This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

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IN THE COUNTY COURT
(Sitting at Middlesbrough)

No. MB155/18

Middlesbrough County Court at Teesside Combined Court
The Law Courts
Russell Street
Middlesbrough, TS1 2AE

Thursday, 13 June 2019

Before:

HER HONOUR JUDGE MATTHEWS QC

(In Private)

B E T W E E N :

G

Respondents

J U D G M E N T

(Transcript prepared without the aid of documentation)

JUDGE MATTHEWS:

1 This judgment concerns two sisters who were once described by professionals as having a strong attachment with one another despite a significant gap in their respective ages. They came into the care system because they could not be looked after within their family. The Local Authority assured the court and the girls' Guardian that they would keep the children together and find a good home for them. Although the children would likely not have direct contact with the rest of their family, they would be able to grow up with a blood relative - their sister - and have contact with them every day; at least they would have each other.

2 The court approved this plan and passed the baton of responsibility to the Local Authority to manage the future care planning for the girls. Within the year following the final hearing, the Local Authority attempted to place the children for adoption and after that failed, brutally separated the children without preparation of either child and subsequently terminated their sibling relationship, allowing them only one further meeting after that separation which was facilitated at as a goodbye visit.

3 The Local Authority failed to notify the family of these events until months afterwards. The family has been devastated by the separation of the girls. The Authority took no steps to notify the court or seek guidance from CAFCASS at any time until after the children had been separated and their relationship brought to an end.

4 This judgment comprises three aspects: Firstly, what orders the court should make at this point to secure the long-term welfare interests of each child; what findings the court should make in respect of the Local Authority handling of the children's care plans; and, lastly, the learning points for this and other Local Authorities in this area.

5 The welfare outcome has been largely a matter of agreement, save for the issue of future contact between the girls. The court hearing has largely been taken up with an enquiry into the Local Authority's conduct as a result of which a great deal of evidence has been considered.

6 Both children have separate Guardians. I am extremely grateful for their enquiries into this matter. They have each pursued findings against the Local Authority as they intend to raise civil suits in the form of Human Rights Act claims against the Authority on behalf of the girls.

7 The children's mother also intends to issue a similar claim on her own behalf.

8 I indicated at an early stage that I would hear the evidence and make findings in respect of the Local Authority's conduct, but not at this stage determine whether that conduct amounted to Human Rights Act breaches; that can be considered at a later stage when all parties have had an opportunity to take advice from civil lawyers, this not yet having taken place. However, determining the factual substratum at this point saves a great deal of time and public cost which should not, hopefully, be replicated.

9 Indeed, the Local Authority has realistically made a number of very significant concessions in respect of the flaws in their implementation of the girls' care planning. I accept those concessions and make findings accordingly. Where I make other findings, I do so applying the civil standard of proof being the balance of probabilities. The burden of proving the findings lies upon the person pursuing those individual findings. I will set out later in this judgment the matters which are agreed and then determine those that remain in contention, and make findings, if I consider it appropriate to do so. It may be possible for any civil actions to be compromised in due course.

10 I have made it clear that I intend to publish this judgment because it will hopefully serve as a cautionary tale to other childcare professionals, as to how even well-meaning workers can fall into serious error if they fail to adhere to the care plan approved by the court, fail to consult with experienced third parties such as CAFCASS and lose a sense of fairness and responsibility to the family into whose lives they have intervened.

11 Most importantly, of course, I will make orders securing the children's welfare which I hope will ensure that they have the stability and security in the future which the court has always wanted to achieve for them and also, hopefully, restore some level of relationship between the girls and, indeed, between the elder sibling S and her family.

12 It is important, firstly, to consider the background history in detail before drawing conclusions as to what led to the current situation.

Background

13 On 14 March 2016, the Local Authority (LA) issued an application for Care Orders in respect of both SG, born [on a date in 2008]; and her younger sister, RG, born [on a date in 2015]. The Local Authority concerns centred around the drug use of their Mother (M), her associated lifestyle and the consequent impact on her ability to parent her children. S's behaviour had deteriorated at school and it was considered that she had suffered emotional harm in her mother's care.

14 For a number of reasons including the appointment of a new Guardian shortly prior to the second final hearing listed in December 2016, the twenty-six week time limit was extended and the final hearing re-listed on 27 February 2017.

15 The Local Authority's final plan recommended that final Care and Placement Orders be made in respect of both children. The Local Authority intended to search for an adoptive placement for both siblings together for a period of six months. In the event that such a joint placement could not be found within that timescale, the contingency plan was to place the children together in a long-term foster placement.

16 It was the stated view of the Local Authority that the children should not be separated. A sibling assessment had been completed in August 2016 (section K - C153-C167) which concluded that "S and R share a very close reciprocal bond" (section K - C166). LP, then the children's social worker throughout the care proceedings, reported: "Remaining together will allow continuity of their evident strong attachment to each other and outweigh the impact of separation, both emotionally and in respect of their sense of identity" (section K - C167).

17 Whilst no updated sibling assessment was completed in advance of the final hearing in February/March 2017, there was reference within the written evidence to the continuation of the close relationship between the siblings. It is apparent from the foster carer's records

filed within the current proceedings that S's behaviour deteriorated around Christmas 2016. LP was made aware of this, but attributed the behaviour to S's knowledge of the aborted final hearing in December 2016 and a change of routine around Christmas.

18 A continuation of this behaviour by S into the early part of 2017 was attributed to her anxiety around the forthcoming final hearing. It is understood that S was aware that there had been two previous final hearings listed which had not proceeded to conclusion. She may, therefore, have been anxious as to whether the third final hearing would actually conclude and also as to its outcome. It is reported in evidence before the court within those proceedings that S was very anxious not to be separated from her sister. She was concerned that R would be placed for adoption without her.

19 The extent of the foster carer's concerns in respect of S's behaviour do not appear to have been made clear within the written evidence filed, either by the Local Authority or the Children's Guardian [CG], during those proceedings. The social worker, Children's Guardian and the Independent Social Worker [ISW] who completed an assessment of R's half-sister, L, all made reference to the deterioration in S's behaviour but none of them appeared to consider that this behaviour was such that a plan of adoption for the two siblings together could not be achieved.

20 The Guardian's final report (section K - E104-E118) recommended that final Care and Placement Orders be made in respect of both children with a view to an adoptive placement being found for the children together. The Guardian's view in respect of contingency planning differed from that of the Local Authority initially, in that she recommended that, if a joint adoptive placement was not found within six months, the Local Authority should consider searching for separate placements which would meet the individual needs of each child (section K - E177). The Guardian's position changed during the course of the hearing and in the final order her position is recorded as follows: "She ultimately did not dispute the contingency planning for the children" (section K - B138).

21 The applications of the Local Authority were contested by the mother at the final hearing and Recorder Bickler QC heard evidence from the social worker, the Mother and the Children's Guardian and closing submissions prior to giving judgment on 2 March 2017. The Judge made final Care and Placement Orders in respect of both children approving the final plans of the Local Authority. A transcript of his judgment is found in the court bundle at K10-K17.

22 No transcript of the evidence given at the hearing is available and therefore it is not evident to what extent the issue of S's behaviour was discussed during that hearing. It presumably formed part of the oral evidence as the fact that she had again demonstrated what he referred to as "troubling behaviour in recent weeks" is referred to by the Judge at para.32 of his judgment (K15). The explanation for that behaviour given to the court was that of likely stress associated with the unknown outcome of the proceedings.

23 The extent of the Judge's concern in relation to S's behaviour is not known nor whether - had more information been given to him - he would have reached a different conclusion in relation to what was the most appropriate welfare outcome for each individual child. It is clear that he had to the forefront of his mind the difficulty of the proposed care plan as he sets out at para.36 (K14). He specifically referred to the age gap between the children with S approaching nine years and R not yet two indicated that their needs were not "necessarily consistent with the other". He echoed the Guardian's concerns that if a joint adoptive placement was not found then placing both in long term foster care meant that R would spend almost her entire minority in foster care. Additionally, if an adoptive placement was

found there were greater risks to its stability, given S's age and her awareness of and connection to the wider birth family.

24 However, he indicated that, having read the sibling assessment from August 2016 and given that all professionals reported how close the girls were, he would support the care plan. In considering welfare throughout their lives and not simply their childhood as he was enjoined to do by s.1(4) of the Adoption and Children Act 2002, he found himself agreeing that the two girls must be placed together (K14, para.37).

25 An initial search for joint adoptive placements at that stage had indicated that there were three potential matches for the girls. The Judge specifically approved the care plan for a six month time-limited search for a closed adoptive placement promoting indirect contact only to the family and its contingency of long term foster care together.

26 At the conclusion of those proceedings, both children remained in their foster placement together. An adoptive placement was identified in May 2017 with the prospective adopters indicating that it was S who in fact drew them to the siblings as a unit. The prospective adopters were recommended to be matched to the children on 20 June 2017 and, therefore, in line with the care plan, a final contact with birth family took place on 27 June 2017.

27 The matching was approved by the agency decision-maker on 12 July 2017 and introductions commenced on 17 July 2017. S's last day at school before the summer holidays was 19 July 2017. She said goodbye to her friends and teachers believing that she would not be returning in the following school year; this is an indication of the impact on a child of such planning being put into operation. At an introduction midway review meeting on 24 July 2017, the prospective adopters advised that they did not feel in a position to continue with the introductions. They stated that they were worried about being able to manage S's challenging behaviours; they, therefore, indicated that they were withdrawing from the process.

28 S had believed in advance of this occurrence that she was about to move to her forever home and therefore she had to be told of the breakdown in arrangements. Unfortunately, her social worker, LP, was on annual leave. The Local Authority considered that S could not wait until LP returned to be told the placement was not going ahead and the decision was taken that someone else would have to share the information with her.

29 The people who had the closest relationship to S at this point, save for the social worker, were the foster carers. S was therefore told by her male foster carer that professionals did not feel this was the right family for her and R and so they would not be going to live there.

30 The prospective adopters subsequently indicated on 27 July 2017 that they wished to recommence the introductions. A professionals' meeting was held on 31 July at which it was decided that reintroducing the adopters to S at this stage, bearing in mind what she had already been told, would not be in her best interests. There were also concerns as to whether the prospective adopters were thinking clearly about their decisions. I agree with those views. On the available evidence it appears that these prospective adopters were not well matched to this sibling group nor, indeed, mindful as to how emotionally damaging their vacillations would be for a child such as S.

31 A disruption meeting took place on 10 August 2017 chaired by the independent reviewing officer, SS, the outcome of which was that it was agreed that the children needed to be separated as the needs of both children together were unlikely to be met in an adoptive

placement. This view was in direct contravention of the Local Authority court-approved care plan.

32 A LAC review was to be held to enable the decision of the meeting to be ratified and the plans of the Local Authority to be amended. An urgent LAC review was arranged for 21 August 2017; a summary of the review discussion is set out at G118. The LAC review meeting did not ratify the decision of the disruption meeting as those present could not agree on the separation of the siblings. I am concerned that it was even contemplated that the decision of the disruption meeting could have been ratified if individuals' views had been different. This would tend to demonstrate that there was little value in the contingency planning of the Local Authority which they had put before the court as they seemed prepared to abandon it so quickly.

33 S's behaviour was known about in advance of the attempted placement with the prospective adopters; that behaviour should have been communicated to the prospective adopters in advance of introductions commencing. The fact that the attempted placement did not go ahead as a result of the prospective adopters pulling out does not, therefore, automatically mandate rejection of the consistent and long held plan to keep the children together.

34 A dispute resolution meeting was held on 22 August 2017. At that meeting, there was a split in the views of the LA professionals; the safeguarding team and IRO were of the opinion that the children should remain together whilst the placement team were of the view that they should be separated.

35 Parts of the transcript of the judgment of Recorder Bickler QC were read to the meeting. The minutes of the meeting (L320-L329) record MM, service manager as stating that "In order to go back to court to revoke the Placement Order at such an early stage, we would need very thorough evidence as to why the previous plan has not worked" (L327). The service manager concluded that a specialist sibling assessment was required and it was agreed that one would be undertaken before the Local Authority made a final decision as to whether the original care plan for the children was being abandoned and, thus, an application made to the court for revocation of S's placement order.

36 However, in fact a specialist assessment would not tell the court why this adoptive placement had not worked. It was apparent why that had not worked in my judgment: they were the wrong potential carers. The prospective adopters were indecisive, said they were overwhelmed during introductions, and their attitude towards the foster parents was frankly concerning stating that they had in some way been hindered by the comments and actions of the foster parents. This attempted placement had not worked because the prospective adopters were not well matched with these children. This was not S's "fault". JH, the manager of the placement team, also thought that the prospective adopters were not appropriate. She was correct, in my view.

37 The issue which had to be tackled at that stage was not what had gone wrong, but whether the children could be parented together in the future by anyone in whatever type of placement. There seemed to be a clear split between the views of the placement team at this stage who seemed to favour R being split off and placed for adoption and the safeguarding team who, at that stage, wanted to keep the girls together if at all possible.

38 The meeting was aware that the foster carers had stated they could not continue to care for S. A vote was therefore taken as to whether the children should be kept together whilst the sibling assessment was carried out and thus an alternative placement identified for them both or, if they were to be separated, whether R should remain in the current placement with

an alternative placement being found for S. Six people voted in favour of the children staying together and three in favour of separation. The plan at the conclusion of the meeting was therefore for a bridging placement to be identified for the children together and for an expert sibling assessment to be undertaken.

39 Unfortunately, despite a request for a bridging placement being made immediately and that request being followed up regularly, one was not identified. S and R, therefore, remained in placement with their previous foster carers who agreed to continue to care for them until an alternative placement became available.

40 LP left the Local Authority on 29 August 2017 and therefore the case was re-allocated to RC, a social worker, who had shadowed LP from 21-25 August and had therefore been present at the dispute resolution meeting.

41 On 2 October 2017, the Local Authority commissioned a sibling assessment to be undertaken by AB, Chartered Psychologist; a copy of the referral request form is found at L337-L338 in the bundle. The assessment was to be completed by 30 November 2017. The questions which were sought to be answered are not balanced, in my judgment, and are weighted toward the issue of separation of the girls and separate care plans. The Local Authority are clearly at this time, in my judgment, formulating an alternative care plan to that which had already been approved by the court.

42 By this time, in accordance with the approved care plan the LA should have moved onto their approved contingency of long term foster care together. If they were still properly considering this as a contingency, they should have been more appropriately asking questions about what qualities a future carer would need in order to care for both children together.

43 Upon being told that this assessment was to be commissioned, the foster carers advised that in order to reduce the number of moves for the children they would continue to care for both S and R until the outcome of the assessment on 30 November. The request for a bridging placement for both children together, however, was not withdrawn as it was anticipated that one would be required at the conclusion of the report. Therefore, RC continued to search for an alternative placement for the children together.

44 Having met with the foster carers, both children and S's school staff on several occasions, on 14 November 2017 AB emailed the Local Authority (L29) stating that in his view the children needed to be separated as a matter of urgency and S placed in a foster placement with no other children as a holding position whilst he further considered matters. He stated: "There are clear safeguarding issues with regard to her sister and the birth child that the foster carers are having to manage which is untenable and unsafe".

45 It is understood AB had informed the foster carers of this opinion during a meeting with them on 9 November (C138). RC spoke to AB on the telephone on 14 November after receiving his email and he confirmed his recommendation to her. He recommended that S be moved without prior knowledge or preparation due to the implications it could have on the other children in the foster home and the placement itself if she was told prior to moving.

46 Due to the extreme nature of AB's recommendations, RC made enquiries of potential placements for S and then engaged in an email exchange with MM and LN, her manager (L31-L34). All said they were very concerned about the prospect of moving S without warning and how damaging this would be for her, but seemed to defer to the expert that R

and the foster carer's birth daughter were at risk of significant harm if S were to remain in that placement or if she were to be given advance notice of the move.

47 Further discussions took place with AB, an email exchange with the foster carers (L35-L36) and discussions between RC and the foster carers' supervising social worker (C139). Having been told of AB's recommendation, despite having initially stated they would continue to care for both S and R until 30 November, the foster carers advised on 17 November that they wished for S to be removed from their care.

48 Despite the Local Authority's reservations in respect of AB's recommendations (C140), the outcome of all discussions was that the Local Authority followed his advice and S was collected from school that day by RC and taken straight to a new emergency foster placement without any preparation or advance notice.

49 AB subsequently provided the Local Authority with a report dated 30 November 2017 (E1-E42) in which he concluded that the Local Authority should pursue separate plans for S and R with S being placed in a residential placement and R being placed for adoption. Following the report being made available, AB met with S at school to explain his recommendations on 7 December 2017 (C145-C186). The social worker was clear in evidence that: she did not know about this visit in advance; or agree to it taking place; or know in advance what AB was going to say to S.

50 KD, S's school counsellor, was also present at this meeting (C254). It is recorded that, at this meeting, AB prepared S for a goodbye visit with R and reported that this would take place in January 2018 (C152). As a result of his recommendation, S had a goodbye contact with her foster carers on 30 November and at a LAC review on 4 December it was agreed that her plan would be changed from one of adoption to one of permanence via residential placement.

51 The plan of one final goodbye visit to R in January 2018 was approved. I am satisfied that these decisions were all based upon and guided by the recommendation of AB. He was not one of a group of professionals reaching a joint decision as he has attempted to suggest in his recent letter to the court. He told the Local Authority what to do and they followed that without question.

52 Within hours of the change of care plans at the LAC review, R's details were being put before the placement team and she was advertised on 6 December. This demonstrates how the Local Authority can move quickly; how they can take action when they want to. In sharp contrast, despite AB making a recommendation for therapy for S in his November report, nothing appears to have been done about this until she was the subject of proceedings and the court and her Guardian pressed for this to happen.

53 A legal meeting was held in relation to the change of S's care plan on 20 December 2017. The outcome was that the Local Authority needed to return to court to request the placement order in respect of S be revoked; MM stipulated that papers should be sent to the Local Authority legal department no later than 16 January (C331). The relevant paperwork was not completed by RC and submitted to the Local Authority's legal department until 11 May 2018. It has been submitted that at the time RC had a number of very complex cases that she felt she had to prioritise and that this, ultimately, resulted in the significant delay.

54 This, sadly, was one of those complex cases and as I have set out above R's adoption was noticeably swift to be actioned. S's situation was ignored; no application was issued; the

family were not told what had gone wrong nor about the change in the care plan; no therapy was pursued; and she was left in an emergency placement which was not suitable for her.

55 This deficiency was picked up on in supervision, but not pursued as forcefully as it is accepted it should have been. Tight timescales were not set for the paperwork to be completed (C153-C188). Not for the first time it has become apparent that the team manager role is not being sufficiently well fulfilled. It is not really clear to the court what LN, the team manager, did to further the issues for S. I find that she did not support this social worker sufficiently and make sure that she was keeping on track with the management of important issues in the case. This is very disappointing. The team manager could not explain herself in evidence to this court.

56 Following the decision of the LAC review, the search for an appropriate placement commenced. P House was identified as a potential placement, but it was felt that there should also be further exploration of whether another appropriate foster placement could be identified to meet S's needs bearing in mind her age; she is very young for such a residential placement (C140-C331).

57 As a result, the plan to place S in P House did not progress until 23 March 2018 when service manager approval was given, as it was agreed that all other options for S had been exhausted and a plan of permanence needed to be implemented. S remained in the foster placement she had been placed in on an emergency basis upon separation from R whilst this process was undertaken.

58 As the court approved care plans for both R and S had been adoption and a match to adopters had been made, a final contact to family members took place on 27 June 2017. As R's plan remained one of adoption, the Local Authority did not feel it appropriate to re-introduce R to her family members in order for them to be taken away again. At the time of the adoption plan breakdown and prior to AB's intervention on 14 November 2017, the Local Authority plan had remained one of both children being placed for adoption together and therefore it was not felt appropriate to re-introduce S to her family members as the plan may have remained one of the children being placed for adoption together.

59 The plan to separate the children and alter the court approved care plans was formally agreed in December 2017 and yet, little was done to re-introduce S to her family subsequent to that significant change. It is important to remember that in December 2017, this girl was alone, separated from her sister, not having contact with family members and without a clear plan for her future other than the suggestion of being put into a residential establishment as AB had told her.

60 Following that change in plan, S remained in her foster placement and had a goodbye visit with the foster carer and then R. RC spoke to S about the potential for her to recommence contact with her mother and other family members. It is said that S was not keen to do that, but was made aware that at any time she could request contact and it would be arranged. However, it is clear from the evidence that when S did show interest in having contact with the family nothing was done to arrange it. RC completed "work" with S around this issue, but that seems to have been little benefit to S in the circumstances as nothing was done to initiate contact.

61 A recommendation at the LAC review from 4 December 2017 was that the social worker, RC was to meet with the mother and inform her of the *proposed* change in care plans for the girls (C147). It was requested by the IRO that this should take place within a month (i.e. by 4 January 2018).

62 The meeting with the mother did not take place until 26 March. Present at that meeting were the mother, maternal grandmother and the social worker, and the family were updated with the change in plans. The mother is reported to have appeared very chaotic and unstable during the meeting which it is said made it difficult to have a structured conversation with her. I am not particularly surprised by her presentation given the dreadful news that was being imparted to the family of the failure of care planning in almost every respect because even R did not have a final home at that stage, one year after care proceedings had concluded.

63 In this meeting it became apparent to RC that mother had not been apprised of the breakdown of the potential adoptive placement in July 2017; apparently, the social worker had believed that the mother had been told. It seemed that the mother had believed that something had gone wrong because she was aware that S was still at her previous school. RC assumed, when taking over, that the mother had been immediately informed by the previous social worker. This is simply not a good enough explanation; a social worker should not assume such a serious matter. There was no file note to inform her that the mother had received this very significant information from the previous social worker nor did RC have a discussion with that former social worker in which it was reported to her that this grave news had been shared with the girls' mother.

64 The reported developments were obviously a source of a great distress for the mother and indeed the rest of the family. They believed that the children had been taken away for a better life together and instead, nearly a year later, neither had a permanent home and a separation had been enforced, when the LA had promised to keep them together. This reflects very poor social worker practice, in my judgment. It is incomprehensible that, when told directly by the IRO to contact the mother within a month in December 2017, the social worker took no steps to contact the mother for several months. It shows a lack of regard for the interests of the birth family and indirectly, therefore, for the children also.

65 Whilst plans in respect of S were being progressed to the residential home, the Local Authority continued their search for an adoptive placement for R. A placement was identified, and a match agreed at panel on 10 April 2018 approved by ADM 26 April 2018. Introductions commenced on 8 May, which progressed very well, and R was placed with her prospective adopters on 22 May 2018. The first adoption review took place on 8 June 2018 and the second on 24 August (C22-C23). Universal opinion concurs that she has settled very well into her adoptive placement over the last year. All parties now agree that the court should make an adoption order in favour of the prospective adopters.

66 Introductions for S to P House were undertaken on 9 May, which it is said went incredibly well. A placement planning meeting was held on 5 June and S moved there on 25 June 2018. It is said that she has settled in very well.

67 The Local Authority plan now is for her to remain in this placement long term and, as a result, on 11 June 2018, six months after the decision was actually made to change the plan for the girls, the Local Authority issued an application to revoke the Placement Order in respect of S only, as the plan for adoption for her was no longer to be pursued. A care plan was filed in support of the application, seeking the continuation of the Care Order with a plan for her to reside in the residential placement of P House.

The Current Legal Proceedings

68 The application first came before the court on 22 August 2018, and were transferred up from District Judge Moreton to myself on 18 October on the grounds of complexity. The mother

issued an application to discharge the care order in respect of S and she also issued an application to discharge the Placement Order in respect of R. However, given that the Local Authority had taken the step of placing R in a proposed adoptive placement on 22 May, this step took away the mother's right to make such an application.

69 In my judgment, the mother should have been clearly told to seek legal advice because the Local Authority were intending to place R. The mother would then have had an opportunity to take action or not, or indeed grandmother could have responded to that information by seeking leave to make an application. Instead the court was left with a significant legal difficulty. All parties were in agreement that the plans for both children should be considered together but the parties were left with two difficult alternatives:

(A) That the Guardian would have to issue an application that she did not support for the revocation of R's Placement Order; or
(B) that the prospective adopters brought forward the issuing of their adoption application.

70 The adopters decided that they were in a position to issue their application, which, brought them, of course, into direct proceedings with the birth family which is not ideal. They felt, however, it was an appropriate time to issue their application and it was issued and joined with the other applications.

71 The maternal grandmother sought to be joined as a party as she wished to care for either or both of the children. Mother sought the return of both children to her care initially, but hair-strand testing carried out on 6 December 2018 confirmed that she was still using drugs. Therefore, she subsequently accepted that she was not in a position to care for either child. She therefore advised that she would support the children being placed with her mother and, if that was not possible, both children to be placed together in long term foster care.

72 The maternal grandmother's application for party status was successful and it was agreed that an independent social work assessment of her was necessary as the Local Authority had previously completed at least one negative assessment of her in previous proceedings. In the light of the information before the court with regard to the Local Authority's conduct and handling of the welfare planning, the court and the parties did not have confidence in the Local Authority to complete a fair assessment. Therefore, DB, a very experienced former Guardian and ISW, was instructed to complete an assessment of her.

73 The assessment was completed of the maternal grandmother with the initial report dated 25 February 2019 (C155-C181). Her recommendations appeared initially ambiguous and were confusing to the parties, so further questions were asked of her to which she responded on 28 March.

74 At the time of replying to those additional questions, DB had been made aware that the maternal grandmother was no longer seeking to care for both S and R but was now putting herself forward for S only. DB's view expressed within the addendum report was that she believed that the maternal grandmother would be able to provide the appropriate level of care for S based on the information available to her at the time. She confirmed that, given her age, S's own views would carry significant weight. DB had not met S or observed contact between S and the grandmother. Whilst she considered that the grandmother had the necessary skills to meet S's basic care, she did not believe that the grandmother currently had the knowledge or expertise to provide S with the therapeutic parenting which she required. This is no criticism of the grandmother; this simply reflects the enormity of the issues for S as a result of her history.

75 Within the proceedings it was highlighted by S's Guardian, TB, that S needed therapeutic input of a specialist nature. The Local Authority agreed to buy in a service and EK, ISW, was instructed by the Local Authority to complete the work. That work is to include S's life story work and, as such, her social worker has not engaged in any further work with her in that regard.

76 RC went on maternity leave shortly after filing the paperwork in respect of the revocation application. ZG, S's current social worker, was appointed during the course of the proceedings.

77 EK has thus far provided the court with two statements detailing the therapeutic intervention she is providing for S. In order to obviate the need for her to give evidence during the final hearing, she was asked further questions in writing which were agreed by the advocates. I am extremely grateful to EK for the work that she is carrying out with S, which I hope will be to her long term benefit; however, it is very disappointing that S had to wait so long for this service to be provided to her.

78 The Local Authority's final evidence is set out at (C112-C124, C405-C409, C453-C472) and Care Plan in respect of S at (D48-D60); The adoption report concerning R, addendum thereto and Care Plan appear at (C255-C335); (C410-C422) and (C32-C47).

79 The maternal grandmother's position has developed throughout the proceedings, entirely understandably and appropriately, in response to the evidence that was being produced. It was important that she reflected on the evidence and responded. The mother has continued to accept that she is not in a position to look after the children; she has supported her mother.

80 The Local Authority Final Care Plan in respect of R is that an adoption order should be made enabling the current carers to become her legal parents and secure her placement with them for the rest of her life. It is evident that she is happy, healthy and thriving in that placement and her needs are met to a very high standard. It would be very damaging for her to be removed from the care of the adopters at this stage of her life. She regards them as her parents.

81 The maternal grandmother's final statement (C437-C444) indicated that, with a heavy heart, she accepted that R's current placement was in her best interests and she no longer sought to care for R and accepted that she would not have any direct contact with R in the future. This shows a proportionate response to the evidence supplied to her; it was no doubt an extremely difficult decision made in the light of the way the case has been dealt with and developed. If the Local Authority had notified the family at a much earlier stage of what had gone wrong and the matter been promptly aired before the court, the situation may have been very different.

82 The mother is still, in my view, extremely fragile. She has not attended the hearing today, and there is no criticism of her for that, but she has found the whole process extremely difficult. She did not engage with her solicitors in the weeks leading up to the final hearing and, therefore, her position was unclear for a while. But she did attend the initial IRH on 29 March and confirmed that she accepted that R should be adopted.

83 R's Guardian, AL, filed her final analysis (E90-E109) in respect of placement issues for R. She also supports an adoption order being made, which is the order I intend to make.

84 The prospective adopters of R have filed statements confirming their desire to adopt R and expressing a willingness to promote direct contact between S and R, providing it is safe and in the best interests of both children to do so. They expect to be guided by professionals in respect of this issue. They have expressed a desire to meet with the mother and also with S if it is felt in S's best interests for her to do so. EK believes that this could be a very positive experience for S and the Local Authority has indicated that it would support this happening.

85 The adopters have had a world of trouble brought to their door by the Local Authority's handling of this matter. They put themselves forward for a child who they believed to be free from strings attached and no doubt these proceedings have caused them a great deal of heartache. Therefore, the Local Authority's conduct has not only impacted on the birth family but also on R's adopters because they are innocent victims in all of this. They had been open to contact taking place with the birth family of a child who they intended to adopt, but, this child was put forward to them on the basis that there would be no ongoing contact, contrary to various statements made by the social worker in her evidence to the court.

86 By the stage of the second IRH on 5 April, it was clear that the adoption of R no longer an issue; the making of an adoption order being unopposed by both mother and maternal grandmother rather than agreed.

87 Indirect contact to R by birth family members needs to be supported by the Local Authority to make it as meaningful as possible for everyone. This is particularly so given that one day, of course, S may live with the grandmother and J and, hopefully, whilst enjoying ongoing direct contact with her younger sister.

88 The Local Authority final care plan for S is to remain in her current placement subject to a Final Care Order. The Local Authority invites the court to discharge/revoke the Placement Order, which I do, and that course is agreed by all parties.

89 S's Guardian analysis appears at (E73-E89). She supports the plan of the Local Authority in respect of placement. She agrees that S should remain subject of a final care order in her current placement. The Guardian is also now pleased that steps are being taken to attempt to set up direct contact between S and R, but also that contact has been re-established for S with family members and considerable support is provided around that.

90 The maternal grandmother's current position is that although she does not pursue a placement of S with her at this point in time, she would hope that in the future when therapeutic work is completed, S may be able to live with her and J and she would like to be subject of a further assessment for that to happen in due course.

91 In the joint statement by KF and ZG, they indicate the level of support which they will offer to the maternal grandmother and indeed J and how they envisage contact being progressed. Information was provided to the grandmother about S's therapeutic needs and it is on that basis that the grandmother has not pursued the issue of S moving to live with her now. Maternal Grandmother has also realistically accepted that S's needs are so great at the current time that they have to be met within a structured residential setting.

92 The Local Authority recommendation in respect of contact between R and her extended birth family is that there will be twice yearly indirect letterbox contact. It is accepted and agreed by all, including R's Guardian, that regular contact between S, the maternal grandmother and brother J should take place. The frequency of that contact has been increased and the frequency of this is agreed between all parties. This allows S to enjoy

quality contact time at the weekend with her family which is activity based. I am extremely pleased that this has managed to be re-established for S; it can only be to her benefit, in my judgment.

93 Contact between S and R is currently taking place on an indirect basis with some written exchange. There were some problems over transfer of that, but that has been corrected now. The hope going forward is that direct contact can take place between the girls providing it is safe and in the interests of both children for it to do so. The Local Authority hopes that that contact could be twice per annum, though at this stage it is not clear when such contact will be able to commence.

94 A contact application has been issued on behalf of S in respect of R. There has been discussion at the bar about the application this afternoon, which I propose to adjourn. The court will maintain a reviewing function in respect of this under s.34(2) of the Children Act 1989. EK's hope is that S may be ready for contact with R by August this year, but until further work is completed it is impossible to tell whether that is feasible and beneficial. There will be a review in July to which R's adoptive parents will be invited. They need to be fully involved. At that review meeting it can be determined whether August is an appropriate time for contact to commence; if not, then a further and later review can be set up.

95 This court will consider how matters are progressing in either August or September or at a later date. There is no intention for the court to retain long term control. The court does not lack confidence in the prospective adopters rather the intention is to ensure that the Local Authority are taking every appropriate step to support the re-establishment of this relationship.

Findings

96 The parties have submitted a multiplicity of findings for the court to consider. I will try to deal with them chronologically bringing the various contentions of each of the three submitting parties together. When considering those findings which remain contentious, it is important that the court assesses the proportionality of making those findings in the light of the significant concessions which have already been made.

97 I consider that there have been four phases of care planning management by the Local Authority which the court needs to consider: Firstly, the preparation and submission of the final care plan to the court in February/March 2017; secondly, the period post-final order leading up to the decision to instruct AB; thirdly, the period during which AB was directing events leading up to 4 January 2018 when the girls had their last contact with each other; and, lastly, the period after the girls' goodbye visit in which the Local Authority pursued separate care plans for each girl.

Phase 1

98 It is suggested that the Local Authority should not have advanced the original care plan to the court in March 2017 for a joint adoptive placement as it was woefully optimistic and also that they failed to listen to the concerns of the foster carers in respect of S's presentation and needs, and did not present the full and accurate picture of those views to the court.

99 The Local Authority accepts that they failed to identify the extent of S's challenging behaviours and the difficulties of parenting S with her sister when formulating their final care plan, having regard to the recordings of the foster carers (C251, G126, G223-G234).

100 The Local Authority also accept that they did not make full information from the foster carers available to the parties or the court at the time of the final hearing. The Local Authority accept that they did not identify the extent of the difficulties to the court. However, the court was made aware that S was demonstrating challenging behaviour but the social worker at the time was of the opinion that this was attributable to the change of routine during the Christmas period and also her anxiety leading up to the final hearing. The social worker did not, therefore, consider that this would cause any additional difficulty in placing S for adoption.

101 The Local Authority accept that they failed to inform the court that, at a meeting on 20 February 2017, the foster carers and their supervising social worker, DJ, were of the view that the children would benefit from being separated (C226, para.6.2).

102 The Local Authority accept also that they failed to inform the court that, at the meeting on 23 February 2017, the foster carers, health visitor, S's headteacher and school counsellor raised concerns about the plan of the girls being kept together in the light of S's behaviour and the need for one-to-one support (G234).

103 The Local Authority accept that they failed to clarify in the child permanence report [CPR] the challenges in placing the children together having regard to the individual needs of each child being met together (C224, para.4.12).

104 The Local Authority accept that they failed to take action to amend the plan or apply to the court prior to introductions to adopters being commenced, despite the concerns of the placement team at that time, the reason for this being that the safeguarding team did not share the same concerns as the placement team, prior to introductions taking place.

105 The Local Authority accept that the sibling assessment dated 5 August 2016 (section K, E153) was out of date at the time of the final hearing, did not balance the sibling relationship and difficulties of parenting S and did not have regard to the foster carer's notes regarding S's behaviour which had demonstrated its extent - including aggression to R - from the start of the placement.

106 S's Guardian takes the view that this care plan did not meet S's needs, led to a high-risk adoptive placement causing an escalation in S's already challenging behaviour with consequent emotional and psychological damage. These events, she submits, directly led to the physical separation from R and the loss of their relationship through contact and the loss of contact with the mother and other maternal family members.

107 I agree that the care plan was optimistic, although I have seen similarly optimistic care plans advanced before the court. I have also seen similar care plans achieve success against all the odds. It all depends, in my experience and judgment, on whether there are the right potential adopters available at the right time for those children. Sadly, this can be a matter of serendipity. If the prospective adopters had been the correct adopters for these girls and the placement had gone ahead successfully, the girls' case would have been a mere footnote by way of an adoption application. It is easy to say now that it has gone wrong because it was always the wrong plan.

108 The mother had wanted the children to stay together. She said to them "At least you will always have each other". The rest of the family, I believe, wanted the children to stay together. Most families state to the court that they feel that children should at least be placed together if they cannot live with their birth family.

109 This care plan was approved and supported by the Children's Guardian at the time, who was a hugely experienced and well-respected professional, who regularly challenged authorities, in my experience, and not simply rubberstamp their plans. She did express concerns about the Local Authority plan in her final analysis dated 20 February 2017 (section K, E104-E118). She highlighted at that time that the foster carers had reported that S's behaviour had deteriorated significantly since December 2016. Her observations, however, were that there was nothing in S's behaviour to indicate that she did not have a positive relationship with R and the foster mother was of the opinion that S had the capacity to flourish and thrive on one-to-one attention.

110 The Guardian concluded that S and R had a positive attachment and all measures must be explored to maintain their relationship (section K, E116, para.39). Equally of course, the Guardian said that parallel planning should be undertaken during the six months of adoptive family finding and, in the event it became apparent this option was not viable, the Local Authority should convene a planning meeting and at that point serious consideration should be given to the merit of identifying alternative separate placements which would meet the children's needs (section K, E117, para.43).

111 Most importantly, the Care Plans were approved by the court. The Judge could have refused to sanction the joint placement for adoption, however, he heard evidence from the social worker and the Guardian and he was persuaded. A different Judge may have made a different decision; perhaps a full time Circuit Judge would have been less amenable to granting approval, but this is speculative. It is impossible now, in my judgment, to reach a truly objective assessment as to whether this was the correct plan or not.

112 Hindsight is a wonderful tool; the gift of foresight is also extremely valuable. The court does not have the benefit of a transcript of the detailed evidence given to the court at the final hearing. The court has not heard evidence from the person who was the social worker at the relevant time, now a Guardian, nor her team manager. I consider that it is simplistic to apportion all of the responsibility for the care plan to the Local Authority in the circumstances. The Guardian at the time and the court must also take responsibility for its approval.

113 There is no evidence of *mala fides* on the part of the Local Authority and there is no basis to suggest that evidence was deliberately withheld from the court. There was a failure, in my judgment, to appreciate the significance of S's behavioural problems and their potential impact upon future care planning. This was rather naïve, in my judgment, and should not happen again.

114 I have seen a number of adoption breakdowns occur recently in which there was patently insufficient appreciation or disclosure of some of the children's difficulties in a multiple sibling group. Good social work practice requires an intellectually honest and open evaluation of the realistic possibilities or probabilities not simply a hope that everything will turn out well.

115 I do not accept that the foster carers' perspective in respect of S was completely ignored; there is information within the previous proceedings filed by the Local Authority which includes information from the foster carers. The social worker, LP, did listen to the

concerns of the foster carers, but her professional opinion differed from that of the foster carers as to the reasons for S's presentation and needs.

116 I also consider that it is stretching the point too far to say that the wrong care plan being advanced was causative of all of the later damage. There were a number of subsequent poor decisions, omissions and failures along the way thereafter which materially affected the outcomes for the children. Those were, in my judgment, significant *novus actus interveniens*. I will set these out later in this judgment. I do not consider that the extent of the later problems was inevitable if sensible steps had been taken in response to the difficulties straight away rather than the steps that were taken.

Phase 2

117 As to phase 2, the most serious concerns I have relate to the professional handling after the Care and Placement orders were made. It seems clear from the statement of MB dated 26 February 2019 (C238), which was not challenged, that the match between the girls and these prospective adopters was rushed. Insufficient time was given to S to grieve for the loss of her birth family and adjust to the need to leave her foster placement. He considered that the plan was always high-risk, but he thought it was pursued for the right reasons as it was acknowledged by all professionals and indeed the family that there could be significant benefits for both girls of remaining in a permanent placement together.

118 The care plan seems to have got into trouble very shortly after it was approved and I do consider that it would have been better to have had senior manager's input at a much earlier stage rather than simply at a disruption meeting. I conclude that introductions were made far too quickly for S. The adopters seemed not to have been sufficiently clear minded or sure what they could manage. The foster carers gave them realistic advice and they took it as criticism. In all the circumstances the impression created was that this couple were not a good match for both girls.

119 It is clear on the evidence that after the breakdown of this plan there were different views as to how to proceed; however, all professionals seemed to forget that the court had approved a six-month time limited search for an adoptive placement followed by a reversion as a contingency to long term foster care. Breakdown occurred in August which was the fifth month and, therefore, in September, in my judgment, the Local Authority should have applied to the court for directions as they clearly did not know what to do and were already considering a potential application to revoke S's placement order. Yet, they failed to issue any such application until June 2018, which is unacceptable and directly led to the instruction of AB and his disastrous involvement (as will be set out later). The Local Authority did not follow their own plan which the court had approved.

120 In my judgment, the care plan for the girls as a unit was materially changed in August 2017 after the adoption match breakdown. It is clear on the evidence thereafter that the Local Authority were considering splitting the children. This is something that they had impliedly assured the court that they would not do, as the plan advanced and approved was either adoption together or long-term foster care together. They were not at that point adhering to the court-approved care plan, but developing a new plan by commissioning expert evidence.

Phase 3

121 The involvement of AB in the lives of the girls has been very negative indeed. The Local Authority accept that they instructed an expert to carry out this very difficult piece of work who was neither a child psychologist nor psychiatrist and did not have any specialism to

report on attachment. In my judgment this was not a "specialist" assessment, as they said they wanted.

122 The Local Authority accept that the decision to physically separate the siblings was based on the recommendation of AB, which at the time of the physical separation of the girls was unwritten and the oral advice appeared to differ from that finally set out in the report.

123 The Local Authority accept that they failed to question the recommendations of AB, thereby relying on his recommendations to inform decision making not only about immediate separation and long-term placement, but also contact between R and her sister. The Local Authority, of course, later commented that some of his recommendations seemed to be extreme.

124 The Local Authority accept that they instructed an expert whose primary expertise was not in working with children. It is incomprehensible in my judgment that, simply because AB was the only psychologist who responded to the offer of work, the Local Authority should choose to instruct him in such an exquisitely difficult case. The old adage "any port in a storm" is not appropriate in child care proceedings or child care work.

125 The Local Authority accept that their letter of instruction did not ask fairly balanced questions of the expert (E37, questions 3 and 4 for example). If the court had been involved at this stage, such an "expert" without specialism would not have been instructed and the questions would have been framed in a more open and balanced way to provide the court with the necessary information to make the best decisions for both children in the light of the changed circumstances. I consider the letter of instruction to be slanted towards a separation of the children.

126 The court was not given the opportunity to intervene in respect of the expert instruction. I do not accept that the instruction of an expert in this way sits easily with MM's comment at the disruption meeting that the court will want clear evidence as to what has gone wrong here because he was not being asked to say what had gone wrong; he was effectively being asked to tell the LA what new care plan/s to pursue.

127 The Local Authority accepts that it abrogated the exercise of their parental responsibility to AB in respect of determining that S should be urgently removed from the joint placement with her sister and also with regard to the future pattern of the sibling relationship. In detail it is conceded:

(1) that the Local Authority treated the telephone recommendation he made as the Local Authority's decision (C56); and
(2) that they acted on his telephone recommendation of 15 November to separate the girls on 17 November without having sight of the written report dated 30 November and thus a detailed understanding of his reasoning; and
(3) that the Local Authority failed to adequately question his recommendation, despite later observing that some of his recommendations were "extreme" and that the potential damage to S was astronomical (L33); and
(4) that the Local Authority relied on his report rather than issuing an application to the court to seek the permission of the court for the fundamental change to the care plan which they were already considering even prior to acting on his views and later report.

128 The Local Authority suggest that there is no legal mechanism for issuing urgent court proceedings for the court to determine S's situation on an emergency basis, but the Local

Authority clearly could have issued an application to revoke the placement order and the court could have given urgent directions. The placement order would not necessarily have been revoked in due course. This would have provided a mechanism to get the matter before the court, with representation of the child, and for the court to determine what evidence was necessary to clarify the planning for the child/ren. That is what the court is here for. Of course, the family could have made applications which would have enabled the matters to be considered by the court, if the information had not been withheld.

129 The Local Authority relied on AB's opinion that immediate separation was required, in my judgment, without adequately considering whether, given that the risk allegedly posed by S to R had existed since May 2016, it could be managed until measured formal decision making could take place.

130 They failed to consider what alternative measures could be made to support the placement in the short term. I appreciate this is not accepted by the Local Authority because the foster carers had already given notice, however this all flows from the Local Authority's actions: instructing AB wrongly; failing to control him; failing to ensure that the foster carers were appropriately supported through this process; failing to prevent AB undermining S's placement with the foster carers with his negative comments.

131 Both AB and the Local Authority must take responsibility for the set of circumstances which developed in the middle of November leading to S's removal from the foster carers' home. I do not accept that no alternative measures which could have been put into place to support the placement by that point. I do accept that the Local Authority and foster carers were impacted by the extreme and inappropriate actions of AB. However, the clear picture created by the evidence of the social worker and the team manager were of helplessness, not knowing what to do and going along with AB in default of knowing what else to do.

132 It is submitted that there was no additional action which could have been taken to prepare S for separation from R but in fact the evidence seems to demonstrate that there was actually no preparation of S at all and there was little, if anything done to support S emotionally after she was pre-emptively removed and placed elsewhere. All that she was afforded was a goodbye meeting two weeks later with her foster carers and a goodbye visit six weeks or so later, after Christmas with her sister.

133 The Local Authority, in my view, failed to consider properly or at all the effect on S of having to leave her foster placement with R remaining in the placement and S's resultant feelings of rejection. It is absolutely plain on the evidence that this child had feelings of rejection. One of the problems within the introductions with the prospective adopters was that she felt that the prospective adoptive mother did not like her. This is a theme which is apparent and the foster carer was clearly aware of this and the pre-emptive removal - going to school one day and expecting to return home and being taken somewhere else - could only compound her feelings of rejection.

134 The Local Authority failed to consider what alternative measures could have been made to promote contact if the girls had to be separated. All of the recommendations of AB were accepted without question. The fact that the LA chose to separate the children and remove S from the foster home at his behest does not mean that they had to go on to accept his recommendations for the children not to have contact with one another save for a goodbye visit. It was not a package that they had to fully accept. The report they commissioned was advisory. The LA did not have to accept that advice or indeed every piece of it. He was not a judge making directions with which they must comply.

135 The Local Authority accept that they arranged for AB to explain the Local Authority's future plans to S and that they failed to adequately consider whether termination of sibling contact was in the girls' best interests. I cannot see any proper assessment of why that was done, whether it was in the children's best interests, what other measures or steps could have been taken. Again, this is simply a slavish adherence to the recommendations of AB. They allowed him to take over their case. The Local Authority should have made an application to the court to revoke and applied for urgent directions, particularly of course in the light and the fact that they knew that the court had approved the children staying together and, again, of course, the family were still not told what was going on

136 I find, as submitted by S's Guardian, that AB exceeded his remit as follows:

- He made recommendations to the Local Authority prior to the production of his report.
- He had discussions with the foster carers which resulted in those carers foreshortening the term of their notice, given that they had already said they were prepared to keep S until 30 November. He made comments to foster carers such as "I do not expect to see S here next time I come" This was a clear and strong indication that they needed to cause her to be removed. He also told them that she posed a physical risk to R and to their own child. Comments such as this could not do anything but frighten the couple.
- His behaviour in turn caused the Local Authority to make the emergency change of placement resulting in sibling separation.
- He expressed the opinion with regard to the risk posed by S yet did not perform a comprehensive assessment of risk.
- He did not enquire whether the Local Authority had performed such an assessment, prior to reaching his own view. In fact, the LA had in the previous month carried out such an assessment which concluded that the risk was manageable.
- The descriptions of S in his report are negative and lack a proper analytical basis describing her as having psychopathic tendencies; something he could not support when he gave evidence.
- He encouraged the Local Authority to take premature action in separating the siblings without considering the brevity of his involvement and the court's plan for the children.
- He failed to adequately identify the likely effect on S of her separation from R, which she had described to various professionals prior to his involvement as, her greatest concern. S stated to her Guardian at their first meeting in 2018 that R was her biggest worry.
- He failed to consider the potential impact on R of separation from S.
- He informed S about her future in the meeting with her on 7 December without proper consultation and of course recommended the termination of sibling contact.

137 I support the recommendation of S's Guardian that the Local Authority should make a complaint to AB's professional body. It is important that standards in this exquisitely difficult and sensitive area of work are maintained at a high level.

138 S's Guardian also asks the court to make a finding that the Local Authority failed to obtain ADM approval for the proposed change of placement prior to S's move on 17 November. The Local Authority do not accept that criticism; at the time such approval was not a practice or policy requirement. I do not make that finding on the grounds that I do not consider it to be necessary or proportionate and clearly was not part of LA policy at the time.

139 The Local Authority do not accept that they failed to obtain ADM approval to the termination of sibling contact prior to an adoptive placement being identified for R. Again, that was not a practice or policy requirement.

140 My main concern in this case is that the LA did not seek the involvement of the court at this time. It would not have assisted the girls if the ADM had approved it. What was required at this stage was independent scrutiny of the Local Authority actions. They failed to follow their own decision to identify an alternative foster care placement for both girls together. The Local Authority do not accept this criticism because they had put in a request for an alternative placement for both girls, but none were available. Given that the foster carers refused to keep S any longer, the Local Authority say that they had no option but to place S in a separate placement.

141 This is correct up to 17 November; however, in my judgment they did nothing to identify a joint placement after 17 November because by that time they had accepted AB's recommendation that the girls needed to be split up.

142 The Local Authority accept that, on the basis of what I have just set out, S's family relationship with R was disrupted, potentially permanently, by her move of placement and similarly R's family relationship with S was disrupted, possibly permanently. It will not be clear how far reaching this has been until it becomes clear whether contact can be re-established between the children.

143 The Local Authority accept that emotional harm occurred to S and her behaviour regressed at school as a result of the lack of preparation for the removal from her home and separation from R (L33, L357, L362, L369).

144 In my view, it is also likely that she suffered educational harm - I agree with S's Guardian - as she would be too upset to properly access her education. She ceased to progress and I accept that that is evidence of harm and the evidence contained in the reports of EK is supportive of the extent of the harm which this child has suffered.

145 Further specific findings which are sought on behalf of S and accepted by the Local Authority are that they repeatedly failed to ensure that actions identified in social work supervision sessions to address in respect of S's welfare were taken (I will not repeat the page numbers). Supervision sessions also failed to record the extent of the emotional impact on S of the loss of the failed adoptive placement, the loss of her foster care placement, the loss of her sibling and the shock of the urgent move.

146 The Local Authority concede that they failed to balance the impact of the removal of S from the joint foster care placement. All considerations were to ensure that the impact on R was less than that on S.

147 Obviously, planning in respect of R is more straight forward given she is so young. The main effort should have been put in with respect to S because she already suffered so much, both at home and then by the failure with regard to the adoptive placement. She should have been the priority because she was the more vulnerable, albeit she was the older. Consideration that R was eminently adoptable took precedence over the previous views that the children should be kept together.

148 The Local Authority accept that they placed S in a foster placement which did not meet her needs and caused her to have an additional move of placement, albeit of course the Local Authority say that this was an emergency placement.

149 The Local Authority admit that they placed S in a position where she was worried about R between November 2017 and the current day. The strong attachment which I identified right at the beginning of this judgment, which the Local Authority identified, was broken by the Local Authority but that does not mean to say that the child ceases to worry about her younger sister.

150 The Independent Reviewing Officer has made concessions which are accepted by all parties in respect of his failures. They are significant. He accepts that. He failed to have regard to S's welfare as the primary concern; ensuring the change of S's placement was subject to detailed scrutiny to ensure that it met her needs and was in her interests; failed to challenge the poor practice of the Local Authority; failed to pursue the necessity for the Local Authority to apply to the court for the Placement Order to be revoked when the plan was changed or consider identifying an advocate for S to assist her in making an application to the court; failed to make a referral to CAFCASS in respect of the breach of S's human rights as a result of the Local Authority's actions. These concessions by the IRO are accepted by all parties and the Court as sufficient on his part.

151 The Local Authority do not concede that they failed to conduct statutory six weekly visits to S. I do not make that finding. I do not consider that to be necessary in all the circumstances of this case.

152 The Local Authority do not accept that the Local Authority failed to answer S's questions about her life story work (C77-C78). They say that her former social worker, RC began some work and started to look for the information, but was not able to find all of it and the life story work was then overtaken by supporting S with crisis intervention. In my judgment, the life story work was not sufficiently prioritised and should have been, given her traumatic history and that she was left alone without contact to anyone in her birth family.

153 The Local Authority admit that they failed to adequately identify and commission therapeutic work for S as set out. (I don't propose to read out the findings at (a)-(f) and also that this extended the timeframe of S's emotional difficulties/issues and caused an exacerbation. They accept that the sequence of events resulted in S being placed in a residential placement with the prospect of a further move being extremely disruptive thus denying her the possibility of a move to a foster care placement with a family environment. It is very sad, indeed, that S is not able to go and live with her grandmother because of the significant emotional damage that she has sustained.

154 The Local Authority accept that they have failed to adequately address the issue of life story work, which was dealt with in a piecemeal and sporadic manner with no formal framework. They accept that S was informed that P House was her forever family. They accept that three movements of placement and an unplanned separation from her sister whilst in the care of the Local Authority has exacerbated S's difficulties.

155 The Local Authority further concede that, as a consequence of the move in November 2017, S was unable to invest or settle in her second foster care placement and her behaviour in school deteriorated after her move of placement in November, albeit that that was never intended to be a long-term placement.

156 The Local Authority also accept that they have on one occasion used language which is inaccurate about S and appeared to hold S responsible for the difficulties she has encountered rather than considering the change in care plan and lack of therapy as causal factors for her difficulties, i.e. in a LAC review on 18 July 2018 it was recorded that: "S broke the placement down. This adoptive placement failed. This was largely due to S's

behaviour and aggressive outbursts" and "S pulled a radiator off the foster carer's wall" which should have read "S pulled the wooden top off the radiator".

157 The Local Authority accepts that it has been insensitive in some of the language which it has used. Language and reporting like this can mislead people who subsequently come to the case and are asked to carry out assessments.

158 All of the above actions have been conceded by the Local Authority and have caused disruption to S's family life and failed to promote her welfare. They have similarly, in my judgment, failed to promote R's welfare interest in maintaining a relationship with her sister, albeit she has been protected from the disruption by her consistent placement with the foster carers and then a move into the permanent care of the adopters.

Phase 4

159 After the final contact visit between the children, little was done with regard to life story work (as I have already indicated) for S, the adoption was pursued for R and the Local Authority continued to fail to involve the court and CAFCASS. It was only six months after the decision to change the care plans that the LA informed the court.

160 What steps could the court take at this stage? Would it have been proportionate for the court to remove R from her adoptive placement? That is highly unlikely. Could the court have simply sent S home to her mother or indeed to her grandmother? Again, highly unlikely. The damage had now been done, the Local Authority effectively presented the court with a *fait accompli* at this stage.

161 There are specific further findings with regard to R that the Local Authority concede: that they failed to assess the impact on R of physical and legal separation and the consequent different plans for her and her sister. The LA accept that failing but do not accept there was a delay in the sibling assessment. I have made significant criticism in respect of the sibling assessment carried out by AB and also that the Local Authority's unquestioning acceptance of it was inappropriate. Even after the termination of R's contact with her sister in January, the LA, still took another five months to locate an adoptive placement. It is not clear why the cessation of contact needed to take place with such indecent haste on this basis. The Local Authority failed to prepare R for the separation from and ending of contact with her sister.

162 In summary, there was no consideration as to whether there should be an assessment of the children's emotional needs following their separation. There was no assessment of how they coped with that separation; how it would impact on them; whether contact should continue to be assessed, implemented, managed, monitored. Nothing was done in this regard at all.

163 It was apparent that it was only as the hearing progressed and the evidence unfolded that the true enormity of the Local Authority's failings was to some extent accepted by them, albeit that acceptance was varied. A simple "Sorry" will not suffice in my view. It is always important to be able to understand and explain why you fell so far into error so that lessons can be truly learnt and the Local Authority witnesses struggled to explain how they had come to behave in this way.

164 I am pleased that new procedures have been brought in, as are both Guardians. I hope and expect that no similar problems arise. Tighter supervision by managers is absolutely vital. Reflection needs to be built-in to social work practice which should not be a series of knee-jerk reactions, but rather considered reflective planning.

165 I do not intend to single out the social worker, RC, who was in my judgment well-meaning but unsupported, inexperienced and misguided in considering that she had to make decisions without managerial oversight. I agree with S's Guardian that there has been insufficient acceptance of the failure of management in this case. This was a difficult case which went wrong and required experienced workers to assist and support such a junior social worker. The failings here are not of any one worker, but of the whole managerial system. Something which I see far too often.

Identification of Professionals

166 I have set out the IRO's accepted failings. I am not going to name him in any public judgment. I have determined not to identify the Local Authority in this judgment and so I am not going to single him out. He has sensibly conceded his failings. He is at the end of his career and due to retire; it does not serve a useful purpose, in my view to identify him. Nevertheless, it is important to state that the IRO plays a vital role in the protection of children within the care system and it is essential that IROs robustly challenge the Local Authority in their care planning.

167 The Guardians seek leave for findings of the court to be disclosed into any Human Rights Act proceedings or any claim brought on behalf of the children. This is granted to the Guardians and, indeed, to the mother. These events caused disruption in the lives of both girls and a failure to promote their welfare, which the Local Authority accept.

168 No party takes issue with the publication of this judgment. This is in line with transparency procedures advocated strongly by the past and current President of the Family Division. The Local Authority and both Guardians ask that the Local Authority and its employees are not named. The Guardians, particularly S's Guardian, are concerned about the issue of jigsaw identification of S in the light of this Local Authority being a small Authority. The mother would wish the LA to be named and is angry and devastated by events since the original hearing. There had been no formal apology to the mother and the family until very recently.

169 I am always concerned about jigsaw identification. The Family Justice and Young People's Board have often drawn attention to the potential for children's whole lives to be exposed to public scrutiny leaving them emotionally naked and in a heightened state of vulnerability by public judgments. I do not, however, accept that the fact that this Authority is in a small geographical area indicates that adverse judgments in relation to its conduct should always be anonymised. That is an argument which supports a blanket ban on their identification which would be wrong. However, in this case I am most concerned about S who is a very vulnerable girl and who can ill-afford any further emotional turmoil. I do not wish to take any step that will put her at further risk thereby compounding the damage already inflicted upon her by the adults in her life, both professional and personal.

170 In addition, the motivation behind publication is not only transparency but education and an incentive to promote good practice. This hearing was never intended to be a witch hunt, rather an enquiry into how the case came to fall into such error and how to ensure that such events do not reoccur. I am well aware that Local Authority employees have been under a huge amount of pressure as a result of the very significant increase in Public Law applications, both nationally and particularly in this area. It is imperative that they do not feel demotivated and attacked by the court. This cautionary tale is intended to positively motivate them to better practice in the future. We should all be proud of the work we do in attempting to make children's lives better and keep them safe.

171 I am satisfied that the Local Authority will respond to the criticisms in this judgment, having had an opportunity to discuss steps which are being taken to improve social work practice within the Authority. It is vital that what has happened here is not replicated and further children damaged by incompetent and ill-informed practice.

172 I have made it clear to all Authorities in this DFJ area and to the local adoption service that the judgment of the court is the starting point and guide for care planning after the making of Care Orders or Care and Placement Orders. The judgment of the court, amended care plan and final court order must always be provided to the adoption agency after a Care and Placement Order is made.

173 The impression has recently created that Local Authorities regarded the granting of Care and Placement Orders as a passport to manage the case as they see fit thereafter departing from the approved care plan at will. I am not clear why it was ever considered appropriate for the adoption service to rely upon the care plan approved by the ADM prior to the final hearing as their road map rather than that exhaustively considered and, in my experience, likely amended by the court at the final hearing.

174 In this particular case excerpts from the judgment were read out at the disruption meeting in August, but there was a failure to join up the content of that judgment with the detail of the approved care plan. I am told this was not intended as any disrespect to the court; however, in my judgment there has been a culture abroad of ignoring the court's guidance once the passport to adoption has been granted. This is simply wrong. Parents, Guardians and, most importantly, Judges, who make the key decisions for children must have confidence in Local Authorities and the assurances they give to the court. Care plans must mean what they say and not simply be a means to achieving an end.

175 Local Authority actions must be transparent and open to scrutiny. Parents and family members must be kept informed of developments rather than ignored. If the approved care plan becomes unworkable, the Local Authority should make an appropriate application to the court, notify CAFCASS and/or encourage family members to make such an application if the Local Authority is not in a position to do so.

176 This judgment does highlight the lacunae in the court's powers to control or scrutinise how the Local Authority implement care plans after approval at a final hearing in default of a further application being made. This Local Authority compounded all of their previous failures by placing R for adoption thereby preventing the mother from making an application to revoke the placement order when they had spent so many months failing to notify the key personnel and the court.

177 It is not clear to me whether any legal advice was taken prior to that placement actually going ahead. This led to the legal difficulty which I have already set out when the matter eventually came to court and, of course, in this case the maternal grandmother had to apply for leave which also had to be dealt with. The adopters then felt that they had to issue their adoption application. I was concerned that they should not have felt compelled to issue because it is important that adoption applications are issued when the time is right rather than as a protective measure.

178 I have determined not to identify the Local Authority in this case, but all of the Local Authorities in the locality will be circulated with an anonymised judgment because of the practice and policy issues which this judgment contains.

Identification of the Psychologist

179 Those representing the children and family have asked that the court identify the expert within the body of the judgment and point to the President of the Family Division's guidance in this respect from December 2018 endorsing the checklist set out in the report by Dr Julia Brophy. The guidance indicates that experts should be named unless there is some compelling reason not to do so.

180 AB, who is neither a clinical expert nor a court-appointed expert, has been notified of this application and has written to the court in a letter dated 7 June (which will be copied for the parties) indicating that he will not be attending the hearing on 13 June 2019 to make representations as he will be out of the country on leave. He objects to being identified in the light of likely reputational damage in this area of the country in which he receives a large percentage of his instructions.

181 Throughout the letter he refers to "we" meaning, as I understand it, "the company" being his company. Using "we" does not add anything to his assertions. The impression he gives is that he believes this adds credence to his expressed views.

182 Obviously, I heard direct evidence from AB and have formed my own view as to his professional competence and handling of this particular case. It must have been apparent to him when he gave evidence that his approach to the issues was under substantial criticism. He backtracked on a number of very significant issues and, most importantly, he indicated that there was an emotional rather than an immediate physical risk to R and the foster carer's child, he reported the latter to the foster family at the time. He could not explain why he told the Local Authority and the foster carers that the risk was physical. He had to concede that emotional risk did not warrant the removal of S in the way it was carried out, which was precipitated by his words and actions.

183 In respect of a number of his decisions and actions, he was unable to provide any rationale which supported them simply stating that "he did not know" at times. His new explanation, advanced only in his recent letter not in the witness box, for being unable to substantiate his decision-making and actions was attributable to the lengthy gap since his involvement [eighteen months]. That, in my view, represents a rather weak attempt to evade responsibility. In the light of the very strong line he took during his involvement, he should have been able to explain the basis for his opinions but he could not.

184 I am afraid that this recent letter tends to support my view that he did not really know what he was doing, but came to a view and pushed that ahead without sufficient or any understanding of the implications for both children. His evidence and that of the social worker's clearly establish that he had gone "off piste" by driving the agenda himself rather than providing the Local Authority with advice in a report, which they could either accept and act upon, partially or fully, or indeed ignore. In my judgment, he took over the case and was an instigator in an incendiary way of the brutal separation of the girls. He became a protagonist rather than a counsellor and advisor.

185 Where his evidence conflicts with that of the social worker and the team manager, I prefer that of the social work team who - whilst they made a number of mistakes - were at least open, honest and self-reflective. That was not the impression created by AB in evidence or in his subsequent letter. I was quite satisfied on the evidence that he drove the agenda for the removal of S, also for permanent separation of the girls and termination of contact with one another. The social work team wrongly considered that they had go along with his views because he was a psychologist.

186 He was provided with the written submissions of those seeking to criticise him and advocating for him to be named in advance of this hearing. In his letter to the court, he seeks to re-write history, his report and his oral evidence to this court. He shows no remorse for his actions. He seeks to attribute all responsibility to the Local Authority. He suggests that he was one of a number of professionals that held a view and he says he does not consider that he should be held responsible or accountable for any process failures, especially after his involvement ended.

187 I do not hold him accountable for the Local Authority's decisions made either before or after his involvement, but I do hold him accountable for his actions and advice to the Local Authority. He does not indicate what his "own learning from this case" will be nor what he will be "thinking carefully" about with regard to how acts in the future. It is not clear what he means by carrying out his own "due diligence" after receiving instructions in the future from Local Authorities, particularly when those are outside the court arena.

188 I am afraid that such bland assertions are of no comfort to this court, having enquired into his unprofessional and ill-informed actions in this matter. He has caused untold damage to these children, quite unnecessarily. I do not accept that the Local Authority sanctioned all of his actions, as he seeks to now say. I accept that they failed to restrain him but that is quite different to actively giving him permission to, for example, upset their foster carers; go to the school, meet S and tell her she was never going to see her sister other than once; and that she would live at a children's home.

189 Sadly, whilst it may sound harsh, the overwhelming impression created by AB's evidence and conduct is of arrogance and a wish to control the situation. I would not wish him to report in any further matters in my DFJ area without very significant reassurances as to a major change in his professional practises. He demonstrated little empathy or understanding of the emotional needs of either child. He completely failed to consider properly at all whether S should re-establish her relationships with her birth family in the light of his advocacy of a change in the care plan.

190 Of course, I will give AB an opportunity to digest the findings of this court as it seems clear from his letter that he has not understood the seriousness of the issues involved. I will give him some time to consider my findings and raise any further points in respect of identification prior to publication. I would urge him not to maintain his current stance of justification as the evidence simply does not support him. He may write to the court or appear with representation should he wish to argue this point further.

Outcome

191 Therefore, I make an adoption order in respect of R and I revoke the Placement Order for S maintaining the Care Order to the Local Authority. In respect of the contact application issued by S's Guardian, I propose to treat that as a freestanding application and will adjourn it to a date to be agreed.

192 I should say for the court record as part of this judgment that I am perfectly satisfied that the prospective adopters would like contact to happen if it is in R's best interests dependent upon S's progress, but, given the Local Authority's handling of this so far, I do not consider that I am ready to pass the baton of responsibility to them on this issue at this stage.

193 It was surprising that the social worker stated that they had not intended to stop contact forever and that they might promote it at some point in the future, when there was no evidence or documents to support that contention and the prospective adopters were told that

R was coming to them free from contact. The Local Authority are a vital component going forward, given that they hold a Care Order for S and that they are supporting the therapy for her.

194 I propose to treat this as an application under s.34(2) of the Children Act 1989 and I will adjourn that application for review to see how S progresses with her therapy and whether EK's hope that she might be ready for contact in August is fulfilled.

195 I want to reassure the adopters that I do not intend for this matter to drag out for a long time and create pressure on them. I would hope that the making of the Adoption Order will reassure them that R is going to remain in their care forever.

196 The Guardians and the girls' birth family support this way forward. I am concerned that the first contact between the girls may not go well because S may be so excited that she may completely overwhelm R. That is not a criticism of S; just an observation of what may occur.

197 The social workers for the children have changed, but I cannot be guaranteed that S's social worker will remain involved. It is imperative that the Guardians remain involved and the court is enjoined with assessing how best to attempt to re-start the relationship between these two girls.

198 Contact between S and her family must be actively promoted, particularly with the maternal grandmother and brother J who will likely play a very important role for her in the future. I know that the mother would obviously like to have contact, but S's wishes and progress will have to be very carefully considered. The relationship and future contact with mother is much more complex given the history in contrast to the relationship with the maternal grandmother and J.

199 We will have to see how S progresses in her work with EK. The Local Authority must provide therapeutic resources and support for S as long as she needs it and, hopefully, given the therapeutic relationship that EK has built with S, the worker will be able to remain involved for as long as necessary.

200 That is the judgment of this court.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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