



IN THE FAMILY COURT

Case Number: WD19C01244

19th August 2020

Before His Honour Judge Middleton-Roy

Between:

A LOCAL AUTHORITY

Applicant

- and -

M

1st Respondent

F

2nd Respondent

**B and S
(The Children
through their Children's Guardian)**

3rd and 4th
Respondents

Miss P Diaz, Counsel, instructed by the Local Authority
Miss J Ecob, Counsel, instructed by Hepburn Delaney Solicitors for the 1st Respondent
Mr G Crawley, Counsel, instructed by Attwaters Solicitors for the 2nd Respondent
Miss R Kang, Counsel, instructed by Sills & Betteridge Solicitors for the 3rd and 4th Respondents

Hearing dates: 3rd to 7th August 2020

JUDGMENT

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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His Honour Judge Middleton-Roy:

Anonymity

1. The names of the children and the adult parties in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018 having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family must be strictly preserved. All persons must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Application

2. This Court is concerned with the welfare of a five-year-old boy (“B”) and a 2-year-old girl (“S”). Their mother is “M.” The person named by the mother as B’s father has not been traced. The mother tells the Court that she believes he is deceased. “F” is the father of S. He is the step-father of B. I will refer to F as the father of both children throughout for reasons of simplicity.
3. Local Authorities owe a duty in law to safeguard and promote the welfare of all children within their area who are in need. In carrying out that duty in law, Local Authorities must promote the upbringing of children by their families and must provide services appropriate to the needs of children who are children in need. In this case, the Local Authority is concerned about physical and emotional harm to the children arising from the father’s anger management resulting in physical chastisement of B, and the emotional impact on both children arising therefrom, F’s favouritism of S over B, scapegoating of B with consequent emotional harm, the parent’s inability to work openly and honestly with professionals, the mother’s mental health and vulnerability and her inability to protect the children.
4. In the exercise of that duty in law, the Local Authority commenced Court proceedings on 9 October 2019. At the outset, the Local Authority sought Interim Supervision Orders in respect of both children. However, on 22 October 2019, the Local Authority changed its interim care plan for both children to one of removal of the children from their parents’ care. That plan was supported by the Children's Guardian. The parents accepted that the threshold for the making of an interim Order was met. The mother did not oppose interim removal. Interim removal was opposed by the father. The Court approved the removal of both children from their parents and approved their placement in Local Authority foster care under Interim Care Orders. The children have remained in foster care throughout the proceedings.
5. At this Final Hearing, the Local Authority seeks permanent removal of the children from the care of their parents, with a view to the children living with their maternal great aunt and uncle under a Special Guardianship Order. The Local Authority invites the Court to determine that the parents should be ruled out as permanent carers of the children and to adjourn the final outcome of the proceedings for a further 8 weeks before making any final Special Guardianship Order with the purpose of facilitating a transition of both children to the care of the proposed Special Guardians under the existing Interim Care Orders, given that the children’s relationship with their maternal great aunt and uncle is still developing.
6. The Local Authority applications are supported by the Children's Guardian.

7. Both parents seek the return of the children to their joint care. The mother accepts one incident took place on 8th June 2018 when the father hit B for taking his nappy off and urinating on the bed. The mother says she was not aware of any other incident. She does not accept that she has ever physically harmed the children. She accepts having failed to protect the children by failing to adhere to a written agreement to keep the children away from the father. The mother tells the Court that she has undertaken learning through extensive parenting courses, that her mental health is under control and that she feels physically and mentally stable.
8. The father acknowledges that his past behaviour was inappropriate. He tells the Court he has undertaken extensive learning through parenting courses. He asserts he has done all that has been asked of him and tells the Court he has changed.
9. If the children cannot return to their care, the parents both support the children being placed with their great aunt and uncle under a Special Guardianship Order.
10. The time period for the proceedings within which the Local Authority application was to be disposed ended on 9th April 2020. The final hearing was originally listed to be heard on 30 March 2020 but was adjourned until June and further adjourned until August, due to the national public health emergency arising from Coronavirus (Covid-19). The allocated Children's Guardian took an extended leave of absence and the matter was re-allocated to the current Children's Guardian. Physical attendance in Court by all court users was suspended for several weeks. Attempts to conduct a hearing in this case purely remotely via video link were not successful. The mother is a person with longstanding bilaterally symmetrical hearing loss in both ears. She does not use sign language. She wears hearing aids to help correct her hearing loss, which she combines with lip reading. The severity of her hearing loss means that she finds certain situations challenging and difficult, including being in Court. Further, the mother was anxious about attending a physical hearing at Court at the height of the pandemic on account of her underlying physical health conditions, including asthma. Additionally, the mother has a background of bipolar disorder and unstable personality disorder. She had increasingly been experiencing weekly episodes of non-epileptic fits, including dizziness, disorientation, shaking and headaches, for which she takes prescribed medication.
11. The Court determined that proceeding with a final hearing purely remotely by video did not enable the mother to engage satisfactorily in the Court hearings on account of the variable quality and small size of the video images, which were not adequate enough to assist her to lip read. The facility on one video platform for live written captions/subtitles also proved to be inadequate. The final hearing over five days commenced on 3rd August 2020 by way of a hybrid hearing, combining the physical attendance of the parents and their Counsel, with other advocates and witnesses attending remotely by video and others attending in person on specified days. Adjustments were made to the hearing in an attempt to ensure there was minimal background noise. The speakers were each reminded to speak clearly and in clear view of the mother so she could see their face/lips. Additional time was allowed for the mother to understand conversations and to be able to ask for things to be repeated if she struggled to hear. Regular breaks were also timetabled. A large screen was used in Court for the mother to see those giving their evidence or otherwise participating remotely. Where the video quality was, on occasion, suboptimal, the evidence of the relevant witness was repeated and relayed to the mother by the Court in short sections.

12. The Court heard evidence from the Local Authority Social Worker, two nursery workers, an independent psychologist, from the mother, the father and from the Children's Guardian. Following full and helpful closing submissions on behalf of all parties, at the conclusion of the hearing the Court reserved its decision. A large amount of documentary evidence was filed. The Court has considered all the evidence, whether or not specifically referred to in this judgment.
13. There are no previous or concurrent Court proceedings relating to the children. By way of concise background, the mother has two older children, neither of whom remain in her care. The oldest child resides with his father under a Child Arrangements Order made in 2009. The second oldest child was made the subject of a Care Order and a Placement Order and was adopted.
14. The child B was made the subject of a Child Protection Plan under the category of neglect prior to his birth. This was 'stepped down' to a Child in Need Plan in March 2016. There have been eight reports of injuries to B since January 2018. On each occasion, B reported that either the father or the mother caused the injury. B has reported that the father hit him and grabbed him. The children both underwent child protection medical examinations on 11th June 2018. No marks were found on S. B was observed to have a fading mark on his torso and scratches to his forearm. The mother provided explanations for these injuries which were acceptable to the medical professionals.
15. Both children were made the subject of Child Protection Plans again on 25th June 2018 due to further concerns around physical abuse. The maternal grandmother reported on 13th August 2018 that she had witnessed F being physically abusive to B. The mother also reported this on 16th August 2018. At a child's birthday party on 24th April 2019 it was reported that the mother was shouting and swearing at her family members and that B looked 'resigned' to the situation. S is reported to have been left unattended during the argument. The mother reported to B's nursery on 1st May 2019 that B's behaviour had been poor at home and that he had been punching her and swearing at her. B said that his mother had slapped him on the arm. The mother reported on 3rd May 2019 that B had hit her with a tree branch on the way to school. The mother is said to have told B that she will call social services and have him taken away if he did not behave.
16. The parents did not adhere to a written working agreement they entered into with the Local Authority, which required the father not to be present in the family home. Following the issuing of Court proceedings on 10th October 2019, in which the Local Authority sought Interim Supervision Orders in respect of both children, the Social Worker visited the family home on 20th October 2019 and observed F at the property. There were numerous documented breaches of the written agreement, despite the parents' reassurances that they would abide by the agreement. F informed the social worker on one occasion that he will continue to breach the written agreement. The social worker visited B at school on 21st October 2019. B indicated he had been with both parents at the weekend. B is reported not to have been forthcoming with this information. The Local Authority is concerned that B had been put in a position by the parents where he felt he had to lie to professionals. Following the parents' continued failure to adhere to the written agreement, the Local Authority amended its interim care plans and sought Interim Care Orders in respect of both children, seeking their removal to foster care. Interim Care Orders were granted by the Court.

17. A parenting assessment and an updating assessment were completed by the Local Authority, which concluded negatively. The Local Authority does not recommend that either child be returned to their parents' care, either as joint or sole carers. A sibling assessment completed by the Local Authority recommended that the children are placed together in any placement. A special guardianship assessment was undertaken of the paternal great aunt and uncle, which is positive.

The Relevant Law

18. The Court must apply both section 31 and section 1 of the Children Act 1989, to each relevant child individually. Section 31(2) of the Children Act 1989 provides that a Court may only make a Care Order or Supervision Order if it is satisfied that the child concerned is suffering, or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him or the child's being beyond parental control. The category of a child being beyond parental control does not apply in this case. These provisions are commonly called the threshold criteria.
19. Sections 31(9) and 105 of the Children Act 1989 provide that "*harm*" means ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another, "*development*" means physical, intellectual, emotional, social or behavioural development and "*health*" means physical or mental health.
20. If satisfied that the threshold criteria are met in respect of the child, the Court must proceed to consider section 1 of the Children Act 1989. At this second stage, the welfare of the child is the Court's paramount consideration.
21. Section 1(1) of the Children Act 1989 provides that when a court determines any question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration.
22. Section 1(3) of the Children Act 1989, commonly referred to as the "welfare checklist," provides that the Court shall have regard in particular to—
 - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
 - (b) the child's physical, emotional and educational needs;
 - (c) the likely effect on the child of any change in her circumstances;
 - (d) the child's age, sex, background and any characteristics of the child which the court considers relevant;
 - (e) any harm which the child has suffered or is at risk of suffering;
 - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
 - (g) the range of powers available to the court under this Act in the proceedings in question.
23. Under Section 1(5), the Court should not make any Order with regard to a child unless it is satisfied that it is better for the child to make that Order rather than to make no Order at all.

Threshold

24. The Local Authority asserts that at the relevant date, namely 10 October 2019 when Court proceedings were issued, the children B and S were suffering and/or were at risk of suffering significant physical and emotional harm attributable to the care given or likely to be given by the parents, not what it would be reasonable to expect a parent to give. The Local Authority submits that, as at the relevant date, the threshold criteria are satisfied as follows:
1. The father has, on more than one occasion, chastised B by hitting him with an open hand and/or with the side of his hand and by shouting at him. This has caused B significant physical and emotional harm, pain, distress and fear. Incidents include the following:
 - a. The father “cuffed” B on more than one occasion (“several”), hitting him with the side of his hand whilst B’s nappy was on: *This is not accepted by the father;*
 - b. The father slapped B after telling him to tidy away toys: *This is accepted by the father;*
 - c. On or around 8 June 2018 and in response to B taking his nappy off and urinating on the bed, the father hit B on his bare bottom/back of leg leaving a red mark. The father also shouted at B. The father describes a ‘rage building up’: *This is accepted by the father;*
 - d. In response to B biting him on the hand, the father shouted at B and pushed him away. The father describes himself as ‘roaring’ at B: *This is accepted by the father;*
 - e. In or around August 2018 and in response to B running away from him whilst walking in the street, the father grabbed B and shouted at him. On this occasion a member of the public indicated that they were minded to report the father to the NSPCC for the way he had treated B: *This is accepted by the father;*
 - f. B has himself reported to staff members at his pre-school that he has been hit and/or grabbed by the father:
 - i. On 27 March 2018: “my daddy hit me as I was climbing on the sofa.” B also reported that the father had grabbed him: *This is not accepted by the father;*
 - ii. On 9 May 2018, on being asked what had happened to the right side of his abdomen where bruising was noted: “daddy did it”. Whilst the local authority cannot, on balance, demonstrate that the father caused the bruising, the Local Authority asserts that B is plainly reporting to professionals that he has been hurt by his father: *This is not accepted by the father.*
 2. The father denied initially that he had ever physically chastised B: *This is accepted by the father.*
 3. The father has difficulty in managing and containing his anger and in regulating his emotions. The father’s anger management profile indicates a need for anger management therapy. Within his profile are high levels of internal and external anger when annoyed, as well as little attempt to control this. As a result of the father’s presentation, B has suffered significant harm and S was at risk of suffering significant harm. *The father accepts that in the past he suffered with anger management issues and has reacted physically.*
 4. As a result of his home environment and the significant harm suffered, B’s behaviour has deteriorated:
 - a. [The nursery] telephoned Children’s Services on the 1st May 2019 to report that B had recently been coming into nursery late. She further reported that the mother had told her that B’s behaviour was ‘bad’ at home and that he had been punching and swearing at her;
 - b. On the 3rd May 2019, the mother reported that B had punched her in the face. She also reported that B was constantly ‘lashing out,’ having nightmares and wetting the bed. *This is accepted by the mother*
 5. The mother was aware that the father was physically chastising B and shouting at him but did not act to protect B or S from significant harm and the risk of harm, respectively, to keep them safe or to prioritise their needs. In particular:
 - a. The mother was initially untruthful with professionals about the father hitting B so as to keep her family together. *This is accepted by the mother but only in relation to the 08.06.2018 incident.*

- b. During a statutory home visit on 16 August 2018, the mother told the social worker that she had witnessed the father being physically abusive towards B, that the father shouts loudly at B and at her, which is frightening and that he will ‘get right into her face when he shouts’: *This is accepted by the mother but only in relation to the 8.6.18 incident.*
 - 6. The mother and father have breached the written agreement on a number of occasions, which puts B and S at risk of physical and emotional harm:
 - a. On 6 June 2019, the social worker called the father. He confirmed that the mother was at the hospital and that she had the children with her. The father told the social worker that he was walking to his car, just having left great grandmother's home to attend the Caring Dad's programme. The social worker went into the hospital and saw that the mother and the father were there together with the children. Both admitted to breaching the Written Agreement and further admitted that the father had been having unsupervised contact throughout;
 - b. On 29 August 2019, the social worker attempted to undertake a statutory visit to B and S. There was no response. The social worker drove past the home to where she had been told that the father parks his car. The social worker observed the mother, the father the Maternal Grandmother and the children together;
 - c. On 20 September 2019, the mother was ready to go out and the father was in the family home looking after the children. The father said he would continue to breach the written agreement if his family need him: *This is accepted by the mother.*
 - 7. The mother has failed to protect B and S by failing to adhere to the written Agreement: *This accepted by the mother.*
25. Both parents accept that the threshold for the making of public law orders is met in respect of the child B. The father asserts that threshold is not crossed in respect of the child S.
26. There are three elements to the harm required by the threshold conditions in s.31(2) of the Children Act 1989: The harm must be actual or likely; it must be significant; and it must be due to parenting that is not reasonable. The concessions made by the parents together with the totality of the evidence in the case leads inexorably to the conclusion that all three of these elements are satisfied in respect of both children. The father's actual physical mistreatment of B in the past plainly gives rise to a real likelihood of future harm in respect of both children, both physical and emotional, that cannot sensibly be ignored. The harm that might result is significant and is undoubtedly not what is reasonable for any parent to give.
27. The parents’ concessions alone are sufficient to cross the threshold for the making of orders in respect of both children, not just the specifically identified physical incidents themselves but the implications for both children’s future safety of being in the care of their parents. Threshold allegations are separated out by Local Authorities for forensic purposes but there is only one threshold and the Court measures the effect of all its findings against it. Facts, which are minor or even trivial if considered in isolation, when taken together may suffice to satisfy the Court of the likelihood of future harm. The Court attaches to all the relevant facts the appropriate weight when coming to an overall conclusion on the crucial issue. Each piece of information affects the calculation of risk. This is different to the position of findings of primary fact, where unproven facts cannot be aggregated to form proven facts. That the threshold conditions are satisfied has a factual base. An alleged but unproved fact, serious or trivial, is not a fact for this purpose. Nor is judicial suspicion, because that is no more than a judicial state of uncertainty about whether or not an event happened. The inevitable conclusion by the Court on the evidence before it is that the threshold for protective intervention is crossed, treating each individual finding not in a compartmentalised manner but looking at the whole picture and based on the findings herein.
28. Where the Local Authority threshold assertions are not accepted by the parents, the Court makes the following findings on the evidence applying the civil standard of proof, on a balance of probabilities.

29. In respect of paragraph 1(a), the father is recorded by Dr Clarke-Dowd to have told her that he had not only smacked B on what he reports to have been one occasion, but also “cuffed” B more than once, hitting him with the side of his hand, “for “not doing as he was told and things like that.” The Court accepts Dr Clarke-Dowd’s reporting as accurate and finds that the Local Authority has proved the assertion.
30. In respect of paragraph 1(f), the evidence from the nursery workers supported by the contemporaneous documentary evidence is clear. The Court accepts that B reported to staff members at his pre-school that he has been hit and/or grabbed by the father. The contemporaneous notes record B’s comments made on 27 March 2018, “My daddy hit me as I was climbing on the sofa,” and that he told the nursery worker that, “Daddy grabbed him.” Further the Court finds the evidence from the nursery to be reliable in the report that on 9 May 2018, on being asked what had happened to the right side of his abdomen where bruising was noted, B replied, “Daddy did it.” The Local Authority cannot, on balance, demonstrate that the father caused the bruising nor does the Local Authority invite to make such finding. Notwithstanding his age at the time, the Court accepts the Local Authority assertion that B plainly reported to professionals that he had been hurt by his father.
31. In respect of paragraph 5, the Local Authority seeks a finding that the mother knew that the father was physically chastising B beyond just the incident of 8th June 2018. The father’s evidence was plain. He accepts physically chastising B on occasions more than just 8th June 2018. The mother remained adamant in her oral evidence that she did not witness any incidents of physical chastisement by the father beyond that single incident. She accepted that the father had shouted at B on other occasions. She accepted also that the nursery had relayed to her B’s reports of being hit by his father. It is clear that the mother ought reasonably to have been aware that the father was physically chastising B. However, the Court is not satisfied on the evidence that the Local Authority has proved its assertion that the mother ‘was untruthful with professionals about the father hitting B so as to keep her family together.’
32. Having regard to the parents’ concessions and having regard also to those findings, the Court finds that the threshold condition under s.31(2) Children Act 1989 is satisfied because at the relevant time, namely when the application was made, B had suffered and both children were likely to suffer, significant physical and emotional harm attributable to the care given to them by their parents not being what it would be reasonable to expect a parent to give.

Welfare

33. I turn first to consider the expert evidence from Dr Clark-Dowd, Clinical Psychologist, set out in her reports dated 10th February 2020 and 29th May 2020.
34. In respect of the mother, Dr Clark-Dowd is of the professional opinion that the mother has a complex psychological and psychiatric history, as well as multiple health needs.
35. The mother described to Dr Clark-Dowd a disrupted childhood. She was removed from her mother’s care at approximately 18 months, due to neglect. She was placed in her grandmother’s care, which resulted in her being exposed to violence. The mother had a history of abusive relationships since the age of 15, including experiencing violence within her relationships. Her eldest child, now 10 years old, lives permanently with his father.
36. The mother’s general cognitive ability was assessed by Dr Clark-Dowd as being within the borderline range of intellectual functioning but not amounting to a learning disability. Psychometric assessment highlighted Avoidant, Histrionic and Antisocial personality features and some symptoms of trauma associated with the abuse she suffered in the past. Dr Clark-Dowd reported that the mother does not appear currently to be experiencing problematic symptoms of anxiety or depression.

37. Dr Clark-Dowd reported that the mother has a diagnosis of Bipolar Mood Disorder, first diagnosed 10 years ago, that is managed under the care of a psychiatrist and mental health services. Dr Clark-Dowd is of the opinion that, in the main, her symptoms appear to be well managed at present. A key factor with the mother's Bipolar Mood Disorder will be potential fluctuation in her impulsivity/emotional regulation, which, Dr Clark-Dowd suggests, is unlikely to change/be prevented through further intervention. Deterioration of her relationship with the father has the potential to impact on her stability and mood.
38. The mother also has a pre-existing diagnosis of Emotionally Unstable Personality Disorder (EUPD). Again, in recent times her symptoms appear mild. Dr Clark-Dowd considers that the mother remains vulnerable to fluctuations in mood and functioning on account of her emotionally unstable traits. Personality difficulties are long-term, however, with the natural process of ageing, experience and potentially the support she has received to date, in Dr Clark-Dowd's opinion, these features in the mother are less problematic at present.
39. Having regard to the mother's long-standing hearing loss, Dr Clark-Dowd is of the opinion that this is further impacted by deficits in her Working Memory that reduce her ability to attend to information when there are competing or complex factors. This cannot be improved but can be accommodated by reducing distractions/competing demands on her attention and allowing her multiple learning opportunities. The mother's health and mental health needs are complex and long-term. She has a history of abuse and trauma in addition to ongoing health and mental-health needs. In Dr Clark-Dowd's opinion, it is unlikely the mother's hearing loss alone could explain potential limitations in her ability to put first the needs of her children.
40. Dr Clark-Dowd noted the mother to be well engaged with and embedded in psychiatric services. The mother reports experiencing relative stability of mood and is taking medication as prescribed. Dr Clark-Dowd considers that the mother is able to appropriately access services available to her with regard to both regulating her emotions and engaging in treatment plans. She is reviewed psychiatrically on a three-monthly basis. Dr Clark-Dowd anticipates that the mother will require a great deal of monitoring and intervention with the services in which she is already embedded. Dr Clark-Dowd noted that the mother is an individual prone to fluctuations, and this is well evidenced to have occurred in 2016 and 2018. Her extensive medical records indicate that, on the whole, she is willing and able to access services as required.
41. The mother is also impacted by fits currently, reporting the onset of seizures since S's birth, known to increase in duration during periods of stress. Dr Clark-Dowd considers it is highly likely this will be an ongoing feature that will need to be taken in to account when thinking about how the mother and the family are able to meet the needs of the children ahead.
42. There are deficits within the mother's functioning with regard to her willingness to prioritise relationships, in particular with the father, before the needs of her children. Dr Clark-Dowd considers that the mother is an individual who is prone to emotional dependency within a relationship. From a psychological point of view, the mother is likely to need a romantic relationship in order to meet her own needs. Dr Clark-Dowd considers this is not likely to change. This particularly appears to be the feature of her relationship with the father. Professionals point out the mother's 'failure to believe B' regarding physical abuse he has and may have suffered by the father. Dr Clark-Dowd says, "This would be consistent with my analysis of her Dependent features and therefore her need to sustain a relationship, in the face of negative evidence." Dr Clark-Dowd considers that the concerns raised regarding the mother's prioritising of her relationship with the father is both well evidenced and valid. The mother's psychological characteristics (Emotionally Unstable Personality Disorder, Dependent features and cognitive deficits), her health needs and lack of alternative support are likely to sustain this position.

43. Dr Clark-Dowd told the Court in her oral evidence that, on account of the mother being emotionally dependent the father, she is more likely to dismiss negative information about him. Dr Clark-Dowd noted a discrepancy between the mother's reported understanding of the concerns of professionals and her behaviour, as well as her willingness to sustain the relationship in spite of the concerns. Dr Clark-Dowd considers this is not likely to change whilst the relationship remains ongoing. Should the relationship end, Dr Clark-Dowd anticipates a period of instability for the mother, associated with her need for support and emotional distress, noting that the mother does not appear to have much in the way of other positive support in her life to rebalance this.
44. The mother is, Dr Clark-Dowd concludes, motivated to seek out and engage in services available to her with regard to her complex mental health needs. The mother's profile suggests she would be willing to engage. Her complex health and mental health needs in the main are as well managed as they can be. She has the cognitive ability to understand the need to parent and to execute boundaries and supervision. The concerns regarding the mother's ability to provide supervision for the children and her willingness to put the father before her children's needs is a conflict that will continue to pose a risk to children in the couple's care. This is because, despite reported understanding of the concerns and her having been exposed to trauma and violence during her childhood, she appears unwilling to comply with professional agreement as well as prioritising the needs of her children in order to keep them safe. It would be very difficult, Dr Clark-Dowd tells the Court, for the mother to prioritise the needs of the children before her own needs, in particular her need for a relationship, on a consistent basis. This risk is greater when she chooses to focus on a relationship before the needs of the children.
45. Dr Clark-Dowd notes that, it is reported that at times the mother has provided good enough and better than good enough care to her children. However, due to her complex health and mental health needs, she is prone to focus on sustaining a relationship that meets her own needs. She chooses to sustain a relationship with the father and minimise the concerns that professionals have raised, so that she is not able to hold in mind B's feelings and protect him appropriately. Further, she is not able to see what professionals report with regard to the father prioritising the child, S. This is unlikely to change substantially.
46. Dr Clark-Dowd was clear in her evidence that risks can be reduced by the father addressing his psychological needs that put children in the couple's care at greater risk of physical and emotional harm. However, the pattern of the mother's great need and her wish to remain in a relationship with the father will continue to be the case. If the father can engage in assessment services and support to ensure better regulation of his emotions, then this will mitigate this risk. Brief couple's therapy was recommended. Personality-based psychotherapy for the mother was not recommended for the mother, Dr Clark-Dowd expressing caution due to the presence of the mother's as yet undiagnosed/understood seizures. Further, Dr Clark-Dowd recommended video interaction guidance (VIG) work, that aims to improve reflective parenting capacity.
47. The Social Worker acknowledged in her oral evidence that at the point of commencement of Court proceedings, the Local Authority's intention was to seek an Interim Supervision Order and not an Interim Care Order, with no plan to separate the children from their mother. The Social Worker identified positives in the mother's care of the children. The mother appeared to be meeting the basic care needs of the children while in her care. The children were well dressed, in weather appropriate, clean clothes. She ensured the children were seen by the GP when they felt unwell. The Social Worker identified ample age-related toys to enhance their imaginary play, learning and development. Further, the mother showed emotional warmth to the children. The Social Worker's concern was that the mother appeared to believe the children were not at any risk of physical and emotional harm. The Social Worker was concerned that the mother cannot now meet the children's emotional needs and prioritise their needs, continuously minimising the concerns of the Local Authority and not fully accepting that this has had a negative effect on her children.

48. The mother is reported in the social work evidence as having said, what has happened previously will not happen again and that she will not *allow* it to happen again. She said that she covered up for the father and she knows that she should not have done this. She added, “if it was to happen again, [he] would be straight out my door.”
49. The mother told the Social Worker that she feels that if she had been open at the start, things would have been different. She believes the father would have been able to access the help he needed earlier. The mother identified family support that was not available to her before, including support from her sister, from the maternal aunt and uncle, the vicar, her half sibling, her friend, her sister’s partner and her aunt and uncle. The mother also pointed to mediation that has taken place between her and the Maternal Grandmother during the course of the proceedings, which she tells the Court has improved their relationship.
50. The Social Worker acknowledged in her oral evidence that the mother has attended appropriate, focused courses to improve her parenting and to help enhance her knowledge and build her self-esteem which have all been good for the mother. The Social Worker remains concerned about the mother applying that knowledge to her parenting, to recognise the concerns and have insight into the emotional needs of the children. The Social Worker told the Court she considers that the mother has moved towards the ‘contemplation’ stage in the cycle of change, in that she is beginning to recognise that her behaviour is problematic and is starting to look at the pros and cons of her continued actions.
51. The Social Worker informed the Court that in the event the children are returned to their parents’ care she would expect both parents to be honest and work openly with the Local Authority, continue to engage with services deemed appropriate at the relevant time, continue with parenting programmes and apply the knowledge gained.
52. The mother told the Court in her oral evidence that she has attended several parenting courses. She told the Court that she has learned how it is right for children to feel safe at all times, the impact on the children of arguments in the family, coping techniques to help with the children’s behaviours, routines, boundaries, identifying different signs of abuse and the importance of giving the children praise. She told the Court, “it’s wrong to shout at a child. Obviously, it’s wrong to smack a child. Obviously, that’s had an impact on my children.”
53. In respect of the father, the mother told the Court, “he’s a lot calmer. When dealing with [the children’s] behaviour, he talks to the them about their problems, more so [B] given [S’s] age, about what could be worrying him, in a calm manner, and how to deal with his feelings and his anger. He shows more affection towards both children than he did in the past.” When the other incidents were put to her, where the father had accepted his physical chastisement of the children, the mother told the Court in respect of each incident, “I was not aware of that.” She told the Court, “I don’t believe [F] would have smacked [B]. I never saw him smack [B] other than on 8th June 2018...when I’ve seen stuff happen, I know it to be true. When I have not seen it, it’s a question of, had it happened or not, because I haven’t seen it...I was very foolish and stupid not to do anything about the incident that happened on 8th June.”
54. When it was put to the mother that the father had accepted one occasion when he pushed B away, the mother told the Court, “what I saw and witnessed was a gentle push.” When it was put to the mother that the father had accepted one occasion when he “roared” at the child, the mother told the Court, “I would not say he roared. I would say she shouted in a firm tone.” Furthermore, when it was put to the mother that B had told nursery staff that his father had hurt him, the mother told the Court, “because I had not seen it, it’s hard to know whether [B] was telling the truth... Given what I have learned on the courses I’ve done, I would believe what [B] told me and take action for what he has told me.”

55. Notwithstanding the father's acceptance that he had slapped or 'cuffed' B on several occasions, the mother maintained in her oral evidence that, as far as she was aware, the father had smacked B only once.
56. When asked about B's comments to the Children's Guardian that he was "scared of Daddy," the mother told the Court, "B has not told me he's scared of [F]. It's just something he told someone else...I would say maybe he's still a little bit scared, because of the incidents in the past, but [B] has not recently shown any sign he's scared of [F]. When having contact, he's never shown any sign he's still scared of [F]."
57. The Children's Guardian acknowledged that there were positive improvements in the mother's presentation. The mother has gone some way to acknowledge the concerns about how she and the father parented B and the need to improve. Further, the mother's mood and physical health appear to be more stable. The mother reports being less stressed and more able to manage her own health.
58. The Children's Guardian remained concerned about the mother's lack of acknowledgement about the relationship between B and the father and of the physical chastisement and emotional harm this has caused B in having parented him this way and the mother's own role in that, despite having attended several courses throughout the involvement of Children's Services. In my judgement, having had the benefit of hearing the mother's oral evidence, it is clear that the mother has gone some way in acknowledging those concerns. She was able to explain at some length what she had learned from the suitable, relevant and focused courses she has attended prior to and since the commencement of Court proceedings. Further, the mother was clear in her evidence in telling the Court that she will not allow the events of the past to happen again. She acknowledged that she covered up for the father in the past. She acknowledged that she should not have done this and she told the Court the steps she would take in the future: "If it was to happen again [he] would be straight out my door."
59. The Children's Guardian was concerned that the mother's physical vulnerabilities will be a complicating factor to her being able to parent the children alone, combined with her mood, mental health and emotional vulnerability. However, it is plain from the evidence that the mother has benefited from a stability in her physical and mental health. Notwithstanding the significant pressures of the Court proceedings generally, the removal of her children and the pressures of attending Court over a five-day final hearing, the mother remained calm and cooperative throughout. Her improvement in mood and the stability in respect of her health are supported by the documentary evidence. The mother is well-embedded in services that support her physical and mental health. She is fully compliant with her treatment and medication. She is well motivated to seek out and engage in services available to her in respect of her mental health needs. Further, her psychological profile suggests she would be willing to engage. The totality of the evidence is that the mother's complex physical health and mental health needs are as well managed as they can be. Whilst there will be pressures and stressors associated with daily life in caring for the children, the evidence of the stability in the mother's global health leads to a conclusion that the risks associated with this factor have reduced to manageable levels.
60. That the mother meets the basic care needs of the children is accepted by each of the professionals. All professionals acknowledge that when the children were in the mother's care, they were well dressed, clean and fed. Their physical health needs were met and they were seen by the GP at appropriate times. Further, their learning and development was enhanced and the mother showed emotional warmth to both children. The background evidence is that the mother has provided better than good enough care to her children in the past.
61. There remain concerns that the mother has not yet sufficiently mentalised the experiences of her children. The mother has the cognitive ability to understand the need to parent and to execute boundaries and supervision. However, there remain concerns about the primary risk with regard

to the mother's ability to prioritise her children over her own and the father's needs, combined with the parents' ability to work openly and honestly with professionals. The mother's ability to protect the children from harm when she continues to minimise the impact of the father's behaviour and does not acknowledge that it happened if she did not see it, despite the father's own admission of physical chastisement of B, remains a concern that cannot be ignored. The concerns regarding the mother putting the father before her children's needs is a conflict that will continue to pose a risk to children. In my judgement, this is a risk that is manageable, having regard also to the improvements demonstrated by the father.

62. In her psychological assessment of the father, Dr Clark-Dowd reported that his overall level of functioning is within average range, noting that his cognitive profile is an interesting one, with areas of real strength, including non-verbal skills in the very superior range. In comparison, his working memory is within the low average range. Like the mother, the father will have some challenges in attending to and processing information in the short term, which may contribute to understanding of his difficulties in managing B's behaviour. His ability to sustain attention, concentrate, and exert mental control was assessed as being in the low average range. His anger management profile indicates a need for anger management therapy. Of note within his profile are high levels of internal and external anger when annoyed, as well as little attempt to control this.
63. Dr Clark-Dowd expressed her opinion that the father's potential impairment in empathy may be explained by Autism, noting there is a measure of potential for Autism. His scores are below the cut-off indicative of a potential diagnosis of the disorder. However, Dr Clark-Dowd considers this requires further investigation by way of an assessment for Autism, stating that in her opinion, it will be important to identify whether the father's reported difficulty viewing situations from another's position, proneness to concrete thinking and emotional regulation problems are explained by limitation in thinking ability, Autism, or are personality based. If an Autism assessment establishes that the father would meet the diagnosis for an Autistic spectrum disorder, Dr Clark-Dowd recommends that the father is subsequently referred to an Autism specialist adult service in which is able to access psychological support to identify and regulate his emotions. If Autistic spectrum disorder is ruled out, Dr Clark-Dowd recommends that the father undertakes psychological therapy that is personality based to address his reported impairment in emotional recognition, expression and processing. An application made in the proceedings by the father seeking the Court's permission to instruct an expert to undertake an autism assessment was dismissed by the Court on the basis that such an assessment was not necessary for the Court to determine the proceedings justly. Such assessment as recommended by Dr Clark-Dowd may be obtained by the father outside these proceedings.
64. Dr Clark-Dowd considered that the concerns with regard to the father are, potential impairment in emotional regulation, anger management difficulties and physical chastisement. In Dr Clark-Dowd's expert opinion, the father is an individual with Antisocial and Avoidant personality features that inform his functioning. He has limited ability to automatically see matters or events from another's point of view. He appears, Dr Clark-Dowd reports, to have some capacity to learn to do so, through intervention and support, although professionals report concerns regarding his ability to apply reported learning and insight. Dr Clark-Dowd provides an example, when in September 2019 the father was observed during a supervised contact session with the children to have shouted at B, "why are you making me shout at you." Such interaction, Dr Clark-Dowd suggests, is concerning, particularly given the concerns raised by professionals and monitoring/intervention of professionals to date.
65. The father is reported to have told Dr Clark-Dowd that he had not only smacked B on what he reports to have been one occasion, but also "cuffed" B, more than once, hitting him with the side of his hand. Dr Clark-Dowd considers that the risks regarding the father's ability to keep the children safe from harm are largely informed by his own difficulty in regulating his emotions. In the past this has put B at risk of harm in the father's care.

66. Dr Clark-Dowd is of the view that the father does present some risk to B in particular, of potential emotional abuse as well as potential physical harm. This is because, whilst the father reports insight from the courses and interventions in which he has engaged to date, he is by nature an individual willing to breach boundaries with which he does not agree, as well as psychologically having the limited ability to recognise and control his emotions, particularly with regard to anger.
67. Dr Clark-Dowd considers that the father is limited in his insight, including in particular, into B's emotional experiences and needs. Evidence from contact would suggest he is better able to respond or potentially offer his own feelings towards the child, S. Dr Clark-Dowd reported, "I do not think either parent is fully aware of what the professionals report with regard to concerns for B's emotional experiences and being subject to abuse in this way." Further, Dr Clark-Dowd told the Court that she remained unclear if the couple could be honest and open with professionals if the children are returned to their care. The father remains highly focussed on the relationship with the mother which Dr Clark-Dowd considers is a priority for the father, such that this will continue to be a feature of family life if the children are returned to the couple and the mother's substantial needs remain.
68. In Dr Clark-Dowd's opinion, the father's capacity and motivation to engage with parenting work will largely be determined by his genuine acceptance of the concerns raised in the evidence and his willingness and motivation to make change. He is reported to be an individual who, whilst engaging in services, has reticence about concerns of professionals and is documented to have some difficulty identifying what others report to see. Therefore, the father's ability to engage with the work recommended will largely depend upon his attitude and his ability to put his children's needs first. It was noted that the father has engaged in courses, including 'Caring Dads,' that are aimed at developing his parenting ability, which Dr Clark-Dowd noted to be positive. Further, Dr Clark-Dowd observed that, due to the potentially unnatural environment of supervised contact, the new skills are yet to be tested in full. However, Dr Clark-Dowd expressed the concern that in contact sessions, the father has been observed to continue to expose B to his raised voice and emotional abuse. This, Dr Clark-Dowd suggests, is reflective of his difficulties with emotional regulation, personality and/or Autism, rather than cognitive ability. Dr Clark-Dowd considered that, even with education, the father will have limited ability to adapt his behaviour sensitively as he remains an individual who has some difficulty with emotional sensitivity and attunement.
69. Previous risk assessments placed the father's domestic violence risk within low range and his risk to a child within the medium range. Dr Clark-Dowd was of the opinion that this will be exacerbated by unresolved issues regarding emotional regulation and anger. The father's personality profile suggests he will only be able to prioritise the needs of the children to the degree he is driven to and wishes to. His personality functioning highlights Antisocial personality traits so that he and the mother are more likely than most to bend the rules of society if it suits them. In addition, he is Avoidant in nature which means he can be fearful of others and their intentions. He will therefore be more cautious than most with regard to working with professionals. This, as well as his wider psychological factors, suggest that the father is likely to maintain the view that professionals are at fault. Dr Clark-Dowd suggests that an ongoing dilemma for the father remains a conflict between his own position and that of professionals.
70. The father reported to Dr Clark-Dowd that he expresses remorse regarding his past harm to B and that he is now better able to refrain from physical chastisement. Dr Clark-Dowd observed, "This may be the case, but my major concern is in regard to his ability to tolerate and not physically express his emotions when aroused. He has been observed in contact to lack insight regarding B's emotional processing but also has blamed B for the way in which he [the father] behaves (by shouting) which is of considerable concern regarding his ability to control his feelings, even within a supervised contact environment." Dr Clark-Dowd observed that the

father may need to be prepared for regular prompting, guidance and intervention from professionals and those supporting the family, if it is deemed appropriate that the children are returned to the couple's care.

71. The father has sourced and has commenced a six-session Anger Management course. Dr Clark-Dowd acknowledged that this appears to be both a useful and appropriate resource that he should engage with and complete. Further, Dr Clark-Dowd recommends that the father engages with more extensive anger management work in addition to input to recognise and tolerate his feelings, noting that, if following this intervention, the father continues to have difficulty identifying and regulating angry feelings, then this will be reflective of more complex reasons for his difficulty with angry outburst, so that Autism or personality-based difficulties would better able explain his problems. Following assessment for Autism, it may be that, dependent on the outcome, he requires either Autism-based intervention to identify and regulate anger or longer-term, in depth psychological therapy aimed at his personality functioning, in particular, Avoidant and Antisocial personality features, to address problematic personality traits that lead to conflict with others. This would likely be at least a six-month programme aimed at helping identify to express and label his emotions as well as better regulate them in front of as well as in interactions with others. Due to the father's needs, this is likely a Cognitive Behavioural (CBT) based approach, potentially on a weekly basis. Additionally, Dr Clark-Dowd recommends brief relationship therapy for the couple to further improve communication.
72. In her addendum report of 29th May 2020, Dr Clark-Dowd acknowledged that the father has now engaged in the courses offered to him and he is able to explain positive benefits on a theoretical level as well as reflectively. Further, he has completed a programme of anger management in addition to the one-day course he had already undertaken. Dr Clark-Dowd observed, "He is able to describe gains from the work, including better recognition of his own and B's triggers and states he has strategies now to prevent escalation in feelings for both himself and B. The work that the father has done and its effects are positive. He appears to have taken learning from this."
73. Dr Clark-Dowd observed that a 'Caring Dads' course had the most impact on the father in terms of how he feels and how he "should have been thinking." He learned from peers in the group to "think about it from B's point of view," which was new knowledge and insight for him.
74. A 'Reflective Parenting' course offered the father space to reflect on his feelings and Dr Clark-Dowd observed, that this complimented the work covered by the Caring Dads programme.
75. Dr Clark-Dowd reported that the additional anger management programme completed by the father was helpful to him in learning how to manage children when they are "having meltdowns" and assisted the father in terms of empathy and anger management. The initial one-day course had focussed on anger within adult relationships. Dr Clark-Dowd observed that the father now knows that, "children get to a point when they are unable to listen when distressed and therefore need help to calm down, talk through their perspective over what happened and see, between you, what can be learned for the future." Dr Clark-Dowd observed that the course had allowed him to consider his own trigger points and he can recognise within himself a "build up" of angry feelings if they occur. He now knows when to step back/take time out before he reaches "meltdown" himself.
76. Dr Clark-Dowd told the Court that the father has a positive attitude. He understands the concerns of the Local Authority and has shown motivation to attempt to address issues raised with him. His self-report suggests increased knowledge and insight as well as greater ability to recognise B's internal experiences. Following completion of the recommended courses, Dr Clark-Dowd observed that the father was able to report improvement in insight and skills regarding his anger management as well as parenting skills. Psychometric assessment of the father's anger management profile is less polarised than when conducted previously in January 2020. His responses suggest he will show less anger externally and will use more control. Internal angry

feelings remain of some concern. Psychometric assessment suggests less trait-based anger as well as less external expression and greater control internally, which, Dr Clark-Dowd tells the Court, is positive.

77. Dr Clark-Dowd concluded, overall it would appear that the father is likely to have some improvement in regulation now. He appears to have less risk of angry outburst now, having obtained new knowledge, skills and insight and he appears to have developed two important skills: (a) knowledge of and ability to apply mentalization (being able to consider the mind of another) and (b) some knowledge and skills about recognising and simmering his own temper. Dr Clark-Dowd reported that this is positive and that the father provides a convincing account of the knowledge and insight that he has developed through the work and interventions he has completed. Dr Clark-Dowd concluded that the father should be able to better manage his own anger and cope with the emotions of others so that risks of domestic violence and physical chastisement are reduced: “From a psychological point of view, he appears to have some improvement in the ‘symptoms’ – angry outbursts he experienced - that placed B in particular at risk.”
78. The Children's Guardian was concerned that, whilst the father's external anger was noted to be lower, his internal anger remains of concern. In my judgement, that conclusion does not sufficiently take account of the expert evidence from the psychologist, namely that the father has a reduced risk of angry outbursts, that he has developed new knowledge, insight and skills, including an ability to apply mentalization and skills in recognising and simmering his own temper. The expert evidence further is plain that the father should be able to better manage his own anger and cope with the emotions of others. In my judgement, the analyses of the Social Worker and Children's Guardian both do not attach sufficient weight to the expert conclusion of the independent psychologist that there has been an improvement in the father's angry outbursts such that the risk of harm to B from the father are reduced. That, combined with the improvements relating to the mother's insight, must inevitably lead to a conclusion that the overall risk of harm to the children is now at a lower level than it was immediately prior to the commencement of the proceedings, when the Local Authority was then contemplating a Supervision Order as a means of managing such risk.
79. The Court has not been assisted by the absence of any consideration of the s1(3) Children Act 1989 factors in the three written analyses from the two Children's Guardians. The Social Worker has completed a full analysis of the s1(3) factors.
80. I turn to consider the ascertainable wishes and feelings of the children concerned, considered in the light of their age and understanding. Due to their young ages, neither child has been informed of the Court proceedings. The child B has limited understanding of his situation. He is reported to know that people are worried that his mother is not able to care for him. On 4th March 2020, the Social Worker received feedback from the foster carer detailing what B told her on the way home from contact the previous day. B is reported to have said, “I like all of daddy now, I don't think [S] likes mummy.” B is also reported to have told the foster carer, “I don't ever want to go home to mummy's house like that. I want to stay with you [the foster carer] forever.”
81. The original Children's Guardian completed work with B in March 2019 designed to ascertain his wishes and feelings. When asked if he enjoyed contact, he stated, “yeh... liked playing with mummy.” When asked what about his father, he replied, “yeh.” When asked if he would like to live with mummy and daddy, he replied, “I like it here, but I do miss mummy and daddy.” When asked how he would feel if he could not go to live with mummy and daddy, he stated “stay with (foster carer)...she gives chocolate, she is kind and listens to me. Spends time with me.” B was asked if there was anything he did *not* like about mummy and daddy. He is reported by the Children's Guardian to have replied, ‘with a sad face,’ “scared of daddy and monsters.” The Children's Guardian asked B if he would like to live with his mummy and daddy, ‘if they moved

to a new house.' He replied, "no." When asked why he said no, he responded, "because no." The Children's Guardian is reported to have asked B how he would feel if he was to sleep in his mother's room. B replied, "feel better still don't want to live with them."

82. It was not possible to test the evidence of the original Children's Guardian in respect of her attempts to ascertain the child's wishes and feelings on account of the Children's Guardian taking long-term leave of absence. There remain several unanswered questions about the child's expressed wishes and feelings, the nature of the questions put to the child by the Children's Guardian to elicit those responses and the context of the child's responses.
83. The second Children's Guardian completed further wishes and feelings work with B which was age-appropriate, utilising cards containing pictures of bears as a way of expressing feelings. The Children's Guardian asked B which 'bear' he was when he lived at home with mum and dad. He pointed to the 'happy bear.' When asked which bear was 'mummy,' he pointed to the bear holding her stomach and said she was the hungry bear. When asked which bear was daddy, he said the bear with his face upturned away. Despite suggesting to the Children's Guardian through his card selection that he was happy when living with his parents, the Children's Guardian is reported to have told the child that his foster carer was worried that he was *not* always happy when he lived at home. B is reported by the Children's Guardian to have nodded, and said, "that's because..." and he pointed to the angry bear. He was asked who the angry bear was and he shrugged.
84. The information given by the child to the two Children's Guardians, the Social Worker and the foster carer regarding his feelings appears to have varied. This may be on account of the different methods used by the professionals to ascertain his wishes. It may also be that the child's wishes have fluctuated with time. There were times when the child expressed being afraid of the father and later feeling better about his father. He told his foster carer that he likes Mummy more than Daddy. He told the foster care that he loves Mummy, and S loves Daddy. His expression of desire to live with the foster carer when asked the question *by* the foster care may be little more than a natural desire to please the person who was providing his primary care at that point in time. Most recently, he told the Children's Guardian that his 'number one choice' would be to live with mum and dad. The child's previous expressions of happiness at home with his parents were not accepted by the Children's Guardian when asking questions of him. He was effectively challenged as to his feelings of happiness, whereupon he then provided a more negative response. It appears he was not always challenged in the same way about his negative feelings of home.
85. It appears to me that firm conclusions cannot be drawn as to the child's wishes and feelings from the various responses he has provided. Having regard to the child's age and having regard also to the manner in which the professionals approached their task, in my judgment, it would be wrong to conclude that the child's genuine wishes and feelings can be ascertained with sufficient clarity to place weight on them as part of the welfare analysis.
86. The child S, given her young age, has no understanding of her situation and is too young to express her wishes and feelings. It would be reasonable to conclude that both children would wish to live in a safe environment where their needs are prioritised and supported by carers who love them and can meet all their needs consistently in order that they can achieve the best possible outcomes without risk of significant harm.
87. I turn next to consider the children's physical, emotional and educational needs. The child, B commenced school in November 2019, and settled very quickly. He is reported to have made friends and enjoys attending school. The school reports that he is 5 or 6 months behind what would be age related expectations for literacy, maths, communication and language, physical development and personal and social development. He is reported to be a little further behind in 'Understanding the World' and Expressive Arts. He has made good progress during his time at

school but often finds it difficult to keep his focus. He is reported to be keen to make friends and eager to learn. S is not of statutory school age.

88. B and S are both reported to be generally healthy children. Their mother and maternal grandmother both have significant hearing loss. Presently, there are no reports that either child is experiencing hearing loss. Both children have the same need as any child of their age, for shelter, warmth and a place that is home where they can feel safe and find comfort. They have the need for predictable parenting and appropriate boundaries and guidance. When in the care of his mother, B's emotional needs have not been met consistently. It is the opinion of the Social Worker that B has recognised that S is favoured by the father. The father's evidence is that he has recognised the concerns of the professionals and now has insight in this regard. Plainly, both children would benefit from the same emotional warmth from their parents so that both children know they are loved and valued. Both children need to have their self-esteem and self-worth nurtured and their emotional needs met consistently.
89. Presently, the children are placed in interim foster care. At the conclusion of these proceedings, both children will be required to move out of that placement, whether that be by way of a return home to their parents or a transition into the care of the proposed Special Guardians, as proposed by the Local Authority. There will be a change of circumstances for both children in any event. The siblings will remain together at all times. A sibling assessment undertaken to assess the relationship between the children and the strength of this when considering the impact of separation and placement of the children highlighted that the siblings have a close relationship with each other. The siblings have shared some of their early life experiences and have a shared history. None of the professionals recommends separation of the siblings. Consequently, the disruption arising from the change of placement that will follow on the Court making final Orders will be mitigated by the constant factor of the siblings remaining together. The change of placement nevertheless is likely to be disruptive for both children but plainly can be managed by sensitive social work and support from all the adults involved.
90. B is noted to have shown marked improvement in his behaviour whilst in foster care. The mother had reported previously that B had displayed outbursts of hitting, kicking and being violent towards her. The foster carer reported a marked decrease in these incidents now. Although B can still 'have his moments,' his challenging behaviour now is more 'age appropriate.' Plainly, B has responded well to being parented without fear of chastisement. I accept the concern of the Children's Guardian that returning him to the care of his parents, where he did not previously feel safe, carries the risk of B experiencing emotional harm through re-visiting this fear and resulting in a worsening of his behaviour. There is also a risk that B may revert to similar behaviour if he was placed in the care of his proposed Special Guardians as he tests out boundaries. There is no certainty that the transition into the care of the proposed Special Guardians will be successful, given that the children have only a limited relationship with the proposed Special Guardians to date. In the event that such transition was to fail, the children would be subjected to further instability arising from a further change of placement. By contrast, transition back into the care of their parents, with whom they are familiar, although not without risk, is likely to be less harmful when compared with the loss the children would inevitably experience through the knowledge that they were removed permanently from their parents' care and the significant reduction in time they would be permitted to spend with their parents directly and indirectly as proposed by the Local Authority.
91. Neither child has any specific characteristics or other factors by reference to their age, sex and background relevant to the Court in its decision making.
92. The child B has suffered from emotional harm and neglectful parenting in the care of his mother and F. He has also experienced physical harm from F. The child S has not experienced any physical harm. That both children are at risk of future physical and emotional harm is a

real possibility that cannot be ignored. There is incontrovertible evidence concerning the background events relating to the father's physical chastisement of B and the emotional harm suffered by B leading to a conclusion that the father has, in the past, lacked the ability to contain and manage his own feelings, including anger, on a number of occasions. There is incontrovertible evidence of the mother's failure to protect B. There is also a solid wall of evidence relating to the mother and father's previous lack of compliance with the written working agreement and evidence of the parents' lack of honesty and openness with professionals, which remain matters of real significance. As the Social Worker put it in her evidence, the difficulty was, this was not just one breach of the agreement, it was dishonesty and a continual breach of the agreement.

93. The root causes for concern continue to be the father's anger management, the mother's ability to prioritise her children over her own and the father's needs and the parent's ability to work openly and honestly with professionals. The father meets many of the mother's needs for emotional dependency as well as providing an element of physical care in the home. There remains a risk that, through fear of reprisals, the parents will minimise or conceal this from professionals, as they did previously. The social work chronology details throughout 2019 a concerning, escalating pattern of the parents not engaging with professionals for visits and work with the family. Those facts undoubtedly disclose risks of significant harm that cannot sensibly be ignored.
94. Having identified the type of risk to the children, in my judgment, the likelihood of those risks coming into play plainly is lower than it was at the commencement of the proceedings, having regard to the improvements made by both parents. To his credit, the father has followed professional advice and recommendations. He has attended several relevant courses specifically focussed towards addressing the areas of concern identified by the Local Authority and the professionals. He has been committed to learning and he has gained positively from that learning. Furthermore, the evidence is plain that the father is able to explain positive benefits from that learning on a theoretical level as well as reflectively, he has better recognition of his own triggers and the children's triggers, and he has strategies in place to prevent escalation in feelings both for himself and the child. The evidence is that the father has acquired new knowledge and insight. He has demonstrated a positive attitude. He understands the concerns of the Local Authority and has shown motivation to attempt to address issues. He has an increased knowledge and improved insight as well as greater ability to recognise the child's internal experiences and improved skills regarding anger management and parenting. His anger management profile is less polarised than it was at the outset of the proceedings. The expert evidence suggests that he will show less anger externally and will use more control. Whilst internal anger remains a concern and whilst the father will likely benefit from pursuing the expert's recommendation for an Autism assessment or personality based longer-term treatment, the reduction in the father's trait-based anger and the reduction in his external expression together with greater control internally, is plainly positive and is a significant positive development. The totality of the evidence plainly leads to a conclusion that the father has achieved improvement in his regulation and has fewer angry outbursts. He has obtained new knowledge, skills and insight. He has developed a knowledge of and an ability to apply mentalization and an ability to consider the mind of another and has knowledge and skills about recognising and moderating his anger.
95. In my judgement, there are solid, evidence-based reasons to conclude that the father is committed to making the necessary changes. Further, there are solid, evidence-based reasons to conclude that the father will be able to maintain that commitment. In my judgement, the evidence demonstrates that the risk of significant harm to the children from the father has reduced to levels that are manageable.
96. The evidence from the independent psychologist identifies improvements in insight in respect of both parents, particularly that of the father, with both parents having taken steps to improve

and develop their learning. The improvements in the parents' situation can be summarised from the totality of the evidence thus:

- a. the mother is well engaged with and embedded in psychiatric services;
- b. her symptoms appear to be well managed;
- c. she has stability of mood and is taking medication as prescribed;
- d. she is able to appropriately access services available to her with regard to both regulating her emotions and engaging in treatment;
- e. she is willing to access services as required;
- f. she is willing to engage with services relating to her health and psychological profile;
- g. she is motivated to seek out and engage in services available to her with regard to her complex mental health needs and her psychological profile;
- h. her symptoms of Emotionally Unstable Personality Disorder are mild in recent times with the natural process of ageing, experience and the support she has received to date, meaning these features are less problematic at present;
- i. she has started the process of mediation with the Maternal Grandmother;
- j. she has attended courses specifically focused on addressing the deficits in her parenting;
- k. the father has now sourced, attended and engaged in courses offered to him specifically focused on addressing the deficits in his parenting;
- l. he is able to explain positive benefits on a theoretical level as well as reflectively;
- m. he is able to describe gains from the work, including better recognition of his own triggers and the child's triggers;
- n. he has strategies now to prevent escalation in feelings for both himself and the child;
- o. the work the father has completed, and its effects, are positive;
- p. the father has taken learning from the courses he has attended;
- q. he has learned from peers in the group to think about matters from the child's point of view, which was new knowledge and insight for him;
- r. he has a positive attitude to self-improvement regarding his parenting;
- s. he understands the concerns of the Local Authority;
- t. he has shown motivation to attempt to address the issues raised with him;
- u. he has increased knowledge and insight;
- v. he has a greater ability to recognise the child's internal experiences;
- w. he has improved skills regarding his anger management;
- x. he has improved parenting skills;
- y. his anger management profile is less polarised than when conducted previously in January 2020;
- z. his responses suggest he will show less anger externally and will use more control;
- aa. he has greater control internally;
- bb. he has improvement in regulation now;
- cc. there is less risk of an angry outburst now;
- dd. he has developed knowledge of and ability to apply mentalization;
- ee. he has developed knowledge and skills about recognising and simmering his own temper;
- ff. he has shown willingness and motivation in seeking an assessment for Autism as recommended by the psychologist.

97. On the totality of the evidence now before the Court, it is reasonable to conclude that it is now less likely that the children would come to the type of harm of the kind identified, albeit it remains a possibility. For the children, if those risks come to play, the likely consequence is that they will suffer harm. However, there are a range of protective measures that could be put in place to ameliorate those risks under a Supervision Order. They include, as identified by the professionals in their oral evidence, the following:

- a. the Local Authority making available to the family a Family Support Worker;
 - b. regular announced and unannounced social work visits to the family home;
 - c. adherence by the parents to a further, clear written working agreement;
 - d. provision of universal services including the GP, Health Visitor, Children's Centre, parenting groups, school and nursery provisions by way of protective overview;
 - e. the father committing to follow through with an assessment for Autism;
 - f. dependent on the outcome of the Autism assessment, either an Autism-based intervention to identify and regulate anger or longer-term in-depth psychological CBT based therapy aimed at personality functioning, in particular, Avoidant and Antisocial personality features, of at least six month's duration;
 - g. relationship therapy for the couple to further improve communication;
 - h. the possibility of video interaction guidance (VIG) work, that aims to improve reflective parenting capacity.
98. Accepting that the range of protective measures could not provide an absolute guarantee, in my judgement, they would reduce the likelihood of harm to an acceptable level or at least ensure that the authorities were alerted to a deteriorating situation before enduring harm was suffered. In my judgement, this a case where a Supervision Order accompanying a return home for the children would provide additional safeguards for the children. When confronting the ultimate question of whether continued separation of the children from their parents is justified on the whole of the evidence, the Court must conclude that the risk is not now enough to justify the remedy.
99. Safe reunification of both children into the care of their parents carries with it the plain and significant advantage for the children of being brought up by their natural family with the potential for security, stability, love and a strong sense of identity and belonging with ongoing, short-term support available from the Local Authority to assist the parents in discharging their responsibilities towards the children. The children would have the opportunity to develop their primary relationship with both parents. The disadvantage in the short term is that the child B, in particular, may feel some anxiety about returning to the care of his parents having regard to the background of harm suffered. A combination of sensitive social work and cooperative parenting will assist in ameliorating this short-term risk. There remains a risk also of future harm. In my judgement, the advantages of reunification of the children with their parents outweigh the disadvantages considerably.
100. Intervention by the State in the family may be appropriate but the aim always should be to reunite the family when the circumstances enable that and the effort should be devoted towards that end. In exercising the jurisdiction to control or to ignore the parental right, the Court must act cautiously and must act in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded.
101. It is a well-established principle that in deciding issues in respect of a child's welfare, the Court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life. The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public Authorities cannot improve on nature. Society must be willing to tolerate very diverse standards of parenting, including the barely adequate and the inconsistent. Children will inevitably have very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. It is not the provenance of the State to spare children all the consequences of defective parenting.

102. The alternative plan favoured by the Local Authority and the Children's Guardian of a transition of the children into the care of their maternal great aunt and uncle under an Interim Care Order with a view to the making of a Special Guardianship Order carries with it the possibility of the children being brought up in a safe and loving environment within the wider family. An assessment of the maternal great aunt and uncle is positive. It is a very real positive that the maternal great aunt and uncle have put themselves forward to care for the children. They have shown great commitment which is hugely commendable and the feedback from their contact with the children has been reassuringly positive. I have no reason to doubt the conclusion of the Social Worker and Children's Guardian that the relationship between the children and their great aunt and uncle has the potential to develop into a stable and positive one. Further, I have no reason to doubt the conclusion that the maternal great aunt and uncle would promote contact between the children and the parents, if the children were placed in their care. It is hoped that the maternal great uncle and aunt will continue to play a role in the lives of the children by way of support for the parents. Plainly, however, the disadvantage for the children of being brought up outwith their parents' care is the loss of opportunity to develop their primary relationship with both parents and the loss of identity arising therefrom.
103. The Court is required to make the least interventionist Order when protecting the welfare of the children. The making of an Order is a step that must not be sanctioned by the Court unless satisfied that that is both necessary and proportionate and that no other less radical form of Order would achieve the essential end of promoting the welfare of the children. In my judgement, on the evidence available presently, on balancing the welfare advantages and disadvantages to the children of reunification into their parents' care and the welfare advantages and disadvantages of placement with their maternal great aunt and uncle, the balance falls in favour of reunification. In my judgement, an extension of the proceedings under the Interim Care Order with a view to permanent removal of the children from their parents' care under a Special Guardianship Order is not necessary nor is it the proportionate response.
104. The Human Rights Act 1998 applies to these proceedings. Under Article 8, there is a right to private and family life. Each individual family member in this case has that right, including the children individually, the mother and the father. These rights must be balanced. The additional question that is addressed by a proportionality evaluation is whether the proposed interference is necessary in the first place and if so whether it goes any further than it must to achieve its purpose. The purpose of the proportionality evaluation is to respect the rights that are engaged and crosscheck the welfare evaluation. The decision is not just whether option A is better than option B. It is also whether option A can be justified as an interference with the rights of those involved. The parents hold rights under Art. 8(1) as do the children. Where there are competing outcomes, the choice of one outcome over another will commonly entail some degree of interference with those rights. It is well-established under European and domestic law that where there is a conflict between the welfare of the child and the rights of an adult, the child's interests will predominate. In my judgement, the interference proposed by the Local Authority is, at this stage, neither necessary nor proportionate.
105. The Court invites the Local Authority to accept a Supervision Order. Whilst a Supervision Order in respect of each child is an interference with the Article 8 rights of the children, their mother and father, such an Order is made in accordance with the law and with the legitimate aim of promoting the welfare of the children. That interference, in my judgement, is necessary and is the proportionate response, having regard to the risks and having regard to the welfare evaluation.
106. The practical aspects of reunification of the children into their parents' care will require careful thought and cooperation by the parents with the Local Authority to ensure that the transition for the children is supported.

Conclusion

107. For the reasons given, the Court does not approve the Local Authority care plan.
108. The Court invites the Local Authority to accept a Supervision Order and to file amended care plans setting out the support it will provide to the family on reunification of the children into their parents' care.

HHJ Middleton-Roy
19th August 2020

Postscript: Following delivery of this judgment, the Local Authority accepted the making of a Supervision Order for a period of 12 months, which was not opposed by the Respondents. The Court is grateful to the Local Authority for preparing amended care plans, setting out the support that will be put in place for the family, underpinned by a further written working agreement. The Court is further grateful to the Local Authority for formulating a sensitive and suitable transition plan for the children's return to their parents' care, which has benefited from the cooperation of all parties.