire near the maternal family. F remains in the family home. Both parents have achieved abstinence from alcohol and drugs. Both quite properly describe themselves as in recovery. F gave up all substances in December 2016; mother about six months later. The couple remain friends and have openly confirmed that they have different aspirations for their relationship. F would like to be reconciled once their respective recoveries have bedded in for at least two years. M is content to be friends and co-parent but she does not wish to reconcile.

- 19 The change in the presentation of F and M is very marked. When we were last in court, they shouted and railed as they gave their evidence and as others gave theirs. F, he may not recall, threatened to throw something at counsel for the local authority even as she cross-examined him; but the man I have seen in court over the course of the last week is a very different man. He is calm. He is respectful. He has listened and he has been reflective. The change I see is echoed in the papers and the views of the guardian, Mr Keene, the psychologist, and the independent social worker.
- 20 Similarly, M has made enormous changes. She presents as calmer, more contained and more reflective. I am aware that there is some concern expressed by the independent social worker that she has still to work on her attitude to some of the professionals but nonetheless there has been remarkable progress from where she was in 2016.
- 21 The changes are also observed by the local authority who have put in train the return of W to his father's care and who propose V should also join that household in July of next year when he finishes his primary education in Cheshire.
- 22 If I may now I would like to give a short description of the children because I think that sets in context the issues that this court has had to think about historically and thinks about today. V has mild ASD. He has a diagnosis of nystagmus, an eye condition for which he has six-monthly check-ups from an orthoptist. He has required support in school with Maths, English and around his social skills but he is doing very well in his current school environment. Dr Bailham considers he has a history of complex trauma and attachment difficulties and I remind myself that, as a younger boy, he received therapy three times a week, principally focusing on the difficulties he had in his attachment with his mother which has been acknowledged by her and is known to all of the professionals. He is studying at a school in Cheshire where everyone agrees he is settled and thriving.

- 23 X at seven has been assessed as having significant emotional and behavioural difficulties. He is academically behind with reading and writing, which is a concern, and he has an EHCP. From October 2017 to July 2018 he attended a PRU two days a week. His behaviour in his foster placement has been noted at times to be very difficult. It has, however, been noted that there has been an improvement in his behaviour in the time that he has been in foster care and in particular over the last eight months. CAMHS are now working with X in school. The children with disability team have confirmed that X does not meet the criteria for support from their service.
- 24 W is noted as having significant emotional and behavioural difficulties. He is learning delayed. He previously had fixed term exclusions from school, and that was prior to his rehabilitation to his father. He too has an EHCP. Dr Bailham concluded that he has mild to moderate learning disability and myoclonic jerks. He is now attending a special educational school. I understand that facility is available until a young person reaches the age of 18, albeit that W's placement at the moment is only secured until July of next year. The Oxfordshire children with disability team have formed the view that W meets their criteria for intervention. However, given the transition into Father's care they propose to provide support only in an advisory capacity with this to be kept under review. Consideration will be given to the allocation of a disability social worker for W in six to twelve months' time if the transition has been successful.
- 25 I pause here to say that it seems to me that there is a tension within the findings of the team as to whether or not a worker should be allocated now. He is either meeting the criteria or he is not. I do not understand why allocation might otherwise be delayed because of the implementation of a reunification plan.

- 26 Y is five, and has some issues with speech and language. Concerns have also previously been raised in that Y has been seen to copy X's aggressive behaviour. Dr Bailham considers Y to have a disorganised attachment, to a lesser degree than X, and some learning difficulties. The children with disability team have confirmed that Y does not meet the criteria for support from their service.
- 27 The local authority accept Father can care for W with support and that V can join his household in time. F is aware V would like to move to him but he is also aware that V wants to stay at his current school in Cheshire. He is settled. It is understood V would also like to go to a secondary school in Cheshire. Mother and Father say that listening to V and considering the placement needs of Y and X, V could remain in Cheshire and move to his mother's care where Mother has support and structure. Neither parent seeks an abrupt move for V.
- 28 X and Y remain in their bridging foster placement. The plan of the local authority for Y and X is dependent on further work being undertaken with them and Mother's progress within the context of an NSPCC reunification programme. The timeframe is at least 15 months and if Mother is not able to care, the local authority would then look at an alternative long-term foster placement.
- 29 Mr Sharp, the social worker for Y and X, completed a together and apart assessment in September 2017, thus before these proceedings were issued. At that time the local authority advocated that Y and X would have a better chance of permanency and stability if placed separately for adoption in consequence of their respective levels of need and the nature of their sibling relationship. The local authority no longer advocates separation of X and Y should they be placed outside the family. The local authority's review of the need for separation has taken place during the course of these proceedings.

30 The parents say both Y and X can be cared for within the family. They would be content for a phased return, either to Father's care or for the court to consider placement of the two of them split between the parental homes.

31 **The expert evidence:** the court endorsed the instruction of three experts: Eileen O'Connor, independent social worker, to provide an independent assessment of the parents' capacity to care. Contact was enlarged to enable that assessment to be undertaken. Dr Bailham was instructed through the guardian to prepare a paper assessment of the children's up-to-date psychological profile and functioning. She did not meet the children, the view being taken that the children were already seeing a significant number of professionals. Mr Keene, chartered clinical psychologist, was appointed to prepare an update on F, who he assessed in October 2016, finding him to have Asperger's and, at that stage, a diagnosis of emotionally unstable personality disorder.

32 **Eileen O'Connor:** Miss O'Connor was previously engaged as an ISW to assess the maternal grandmother as a carer for Z and/or X in 2016. She did not meet the children in the earlier proceedings. Within those proceedings, she recommended that Z be placed with the maternal grandmother but persuaded the court that the maternal grandmother could not manage the care of two children as the risks of placement breakdown were simply too high. It is noteworthy that Z's placement with the maternal grandmother has endured.

33 Mrs O'Connor has a breadth of qualifications and experience that she brings to her assessment. She has a Masters in Social Work, a postgraduate Masters in Autism. She has a Diploma in Mental Health, is PAMS trained and has a Diploma in Alcohol and Drugs Counselling. She is now employed as a social worker in Newcastle and thus has current practice expertise and experience. She spent in excess of 20 hours with the children and

their parents, observing contact and the parents' support networks. She wrote three reports, one concerning each parent, dated 6th June, and an addendum of 29th July.

34 Her written reports are criticised by the local authority and the guardian for failing to include a clear critical analysis of each child's welfare. However, in my view, her oral evidence was clear, coherent, child-focused and provided to the court a dynamic assessment of the risks for the children and their welfare and thus must weigh heavily in the court's assessment of the totality of the evidence.

35 Of M and her journey to abstinence and her current presentation, Mrs O'Connor said this [E37]:

“M's relationship with substances has been complex. Her drug misuse has affected her relationships, her ability to care for her children, her personality leading to aggressive outbursts, and her involvement with social worker. It has been a longstanding issue that she attempted to control and reduce over a period of time. M is honest in respect of her long history with substance abuse. It would appear that drug misuse has dominated her thinking for many years and her decision making has been severely compromised.”

36 Of her relationship with F, she said this:

“M stated that she and F hit very difficult financial times and lost their homes. M said all her children were planned and they both wanted a large family. She had wanted to try for a girl. There was an accumulation of issues in her relationship with F.”

37 She goes on to describe M’s account of a difficult and tumultuous relationship with F, recording that:

“M described a volatile and chaotic relationship with F. She described multiple stresses and difficulties, resulting in the children being subject to child protection plans and eventual removal from their care.”

When looking at her ability to understand the local authority’s concerns, Miss O’Connor observed that:

“The practical changes M has made were illustrative of a developing insight.” Miss O’Connor marked and noted the difficulties of M historically, her presentation historically, the challenges within the adult relationship, the negative impact of substance misuse, but in the current assessment, she observed a woman who presented very differently both in discussion and in the behaviours observed between M and the children.

38 She goes on [E50]:

“I would suggest that if M had not developed insight into her issues that commenced proceedings in this case then she would not have engaged with services so readily and with such openness and honesty. It is important that we recognise that which constitutes insight. There are six criteria to consider when assessing a person’s level of insight: (1) complete denial; (2) a slight awareness, however, denial still exists; (3) acknowledgement of the problems, however, the problem is projected onto others; (4) external factors or on physical factors; (5) awareness of the issues but not understanding the cause of the problems; and (6) intellectual insight which is an

acknowledgement of the problem due to a person's own behaviours, and, finally, emotional insight where the person is aware of his/her feelings and motives and those of others that lead to changes in the person's journey to recovery.”

39 When looking at her ability to understand, that is M's ability to understand the local authority's concerns, Miss O'Connor observed these practical changes to be significant. She was cognisant of Mother's hostility and mistrust of social workers in the past and the fact that there was still some fragility in her relationship and her understanding of the need to work with the local authority. In her oral evidence, however, Miss O'Connor adapted a pragmatic approach, making clear that Mother could work with professionals, partly as determined by the personalities of those involved, and partly by enabling her to feel supported in the work that she needs to undertake with the local authority.

40 She opined that the family, and in particular M, may well be able to work more effectively with a disability social worker as well as others who work within the child protection arena if there was openness, honesty and clarity. Miss O'Connor felt from her own work with the mother that she was able to cope with challenge, that she was open to listening to what was said and, although she did not always agree with what was said to her, she was able to reflect upon it. She observed that M had a demonstrable capacity to parent, whether that be V or Y and X or in other combination, or as a support for F.

41 So far as F is concerned, Miss O'Connor observed [E69] :

“F has demonstrated an understanding of the impact of intimate partner violence on children. He has accepted the need to change and has demonstrated a capacity and capability to address the ineffective parenting practices that were a concern at the commencement of these proceedings. It is my opinion that F has developed insight.

F has moved from insight to change processes and this can be seen in his everyday interactions with specialist services and his local community. F has ceased his drug-using lifestyle, addressed gaps within his parenting knowledge and is separated from M. He has focused upon his own personal issues to prepare himself both physically and emotionally to care for his children. It is my opinion that he has made a very firm commitment to improving himself psychologically, to prioritise the care of his children. This will not be without its challenges but with the changes that F has been able to demonstrate, I believe reunification of the children with F needs to be tested. I acknowledge that the emotional fallout from a failed reunification plan will be borne out by the children themselves but I believe going forward there is a good chance of success. I am hopeful that with the support of his professional network, his church and his family members, including M, that F will be able to care for the children in the longer term.”

42 F has now been drug-free since December 2016. Miss O’Connor noted F’s awareness of the psychological effects of cannabis and, as he told me in the witness box, the negative psychological consequences of prescribed medications for depression. No one challenges his assertion that he is entirely drug-free. He achieved this, he says, in light of the advice of Mr Keene, who gave evidence in November 2016 as to the deleterious effects of antidepressants on people with Asperger’s and of the impact of cannabis on mental health.

43 Miss O’Connor observed that F had embraced change [E84]:

“F is now able to see the value in services and is less resistant to advice. His continuing engagement with services in his local community will be important now and in the future. A circle of support around F will help to relieve any stresses that come with the task of parenting children with additional needs. Rather than denying

difficulties, F's positive relationship with professionals will support him to acknowledge difficulties without fear of having his children removed. I have spoken many times with F about his continuing ability to work with professionals, including social workers, in an open and honest manner. Without F relaxing his approach to statutory intervention, professionals may be worried that he will attempt to conceal issues in the family home. This will inevitably lead to emotional pressures being placed on the children to keep secrets. F has concluded he is able to work with professionals and accept advice and guidance."

- 44 Miss O'Connor has spent more time with the parents individually and together during periods of extended contact, in an otherwise unsupervised setting, than the guardian and the social workers together. Of Father and V, she said it was an emotionally warm relationship with Father able to read and respond to V's cues. She said:

"He can read V's cues and respond to these cues. F did not place his own agenda onto V and this can be tempting for parents to do when they are observed. V has been observed to stay with F and to seek comfort from him. Their interactions are very warm and they both, as the literature states, show a clear love for one another and engage in the dance of the parent-child dyad. This is observed through an analysis of their eye contact and how they hold each other's gaze without interruption. This is unusual in parents with Asperger's "syndrome but it is clearly evident through direct observation that they find joy in each other's company."

- 45 Of his time with the other children, she observed this:

"During his contact with X, W and Y, F was able to demonstrate his ability to use words and language that engaged the children. He also ensured they understood the

boundaries in place and if they were not allowed to perform certain tasks, he would explain this without resorting to a simple ‘no’ statement. He was able to draw each child into conversations and to help them build on their turn-taking skills as a sibling group and learn about the world through words linked to their daily experiences of play. This also demonstrated his ability to allow X, W and Y to think about their choices and to problem solve. F allowed the children to play and enjoy activities while he waited patiently. When the children found joy in games and activity, F expressed his pleasure in their achievements. Throughout the observations, it is clear that F has improved his response to the children and they in turn find joy in their contact with him.”

46 In her observations of Father with the children, she observed his ability to impose boundaries but did note that he may require help to maintain them consistently and identified this as an area where he will require ongoing professional support. She concluded her written report, [E100] :

“It is my recommendation that F should be considered as a primary carer to V, X, W and Y. This is not risk free as the children have an accumulation of issues that include emotional needs and developmental delay. The parenting task will be significantly challenging but with a strong support network and a continuing engagement with universal services, then F should be able to meet the needs of the children.”

47 Miss O’Connor was criticised and challenged for failing to acknowledge the likely impact of the children’s behaviours on their carer, their competing needs and how this might impact on a placement. It was suggested that the ordered, warm, managed contact she observed, with both parents, was unrepresentative of family life and a likely consequence of the

children being on their best behaviours. She disagreed, saying that children and parents cannot feign holding it together for long sustained periods of time. Children tell a lot more, she said, through their behaviours.

48 She thought it unlikely that the children would have presented very differently if she had not been present to observe. She thought that her observations of the parent responses were likely reliable, particularly as one of the principal historical charges against the parents was their emotional dysregulation. She spoke of X doing things to mobilise his parents but she saw no signs of aggression in the parents' responses and when V and X fell out, Mum was able to manage. When asked about the sibling relationship, she saw nothing that fell outside of what she would expect to see in a large sibship. She saw the parents step in and negotiate to manage. She noted the strength of the siblings and parent relationship. She said, "They are a family unit and are very loyal to each other." That observation echoed with what was noted in the earlier proceedings and is perhaps of increased significance since the children have been separated for so long and with such limited inter-sibling contact. She described the children as still having hope in the parental relationship.

49 Miss O'Connor warned against social work over-pathologising children, a message I would endorse. She felt that the children's needs and the parents' abilities to manage them could be supplemented by a clear and robust plan of support. She would expect the local authority, social worker, a disability social worker, if allocated, school, counselling and systemic therapy, CAMHS, to be brought together to bring about a safe reunification for these children, albeit on a phased basis. She anticipated Cheshire social care would be an important part of any plan if V were to be moved to his mother and in particular if Father were to move to Cheshire, as he has stated to be his plan in due course.

50 **Mr Keene:** Mr Keene reported in the earlier proceedings and he has said much that has influenced the behaviours of F since the last hearing. He wrote in his report and observed in evidence that the change in F's presentation was really quite remarkable. He recalled advising in his evidence to this court in 2016 that the father's mental health was significantly impacted by his use of cannabis, co-codamol and anti-depressants.

51 In his 2018 report he revised his view saying [E26F]:

“F's recent history shows no sign of emotional lability, angry outbursts or impulsive behaviour that might suggest emotionally unstable personality disorder which had previously been diagnosed. It is remarkable that F appears to have been able to give up co-codamol, anti-depressant medication and smoking cannabis and tobacco at one attempt, even while his partner was struggling with a drug habit and he was suffering from pneumonia. He appears to have maintained this for 18 months, which is highly commendable. Abandoning these substances has had a profoundly positive effect on his physical health such that he is able to manage his back pain, lung condition and irritable bowel syndrome much more successfully and now has a positive outlook on life, with energy to help with the church and to act in a supportive way to people coming off drugs at Turning Point. His social presentation and ability to relate to others has also improved significantly. He is no longer depressed and is able to practice and develop his skills in meditation which have also no doubt contributed to his wellbeing.”

52 Mr Keene opined that emotionally unstable personality disorder is severe and enduring but it is not necessarily lifelong. It is no longer regarded as an untreatable condition, contrary to previously held views. Mr Keene acknowledged that Father's diagnosis may yet change. He does not say it is currently different.

53 At para.9.6 he went on to say:

“For the past 18 months F has been functioning in a more responsible way and carefully managing his own health and mental health in a way that leads me to be cautiously optimistic about his future ability to cope without relapsing into addiction or falling back to a reliance on a toxic mix of prescribed and recreational drugs.”

54 He went on:

“In normal circumstances I would expect F in his present state to be able to parent one or two children quite successfully. However, if all four children are returned to his care simultaneously without the help of [Mother], this would undoubtedly test his resilience well beyond the challenges he has had to face in the last year.”

55 Mr Keene does express some caution about F’s ability to care for more than two children on his own but thought with appropriate local authority support and co-parenting, it might be possible. He said he had been impressed by Dr Bailhams’s report but had not appreciated that she had not met or seen the children. He also expressed some surprise that Dr Bailham had spoken of X possibly demonstrating ‘psychopathic traits’.

56 **Dr Bailham:** Dr Bailham was instructed to prepare a paper report, which she did on 3rd August, with an addendum on 5th August. Dr Bailham noted that since removal, the children had received some limited play and attach therapy through school. X is now receiving some support through CAMHS. The foster carers have had little or no therapeutic support. I am aware that Mr Sharp has used his best endeavours to remain in contact with

the attach team, who are an in house psychological service for Oxford, but direct work with the children and the carers has been limited.

57 Of placement for V and W, Dr Bailham says this[E121]:

“V is a vulnerably emotionally fragile child and wants to be placed back in his father’s care but this will depend on whether he is placed solely or with other siblings. In my opinion, V could be placed back in his father’s care with one other sibling, possibly W. I would not recommend him being placed with X because there is a history of them having a difficult relationship. V would likely be targeted by X physically and possibly Y, who is prone to copying X’s behaviour because of the aggression he has experienced whilst living with X. I would only recommend V and W to be cared for by F or W by M, because both children have complex needs that would put a lot of demands on any parent, let alone a sole father parenting them who has Asperger’s and a diagnosis of EUPD, the latter being prone to being destabilised by stress.”

58 In her oral evidence Dr Bailham accepted that V could live with Mother if work was done with her around caring and meeting V’s needs. She said W and V was an option. So far as Y and X were concerned, she felt that X probably needed a therapeutic placement so that work could be done with him and with Y around the trauma they experienced in parental care. She feels X’s behaviour indicates a level of emotional trauma. She rejected the possibility of any systemic work being done with X and Y before returning to parental care. She said that the plan required the children to have trauma work before consideration is given to returning them to the family that traumatised them.

59 The CAMHS team, as I understand it, are now working with X. In their letter of 1st October 1018, they make the following recommendations [C141B]:

“Recommendations being foster carer and social worker both request an intervention for X that targets emotional regulation. Our assessment suggests that X is “showing signs of attachment difficulties and that he has experienced trauma. He has difficulty regulating his emotions and this impacts his ability to relate to others. In the first instance, X would benefit from a targeted intervention that focuses on emotional regulation and managing anger. He would also secondly benefit from a longer intervention such as play therapy. Due to the pending court decision, we cannot say how long X will remain with his current foster carer which indicates that a shorter, focused intervention may be most appropriate at present.”

60 The local authority have now devised a plan of therapeutic support in the foster placement, which is detailed at C137 of my bundle, that being a plan of support which is to be delivered through the Oxford therapeutic team. The foster carers have reportedly said that they would continue to care for Y and X during the programme of such work. I understand that the programme of work is not open to parents as carers but only to those who care as foster carers. The local authority say that they can deliver this work to support Y and X over a nine to twelve-month programme that can be extended.

61 I think it is important to pause at this stage and note that the two children have been in their current placement for some two years. What does the OTFC plan in fact consist of? As I understand it, that team themselves will discuss the children fortnightly. The foster carer will meet with a peer group under an OTFC supervisor. There will be specialist foster carer training. The boys will have a life coach working on self esteem and attention in the community. The team will get the feedback from the carers twice a week and this

programme will be delivered on the basis of social learning and systemic theory. It does not, as far as I can see, expressly deliver trauma work.

62 The evidence of the social care team was given sensitively and it is clear to me that both Mr Sharp and Miss Marsh, have endeavoured to establish good working relationships with both parents. It is important to emphasise that historically there was considerable hostility from both F and M towards the social workers who were presenting the case before this court in November of 2016. It is to the credit of the family that they have been able to establish a good working relationship with the social workers but it is also a credit to the social work team that they have made that possible.

63 F has a good relationship with Miss Marsh, perhaps not surprisingly since she is recommending the two children that she has been largely responsible for should be returned to the family, but nonetheless it does seem that on those occasions where there has been disagreement between her and father it has been possible to debate those issues without difficulty. F has engaged even when he is not happy. I understand that when he has been involved in discussions at LAC reviews, he has made clear when he takes issue with an arrangement or proposal of the local authority but has been measured and reflective in his response.

64 Mr Sharp is not currently advocating the immediate return of X and Y to parental care but he too says he has been able to work with the family. M, as I suggested at the outset, is more cautious about working with social care. She acknowledges that. It is an area for work.

65 Miss Marsh produced an email from the foster carer. Recording, I believe, a conversation that V had had with the foster carer. The email suggests that V had been told by his dad that he must live with his mum until his dad and his brothers have moved up to Cheshire and

they all can live together. It is not accepted by either Mother or Father that this is a conversation that took place in that form, and indeed Miss Marsh was not unduly troubled by it. Both Mother and Father say that they have not had any direct conversations with V to suggest that they themselves would like to see a plan implemented whereby V would move to his mother's care, W establishes himself with Father and where the family looks to recover care of X and Y with Father to move to Cheshire so that they are in closer proximity. However, a lot of professionals have been to see the children and V has been asked a lot of questions by a lot of different people about what the arrangements are and what he would like to happen.

- 66 F has been open with all professionals about his ultimate wish to move to Cheshire so that he and M can co-parent. He wishes, I know, to reconcile with M. She, I am equally clear, does not want to reconcile. She sees their future as a family living in separated households.
- 67 Miss Marsh knows that V's primary wish is to live with his dad. However, V wants to finish year six in school, which he now attends in Cheshire. He has a good relationship with his current foster carer. He sees her as holding his family together. Miss Marsh is aware that V has also spoken of going to the same secondary school as his brother, Z.
- 68 Miss Marsh recognises it is a difficult and delicate problem for the parents. F in particular does not want V to feel rejected but his case is founded on the belief that he must listen to what V says about school and family and friends and, when looking at the various permutations of placement for the children within the family, he must look at things in the round. Miss Marsh's preference is to stick to the current local authority plan, to see W joined by V in the father's household next summer.

69 W has returned to his father's care as recently as 25th October. No party suggests that that should be under any other legal structure than a care order. Miss Marsh suggests that the plan for W will be reinforced by W's new school. The school is a special resource which offers special needs education until 18. The school have a breakfast and after school club. There will be liaison between school and Dad to ensure that they adopt the same disciplinary tactics. A key worker from the Oxford REOCC team (and that is the Residential and Edge of Care Crisis response team) has been allocated to support Dad around boundaries and discipline and will be led in the work by F. Miss Marsh will remain the allocated social worker. She was allocated, as I understand it, as long ago as March 2017. That is a professional relationship that has endured much longer than many other social workers allocated to this family and I think is a positive and is to be noted and commended.

70 Miss Marsh described W as being really dad-focused, such that every time she visits, he thinks his dad is with her. Miss Marsh feels that the current plan is child-focused and is crafted around W and V's primary wish: V's primary wish being to be with his father.

71 However, in the witness box, I thought Miss Marsh was openminded about the possibility of V living with his mother. She had not actively considered and weighed in the balance the protective value of the maternal grandparents supporting V in Mother's care. She knows that Mother sees Z for weekend contact every other weekend but had not critically considered the quality of that care. She spoke of the need to understand what the Cheshire social care teams might provide to support V if he stayed in Cheshire. Such conversations have not yet taken place. Miss Marsh is familiar with the NSPCC reunification programme that her authority want to use to engage, assess and support Mum. It is currently running as a pilot in Oxford. It was first rolled out in 2012. She said she would be the social worker conducting the work with Mum in Cheshire. Parts of the programme could be delivered there, parts in Oxford when Mum attends for contact with the other siblings.

- 72 Miss Marsh is concerned that Mother has not parented for two years. She is aware that Mother is currently living in a one-bedroom flat and that V is valuing having a bedroom of his own in the current foster placement. She notes that M is six months behind Father in her recovery from addiction. She has some concerns about Mother's current level of insight and her ability to work with professionals. She emphasised that she wants the outline plan for reunification of the children to be successful. I am sure everybody wants that. She stressed that she does not want the children to come back into care and I am confident that none of the professionals, and Mum and Dad certainly do not want that.
- 73 She thought that if V was to return to Mother, time needed to be taken to enable a plan of work to be considered. Mother suggested Christmas and perhaps February half term as a possible return date.
- 74 I thought Miss Marsh was very fair and balanced in her evidence and in her consideration of the possible permutations. While she felt V and W could work as a combination, she was mindful that V is doing well where he is and could see that there are positive factors to be weighed in the balance if V is placed with the mother, including the ongoing involvement possibly of the foster carer as a respite carer. She expressed concern about how V would cope moving south to join his father, only to return to Cheshire if father moves there in line with his plans.
- 75 Miss Marsh commended the parents for being open to working with professionals and noted they are developing the ability to work together. So far as Y and X are concerned, Miss Marsh favours a slow and cautious return, subject to the assessments that have been outlined. She would be reluctant to see the two children separated but was open to considering a phased return. She acknowledged that she had very limited time with Y, X

and V during the course of these proceedings. There was necessarily a lot of call on the social worker's time. She also, quite sensitively, did not wish to intrude unduly on parental contact.

76 She acknowledged F could meet both W and V's hierarchy of need, including their emotional needs and their needs surrounding self-esteem. If the local authority accept that F can meet the hierarchy of need for two children now, then that leaves open the question of whether he can care for Y and/or X if V resides with his mother.

77 Mr Sharp is the social worker for Y and X. He too says he has a good working relationship with F. He is not aware of F currently having problems with other agencies. He felt that F will need to work with other agencies in order to garner the support needed for the children in his care. He has had the benefit of seeing parts of three contacts. He has not met the father's wider social support. He acknowledged the value of more extensive observations but commented, and I understand entirely why he would say, that time is simply not available. He was cautious about the plans for Y and X returning to the family and wanted work to be done with them to ensure that any plan would be robust and enduring. He saw the local authority's plans as an opportunity for collaborative working.

78 Mr Sharp observed that Mother had not yet sustained abstinence for as long as Father. He also felt there was some work to do around her insight. He reiterated that it was important for the plan of reunification not to break down. He acknowledged that no work had been done around Y or X moving to Father. It is still, so far as the local authority are concerned, a potential outcome, subject to assessment. The focus has been on W and V.

79 He accepted that F is working openly and transparently around a move to Cheshire but the detail of F's plans is still being formed. Mr Sharp is worried about the ability of either

parent caring for X at this moment. W is a child with a high level of need and the local authority are concerned how any parent might care for other children in addition. He observed Y's needs are greater than previously thought. When pressed, there were concerns that Y was copying some of X's behaviours. He accepted that things had improved over the last few months but there were a handful of occasions when Y's behaviour was particularly concerning, once when Y retaliated and hit X back, a couple of occasions when he had major meltdowns lasting for a significant period of time; on another occasion when there was a bite.

80 The court has the benefit of the foster carer logs, some of which are appended to the closing submissions of the local authority and those provide a summary of the behaviours of note over an eight-month period, from 11 August 2017 to May 2018. The logs necessarily provide a limited summary of the challenges and little of the context. They do not paint a picture of a child demonstrating high level need and I remind myself that Y has now been in foster placement for almost two years.

81 The local authority acknowledge that Y's behaviours are not as challenging as X's or W's but describe his behaviours as emerging. The local authority now seek to support Y, along with X, through the OTFC plan and trauma work. Dr Bailham felt that Y would benefit from individual trauma-based therapy for six months.

82 Mr Sharp remains concerned about X's level of need. X is said by Dr Bailham to ideally need therapeutic parenting with an experienced foster carer. Nonetheless the local authority say that they are open to reunifying Y and X with the mother. There is a clear tension between the local authority's assessment of X and their stated commitment to that plan of reunification. Mr Sharp has reviewed his together and apart assessment of September 2017 and no longer advocates X's separation from Y in order to achieve a permanent placement.

Dr Bailham also advocates the two should be kept together, having lived together throughout their childhood. She has not considered separate placements within the family and neither was she asked to consider a phased move from care.

83 The guardian endorses the plans of the local authority for the children, urging against either parent taking on too much too soon. She is content with the local authority's care plans. She acknowledged that there had been no discussion around the different permutations for returning the children. If V is to remain in Cheshire, she would wish to know more about his support plan. She expressed concern about the duration of the work the local authority propose in so far as Y and X are concerned but would not challenge the nature of the work. She observed that there was likely to be delay in excess of one year under the local authority's current plans for Y and X.

84 A year is a long time in a child's life. That was the view of the guardian. I share her concern about the time that the local authority says is necessary to prepare the children for potential reunification and/or move to long-term foster care. Miss Brown applauded the parents for their progress but she did not seek to press the local authority for a quicker or more focused delivery of services.

85 The guardian has known the children from the previous proceedings. She decided that she would have very limited contact with the children in order to complete her assessment, on the basis that the children were already seeing a lot of professionals. I understand that she met with Y, X and V on two occasions and W on just one occasion. She necessarily relies on the written evidence before the court and her earlier involvement.

86 Turning now to F and M, I cannot emphasise enough the change in the presentation of the parents, particularly F. In the previous proceedings he shouted through most of his

evidence. He was loud and sneering in court and intimidating of the local authority counsel. I made clear in my previous judgment how very unusual that level of hostility was. F says he cannot recall how he behaved in court on the last occasion, and he smiles as I give this passage of my judgment. I can believe that he does not recall because he was in battle mode. He was fighting for his children and he either could not or would not listen to what others had to say. His previous behaviour is very much in contrast with how he has conducted himself throughout these proceedings. He has appeared measured, thoughtful and reflective. The combative and defensive mode of answering questions has fallen away. He is committed to seeing all of his children returned to his care. He does not shy away from telling the court that he has made clear that he will continue to fight for reunification of his family.

87 F has managed a period of more than 21 months' abstinence. He is a regular church attender and has a strong network of friends. He has the support of his church. F acknowledges that he would wish to reconcile with M. M, as I have already said, is equally clear that she will not. Only time will tell how the couple deal with those competing views and aspirations for their relationship and I am aware that professionals will need to support them to enable them to maintain the calm, responsible and sensitive manner in which they work with each other at the moment.

88 M has described her relationship with F as volatile and abusive and it is important that F hears that. F must continue to work on his understanding of his behaviour and its impact on M and the children. F has enjoyed a sustained period of calm and reflection but he will have to remain alive to triggers that prompted him to engage in abusive behaviours in the past. As a sole carer for all or any of his four boys, his resources will be stretched. In Mr Keene's first report, he observed, and I read because I think it is relevant to remind all in court but particularly F who is listening carefully to what I say:

“Asperger’s Syndrome and personality disorder have clearly impacted on F’s behaviours towards his partners and now his five children, over many years. Of particular note is his inflexibility and lack of awareness he is having on others.”

During this hearing Mr Keene observed that Father had effected change through his abstinence, his engagement with mindfulness, his faith and his social network.

89 F believes that he can maintain that trajectory of progress. Mr Keene cautions against overloading him. Eileen O’Connor recommends that F be considered as a carer for all four or, in the alternative, for up to three of the children if V is placed elsewhere. Eileen O’Connor notes that he will need a strong support network and the capacity to engage with universal services and to engage with M as a co-parent.

90 I understand that F’s relationship with Z has been difficult over the last 15 months and Z has only just started to see him again. The fracture flows from an altercation when the parents joined with the maternal grandparents at a caravan park on an unauthorised holiday in May 2017. Mother says Father raised his hand and the maternal grandmother called out, “Don’t hit me.” F is emphatic that he did not hit the maternal grandmother. M did not see him hit. I make no finding as to what happened that day but what is clear is that Z withdrew from his relationship with his father because of what he observed. The relationship with the maternal grandparents was strained in the months that followed. Father’s relationship with the maternal grandfather is still difficult.

91 Since then F has had a further 19 months to build on his mental resilience, his faith and his abstinence. He was relatively early on in his recovery in May 2017 but nonetheless that

episode serves to remind of the need for F and those working with him to be vigilant, because the consequences of a repeat would be very significant for any of the children.

92 M has also made progress. She has established a life for herself in Cheshire, with a one-bedroom flat and a place in college. She enjoys her time with Z every other weekend and she goes to visit the maternal family on alternate Sundays for Sunday lunch, part of normal family life. She has reached the point where she is quite clear that she cannot and will not reconcile with F.

93 I understand that M would seek to make an application for larger accommodation if V is returned to her care but in the short term would give him her bedroom while she would live in the lounge. She tells me that the bus for V's school stops near her current property. She tells me that the secondary school that V wants to go to and which is attended by Z can also be reached from her accommodation. She is aware that V and Z do not have an easy relationship but she is not proposing that they live together.

94 Eileen O'Connor has had a good relationship with F and M through the course of her assessment. Miss Marsh and Mr Sharp have also been able to work with M. M has expressed concern about engaging with the NSPCC programme of work that the local authority propose, partly because of geography but also the delay that such a programme would build in to any planning for the children. She is sceptical about the local authority's willingness to consider X and Y's return to her care or to the family.

95 **My analysis and conclusions:** I remind myself the children's welfare is my paramount concern, both as individuals and as part of a larger sibship. The Art.6 and Art.8 rights of the parents and the children are engaged and where they compete, the rights of the children prevail. I invited all parties to address me in their submissions on the application of the

principles of *Re W (Care Proceedings: Court's Function)* [2013] EWCA 1227 and *Re T* [2018] EWCA 650 to the form of proceedings before this court, namely discharge proceedings. No issue is taken as to the application of the principles to a discharge application, albeit, as I understand it, there are no guiding authorities on the point.

96 The court being seized of the application, it must consider and conduct its own welfare analysis with reference to the welfare checklist. I will, if I may, in so far as the law relating to this part is concerned, refer to the very helpful set of submissions prepared by the local authority.

“In Re W the court concluded inter alia that:

- (a) it is for the court not the local authority to form the all important value judgment so far as its risk assessment is concerned;*
- (b) the risk assessment informs the proportionality of the response to the identified risk;*
- (c) it is not open to the local authority to decline to accept the court's evaluation of risk;*
- (d) similarly, the local authority is obliged to identify the practical services that it is able to provide to make each of the range of placement options and orders work in order to meet the risks identified. If the position were otherwise and the local authority were permitted to disregard the court's all important value judgment and refuse to engage with the problem solving exercise, then there would be no point in having the judicial function and the process could be an administrative one;*
- (e) if the local authority does not agree with the value judgment then the correct route is appeal;*

(f) if the local authority is clear that it will not implement a care plan option then, in such a rare case, the route upon is via judicial review in the High Court.

Logically it would seem to the local authority that it must be right that within discharge proceedings the local authority must accept the court's evaluation of risk. If they do not accept it then the route is appeal. If that is so then similar principles would seem to apply as outlined in Re W highlighted above. Otherwise the care plans for the children could potentially be a disproportionate intervention in the lives of the children if there is not that partnership endeavour between the local authority and the court of identifying the best outcome to the solution in light of the court's assessment of risk. As such, the local authority would accept that the court could invite them to reconsider their care plans once the value judgment has been made if the court takes a different view as to the steps within the children's care plans that are required to meet their needs under care orders."

97 The court, as a public body, as well as the local authority is required to act compatibly with Convention rights. In its evaluation of welfare the court must, in my view, conduct its own risk assessment. The risk assessment informs proportionality and the response to the identified risks. I can do no better than borrow from a passage of the judgment of Mostyn J in *GM v Carmarthenshire County Council* [2018] EWFC 36, which is itself a 2018 case and which was focused upon an application to discharge. I refer here to a passage in para.6 of that judgment:

“...in determining the application there is no formal presumption in favour of the natural parent. The welfare principle in section 1(1) of the Act, as particularised in section 1(3), contains no such steer, beyond that in section 1(3)(g) which requires the court to have specific regard to the capacity of the child's parents to meet his or her

needs. Yet, these provisions have to be read compatibly with the principle of proportionality as well as the right to respect for family life as expressed in Article 8 of the European Convention on Human Rights (as incorporated by the Human Rights Act 1998).”

98 Considering then the cases presented by the parents, the assessment of the local authority and the guardian, my view is this, turning firstly to W. The local authority have already commenced on a plan of reunification for W. It is noteworthy that he is the only child in the sibship who meets the local authority’s criteria for an allocated Disability social worker. The statement of Julie Fox of 16 October 2018 is, however, somewhat equivocal. The eligibility criteria for the allocation of a Disability social worker is given as (1) moderate to severe learning disability, i.e. the child is functioning at a substantially lower than expected level for his own chronological year and (2) ASD in addition.

99 I understand the local authority propose that they will offer support for W in an advisory capacity for the time being whilst W transitions home. I say, again, that the rationale apparently being that he is working with a lot of professionals seems to me at odds with the assessment that he meets the criteria. I struggle to understand why there would be delay in allocating a social worker. The face-to-face involvement of the worker could clearly be tailored around the transition plan and enable Father to establish a good working relationship.

100 I share Miss O’Connor’s view that the allocation of a disability social worker could be a significant support for W and his father and if it relieves and enables Father as a sole carer, there will undoubtedly be benefits for the other children.

- 101 Returning my focus to W, however, it is clear that this little boy wishes to be in the care of his father. He is, as Miss Marsh observed, obsessed with his dad. He is a young man who has a significant number of difficulties. He is now nearly seven but functions as a three-and-a-half year old. He now has a place in a special school, where, as I understand it, he can remain until July of next year. I am aware that both parents were relieved that W was offered such a place as he had struggled in mainstream school. I am concerned that at the moment the care plan raises a question mark around W remaining at the school beyond July.
- 102 The local authority care plan identifies that a high level of support will be needed to meet W's needs. F will need to get W to multiple medical appointments. He will be required to work with school to ensure there is uniformity of approach with boundaries and discipline. The REOC team will be working to support him in maintaining a calm response to W's behaviours. W is unable to fully comprehend the decisions around his care but he clearly wants to be with his father. His sense of family is limited by his experiences of the last two years. He does not currently see V as a significant member of his family. That is partly as a consequence of the geographical distances and, of course, the fact that there has been limited contact.
- 103 In the local authority's assessment father is able to meet W's hierarchy of need for shelter, love, nurture, esteem.
- 104 Miss O'Connor spent a lot of time with F and the children in a variety of settings. I consider her evidence and observations to be an invaluable part of the court's assessment. Her oral evidence provided a balanced and careful dynamic assessment of risk which was informed by the written evidence but not limited to it.

- 105 She observed Father to show warmth, consistency, nurture, to play, to listen, to cope with W's care as part of a competing sibship. The safe implementation of boundaries is clearly a very important feature for W, particularly where he has historically been exposed to the father's inability to manage his own temper. Miss O'Connor, the social care team and the guardian all identify this as an area for ongoing work. F's ability to parent safely will require an ongoing self-awareness of his own triggers, his responses to stress and his ability to work with others.
- 106 The local authority supports W's return home. To optimise the prospects of the placement enduring, it is critical that the local authority allocate a Disability social worker. Such a worker will be able to navigate the challenges of obtaining necessary resources, ensuring that W's educational needs are promoted, be an advocate and an ally. I endorse the plan of reunification subject to a revision in the local authority care plan for the appointment of a Disability social worker. Neither Father nor Mother nor the local authority invite me to proceed to discharge the care order concerning W on the basis that there is agreement as to the plan: which I am content to approve, subject to the amendments I have identified.
- 107 So far as V is concerned, he is now ten. He has lived in Cheshire since 2016. It is now his community. He is settled at school and is thriving. He enjoys his relationship with his foster carer. V has become somewhat dislocated from his siblings and it is noteworthy that W does not include him in his concept of family. W is young and with limited intellectual functioning. It will be important for V to have more frequent contact with his siblings. V loves all his siblings. He has a fractious relationship with Z. X and V also have a difficult relationship. Miss O'Connor observed that V and X would need different parenting styles and that a carer managing the care of all four would spend most of their time negotiating between V and X, leaving little time for W and Y.

- 108 I consider her observations of the children's interactions, differing presentations and practical challenges to carry considerable weight on the basis of her extended periods with the family. I am aware that V would wish to live with his father. He would like to see his parents reconciled. He has an awareness of his father's wish to move to Cheshire. He has a child's wish to see everyone happy and for Mum and Dad to live happily ever after. He is going to need to be helped to understand that families can exist in different ways.
- 109 The local authority have a plan under which V will move to his father at the end of the current academic year. The local authority accept F can care for two children and meet their hierarchy of need. I question, however, whether the local authority have properly considered the possibility of V living with his mother in Cheshire thereby achieving V's second objective of remaining in his current school and preferred secondary school; where he would have the support of the maternal family and potentially the ongoing involvement of his current foster carers.
- 110 Miss Marsh was a quiet and reflective witness who impressed me with her professionalism, who acknowledged that there may be a number of factors to weigh in the balance in concluding a plan for V. The local authority are clearly aware that Z spends every other weekend with his mother. No one has raised any objections to that. I assume that on a practical level the local authority are content that Mother is able to meet Z's practical and emotional needs as a contact parent for extended periods of time. It matters not that Z is currently the subject of a special guardianship order. He is a child who forms part of this sibship. The contact records indicate that Mother relates well to V. The challenges of V's early life experiences with Mother were the subject of intensive therapeutic input. I do not ignore them.

- 111 Mother and her parents remain in a positive relationship. The mother visits Z at their home every other week. The local authority, in my view, have not yet properly weighed in the balance the benefit of V remaining in the area where he has thrived. They have not considered the protective benefits that could flow from the support of the maternal family, even the involvement of Z (who I know he has a fractious relationship with) the fact that he has his cousin R living nearby, the continuity of school, of clubs, of networks, of education and, of course, the possibility of the current foster carers providing respite care.
- 112 Miss Marsh quite rightly said she would wish to know what Cheshire might do to support a placement of V with Mum and I too would welcome that information. The shopping list of supports outlined by Miss O'Connor would be an ideal, around school, social care, transport, work with Mother. I accept that it will be necessary for a placement to be supported. The current plan of the local authority does address V's primary wish but does not take account of the potential disruption for V if Father moves to Cheshire in line with his current plan.
- 113 The local authority plan for V has also built into it significant delay which would, in my view, result in his separation from the family enduring longer than the parents' current functioning would justify. Dr Bailhams's paper assessment was necessarily written in a vacuum. She was unaware of the detail of the plan for V to return to his father's care.
- 114 The local authority have built in life story work for V within the plan for reunification with his father. The current plan does not include any current trauma work such as Dr Bailham has advocated. I note that it has not been offered in the two years V has been in care.
- 115 Miss Brown, the guardian, was not aware of the parents' joint proposal around V until shortly before this hearing. She acknowledged there were a number of protective factors to

be considered around V's placement with his mother. She accepted the parents' proposals were child focused. She expressed some concern about the likely duration of the local authority plan for reunification of the family which would mean a year, or rather 10 months before V could join the father, and a 12 to 15 month delay in determining final plans for X and Y in the event OTFC work was undertaken : a very long time for the children.

116 I am clear that both Mother and Father have made very significant changes in their lives, such as would significantly improve their ability to meet the needs of V. I acknowledge the expertise of Dr Bailham but I have to look at her theoretical assessment of risk against the robust, comprehensive assessment of the parents by the independent social worker, Miss O'Connor whose oral evidence was ultimately persuasive of the clear shift in the parenting of Mother and her ability to meet V's needs in Cheshire if properly supported. The local authority social worker was herself open to the potential benefits of this course.

117 I am thus unable to adopt the recommendations of the guardian, who had perhaps overlooked the need to creatively consider an outcome for the children outside the strictures of the local authority's plan, where on the evidence the mother can offer good enough care, supplemented by the wider family, school, social care and the possibility of the current foster carers. I thus propose to adjourn the proceedings so far as V is concerned to enable the local authority to provide an alternative care plan to incorporate social care services in Cheshire, the assistance of the wider family and a timely piece of work with V around trauma and life story.

118 Mother and Father have been realistic about the timeframe for V's placement with Mother. Accommodation should ideally be addressed, albeit it is not an obstacle to placement in and of itself. I agree with Miss Marsh and the guardian that Christmas can be an emotive time

and is not an appropriate goal for reunification in and of itself. I would wish to see a programme of support and work to enable placement by February half term.

119 Both Mother and Father see the benefits of continuing to share parental responsibility with the local authority under care orders if the care plan can be amended. I share the view that the resources to meet the level of need for both W and V will necessitate a care order. The local authority are mindful of the need to review such orders and would look at a discharge, in so far as W is concerned, in about a year. A plan of reunification with support for V to Mum and W to Dad meets, in my view, the children's welfare needs and ensures the local authority's continuing intervention with the family's Art.6 rights is proportionate to the risk as I have identified them.

120 Turning now to X and Y: X is described as a child with a high level need. He does not meet the criteria for Disability team social worker allocation, however. In the two years he has been in foster care, his behaviour has tested his foster placement. The foster carer logs provide but a window on his behaviours in that time. Y was referred to during these proceedings as the child who often got left behind. He was almost seen as an appendage to X and, in consequence, his needs overlooked. I think it is significant that the local authority prepared a together and apart assessment in 2017 when they were still looking at the option of an adoptive placement. The local authority's conclusion that separation would be necessary to enable long-term security to be achieved in a long-term placement was a difficult and challenging one. It was an assessment that considered the difficulties between the boys, their competing care needs and the challenges for any carer. The local authority have now reversed that decision but nonetheless the issues of the relationship remain live.

121 Dr Bailham says it is important that the boys are enabled to remain together and that they have therapeutic work and that they also have the benefit of trauma work. It is necessary,

she says, for that trauma work to be conducted before they are returned to the place in which the trauma occurred. I accept that a programme of trauma work is necessary for Y and for X and I understand that it is a programme that will need to be devised carefully, but I do struggle to understand why that work has not been done before now.

122 I am also in some difficulties in understanding why once such a programme of work has been completed, systemic therapy could not be delivered within placement, and by that I mean permanent placement. The local authority now have a programme of work that they want to deliver around the foster carers and the boys. That is at least a year long. Having considered the elements of that programme, I struggle to understand why the OTFC could not devise a shorter programme of delivery. There is nothing in that programme that intrinsically requires 12 months.

123 The local authority have satisfied themselves that Father is able to meet the hierarchy of need for two children. The local authority takes a cautious approach about another child joining his household until W has settled and Father has continued to demonstrate an ability to work openly and effectively with the local authority. F, as I understand it, does not challenge that approach. I endorse that approach. Eileen O'Connor clearly advocates the return of Y and X to the family if properly and effectively supported. Mr Keene thought that Father could manage the care needs of two children if properly supported by the local authority and potentially all four if there is a proper system of universal support and M is available to actively co-parent.

124 I would like to invite the local authority to give consideration to revising their plan to include the possibility of Y and X being returned to the family, either in a phased return to Father, or potentially X with W and Father, and Y with V. W and X have a good relationship and each has expressed a wish to be with the other. Y and V similarly enjoy an

easier sibling relationship. Miss O'Connor has observed the children in their various permutations and raises that possibility.

125 I accept entirely that the local authority wants any plan of reunification to succeed. There is reason to be cautious because if a return home to either parent fails, the consequences for these two boys (Y and X) will be catastrophic. A failed reunification is likely to lead to at least three more placements, a move to an emergency placement, a move to a short-term foster placement and then a move to a long-term foster placement. I am confident that neither Mother nor Father want that to happen for these boys. That, I believe, is reflected in their willingness to work with the local authority on a collaborative basis with a phased return home.

126 The local authority's case, as currently set out, builds in a potential 15-month delay before the local authority would be able to formulate a plan for permanence. That would mean that Y and X will have had almost three and a half years in a short-term foster placement before a plan for permanence could be signed off.

127 I remind myself that care proceedings are limited to 26 weeks and yet, in this instance, I am being asked to endorse a plan that is looking to be at least double that. If the local authority plan for the programme with the mother, with X and Y, and with the foster carers flounders because Mum cannot manage one or both, then the local authority is going to be looking at long-term foster care again. It is not unreasonable to anticipate the issue of a together and apart assessment of Y and X being revisited.

128 I am mindful that Dr Bailham was resistant to Y being placed with the family and X being left behind in foster care. The sense of rejection, loss and bereavement for that last child would be considerable. The guardian, however, saw the potential merit of a phased return

with Y and X moving at different times. The guardian had not actively considered other permutations of placement within the family aside from that posed by the local authority. The option of X with W and Father, and Y with V and Mother, was not, in my view, properly considered.

129 Looking then at the question of what orders I might make today, reminding myself, as I do, that this is a discharge application. Neither parent, as I understand it, seeks to pursue discharge of the local authority's care orders if a plan for reunification is adopted by the local authority. The parents are clear that they would seek a phased return of the children to their care and would be content to share parental responsibility. They see the benefit of collaborative working, shared resources and developing a care package. There is consensus already around W save for the invitation I make with regard to the disability social worker. As to the terms of any order concerning W, I would invite the inclusion of DE recitals so that in the event of placement breakdown, the local authority is required (or acknowledges) that they will work in an open and transparent way with the family and ensure that the family is given an opportunity to issue process if the placement is in difficulties.

130 So far as V is concerned, I will invite the local authority to lodge a revised care plan with a phased return to Mother in Cheshire. The local authority plan will need to reflect the support from Cheshire, the family, possibly the foster carer, as well as the Oxfordshire services. The timing of trauma work and work with Mother, I would anticipate should be set in train to ensure it can be completed to enable a phased return by February.

131 So far as Y and X are concerned, I prefer the dynamic assessment of risk conducted by the ISW, tempered by the caution of Mr Keene, and conclude that Father should be able to care for two to three children provided he is not overloaded and is adequately supported. I consider that the needs of the children necessitate a sharing of parental responsibility to

achieve that in the most effective way, consistent with the children's welfare. I accept that the risks of placement breakdown may be best managed by Y and X living within the family, albeit possibly in different parental households.

132 I do not consider that I am able to order immediate discharge of the care orders because of the level of complexity of the needs of the children and the manageable vulnerabilities of the parents. I consider it necessary that parental responsibility should continue to be shared between the local authority and the parents. I invite the local authority to amend its care plan for Y and for X. I do not, as I did with V, set a timeframe around the reunification plan because there are greater complexities to be considered in terms of delivery of such a plan but if I simply reject the application of both F and M and leave the children subject to the local authority's current plan, there will be an inbuilt delay in achieving permanence and, in my view, a disproportionate and enduring interference with the parents' and children's rights Art 8 rights.

133 I remind myself that if the court were required to consider a care plan within care proceedings, the court must consider the plan for permanence (s.31(3)(A) as amended). In this case the local authority's care plan, as currently before the court, does not include a settled plan for permanence. The parents can of course renew their discharge application in six months' time but they may struggle to obtain funding. In the alternative, they may seek judicial review; again, funding is unlikely. Proceedings are lengthy and complex such as would add a further burden on the family where all are agreed the children should be home, if at all possible. It is on that basis I adjourn the proceedings in respect of V, Y and X. There will, of course, need to be a minor amendment to W's plan, for the allocation of a Disability social worker.

134 Otherwise it seems to me that this matter should now be relisted for a further hearing for the court to consider the responses of the local authority, and indeed the guardian, to the evaluation of this court.

CERTIFICATE

Opus 2 International Ltd. Hereby certifies that the above is an accurate and complete record of the judgment or part thereof.

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