

Case No: ZW18C00022

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,  
Gloucester House, 4 Dukes Green Avenue  
Feltham, TW14 0LR

Date: 03/09/2018

**Before :**

**HIS HONOUR JUDGE WILLANS**

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**Between :**

**LONDON BOROUGH OF HILLINGDON**

**Applicant**

**- and -**

**(1) M**

**(2) F**

**(3) B, C & D**

**(by their Children's Guardian)**

**(4) A**

**Respondents**

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**Ms Ella Shaw for the Applicant**

**Mr Neelo Shrvat for the First Respondent**

**Ms Josephine Alexander for the Second Respondent**

**Ms Jessica Bernstein for the Third to Fifth Respondents**

**Mr James Sandiford for the Sixth Respondent**

Hearing dates: 9-10, 13-17 August 2018  
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**JUDGMENT**

## **His Honour Judge Willans:**

### **Introduction**

- 1.1 I am concerned with four children and the question as to whether final public law orders are required to safeguard their welfare interests. For the purpose of anonymity I will use the following key when referring to the participants in the case:
- a) LA: The London Borough of Hillingdon
  - b) M: Mother
  - c) F: Father
  - d) A: Teenage Child of family – separately represented
  - e) B: Female child of family aged 12
  - f) C: Male child of family aged 8
  - g) D: Female child of family aged 3
  - h) E: adult son of F and previous partner

I have used appropriate labels when referring to the other witnesses/participants to this case. No discourtesy is intended.

- 1.2 In reaching my decision I have considered the papers in the final hearing bundle; the evidence given to me by the witnesses who came to Court<sup>1</sup>, and; the written and oral submissions of the representatives for all parties. In this judgment I refer to but part of the evidence but I have borne in mind all the evidence in reaching my conclusions.
- 1.3 I heard evidence over 7 days. The hearing took account of the learning disabilities of each parent (who were each supported by an intermediary) by way of regular breaks and other appropriate ground rules. Unfortunately the listed time was not sufficient to conclude the case and I therefore adjourned to provide this reserved judgment.

### **An outline of the parties' positions**

- 2.1 The parties agreed threshold is crossed but disagree as to the extent to which it is crossed and I am required to carry out a fact finding exercise.
- 2.2 All parties agreed A should continue to live with M under a supervision order to the LA. This outcome reflects his age and his wishes and feelings.
- 2.3 The first significant area of disagreement relates to B and C. The LA supported by the Guardian ask me to make final care orders for each child with a plan of long term foster care together, allied with ongoing contact with the parents and A (and with D subject to the wishes of a placement family). Whilst F agrees he cannot care for any of the children he, together with M and A argue for the children to return to the care of M. Failing this there is a dispute as to the quantum of contact.
- 2.4 The second significant area of disagreement relates to D. The LA supported by the Guardian asks me to make a final care and placement order, with positive encouragement of post-adoption sibling contact. F, M and A oppose this plan and argue for D to return to the care of M, failing which for her to be placed with her

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<sup>1</sup> Dr K (consultant Paediatrician); EW (social worker); VC (family finding social worker); CT (allocated social worker); Dr R (chartered consultant psychologist); NM (PAMS ISW); M; F, and; the Guardian

siblings (were they to be made subject to final care orders). In any event they seek ongoing contact with D.

## **The legal Principles**

- 3.1 My paramount consideration is the welfare interests of each child. I will in due course reflect upon the factors found in section 1(3) Children Act 1989, and in the case of D in section 1(4) Adoption and Children Act 2002. I bear in mind I am to have regard to D's welfare 'throughout her lifetime' when carrying out my assessment under the 2002 Act.
- 3.2 Although not in dispute I bear in mind my power to make public law orders (care and supervision orders) only arises if the legal threshold in section 31(2) Children Act 1989 is crossed<sup>2</sup>. The crossing of the threshold opens the door to the making of public law orders but does not answer the question as to what if any orders should be made. It is appropriate to bear in mind the need for tolerance as to a range of parenting standards and accept that it is not for the state to spare children all the consequences of defective parenting<sup>3</sup>.
- 3.3 In determining whether a particular allegation is proven I have to consider all the evidence and give particular consideration to the evidence of the parents. It will be for the LA to prove the allegations upon which it relies. It will not be for the parents to disprove any matters alleged against them. An allegation is proven and thus treated as a fact if it is established on the balance of probabilities ('more likely than not'). If it is not established to this standard then it is not found as a fact and will be disregarded in reaching my conclusions. In considering the evidence of all witnesses I bear in mind that a witness may lie in regards to one aspect of the evidence but be honest elsewhere. There are many reasons why a witness may lie and it must not be assumed they are thereafter unreliable. Context is important and I must examine the reasons why a lie may have been told<sup>4</sup>.
- 3.4 If the legal threshold is crossed I must then carry out a qualitative assessment weighing up all the factors which touch upon the child's welfare before making a decision. In carrying out this exercise I am obliged to adopt an holistic approach assessing the realistic options and balancing the respective positives and negatives of each option.
- 3.5 Furthermore in assessing the question of a placement order I am obliged to have additional regard to the very significant impact of such an order on family life. Such an option should be the last resort for the Court when there is nothing else that will appropriately meet the needs of the child. If I were to favour the proposals of the LA then I would have to dispense with the consent of each parent. I would only do so if the child's welfare required me to do so.
- 3.6 The orders sought in the case cut to the very heart of the family relationships which have existed for many years. Intervention has to be justified and lawful and must be subject to a test of proportionality, necessity and reasonableness.

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<sup>2</sup>That the child has suffered significant harm or is likely to suffer significant harm and that the harm is attributable to the care given to the child (or likely to be given to the child) if the order was not made is not that which the Court would expect from a reasonable parent

<sup>3</sup> See Hedley J. in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050

<sup>4</sup> In making these observations I bear in mind the *Lucas Directions*

- 3.7 In addition to these core principles the parties have additionally referred me to the principles applicable in cases in which parents have learning disabilities. I was taken to the authority of *D (A Child) (No.3) [2016] EWFC 1* in which Sir James Munby quoted from the decision of Gillen J. in the Northern Irish case of *Re G and A (Care Order: Freeing Order: Parents with a Learning Disability) [2006] NIFam 8* and in particular attached as an annex to the judgment paragraphs 5(1) – (8) of the Irish decision. I have read those parts and bear them in mind.
- 3.8 The parties have finally referred me to the following matters:
- a) *W (A Child) [2013] EWCA 1227* – particularly insofar as it considers the need for the LA to assist the Court by setting out the structure of support that would attend to orders outside of those preferred or forwarded by the LA [para. 79-82 and 101]
  - b) *Re W; Re F [2015] EWCA Civ 1300* – particularly insofar as this considers the appropriate conduct of ABE interviewing [para. 35]
  - c) *TW [2011] EWCA Civ 17* – again as to ABE processes and good practice [para. 30 and 52]
  - d) Good Practice guidance on working with parents with a learning disability (2007)
  - e) The Care Act 2014, section 9
  - f) The Bridget Lindley OBE Memorial Lecture 2017 [McFarlane LJ: Holding the Risk: The balance between child protection and the right to family life]
  - g) *A Local Authority v G (Parent with Learning Disability) [2017] EWFC B94* per HHJ Dancey

I bear all of this in mind whether or not I specifically refer to the same within this judgment.

## **Some Preliminary Observations**

- 4.1 It is important to acknowledge all parties agree this is a case in which there is a high level of love and warmth between the parents and their children. Indeed it was in this context that CT reflected upon the ‘heart-breaking’ nature of the decision she had reached. I accept this characterisation and noted the parents struggling to contemplate the possible loss of any, let alone the majority of their children. It was clear that for them the suggested option for D is almost beyond comprehension.
- 4.2 It is also important to have regard to the strong sibling bond felt between these four children. I was particularly taken to the strong emotional bond between B and D but this was not exclusive. Separately I heard about the care demonstrated by A to B when seeking to help her cope when she became aware of the LA’s planning for D. The evidence suggested that for some of the children the intra-sibling attachment is as important as that with their parents.
- 4.3 As I have noted this is a case in which the learning disabled status of the parents requires careful consideration both as to the Court’s process but also importantly in evaluating the supportive efforts taken in the past and what can be offered in the future. The parents have a right not to be discriminated against and it is crucial an ‘easy’ option of removal is not adopted in place of a ‘harder’ but more considered structure of support. That being said this is not a case in which the parents are before the Court simply as a result of their being learning disabled<sup>5</sup>. As will be

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<sup>5</sup> In this regard this case can be distinguished from *Re W*

examined in the fact finding process there are significant conduct issues which require the LA to be involved irrespective of the cognitive abilities of each parent.

- 4.4 Finally, it is appropriate to pay regard to the relatively high level of co-operation and effort shown by each parent. The evidence indicates each have been willing to fully engage with the LA both prior to and during the proceedings. They have kept appointments including contact and been open and straightforward when being assessed. In summary they have essentially done all that has been asked of them. The evidence appears to suggest that each will likely undertake any courses of programmes to which they may be referred. The issue in the case has been as to whether the programmes will be effective within the timescales of the children.

## **Background**

- 5.1 I do not intend to weigh this judgment down with a fine detail analysis of the history of the parties. Rather I will identify the key sources I have come to rely upon and add a little detail to permit a proper understanding of the picture that confronted the Court.
- 5.2 It is always helpful to gain some understanding of the background features which have impacted upon the lives of the key participants. In this regard I bear in mind the following:
- a) Dr R sets out a background for M [E35-38, paragraphs 1.10-1.16]. A point of note is M's diagnosis with chromosome 16 deletion. This syndrome is a disorder associated with developmental delay and intellectual disability. It is hereditary in character and M shares this condition with C and D. She reported her only significant relationship being with F and dates problems in the relationship to 2006 when F started to demonstrate 'outbursts'<sup>6</sup> associated with alcohol usage. Otherwise the relationship was good. It is of note that M appears to minimise or normalise F's behaviour when speaking to the expert and on being asked why she had not separated despite the violence and being afraid of F. She was reported as considering it unfair that they could not be together whilst maintaining the intention to remain separate. A fuller history can be found in the report of NM [see E164-168]. This history makes reference to M's own mother's death in 2014 and the agreed impact this has had in particular on A.

Dr R provides a comprehensive overview as to M's cognitive functioning [E74 and 1.1-1.2 in particular]. She is assessed as functioning in the mild learning disabled intellectual functioning range and is assessed as learning disabled. Her verbal abilities are significantly lower than her non-verbal skills and her limitations are primarily related to her neurological deficits (chromosomal deficit) which suggested limited room for improved cognitive capacity. With limited working memory and limited adaptive skills her capacity to learn is reduced.

- b) Dr R gives an account relating to F [E54-60]. An aspect of particular note is F's reports of suffering significant sexual and physical abuse whilst at boarding school between the age of 12 and 15. F's significant alcohol usage commenced shortly thereafter and continued until he was sent to prison in 2016 since which time he claims to have remained abstinent. F associated the domestic violence in the relationship as being drink related in response to the intrusive thoughts from

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<sup>6</sup> F37 para. 1.14

his boarding school days. He commented that he would be “totally out of it” and did not know what he was doing. He agreed that he has a tendency to make threats when angry albeit with no intention to carry through. F admitted to having feelings for M but maintained he did not want to resume their relationship. NM provides her narrative history [E106-110]. She notes F’s traumatic time at boarding school and provides insight into the domestic difficulties in the relationship between M and F [see E109-110 in particular]. It is noteworthy that within his meeting with NM he made threat in respect of both M (“*I want to kill her*”) and the social workers (“*I’m willing to do life in prison if I don’t get my kids back...I will blow people up*”). The account also documents E’s difficulties which includes sexual touching of A (when he was aged 5) and assaults upon B and C.

Dr R provides a comprehensive overview as to F’s cognitive functioning [E74 and I.1 and I.3 in particular] concluding that he functions within the mild learning-disabled intellectual functioning range. He is assessed to have a learning disability with limited verbal and non-verbal reasoning skills. He was assessed to have significant educational, environmental and emotional deprivation during his formative years. He presents with chronic PTSD and emotional impairment which has impacted on his cognitive development. Due to this there may be room for cognitive improvement in the event of improvements in psychological and emotional functioning. He has the capacity to learn and to read and write despite his early deprivation. His adaptive functioning is at a higher level than that for M.

- c) Both parents explain their background within the [x] community. F within his statement evidence made clear this was not [removed].

5.3 I am assisted by the social work chronology [C9-C17] which I read in conjunction with the assessments and interventions prior to issue of proceedings [C21-22]. What is immediately apparent is the long standing involvement of the LA in the lives of this family, commencing first with issues relating to E and then from 2005 with concerns relating to the children subject to these proceedings. A second point of importance is the presence of domestic violence in the household. From 2006 there are reports of inter-adult violence and reports from school of disturbed behaviour (in the first instance concerning A). In considering this aspect of the history I am alive to the evidence of a hostile relationship with neighbouring families (in particular the W family) and I bear in mind that there is within the papers clear evidence of fabricated anonymous allegations. That being said the concerns extend beyond domestic violence and by June 2016 the children were on a Child Protection Plan for neglect.

5.4 It can be seen there has been extensive and intensive involvement in the family’s life over a period of more than a decade [C21]. It is noteworthy that in the period up to August 2017 intensive work had been undertaken at a time at which the LA were conscious of the parents being affected by learning difficulties [see September 2015 C11]. In August 2017 the LA closed the case as it was deemed the parents ‘*had received full support in enabling them to care for the children without additional support*’ and by February of the same year the children had been deplanned from the child protection process.

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<sup>7</sup> As a result of these threats in addition to ones made to his probation officer special measures were required for CT to give her evidence

- 5.5 Yet it is not in dispute that within the same month police attended at the home to find F smashing the windscreen and side windows of the car [C13: August 2017]; on 1 October 2017 police returned B to the home and were concerned as to its state; on 4 October 2017 there was a domestic incident following which F was said to have been on the run from the police for several months; on 10 October 2017 a report was received from the school of C having a graze and black eye related to a fall off his bike in an incident involving a car; on 14 November 2017 M signed a written agreement about not allowing F into the home but noted she wanted to remain in a relationship with him; on 12 December 2017 the children were placed on the child protection register; around Christmas 2017 E was said to be living at the family home; in early January 2018 reports were received of B being punched by F and anonymous reports were received of F being at the family home; on 10 January 2018 a report was received of D attending nursery with a deep laceration to her face.
- 5.6 The last report led to a child protection medical which concluded the injury was 'non-accidental' in nature. The police exercised emergency protection powers on 12 January 2018 and on the same day the LA issued these proceedings. The history of the proceedings can be found within the Court Orders and Applications at section B of the bundle. On 16 May 2018 HHJ Rowe QC extended the proceedings to allow for the final hearing. The children (B, C and D) have been subject to interim care orders since 30 January 2018 [B38].

## **My Assessment of the Witnesses**

- 6.1 Both M and F gave evidence in a polite and open fashion. It was clear that to differing extents their disability impacted on the quality of their evidence. The presentation fitted with Dr R's assessment and the helpful guidance of the intermediaries. F appeared more able to engage with questions in a fluid fashion. In contrast M required time to process points and respond. Both however suffered in terms of their capacity to relate historic details. I appreciate this can be a difficult task for all witnesses but M and F found it particularly difficult. This made the fact finding process a harder one and there was a significant extent to which neither M or F were able to assist the Court. There were aspects of F's evidence which left me believing he was choosing what to recall rather than being unable to do so. For instance a part of his evidence was as to an inability to recall certain matters due to him having been drunk at the time. Yet he was able to provide details that suggested his memory might have been better than he was willing to accept. I was left with the view that he might naturally have been wanting to avoid issues which put him in a difficult position evidentially.
- 6.2 As to their hopes and wishes they were quite clear and I felt genuine. They both love their children and want them home. My sense of them as witnesses was not generally of evasive individuals and I formed the overall impression they were answering most questions head on and to the best of their ability. I found both however to lack insight as to the realities of the case and in the case of the domestic violence I had the sense that they both minimised or normalised the behaviour. As a result they could not identify the very real impact of the same on the family. My sense was that this was not deliberate avoidance but more likely a function of their limited cognitive ability.
- 6.3 Dr K gave straightforward and clear evidence. On balance I reject her conclusions but this is not due to any essential defect in the manner in which she approached the Court, rather it flows from my greater understanding of the circumstances that

surrounded the issue in contrast to the poor history received by her from M. In the circumstances I can see why she reached the conclusion she did. It was on the information available a justified conclusion. I depart from it for the reasons set out below.

- 6.4 Of the social workers I found EW the less persuasive witness (but the less important of the two). Her approach to the questioning of B indicated a poor understanding of the principles of obtaining best information. Nonetheless I did not find her to be a dogmatic or overly partial witness.
- 6.5 I heard significant evidence from CT. It was clear to me that she is an experienced professional and she gave clear and well reasoned evidence. I had the clear sense that she has struggled reaching conclusions in this case and that she has not jumped to easy answers. I found her an overall impressive and helpful witness. She was frank in her concessions as to perceived failures in social work in the case and I found her an open and transparent witness.
- 6.6 Dr R was equally professional and lacking in any dogma and fixed thinking. She gave clear, consistent and reasoned evidence. She dealt with all points put to her in a clear and comprehensible manner.
- 6.7 I was impressed by NM. Her assessment was adult focused and set out in detail the logic for her conclusions. She explained why she disagreed with the propositions being put to her as to the level of support required. I found her a fair and independent witness.
- 6.8 VC gave evidence as to family finding. I did not find there to be a significant discrepancy between what she told me and a later email relied upon by M. I thought she was a straightforward witness who gave honest evidence as to the placement options.
- 6.9 The Guardian in my assessment took a wholly independent approach and was willing to be critical of the LA and a supporter of a more positive approach to post-adoption contact. As in the case of CT she is very experienced and was able to deal with all points put to her with care and with compassion but with absolute clarity. She was resolute in her evidence and gave sound reasons for her conclusions.

## **An Overview of the Evidence heard**

- 7.1 Dr K gave evidence first. She was called in respect of the injury suffered by D in January 2018. Having regard to the history received she had determined the injury a likely non-accidental injury and rejected the notion of it being a result of a carpet burn. When questioned she pointed to the site of the injury as not being a normal site for accidental injuries and further maintained it was not a carpet burn but a relatively deep laceration. She agreed she had not carried out any deeper enquiries as to the surrounding environmental circumstances but had simply worked on the basis of the account given by M. She was not able to comment on the cause of the injury. Having heard this evidence I remind myself that M's case has been throughout of being otherwise engaged at the time of the injury (running the bath) and as such her account is not direct evidence of what she saw happen. I also reflect upon her cognitive difficulties and the role these may have played in restricting the quality of the account she gave.



- 7.2 VC gave evidence next. Her report [C78-85] indicated the need for carers for D with a high level of nurturing and therapeutic parenting style. She considered a 6-9 period would be required to match D. She clarified the current foster carers remained uncertain as to whether they would be able to provide long term care for B, C (and possibly D). She felt they were concerned as to the response of the parents to a final negative decision. She identified a likely 4-6 month timetable for identifying long term carers. She was cautious as to the effect of a placement for D requiring open contact with siblings. Initial enquiries had identified two expressions of interest but both were likely to be turned off by an expectation of an open adoption. She was worried about the likely reduction in options if an open arrangement was required involving the siblings as it would raise issues of confidentiality and would impact on likely settlement into placement. She was conscious of D's own special needs in reaching her conclusions. She acknowledged the research around the benefits of open adoption but in her opinion it was a case by case approach. She agreed there was relevance to the loss of sibling attachments and to the age of D. When asked about the chances of placing the three siblings together she was not optimistic. It would take longer and would likely be further afield. As to adoption she agreed age and the chromosomal deficiency were difficulties. If there were to be sibling contact then work could be done to enable D to understand why she was not having parental contact along with her siblings. She agreed it was unlikely carers from a travelling heritage would be found. She confirmed the current carers were willing to retain the children until a permanency decision was reached. She agreed there was sense in parallel planning by way of looking for a long term foster carer who could take 3 children in the event that D could not be matched for adoption. On being further examined as to an open adoption she identified the risk of this being a constant and raw reminder of the severance of family life. She felt the relationship with B might help stabilise in the first instance but on balance would likely be a destabilising factor and in any event it was not B's role in life to be a support for the placement.
- 7.3 EW's statement evidence [C1]. Her role was substantially in the period prior to the commencement of proceedings (with CT taking over at the end of January 2018). Her evidence set out the history of involvement with the family; outlined the safeguarding issues that caused the LA to seek removal of the children, and set out the case management requirements in the interim whilst the case was heard. She was particularly examined about her role in respect of the note taken from B in early January 2018 [F8]. She agreed that she had led the questioning as to whether B had been punched and that B had not volunteered this to her. She agreed she had been informed about the alleged incident when B was said to have been punched on a bus by a stranger. She had not received ABE training. She considered the period leading to the case closure in August 2017 and felt there had been significant positive changes. She agreed there was no PLO process prior to removal. She agreed the LA had endorsed F living in the property as at August 2017. She suggested that B may have spoken illicitly to a family member post-removal and that this may have influenced her ABE account. She agreed that certain anonymous allegations [see F109] were obviously untrue.
- 7.4 I viewed the ABE interview of B with the parties present.
- 7.5 The evidence of CT came next and her statement evidence is found at [C41]. Her statement brought the evidence up to date and provided a detailed *Re BS* analysis. At [C73] she set out in detail the placement considerations. CT explained how she would in an ideal world want to keep the three children together but was very mindful of D's age and the implications for her of long term care. She also

considered the placing of B and C together and the significant demands this would bring given C's needs but felt on balance it was the best option given their shared life experiences and the undoubted trauma they would suffer on losing D.

- 7.6 Her live evidence was initially undertaken by videolink following an application by the LA based on the threats made by F to the social worker. As a result of this and the timetable set by the M and F's needs the evidence was interrupted on a series of occasions. Other witnesses were interposed and eventually due to technology difficulties CT attended the Court room and gave evidence from behind a screen.
- 7.7 She confirmed the LA's plans but made clear if D could not be placed for adoption then the LA would do as much as was possible to place the three children together. They would parallel plan with respect to the placements given the wish not to delay placement for the older children. She felt it would take a 2 parent family with a lot of support to manage the children together. She told me the parents had initially denied meeting at the Bingo Hall. She told me she was not fundamentally opposed to post-adoption contact between the siblings but was concerned as to the effect this would have on the likely pool of potential adopters and the consequent risk a placement might not be found. She explained M was struggling to get A to school and was at her wits end and crying on the phone to the LA every day. She did not want to remove the child's X Box as she feared he would self-harm. She felt A was doing well with his support worker. She felt it was difficult to disentangle A's emotional difficulties but accepted there were a range of factors. She detailed B being very emotional when informed of the LA's plan. It was a distressing meeting and it is clear she wants to return home. It was heart-breaking for B to hear the plan for D to be adopted. The children are a strongly bonded group. She felt M was a kind and loving mother and the children benefit from seeing her. She rationalised the post-care contact plan by reference to the need to see both parents and the need to stabilise and develop a demarcation between home and placement. She was asked as to a meeting with B and C [F130-134] in which she took them back to the domestic violence issues. She accepted that in retrospect she would have approached the issue differently. C's response was shocking, he was frantic and it was quite distressing.
- 7.8 She was questioned as to where in her report it was said that the support required would be at the levels now claimed (24/7 wrap around). She pointed to [C69] and told me the M would need 'shadowing all the time to help her parent', 'she had a family support worker but could not implement the strategies', 'it is about the delivery of the information and the need to put it into small chunks...someone would have to frame this every day...this is unrealistic', 'the intensity of support is unrealistic based on the assessments'. A written agreement could be executed but it would not cause M to adhere to it: 'she needs to accept she needs support...she has said she does not know why she needs support...we would need to offer daily support for the duration of the childhoods. She confirmed had she been the social worker (as at August 2017) then she might have taken a different view. As to the parents relationship she was worried about F returning. M had said throughout that she did not think she should be separated from him and is highly defensive of F. She does not understand the impact on the children due to her own difficulties: 'she has said she would have him back if he has help...the children would be with the mother and this would be the trigger for F returning'. She was questioned as to whether and to what extent there had been adequate assessment of M's needs including through adult services. She explained the threshold for such services is very high, even after Dr R's report she contacted the adult team but they would not do work as the case was in proceedings. It is nigh impossible to get a service. She agreed to continue to

attempt to liaise whatever the outcome of the proceedings. When it was put to her that this amounted to discriminatory conduct she pointed out this was an overstretched resource but she agreed with the points being made as to the lack of work with adult learning team in the period up to the proceedings.

- 7.9 She was questioned about the level of support offered by the FSW. She told me the FSW is very experienced working with parents with learning difficulties. Her concluding view was that: 'In her professional opinion the level of support is so intense that M would need someone shadowing her all the time..for the children to be safe...I have never come across a support package that provides this'. The issue is neurological as per the report of Dr R: 'this is more about her inability to learn due to her cognitive inability – the scope for learning and improvement is limited'. The evidence from August 2017 is that change was not sustained: 'I would seriously question why the case was closed at that time'. 'I think we have made mistakes in the case...makes it unfair to the parents now...errors made in August which were laid bare in January'. Later she observed that M 'has done everything asked of her...I can't fault her participation in services...but she feels she does not need the support...she is going along as a tick box...the conclusions from the courses is that she has no understanding of the concerns and so the prospects of success are remote'.
- 7.10 B was clear that the punch incident was after the bus incident and was able to give a clear account of the incident. She agreed F's contact has been positive, indeed more so than that of M. There was a beautiful contact on C's birthday. The children have been consistent in wanting to return to M. She told me A was a 'lovely gentle soul'. His behaviour at school has been concerning and it is of concern that he does not go anywhere but stays in his bedroom. He has engaged with help (CAHMS). There were concerns around the time of his mocks when he disengaged from school and attendance was at 70%. He is in a lot of pain over the separation: 'I think the DV has affected him...his poem about going under the covers...he said a lot of his suicidal thoughts are due to the DV'. She accepted his non-attendance at contact was due to the emotions of the plans for the children. It might be easier once final decisions are reached. She felt adoption was best for D. She acknowledged the difficulties around age; chromosomal deficit, and; behavioural issues. She felt B has more or less been her parent. Adoption will be difficult but it is not unachievable. It will have a detrimental impact on the other siblings. The current carers are finding it increasingly difficult to meet both C and D's developing needs and are requiring regular respite care. It is becoming increasingly difficult. The chance of breakdown may cause her to review her sibling assessment. She felt the evidence indicated a need for substitute parenting which is unrealistic and which would have a detrimental invasive impact on A. In her last conversation B had said that: 'I think you have it right but I still want to go home...I think she has insight...she knows about the DV...there is a clear demarcation between the two incidents...she has a detailed and vivid recall of the incident'. She was concerned about M and F's interactions outside of a relationship: 'M has not internalised the DV concerns...she doesn't see the children have suffered harm...if not perceive a risk then she will allow contact...this runs through the evidence'. She agreed with the Guardian's suggestions as to parallel planning (looking for an adoptive placement for D whilst searching for a family that can take up to 3 children long term fostering). There was a difficult balance between the benefits of ongoing post-adoption contact and the risks this might pose to finding a placement. She prioritised finding a placement.
- 7.11 Dr R has provided a detailed analysis [E22-97 & E98-99]. I summarise a significant part of her conclusions in section 5 above. In summary she felt neither parent has

the capacity to keep the children safe from harm or to prioritise their needs at this stage without meaningful support. At the outset of her evidence she was asked to clarify what she meant. She responded: 'With M's difficulties...she knows what to do but has difficulties in practice...she would manage with a co-parent taking responsibility...the difficulty from the PAMS report is that even when provided with additional guidance and strategies she was unable to consistently apply that...so would be longer term issues unless there was an effective co-parent...in summary I agree with the social worker...the limited cognitive capacity is neurological not environmental'. She felt 'without doubt both parents have minimised DV...strong link as to normalisation of DV...there is a genuine belief there is no problem...this is the biggest issue'. She agrees resources have come late in the day and that in part M's insight would have been a function of the support she received. M's difficulty with support is that: 'she does not fundamentally accept there are concerns and so the motivation and ability to translate what she is told is not there'. There is no question as to her commitment: 'If she recognises a problem then she will deal with it...it is when she does not recognise the situation is harmful, that is when she struggles...it is about her capacity in an abstract situation'. F is committed and understands he has an anger issue. He does have that insight. He does need an anger management course and CBT. Resources though are limited. The CBT needs to be trauma focused not simple CBT. It is a treatment process. He needs to address the trauma until which time he will not truly develop strategies. When questioned on behalf of A she noted: 'That level is equivalent to co-parenting...would need to be 24/7 if the children are all at home, given the complex needs of the children...akin to a 'super nanny'...there would need to be a co-parent who understands the limitations...the aunt does not recognise the concerns and so M will not get the support she needs'. 'The worst thing would be for the children to be returned and then removed again. So M needs to demonstrate understanding and an ability to develop strategies before the children come home and this is beyond the timescales of the children'.

- 7.12 I heard from NM (ISW). Her reports are at [E100: F] and [E158: M]. In Part 2 of each report she sets out in detail the results for each parent of the in-depth assessment of that individuals parenting skills using the PAMS approach. In the case of F there is a significant difference between his own assessment of where he requires help (2 of 45) and the areas assessed as needing help (36 of 45). The equivalent figures for M are (4/45) and (38/45). The assessment set out in detail the foundation for these conclusions which I have considered but will not repeat within this judgment. Focusing on M (given the realistic options) the ISW concluded M would need an unsustainable level of support and monitoring to support her parenting and that M continues to ask why she is receiving support for her parenting. In oral evidence she felt M would need someone with her at 'virtually all times'. If all the children returned she would be concerned B would end up co-parenting her younger siblings. She felt the parents were co-dependent and felt they would struggle to stay apart when the proceedings come to an end. She considered the state of the home was not the simple clutter of a cramped home but was rather unhygienic. She felt M was in the same position at the end of the assessment as she was at the start. The difficulty is that professionals are explaining the difficulties in simple terms but M is just not picking up on it.
- 7.13 M gave evidence to me. She was questioned as to the range of allegations. She explained why an incident involving C and a bike could not have involved F. She accepted the incident when she was head butted was a risk to the children as they would hear the shouting and noises. C had been struck when trying to protect her but not on 2 October although F did try and kick C on that occasion. She did not

call the police because she was frightened. She agreed she had said he would not carry through with the threats. He did pull her hair. She could not remember later saying this was a lie. She did not influence B as to her evidence. B had attempted to stop the parents fighting once in October 2017. C had tried twice including in October 2017. The injury to D was caused while she was running a bath. F was not there. She gave somewhat confusing information as to the exact period spent by E at the home at Christmas 2017. She felt E was not a risk to the other children as foster care had 'turned his life around'. As she did not have the concerns in 'black and white' she did not act. She agreed she needed support but was not sure what the safeguarding issues were. The children would have been harmed by seeing the rows. A hasn't seen anything as he is always upstairs. The children would be affected by the shouting. She felt it was OK to see F at Bingo as it was a public place. There was more good than bad in the relationship, apart from when F is having his outbursts. She agreed she may have said about getting back with F as the kids were on her mind. She did not think F would hurt her if he was not in the house. There was nothing he could do to let him back into the house but she was less sure about visits. It was okay to be friends as they have children together.

7.14 F told me he had obtained an appointment for CBT and accepted he needed help with this. He has met the foster carers and not been aggressive and knows where the children are at school but has not gone there. The LA examined him as to the allegations. He was clear his recollection was effected by alcohol. He accepted the hammer incident if E had stated this had been the case. He told me it was E who had pushed C with his foot. He damaged the car due to stress about his mother and was sober at the time. He had sprayed the walls with abusive words because he was upset about their argument (about not calling his mother who was in hospital). He did this to upset M and might have said he would kill her but didn't mean it. The kids were upset but did not try to intervene and he did not lash out or hit either child. He did threaten to leave marks on her with the vacuum cleaner. He agreed he threatened to burn the house down and then made false allegations about M and drugs. He could not say how he would react if M formed a new relationship – she won't. He did not go to the house after October and was on the run. His return home in 2017 was endorsed by the LA who did a risk assessment. He did not agree there was a need for wrap around care. At the end of his evidence F tearfully apologised to M.

7.15 My last witness was the children's guardian. Her final analysis is at [E259]. Her assessment supports final care orders with a placement order for D. She supports ongoing sibling contact, with the parents and between the children and D (if placed). Dealing with the suggestion of 24/7 support she observed that this was something she had seen over a short intensive period (1-2 weeks) but not beyond this. It would otherwise encroach on family life and would directly impact on A's welfare. In the light of concessions made by the LA as to encouraging consideration of post-adoption contact she moved away from the need for an order for the same. She explained her contact proposals as follows:

- 3 contacts for each parent each year
- 2 contacts for the full sibling group including D
- 2 contacts for the sibling group (excluding D)
- Thus for each child 7 discrete events on the basis that the parents contact could be synchronised (for instance around the same weekend and therefore treated as a 'single' event)

As to M's developing insight she felt there had been some development but M was at the 'v.v.v.earliest stages'. Even in July 2018 when visited by the Guardian M could not really explain why the DV was bad for the children or had an impact upon them. In meetings with the parents both had minimised the DV and spoken in very similar positive terms of the other. There was a lack of acceptance as to a need for support which was crucial for work to be effective. F's threats have to be taken seriously. There is no way the LA could promote contact post-adoption with the parents and say F is not a risk. She had experience of the positives of post-adoption contact. She recognised the balance that had to be drawn as to the benefits of permanence for D against continuing contact if such contact would mean permanence was lost or reduced as a significant prospect. In such a scenario she prioritised permanence insofar as D's welfare was concerned. It was important to bear in mind D had a sense of identity and the realities of living in an age of social media. It is often the case that those adopting older children are more open to ongoing contact given the reality of the child having a fixed sense of identity.

- 7.16 If adoption were not possible then it may be the LA would have to reconsider its sibling assessment. It may be more beneficial for B and D to be placed together having regard to the circumstances then pertaining. This needs to be kept under active review. She felt the LA had let the family down, the concerns arising are not new. Things were not done as they should have been. Whilst she remains shocked as to the decision making of the LA in August 2017 she is reaching her assessment on the level of insight and the circumstances now. Tailored work has been done within the proceedings and we have to consider the position we are in now notwithstanding mistakes in the past. She was troubled about separating D from B and C but this had to be balanced against all the other factors in the case (age and the security that adoption could offer D) but the balance is a fine one. Long term foster care is a realistic option.

### **Fact Finding / Threshold**

- 8.1 As noted above the fact of threshold being crossed is not in dispute in this case. There are however matters which remain in dispute, most importantly:
- (a) the circumstances of the events in October 2017;
  - (b) the presence or otherwise of F in the family home post (a); and
  - (c) the circumstances surrounding D's injury on 10 January 2018.
- 8.2 It is quite clear there has been significant domestic violence on a chronic basis within the adult relationship. Dealing first with allegations through 1-9 (inclusive and noting that findings are not sought with respect to allegation 3 and 9):
- There is a serious allegation of violence in September 2006 when M was pushed to the floor by F, sat on, held down and F attempted to strangle her, before attempting to stab her in the stomach and threatening to kill her. A was present during the incident (aged 4). The police were called but M did not press charges. I find this allegation proven. M accepts the allegation and F only challenges it to the extent that he has no memory of the incident. In reaching my conclusion I prefer the evidence of M found in the contemporaneous police report [G280] together with the corroborative evidence with respect to the cut finger. I note F gave a 'no comment' interview to the police at the time. I find M was locked in the property at the conclusion of the incident but on balance cannot see that this adds anything of significance to the allegation. I note M did not retract the allegation at the time but took the view the behaviour was out of character and

due to issues with medication. I consider it likely the incident was alcohol related. It would have been a terrifying incident for all involved most particularly A who was present. It is evidence of significant inappropriate physical and verbal behaviour. As explained above I consider it likely F has a better memory of the incident than he wishes to accept. It is striking that he can give an account of what happened with the keys in the aftermath of the incident but not recall whether he held his partner to the floor while he attempted to strangle her/stab her. It is noteworthy that the incident arose out of a perception that F was having an affair.

- The incident on 17 November 2010 is accepted and proven. What is striking is that the incident arose out of much of nothing yet F was unable to contain his temper in the presence of the children (A, B and C). Again they would likely have been significantly affected. It is also noteworthy that the report came from a passer by who heard shouting and swearing. I consider this significant. For a passer-by to report such concerns gives a clear indication as to the likely level of the upset being experienced in the home and witnessed by the children. It seems most unlikely that this trivial based incident would have been anything like an exceptional event in the lives of the parents and the children.
- The incident on 20 June 2015 is accepted and proven. Again a serious incident of violence with F head-butting and slapping M causing bruising to the bridge of her nose and bleeding. In addition using a pole to break a car windscreen. Alcohol was involved. Both parents point to the fact the children were upstairs at the time sleeping. This in my judgment is of limited comfort. Given the emotions of the incident it seems to me highly likely that there would have been noise, shouting and crying/screaming. It is likely the children (A, B, C and D) would have become aware of something happening. Given the history of their home lives they would have likely been significantly emotionally effected/harmed. In my judgment very little turns on the fact they were not eye-witnesses to the incident. The parents' suggestion of them being asleep whilst all of this happened in their small property is indicative of very little insight as to the impact of the domestic violence on the children. Again the quality of the incident is demonstrated by the report coming from a third party. I accept M did not support police action. I make such finding as she was unable to provide a contrary case and the contemporaneous documents support such an allegation [G401].
- The incident on 4 September 2015 is accepted and proven (as per the parents' admissions). Again evidence of a significant over-reaction from F, with unpredictable violent behaviour and a refusal by M to take appropriate action. On the same day (allegation 6) a third party reported the parents arguing in the street. The language of 'bickering' does not convey the likely emotions. For a third party to report the matter to the police it is very likely the emotions were at a much higher level.
- The incident on 5 May 2016 is now accepted and proven on the basis that F threatened M with a hammer. The children were present. They are likely to have been terrified by what was happening around them. Again sexual insecurity in the relationship and alcohol were triggering features. The subsequent messages (for which F was convicted) [G353-354] are highly threatening in character (by way of example "*I kill you tomorrow after school*") and cannot be excused away by the simple statement that F does not intend to carry through on his threats. It is particularly troubling that these messages were conveyed via

B's Facebook account. On this occasion F was willing to make threats without regard to the impact this would have on the children. One wonders the emotions that would have been felt by B attending school being aware of such allegations.

- The incident in August 2017 is admitted and proven on the parents admissions. It is further evidence of F's uncontrollable anger/behaviour when stressed<sup>8</sup> – in this case again smashing the car glass.

One can therefore see a pattern of chronic domestic violence at a high level with direct impact upon the children. The obvious triggers appear to be alcohol and insecurity in the relationship. The behaviour has at times an unpredictable quality having no obvious relationship to the factor provoking it (in the sense of being out of all reasonable proportion to the triggering event).

8.3 I intend to now shortly deal with a series of allegations out of order. Based on my findings to date (above) it is clear that the admitted matters at 14, 16, 17 and 18 are also proven. On my assessment the short paragraph as to the impact on the children (14) is of significant relevance. I am in no doubt that the regular explosions ('outbursts') within the house would have been highly damaging for the children. They would have feared for their mother and for themselves. They would have likely been terrified by what they were witnessing or at least deeply worried about what they were hearing. It would have likely left them with an ever present sense of fear and apprehension as to when the next incident would occur. It perhaps does not need to be stated that this would be a highly destabilising environment for any child.

8.4 I will also deal with the paragraph relating to A at this point. It is alleged that the home environment will have negatively impacted on A's educational attendance and emotional presentation. It is said it will have caused his suicidal ideation. The parents and A oppose the width of this finding and point to other features of his life which have played their role (issues as to his sexuality in the context of his [x] heritage / his grandmothers death and his strong sense of bereavement /guilt). In my judgment these are all relevant considerations but it is striking that it is in this context that the parents have conducted themselves. They know A is troubled and emotionally fragile. His need is for a stable, emotionally supportive home environment. In contrast he has been surrounded by disturbance at a high level. On my assessment of the evidence there is good evidence for this allegation. As an example A's own recent comments to CT including about being in his room since the age of 4/5. I do not make that finding but it is indicative of a teenager who has chosen to hide himself away to protect himself from what is otherwise going on around him. I note the report as to the poem [F79] which clearly evidences a causative link between the domestic violence and a significantly harmful impact upon A. I find the allegation proven on the basis that the domestic violence has had a material contributing part to his presentation.

8.5 That leads me on to the key fact finding disputes:

- Dealing first with the events of 2 October 2017 (allegation 10-12). There is a significant level of agreement as to certain admitted facts which I find as proven. This was plainly a further heated incident with some level of sexual undertone. It is instructive that on F's evidence alcohol can have played no part in the events. The incident involved a significant domestic incident in which the children were directly involved. It is agreed in the course of the incident F spray-painted the

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<sup>8</sup> It would appear this behaviour arise out of stress associated with F's mothers poor health



walls of the house with phrases such as 'slag' and 'hore' (sic) (words directed at M) whilst in the presence of A. Furthermore F was seen (by M and the children) to attempt to siphon petrol from the car and was threatening to burn the house down. At one point F scratched the car with a metal pole whilst the children were in the car. As a result of the incident M and the children fled the home and F subsequently sent threatening messages to M in which he threatened to kill her. Due to the impact of the incident the children were kept off school the next day.

The dispute in this regard is as to whether F assaulted M in the course of the incident by pulling her hair and whether the children (B and C in particular) became involved in attempting to protect M and were hurt in the ensuing tussle.

Having considered the evidence I make the following additional findings:

- a) I find F did assault M by pulling her hair. I prefer the evidence of M over that of F in this regard. I find the evidence of F as to it being an accidental event when M's hair got caught in the velcro of his jacket as most unlikely. Were this the case then I consider both parents would have a clear recollection of the aftermath in which the hair had to be freed from the adhesive material. I appreciate that B disputes whether her mother was hit but I find there was an assault of such character having regard to the parents' agreement as to there being some form of physical interaction (the quality alone is in dispute) and my determination as to the nature of the contact.
- b) I find the children (B and C) did become involved in the incident. Despite the concerns about the ABE interview process (see below), I find B's account [G574-5] compelling in this regard. She has a clear recollection of the day (including the 'non-drugs' drugs allegation) and her account in ABE of her parents rowing and her trying to stop it because it was upsetting her was clear and powerful. I formed the impression she was being honest and careful in her account and I have no reason to disbelieve what she recounted in this regard. I accept the account of M that C also tried to intervene. Again taking all the evidence together this has a ring of truth about it and fits the other participant accounts.
- c) I find B was struck in the course of this incident. Importantly on balance I time the allegation of the accidental punch to this incident. The account of the punch is straightforward and has no sense of being embellished. It is clear she is to an extent seeking to excuse her father and I find it unlikely she would have invented this aspect. I do not accept she has in principle confused this with a separate incident on a bus. Whilst there may have been a separate incident the account given is most unlikely to be confused with a wholly separate incident at a different venue in which her father was neither present nor involved. I make this finding notwithstanding the poor manner in which certain aspects of the ABE (and preceding process) were conducted. I accept the criticisms levelled against both the social worker (and it seems to me to a lesser extent against the police officer). The choice of questions were at times poor in introducing topics rather than letting the account flow freely. Notwithstanding this I am impressed by the surrounding detail given by B and having observed the ABE interview I saw nothing in her demeanour to suggest the account was anything other than honest and genuine. My judgment as to timing is based upon the surrounding evidence relating to B's account of the punch being months before the report; the evidence of this

being a particularly heated incident within the timeframe and the evidence of M as to this being the one incident when B intervened. For the avoidance of doubt whilst I am on balance of the view the punch occurred on this occasion I am very confident the punch incident happened in fact within a period of a year of the report. It may be thought the resolution of the exact timing is perhaps less relevant in those circumstances.

- d) I find C was also assaulted during the incident (albeit incidentally whilst trying to intervene to help his mother). In making this finding I reject the accounts given by M, F (and to the extent it contradicts my finding B). I find each has generally sought to minimise the impact of their behaviour on the children and in the heat of the moment they have either failed to appreciate the direct impact on the children or have chosen to close their eyes to that which was apparent to them. I find M finds it easier to accept that F has been harmful to her than to the children. She sees him as a good father (and in some ways he is) and refuses to acknowledge to the Court the impact he has had on the children. I note in particular the contemporaneous note of the incident [F90] in which M gave a clear account of C becoming involved and hit.
  - e) I find F did threaten M with the vacuum hose. I prefer the evidence of M over F in this regard. I rely upon the contemporaneous note [F90] and I note M was not seriously challenged on this point in her evidence. It fits the pattern of behaviour on the part of F and is likely in the context of this incident. I believe F ultimately accepted this allegation in any event.
  - f) I make no finding on the door. The evidence does not allow me to reach the necessary standard and I question what it adds to the case in any event.
- I turn to the allegation that F has been at the home between October 2017 – January 2018 (allegation 13). I do not find this allegation proven (although components of it are proven but by reference to the October incident). The evidence is limited and tangential in any event. The most direct evidence is the anonymous report but I reflect on the fact that the report was plainly wrong in important regards (as to the children being in the home after they had been removed into care). Aside from this there is the reliance on the evidence from B as to having been punched shortly before the January removal and the incident surrounding D (below). However I have found the evidence supports the punch as having occurred during the October event. For reasons I give below the D incident does not support the allegation. I am struck by the absence of evidence that I might have expected given the nature of the home and the various agencies involved in the life of the family. Sometimes a lack of evidence is as instructive as the evidence put before the Court. It is possible F has been in the home and there is evidence of the parents keeping in contact via family members but I do not find it more likely than not.
  - I next deal with the D incident (allegation 22). An incident in which D suffered a deep laceration to her face and which has been given the label ‘non-accidental’. I will explain why I do not find this allegation proven:
    - a) It is clear D suffered an injury [F112-114] and one which called for an explanation. The account given by M and B was of D falling whilst M was busy running the bath. The account suggests she may have at the time have been being chased by C. M suggested it was caused by

a carpet burn but this was not direct witness evidence of an event seen by M. Dr K rejected this suggestion and having regard to the site of the injury and the family history reached a conclusion as to non-accidental injury.

- b) Whilst I agree that the evidence is not of a carpet burn this does not resolve the dispute positively against M. She was not (I find) present (nor was F – and there is no evidence of D being injured when caught up in a domestic incident) and she has, I believe, done the best to explain what likely happened to D in the light of her own cognitive skills. That this explanation is not really an explanation does not mean she is lying or that this was a non-accidental injury (in the culpable form suggested by the term).
- c) Rather this was a home acknowledged to be cramped and in a poor state. There are of course a whole host of obvious items that might have been fallen on causing the cut (a toy brick for example) and I judge the detail was undoubtedly lost in the moment.
- d) I am supported in my conclusions by the account given by B in ABE interview of her sister having fallen. This was a clear and reliable explanation. I found it highly persuasive and in my judgment it rules out non-accidental injury as alleged.
- e) I make no finding as to poor supervision. This is the sort of injury that could have happened in any household. In my judgment it fails the *Re L* 'range of parenting styles test'.

8.6 I turn to the balance of allegations and makes the following findings:

- a) Allegation 19 and 21 (F hitting the children on multiple occasions). I do not make this finding. I do not find the evidence sufficiently persuasive to make the finding. The source is a report made by C on 24 February 2017 of 'being hit every day'. I take into account C's personal developmental issues; the absence of a clear ABE discussion with C and the lack of clarity as to what is meant by the phrase. The Court has to accept that a certain level of chastisement (including physical) is permitted and falls within acceptable parenting. I have no evidence to suggest where this report falls in respect of that level.
- b) Allegation 20 (C being pushed over by F using his foot). I do not find this proven. There is an absence of clear evidence as to what exactly happened. The contemporaneous report [G10] is lacking in real evidence as to the quality of the alleged assault and whether it in fact amounted to an assault at all. F confuses the position further by suggesting it was E who pushed C to gain access to a computer game. I question what this adds to the case in any event.
- c) Allegation 23 (children being coached). This is not proven. The evidence is insufficient to meet the standard. The direct observation taken from C is ambiguous as to coaching.
- d) Allegation 24 (failure to protect). This is proven. There is widespread evidence of M failing to take appropriate steps in the light of serious violence witnessed or experienced by the children. In my judgment whilst M can point to the risk assessment prior to F's return in 2017 this does not excuse her own inaction.

- e) Allegation 25. This is proven but in the context of the findings above (see the punch and October incident).
- f) Allegation 26. This is proven as to the facts (the assaults on the children). The finding in my judgment has particular relevance to M insofar as one considers the December 2017 allegation (below).
- g) Allegation 27. This is proven as follows. M plainly permitted E to live at the property and to sleep close to C (but not in the same bed) despite the history of him assaulting B and C. The evidence no longer suggests the notion of them sharing a bed but more appropriate safeguards should have been taken. I make no finding against F in this regard on the basis he was not at the home. M accepts the allegation insofar as A is concerned (nearly stabbed).
- h) Allegations 28-31 (neglect). I do not find these allegations proven. It is important to note that this family of 6 lived in a cramped 2-bedroom property. Both parents have learning disabilities and 2 of the children have developmental needs. A has his own room leaving 1 bedroom for the other family members. I accept there is evidence of poor standards and isolated observations (from attending police and other agencies) as to the state of the property. But I also observe that there was intensive work with this family and yet I have not been drawn to particular evidence of work as to the state of the property and a failure to co-operate. I accept there is damage to the property arising out of F's conduct but this is of itself not a threshold matter in my view. The evidence as to school attendance is insufficient to make out the test<sup>9</sup>. I accept C had an accident but the evidence is insufficient to take this above the ordinary hazards of day-to-day life. I did not find the evidence as to C presentation significant and it is noteworthy no complaints are made about A or B. The contrary explanation given by the parents carries some weight.

## **Welfare Assessment**

- 9.1 Having heard the evidence and submissions I note the following key submissions made on behalf of the parents:
  - a) The incongruity of the current proceedings against the case closure in August 2017
  - b) The failure to properly support the parents and have regard to their learning disabled status
  - c) The difference of opinion as to whether M requires supported parenting or support equivalent to replacement parenting
- 9.2 M, F and A highlight the chronology and draw particular attention to the LA's own conclusion in August 2017 that this was a family that no longer required support and as such the case was closed. How, it is asked, can this now be a family for who the level of support required is so high that it goes beyond reasonable support? What has happened to so fundamentally change the circumstances to justify this outcome? In essence they argue the historic conclusions are fundamentally sound and M rather now requires appropriate support to parent her children and whilst this may be significant support (as one would expect in the case of a learning disabled parent) it

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<sup>9</sup>See the evidence as to B and the lack of detail to suggest that more than 5% was inappropriate absence

falls far short of that suggested by the LA and Guardian. They argue that the deterioration in the period after August 2017 reflected a failure on the part of the LA to properly engage with the needs of this family and to then offer enduring support. They point to the implicit support for F to return to the home without any form of anger management or other domestic violence programme and the message this would have sent to M and F (with the impact it would have had in shaping her insight). They suggest the LA has seriously let down the family as a result. They argue the evidence as to replacement parenting is not found in the written evidence and does not fit with the views expressed in the statement evidence.

- 9.3 In meeting these submissions it is important to note that both CT and the Guardian take the view the decision to close the case in August was premature and poorly thought through (as noted above). CT made clear she would not have taken that decision if she had been the social worker at the time. The Guardian is critical of the LA as to allowing the situation to linger for so long and for the decision to close the case. As such they do not accept the position was as positive as the chronology might suggest in August 2017. There is also acceptance that despite the LA being aware of the learning difficulties they failed to tailor support to the family or indeed promote certain important work (such as DV programmes). CT was frank in accepting an absence of such pre-proceedings work. However they argue the proceedings have permitted a comprehensive assessment with tailored assessments and the conclusions cannot be ignored: as the Guardian made clear she is considering the position now and in the light of appropriate assessments. They argue the conclusions of all four experts (CT; Dr R; NM and the Guardian) are that M would require a level of support beyond that which can be expected and which would be in any event harmful for the children.
- 9.4 It is important I set out my views and findings with respect to each of these aspects.
- 9.5 I agree this family required a more extensive range of supports prior to the case being closed; that obvious work was not offered and that it is quite unclear on what basis the LA were able to conclude that the family were now able to move on without active support post August 2017. In my judgment this decision making was wrong and wholly misjudged the state of the family dynamic. That this was so is readily shown by the speedy deterioration of the family in the days and weeks that followed the closure (see the background detail above). This was (see Dr R) a father with deep seated emotional troubles which would continue to resurface and leave him as a threat to his family without meaningful therapeutic work, yet not even domestic violence work was promoted. This was a family with significant learning needs and children with similar challenges. It is difficult to understand the basis on which it was felt the situation had been 'resolved' and the children's welfare no longer required intervention. Importantly whilst it would be unfair to suggest that the support did no more than scratch the surface of the difficulties it did not reach the depths required to make long term changes. The key question is whether appropriate support can now achieve these goals?
- 9.6 This is an important consideration. I need to ask myself whether the August 2017 decision simply held off the inevitability of these proceedings and the conclusions I am now asked to reach? Were the process then to have been satisfactory would the Court have been asked to make these decisions much earlier? I make it clear I do not proceed on the basis that August 2017 is good evidence of satisfactory parenting to which one can now simply aim to return. Rather the August decision masked ongoing difficulties.

- 9.7 It is also clear that the work undertaken with the parents during that period did not have proper respect for their learning disabled status and was likely therefore to be undermined before it started. In a sense the family was set up to fail and it unsurprisingly did fail. Against this though I accept that the work undertaken within the Court process, and the assessments upon which I am asked to decide have given proper regard to the parents needs and are reflective of the need to make appropriate reasonable adjustments particularly to help preserve family life where possible. Dr R identified the parents' needs and NM adopted a PAMS based assessment. The domestic violence programme carried out within the proceedings was also tailored to the parents needs. The Family Support Worker is experienced in assisting parents with learning difficulties. There is no evidential suggestion to the contrary.
- 9.8 In considering the level of support required I must take into account that I am considering the position of M alone. It is clear on the evidence of all parties that F will not be a planned part of the proposed home unit and this is significant as despite the difficulties he has posed the evidence is that he has been carrying out important functions. The evidence of Dr R was that he had a greater level of adaptive skill and the greater capacity to learn and improve. Sadly, without him M is in a far harder position (although with him present the difficulties would be different and significant in nature). It is also important to bear in mind that the external support M can expect other than from agencies is limited. I have born in mind the statements of KL [C90] and KDL [C92]. Their evidence suggests no real insight into the issues that have concerned this Court and this does call into question the extent to which they would be able to fill any deficits otherwise existing. Furthermore each have their own extensive child-care responsibilities and it seems most unlikely either would be able to provide other than occasional support to M. I am sure each would do their best but I judge this must be understood for the limited help it would likely be. In this regard I agree with Dr R.
- 9.9 It is right to have regard to the challenges that caring for the four children would bring. The evidence of the professionals was that caring for A itself would be a serious challenge given his significant emotional needs. The evidence (which I accept) is that M is really struggling in this regard alone. The professionals identified the struggle this poses for M despite her best intentions. To this would be added the three other children. The younger two have significant developmental needs and the evidence is that the current full time foster carers find the care hard requiring respite to successfully meet the children's day to day needs.
- 9.10 I bear in mind the evidence of Dr R and NM. Their evidence was clear and resolute that the needs of the children could not be met by M without 'wrap around care'. Significant support to include morning and afternoon visits would not be sufficient. There would need to be something akin to either a supportive co-parent or grandmother (or super nanny) figure to be ever-present to assist and coach M through the day-to-day care of the children. Without this M simply would not be able to provide the higher level of good enough parenting<sup>10</sup> required by the younger children in particular. All the experts agreed that such a level of support would be not only unrealistic and impractical but contrary to the welfare of the children and likely unwelcomed by A in any event (he is very private in who he wants in the home).

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<sup>10</sup> See D (A Child) at para.142-143

- 9.11 The counter to this was that this does not fit the outcome in August and that there has never really been an attempt at heightened support to see if it would work. It is pointed out that the expressions as to wrap around care are not found in the written evidence and the implicit suggestion is that the need has been exaggerated beyond the realities of the case. I have set out my views as to what the August outcome tells us about this case. As to the strength and weight that should be applied to the evidence I have the following observations:
- a) The view as to wrap around care was shared by each of the experienced professionals. They were clear in this view and were unwilling to accept that significant support at a lower level would be sufficient.
  - b) The evidence of Dr R is important as she associated these difficulties with M's neurological difficulties arising out of an organic not environmental source. Her evidence was clear and I found independently reached. I do not consider I can simply reject this expert analysis without clear countervailing evidence.
  - c) Yet the evidence of NM which carried out a practical assessment of M chimed with the conclusions of Dr R. Her work with M informed her that M would not be able to manage without a very high level of support.
  - d) Furthermore the views are not theoretical but are based in the case of NM on an in-depth assessment. Additionally both the DV programme and the evidence of CT and the Guardian identify the reality of the limited extent to which insight and learning is developing.
  - e) The criticism of the evidence having developed in the oral evidence has some weight but it is double edged. Having seen the witnesses it was clear to me that this was a case in which they had not '*put their heads together*' to form a joint conclusion' but rather independently reached the same conclusions (albeit by reference to each others assessments). In my judgment this magnifies the force of the conclusions.
- 9.12 Of course one can reasonably ask as to how this can be correct (the need for wrap around care) when M has been providing care for these children for the last 17 years without such care. The difficulty is the highlighted problems in the home which have continued over the very same period; the significant issues which A continues to face; the developing significant needs of C and D; the absence now of F as a supportive feature, and; the reality that the matters investigated by the Court are likely to be but part of the global problems which have arisen over the period. The nature of fact finding is to focus on significant matters and to where possible take a proportionate approach to the process. No one should believe I have resolved every aspect of concern from the last 13 years.
- 9.13 Having heard all the evidence and having had the chance to assess M in particular (by way of her oral and written evidence but also all that is known of her from the case papers and assessments) I have reached the view that she would need very extensive support to once again take on the burden of caring for her other three children. I am in no doubt that caring for A alone will require significant effort - in addition to her undoubted commitment - and support. In my assessment the outcome of the same is by no means certain. However to add the three other children would stretch M's limited individual capacity too far and would require constant assistance to maintain the safety of the children. As a matter of reality there would be times when the stresses would reduce (when for instance all four children were out of the

house) but for significant parts of the day (and during the night) the need for support would exist.

- 9.14 A related consideration is as to whether this is likely to be a time limited situation or one which would endure into the foreseeable future. On the evidence presented to me it is likely the need for support would be long-term given the evidence of M's limited adaptive skills. This can be seen in part from the progress to date but also is really the only conclusion that I can reasonably draw based on the expert evidence presented to me.
- 9.15 I consider the welfare checklist:

#### Wishes and Feelings

- a) The children love their parents very much. All have expressed themselves as wanting to be with them. At times this has been painful to read: see C's recent expression of wanting to be with M. The older children have the competency to think about their siblings and want them to be together with their parents. The children's views are very important (almost determinative in the case of A) and deserve respect. They have experienced their parents care and what life has felt like in the family home. They have an important position in being able to consider the balance between their wishes and the reality of daily life. They want to return home. Against this it must be recognised that the two younger children are young and have limited understanding particularly in the light of their developmental needs. B is older and is not equally affected but she has a plain loyalty to the family and her natural wish to return home must be balanced against any risks to her arising out of the same. There is in the evidence of CT an indication that B has some level of realisation that a return home may not be the outcome for her: ('that the LA have got it right').

#### Needs

- b) The children have needs like any other children for safety; for their daily basic needs to be met; for their educational capacity to be maximised. I take all of this into account. The specifics though are important. At a physical level the children need to be safe. They have not been kept safe by their parents over many years. The domestic violence and 'outbursts' have been incredibly damaging to them. When angry (under the influence of alcohol or not) F is unpredictable and frightening. He does not limit his behaviour to threats but has been seriously violent both in the children's presence and hearing. I am in no doubt the children will hold a certain level of anticipatory fear whilst living at home which undermines their entitlement to feel and be safe. At times of actual DV they are not safe: see B being punched. In these moments their welfare is completely lost from view.

This is inter-related to their emotional needs. C and D are children with a particular need for consistent and stable/predictable care. Their developmental needs mean they will particularly suffer where care is inconsistent and unpredictable. A failure in this regard will have life-long impacts upon them. In my judgment A illustrates the dangers that might lie ahead. He is on my understanding of the evidence an intelligent considerate young man. Yet his life experiences have undoubtedly damaged him to the point where he is self-harming and not attending school. He carries significant emotional baggage and whilst this is not all to be laid at the doors of the parents it is clear that they



have been unable to modify their relationship in the light of his extra needs. The same concern will apply for C and D.

This brings into consideration the likelihood of future emotional upset in the family home around the return of F. I have rejected the allegation that F has in fact been ever present since October 2017. But this is not the end of the analysis. The evidence suggests there are grounds for concern as to the future nature of the parents' relationship and the impact this will have on the children. I note the following:

- i) This is a long standing relationship and indeed it is M's only adult relationship. They share 4 children together and the sense I have is that their adult lives have mostly involved their own personal interactions with limited community interaction;
- ii) Each appear to have a limited wider support group. It is noteworthy that much of M's support comes from F's family;
- iii) The evidence indicates that M is forgiving of F's conduct and has excused / minimised it. She has been unable to effectively take steps to shield her and the children from his poor conduct;
- iv) The relationship has in the past continued despite serious incidents including periods of imprisonment. I appreciate that M would point to F returning following a risk assessment but at heart the return is based upon the emotional connection between the adults not the conclusion of an assessment;
- v) The period following October 2017 may in fact shed little light on the future reality given F was on the run from the police and had good reason not to return home;
- vi) There is evidence of the parents continuing to communicate and I heard evidence of the parents both meeting and remaining in each other's company at a Bingo hall post removal of the children. The information from the individual who saw them was that they appeared like a couple;
- vii) The evidence suggests M will struggle with the children alone and this increases the prospects of F being summonsed to help or returning if and when he is informed as to what is happening (for all the negatives of F he cares for his children and I consider the pull of problems at home would be difficult for him to resist). I agree that the children being at home will act as a likely trigger in such regard;
- viii) F is highly instinctive/spontaneous in his responses and does not think through the consequences of his actions: see his use of threats when under pressure. This increases the chances that he will despite his best intentions return to the home at moments of emotion. The evidence suggests a continuing strong attachment between the parents and a level of insecurity on the part of F. This increases the chance he will wish to be at the home to ensure M does not move on into new relationships;

- ix) M is vulnerable and isolated. In my assessment she continues to think positively about F and is likely to be malleable to any wish to return on his part;
- x) Within the relationship there appear to have been pockets of calm and my sense is that both parents focus on these periods to the exclusion of the significant difficulties. I have no reason to believe the same would not occur in the future. Were M to start to spend time with F and there were no difficulties then this would reinforce her view as to his essential goodness increasing the chances of rehabilitation;
- xi) Last, there is evidence that the work required by each parent to appropriately safeguard will be difficult with at this time unclear likely outcomes. The work which brings stresses and I fear at such times the prospects of return are heightened.

My ultimate conclusion is that there is a very real likelihood of some form of rehabilitation between the parents in the foreseeable future. On balance I find the denials of any intention in such regard well intentioned but not grounds for significant optimism.

The children's educational attainment will be in part a function of their essential make-up. I appreciate for C and D the likely outcomes are unclear. My sense of B from the ABE interview was that she was a sensible and caring child who may achieve given the chance. Likewise A is described in positive terms. However for all the children their likely outcomes will be inevitably impacted upon by the home environment from which they leave to attend school. It is obvious that children who have experienced a night of shouting and fighting or have been caused to leave their property or experience the attendance of the police; will not be well placed to focus and join in with school based activities. A child who may read her father plans to attend school to kill her mother will besides other matters not be able to focus on schooling.

#### Change in circumstance

- c) It is clear that A would react negatively to any plan of removal. The acknowledged reality is that the proportionate response is to work with him in situ. For B, C and D it is likely they would respond positively to being returned home as it is what they want. But as I heard in evidence it would be highly damaging for them if this were to be but a temporary return with a further removal were matters to deteriorate. The evidence is that a return home would need to be on a secure footing with confidence as to the ability of the move to be maintained and stable. Were this achievable then this would be a change the children would be able to adapt to. A plan for final care orders would be a change notwithstanding that it might not mean an immediate change in living arrangements. B would be able to understand the implications of the same for her and would be left distressed and deeply saddened. This would be an obvious negative impact and would require careful management. It would be a magnified emotion were placement orders to be made for D. I sense the impacts for C and D are less easy to identify given their needs and the complication of attempting to factor out this feature. My sense is that the future care for each will be unsettled whilst significant work is done to build a stable footing for day to day life. Any change is likely to unsettle them (including a return home) and

will bring with it some level of emotional response (including negative responses). With care this can be overcome.

#### Personal characteristics

- d) The children have a range of personal characteristics which have been referred to within this judgment including their ages; relationships; developmental needs, and; [x] heritage. I pause to reflect on the last feature. It is clear from the evidence that [removed to preserve anonymity]. Irrespective of their actual detailed heritage it is clear this is an important consideration. The parents consider it very important for the children to understand and have a proper sense of their heritage and their customs. I agree this is important but at the same time it must be balanced against their fundamental need for their welfare needs to be met.

#### Harm

- e) I have dealt with risk of harm above at length.

#### Capacity of the Parents

- f) I have dealt with the capacity of the parents above. F does not put himself forward to care for the children. He accepts he has significant work to undertake (as to anger management and addressing the deep seated roots of his behaviour). M does wish to care for the children. There is much to commend her. She loves her children deeply and wants the best for them. I consider she does her best to achieve this. However the evidence indicates that without significant support she would not be able to meet the needs of the children on a continuing and consistent basis.

#### Range of powers

- g) As to range of powers: I can make the care order sought. Alternatively I could consider the making of supervision orders to assist and befriend the children on return home. My understanding is that M would accept the same. Alternatively I could make no order thus discharging the interim care order and returning the children home. I will return to my choice of orders below.

- 9.16 The application for placement engages different aspects and is importantly to be viewed over the lifetime of the child (D). I note the following:

#### Wishes and feelings

- a) See above for D's wishes. She is a young child and would want to return home without being able to compute the balance of harm to her of doing so. Her wish would be instinctive and based upon her attachment to her family. I bear in mind the decision I am being asked to make is for her life-time and so I take into account her likely strong wish not to be severed from her family pursuant to a placement decision.

#### Needs

- b) I have commented about D's developmental needs above. There are signs in the case of C that these needs may be significant and may pose a challenge to a range of different potential carers. They are only just beginning to materialise. I

consider D will require consistent and focused care to meet her particular needs. I would be concerned that if there was a loss of focus on her needs then this would have long term implications for her life chances. I agree she needs a high level of nurturing care.

#### Impact of being adopted

- c) The effect on D of being an adopted child will be profound. Whilst I will return to this below, there must be a realistic chance of adoption severing all family connections (and on best case scenario only maintaining limited contact). D has an understanding of her family and will likely be closer to 5 than 4 by the time of any matching and placement. She will retain knowledge of M, F, A and particularly B and C. This will heighten the emotional impact upon her of the loss of these relationships. B and C have been ever present for her and her bond to B in particular is noted. Whilst she may not be able to intellectualise the loss of these relationships she will experience the everyday reality of no longer seeing these important people. She will be separated from her siblings having previously had this form of life line on separation from her parents. I have no doubt this will be a truly significant loss and impact for her. Dealing with it will require the upmost care and professional skill.

#### Characteristics

- d) I have dealt with personal characteristics elsewhere within this judgment.

#### Harm

- e) I have dealt with harm elsewhere within this judgment.

#### Other relationships

- f) I have particularly noted the relationship D has with M, F, A, B and C. I have commented upon the strength of the sibling bonds. I appreciate there are other family members who are important and have emotional attachments to D but my assessment of the evidence suggests it is the key characters noted above who are central to D's life. It is to be noted that no alternative family placements were available and no alternative family placement was argued before me. It is clear to me that M, F, A and B have a very strong wish for D not to be placed for adoption and for her to remain with (or within contact with) her family. The reaction of B to discovering the LA's plans for D is strong evidence of this desire. I have observed M and F in court and cannot but be impressed by the strength of their feelings in this regard. I have heard directly from A's representative who has informed me as to how important it is to A that he retains a relationship with D. They all could not be more opposed to placement. But of course A and B cannot provide a secure environment in which D could develop. F accepts he cannot provide such an environment. This judgment is in effect an assessment of whether M alone can provide an appropriate setting for D.

- 9.17 I am obliged to carry out a dual holistic assessment in this case. For B and C the realistic options before me are either a return to the care of M or final care orders. For D the situation is different and the options are return home; placement orders or final care orders. Plainly there are common themes with respect to return home or final care orders when considering either B and C or D.

9.18 CT [C69] and the Guardian [E272] engage with this assessment. I have considered and adopt their logic in reaching my conclusions. CT's analysis is detailed and approaches each child individually. It is a fair overview of the benefits and detriments of each option.

9.19 I make the following additional observations:

- a) For B and C final care orders would interfere significantly with family life and would stifle to an extent their understanding of their identity. Such orders would cut across their wishes and feelings. In the context of B, as a child of 12, one has to have regard to her developing independence and the possibility that she would act as she deems appropriate whether or not this is in line with the planning. At the same time these children have an understanding of their family life and would not lose this entirely were such orders to be made.
- b) The situation for D (and indirectly insofar as her sibling relationship is concerned for B and C) is more stark. The plans for adoption would have a fundamental legal and real impact on her daily life. She would be severed from her family (her parents fully and her siblings substantially if not fully). She would have new parents yet would retain knowledge of her biological parents. In the context of this developmentally challenged child the impact is uncertain. Further there can be no guarantees that adoption would bring the stability and security which I refer to within my judgment as being needed. With her needs it may be that a replacement family would equally struggle (as the foster carers are appearing to do with C in particular) and breakdown cannot be ruled out. In context that would be an absolute disaster. Were final care orders made then she would retain a close association with her siblings (if placed with them) and a continuing relationship with her parents. This is an important positive. Contact post-adoption may make the placement a problematic one in which the tension between placement and family is unworkable. There is also the difficulties that would be attendant upon mixed orders (B and C care with D placed) in terms of D understanding why she has not been able to remain with her siblings and why they may have a different and more substantial relationship with her natural parents.

9.20 I have borne all of this in mind in what is undoubtedly a sad and difficult case.

## **Conclusions**

- 10.1 I approve the plans for A of a 12 month supervision order. I say little more about it given the agreement other than A will substantially benefit from a careful package of support to help him through this difficult time in his life. M alone will struggle to meet his needs and requires active support. The same is evidence from the current state of affairs. She cannot cope without support. This outcome is consistent with A's welfare. He agrees the same. It is a proportionate response to the situation faced.
- 10.2 The central question for me is as to whether M can care for the other children allowing for an acceptable level of agency support. Reflecting upon the evidence I have received in this case I have sadly reached the conclusion that she could not do so and certainly could not do so within the timescales of the children. My assessment is that A will himself demand a significant level of agency support and M's focus and that the outcomes for him are far from clear. I judge M could only take

responsibility for B, C and D (or in fact any one of them) were she to receive a very high level of support. Such support would go well beyond being reasonably expected support and would in effect equate to replacement parenting. It would require extensive daily coaching and replacement care and would endure far into the future. During this period the support would be meeting the needs of the children with M supplementing the care but in effect not as the key provider. In my assessment this is an inappropriate level of intervention and is not in the welfare interests of the children. It would in effect amount to agency parenting with all the known disadvantages that this would bring. It is questionable whether A would welcome such a package into his home (notwithstanding it would be in support of an outcome he would want). In my judgment it is neither practical, maintainable nor realistic.

- 10.3 I have therefore reached the conclusion the children cannot return home and that final care orders must be made. Such orders are necessary to meet the needs of the children and are reasonable as the lowest level of intervention that will adequately meet their daily needs. For these reasons the order is both proportionate and lawful.
- 10.4 I am next obliged to turn my mind to D. There is much force in the arguments for care over placement. I have particularly wrestled with the issues surrounding the strong sibling relationship and the age of D and what all this means for her sense of identity.
- 10.5 However, I have stood back and done my best to properly balance these options in working out whether this will meet D's needs and whether in fact it is the something else that will do that means adoption cannot be permitted.
- 10.6 In reaching my evaluation I have borne in mind the key distinctions between a life under a care order and the life of a placed child. In doing so I have been assisted by the helpful observation of Lady Black in *Re V (Children)* [2013] EWCA Civ 913<sup>11</sup>.
- 10.7 I have reached the sad conclusion that placement is in D's welfare interests and that nothing else will do. I agree with the Guardian and CT that D requires a chance of permanence and that at 3 years of age (nearly 4) it would be wrong to plot a life for her within the care system with all the obvious disadvantages this brings. The placement option with her siblings goes some way to rebalancing this decision but I bear in mind B is 12 and may in very short order chart a return to her parents (or one of them). I also bear in mind that the reality of a care order may not be placement together (particularly with C) given each child's likely significant needs and the difficulties in finding a placement which can properly meet the same. The reality (as recognised by the Guardian) is that consideration may need to be given to separation of B from C. I fully recognise that D retains a sense of her identity and this will be an issue requiring of care but in my assessment it is not of itself a bar to the course I take. In reaching this conclusion I am aware that M and F cannot consent and I dispense with the same on the basis that my assessment of D's needs mean the same is required.
- 10.8 On my assessment of the evidence these order are necessary to safeguard the welfare of each child. They are reasonable in being the lowest level of interference consistent with such an aim and are proportionate – I have explained why no lesser intervention would suffice.

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<sup>11</sup> In particular see paragraph 96

## **Contact**

- 11.1 I am required to evaluate the following questions:
- a) What contact should B and C have with M, F and A
  - b) What contact should D have with M and F and with A, B and C.
- 11.2 The LA and Guardian agree as to the appropriate contact arrangements on the basis of the orders I have set out above. They suggest the children should see the parents 3 times per year (6 times in total – with the Guardian suggesting this might be around the same time and thus there being 3 discrete contact occasions each year) and for A to be able to join in with these and have an additional sibling contact (and hence 7 in total). The Guardian was a strong advocate for active consideration of post-adoption sibling contact and proposed this should occur between A, B, C and D on two occasions per year.
- 11.3 In such circumstances the parents argue for an open adoption with a high frequency of contact and much more regular contact with B and C in any event (monthly). I am asked to make a post-adoption contact order under the 2002 Act.
- 11.4 Plainly a balance has to be struck between obtaining a stable placement in which the children can settle against the emotional need of the children for contact, with the risk that insufficient contact may itself amount to a destabilising feature. In the case of D the additional issue is the risk of break down of the adoptive placement either because of too much or alternatively too little contact.
- 11.5 I have considered the evidence of the CT, VC and the Guardian on the question of post-adoption contact. I have reflected on the parents' submissions and the acknowledged benefits that can arise in the event of an open adoption. However, I accept the analysis of CT and VC that the requirement of parental contact would likely reduce the potential pool of adopters to such an extent as to be positively detrimental for D. The reality of such a plan may be that D cannot be placed for adoption and ends up being placed alone in long term foster care (an outcome which is in reality a worse outcome for her). The undeniable difficulty is the threats and conduct of F cannot be hidden from adopters being asked to consider an open arrangement allied with the very real risk that the continuing bond between M and F means that she cannot be considered independently for contact. In the course of the hearing I had to grapple with the fact that F was able and willing to make serious threats. Whilst he conducted himself appropriately during the hearing itself one cannot ignore the fact he has been violent in his conduct to M; that the emotions would be incredibly high and that adopters are very unlikely to wish to take on such a risk. For these reasons I have reached the conclusion that I cannot approve direct post-adoption contact with M and F. I do approve the proposed indirect contact.
- 11.6 Insofar as the sibling contact is concerned vis a vis D the position is no less challenging. I agree that contact would have the potential benefit of alleviating the very real emotional stresses that would flow from the making of a placement order in that it would continue to permit D the sense of her family identity and the continuing bond with her siblings. But this is not a one-way street. It would in doing so be a real challenge to her ability to find a permanent home with a new family. It would have the potential to stage periods of real stress twice each year when emotions would significantly rise. It is difficult to predict whether D and A/B/C would react positively overall to the opportunity to see their sibling or whether the limited nature of the contact and the subsequent periods before next contact would

be more stabilising than beneficial. Further, it is almost impossible to predict what impact D would suffer from understanding (as she would likely do) that her siblings continue to see her parents whereas she does not. For these reasons I do not believe it is in D's welfare interests for there to be an order for contact. I agree it is appropriate for adopters to have brought to their attention the positives of contact and a clear understanding of the dynamics of the sibling relationship so that they can properly consider the benefits that might flow from contact. But ultimately I would not wish to tie their hands. In the event of contact arising then I would agree two occasions per year is most consistent with the D's welfare.

11.7 In the case of B and C I bear in mind B's age and the strong family attachment. I reflect on all the evidence I have heard. Again a balance has to be drawn. The proposals of the parents are ones which I understand but in my judgment go beyond that which allows the children to settle in placement. Of course any plans are subject to review and in the case of B there may be a need for changes in planning as she gets older. My overall assessment is that A should have contact as per the suggestion of the Guardian (based around school holiday periods with I contact at the start and I at the end of summer – this will incidentally likely catch B and C's birthday's in many years as they fall around Easter). In the case of the parents there should be 4 contact sessions each (I suggest in Easter, Summer and Christmas with an additional contact to balance out the year and to be in April if Easter falls early and misses or does not come close to B and C's birthdays) and I agree it would be sensible for these to be staged around the same week (but not necessarily on the same day) or so. In reaching this conclusion I depart modestly from the views of the Guardian and social worker. I do so having regard to my assessment of where this fine balance lies to achieve stability for the children.

11.8 I have therefore concluded:

- a) There should be a 12 month supervision order for A
- b) There should be final care orders for B, C and D
- c) There should be a placement order for D
- d) I dispense with the parents consent to the same
- e) I set out my views on contact above.

11.9 Without doubt these decisions will cause all members of the family real sadness and heartache. The parents will be devastated that I have decided the children cannot return to the care of M. I have done my best to explain why I have reached this decision. There remains work for both M and F to do to ensure the future time with B and C is positive. I urge them to follow through with their intentions to complete the work. I am sure that in doing so they will be acting in the best interests of all their children. A will share in this sadness. I hope he can now join in with the contact. He has done nothing himself to warrant any criticism and it is clear to me he very much loves all of his family members. I wish him the very best.

His Honour Judge Willans