

1 **THE FAMILY COURT SITTING AT OXFORD**

2 **BEFORE HER HONOUR JUDGE OWENS**

3

CASE NO: OX20C00095

4 **7TH JULY 2021**

5

Re a Child

6

Ms Ishmael, Counsel, for OCC

7

Ms Styles, Counsel, for the First Respondent Mother, M

8

Ms Sharon, Solicitor, for the Second Respondent Father, F

9

Ms Cox, Counsel, for the Third & Fourth Respondents A & B acting through

10

their Children's Guardian

11

12 This judgment is being handed down [in private] on 7th July 2021. It consists of 16
13 pages and has been signed and dated by the judge. The Judge has given permission for
14 the judgment (and any of the facts and matters contained in it) to be published on
15 condition that in any report, no person other than the advocates or the solicitors
16 instructing them (and other persons identified by name in the judgment itself) may be
17 identified by name, current address or location [including school or work place]. In
18 particular the anonymity of the children and the adult members of their family must
19 be strictly preserved. All persons, including representatives of the media, must ensure
20 that these conditions are strictly complied with. Failure to do so will be a contempt of
21 court. For the avoidance of doubt, the strict prohibition on publishing the names and
22 current addresses of the parties and the child will continue to apply where that
23 information has been obtained by using the contents of this judgment to discover
24 information already in the public domain.

25

26 **Introduction, Background and Evidential Summary**

27

28 This is the final hearing of the Local Authority's applications for a public law orders
29 in relation to A & B, a boy and girl now aged 8 and 6 years old respectively. Their
30 parents are M and F. This is the third set of public law proceedings for these children.
31 In November 2014 care proceedings commenced as a result of B having sustained
32 bruising and a fractured left clavicle whilst in the care of her parents. Concerns at that
33 time also related to the volatile behaviour of M and F and neglect of the children's
34 needs and a finding was made in respect of lack of adequate supervision.

35

36 B was placed in foster care for a short period after discharge from hospital, before
37 moving to live with a family friend (C). A stayed with his maternal grandmother.

38

39 The first set of care proceedings concluded on 10th December 2015 with Care Orders
40 being made for each child. The approved final care plans were for them to move to
41 the care of their paternal aunt and uncle in Madeira. The transition to their care was
42 completed in January 2016. Contact with M and F was to take place four times a
43 year.

44

45 A comprehensive support package was provided to the paternal aunt and uncle in
46 Madeira, which included post-adoption support through the Local Authority's
47 permanence and support service. Sadly, A's behaviour deteriorated very significantly
48 over time. By April 2018 the paternal aunt and uncle felt that they were unable to
49 continue caring for A and B. A psychologist had been working with A and she
50 considered that, owing to his attachment difficulties and early life experiences, A was

51 experiencing high levels of anxiety and difficulty in managing change. His needs
52 included: low self-esteem; confusion; loneliness; loss; lack of empathy and difficulty
53 regulating his emotions. She anticipated that the trauma of returning to the UK would
54 be likely to result in him “*withdrawing and displaying higher level (sic) of aggression*
55 *towards himself and towards others*” (C35 quoted in Viability Assessment of C).

56

57 Further support and assistance were put in place to try to stabilise the placement, and
58 this resulted in the carers reaffirming their commitment to caring for the children long
59 term.

60

61 Towards the end of 2018 the second set of care proceedings commenced, the aim of
62 those proceedings being to provide the carers with what would amount to special
63 guardianship orders. The Care Orders were discharged, and Special Guardianship
64 Orders were made in March 2019 at the conclusion of those proceedings.

65

66 Unfortunately, there then followed a further significant deterioration in the behaviour
67 of A and also in the behaviour of B at this point. It was felt that B may be copying
68 A’s aggression and self-harming and was also showing some low-level behavioural
69 issues. This in turn put considerable strain on the paternal aunt and uncle and led to
70 them giving notice via the Portuguese court system on 12th June 2020 that they could
71 no longer care for A and B. The paternal uncle returned the children to the UK on
72 27th July 2020.

73

74 On 4th August 2020 these proceedings were issued. On 10th August 2020 interim care
75 orders were made for each child and they were placed with C. Unfortunately, A’s

76 behaviour again became unmanageable, and he moved to a separate foster placement
77 in December 2020 as a result. His behaviour continued to be very difficult to manage
78 and the foster carers gave notice to end the placement on 14th April 2021. On 28th
79 April 2021 A moved to a Therapeutic Residential Care Placement where he has
80 remained. B remains in the care of C. The final care plans for each child propose that
81 they remain in these placements under Care Orders.

82

83 M has been assessed by a consultant psychologist in these proceedings, Dr Furlong
84 (E1-27) and he recommended that there should be a PAMS based parenting
85 assessment of her. Dr Dowd conducted a psychological assessment of the parents,
86 and his report (dated 28th October 2020) can be found at E28-79. Dr Murray
87 completed an autism assessment of M dated 23rd December 2020 (E160-180) and
88 concluded that she met the criteria for a diagnosis of Autism Spectrum Disorder. The
89 children have also been psychologically assessed. Dr Murray completed this
90 assessment, dated 30th November 2020, and his report can be found at E117-E149.
91 Ward Andrews completed a PAMS based parenting assessment of the parents on 1st
92 February 2021 and their report can be found at E181-197. The consensus of all of
93 these experts was that the children have significant additional needs arising from the
94 parenting which they received when in their parents' care which now require a very
95 high standard of care, and that the parents remain sadly unable to care for either child
96 jointly or individually.

97

98 M and F remain in a relationship and living together. The Local Authority
99 acknowledged at the outset that M had taken some positive steps to address the
100 concerns about her. She has engaged with the complex needs service and completed

101 anger management work, for example. The couple's relationship also appears stable
102 and there is no evidence of domestic abuse. However, significant concerns remain
103 about her ability and that of F to meet the now very complex needs of each child.
104 Both parents accepted fairly early on in these proceedings that they could not care for
105 B. Very bravely, both parents accepted at the IRH for this case on 17th June 2021 that
106 they could not provide the heightened level of parenting that both children require and
107 thus did not pursue a return of A to their care either. They thus confirmed that they
108 accepted the proposed placements for A and B. All parties subsequently agreed
109 threshold, but the remaining issue for this hearing is about contact.

110

111 **Parties' Positions in relation to the dispute about Contact**

112

113 The Local Authority final care plans for each child propose a reduction in contact
114 between A and B and their parents from the levels provided during the proceedings.

115 The Local Authority final plans outlined today propose the following each year:

116 a. Minimum of 4 x "whole family contact" for birth parents, A and B, 3
117 hours

118 b. Minimum of 2 x contacts for birth parents and A alone, 3 hours

119 c. Minimum of 4 x contacts for birth parents and B alone, 3 hours

120 d. Minimum of 6 sibling contacts for A and B - this would be a
121 combination of direct and indirect contact, activity based, with a
122 maximum duration of 1 hour each time, with the possibility of
123 extending the duration as reparative work is completed with the
124 children.

125

126 M ideally wants contact with B at a minimum of once per month, progressing towards
127 unsupervised contact and then overnight contact once per month. In respect of A, she
128 fully accepts the plans in relation to him.

129

130 F wants the same as M.

131

132 The Guardian recommends that the contact proposed by the Local Authority is in the
133 best interests of the children but should remain subject to review.

134

135 **Relevant legal considerations**

136

137 In addition to considering section 31 (2) of the Children Act 1989 regarding threshold
138 and section 34 with regard to contact with a child in care, I have considered the
139 welfare checklist in section 1(3) of that Act and had regard to the article 8 rights of the
140 parents and the children. I have also had regard to the article 6 rights of all concerned,
141 particularly the parents, not least in relation to the remote hearing that I undertook to
142 conclude this case.

143

144 I have also considered the options for the children applying the considerations set out
145 in *Re B-S (Children) [2013] EWCA Civ 1146*.

146

147 **Findings**

148

149 The threshold findings sought by the Local Authority appear at A93 of the Bundle.

150 These findings are agreed by all parties. Based on the uncontested evidence in the

151 Bundle relating to threshold, I do find that threshold is crossed for the purposes of s31
152 and adopt the findings at A93 in this regard.

153

154 Turning next to consider the welfare aspect of this case, all parties accept that it is in
155 the welfare interests of the children for there to be Care Orders and for them to remain
156 in their current placements under those orders. The unchallenged evidence in the
157 Bundle, including the Guardian's analysis that the wishes and feelings of the children
158 are to remain where they are (E209), is that it is in their welfare interests to remain in
159 their current placements. I therefore find that it is in the welfare interests of the
160 children for there to be final care orders with care plans for them to remain in their
161 current placements.

162

163 The remaining issue is therefore the frequency and duration of contact between B and
164 her parents as I have noted. The children are at an age where they can articulate their
165 wishes and feelings, especially A, but they are not old enough for these to be
166 determinative of any issue. The Guardian has clearly carefully considered this aspect.
167 She has spoken to A: *"We talked about contact with his parents, A said it was good.
168 When asked why it was good, he said "because they bring me toys and presents ... if
169 they don't I get angry ... ". I asked A about his sister B, A looked sad, he said "boo ... I
170 miss her ... ". It is my view that whilst contact for A with his parents is enjoyable,
171 evidently his focus is often on the gifts they may bring."* (E212). She also explored
172 B's wishes and feelings: *"On the issue of contact, I asked B if she wanted to see her
173 parents more, about the same or less often than at present. B said, "I want to see them
174 sometimes ... ". Whilst I can only interpret what I felt she was saying as B turned
175 away from me at that point and clearly did not want to continue with this topic, I*

176 *formed the view based upon her narrative and presentation that she would be content*
177 *with contact at a lesser frequency to that that occurs at present.” (E214). The*
178 *Guardian encouraged B to draw an eco-map during one of their video calls to help*
179 *explore the relationships she shares and understand her views on contact. The*
180 *Guardian noted: “B placed A close to her on her eco-map, whilst she did not*
181 *volunteer much information as to why she placed him there, she did say of contact*
182 *that she wanted to “see him sometimes...”. When asked if she would like to share*
183 *cards and letters with A in-between contact, B smiled broadly and said yes” (E213).*
184 *The wishes and feelings of the children are therefore nuanced. They clearly want to*
185 *continue to see their parents and each other, but B seems to want to have less contact*
186 *that currently takes place with her parents.*

187

188 *Physical, emotional and educational needs is the next relevant welfare heading. All*
189 *agree that the children display a heightened level of need, especially A, arising from*
190 *their exposure to developmental trauma which also complicates their relationships*
191 *with their parents and each other (see for example Dr Murray E128). B will have an*
192 *emotional need to have stability in her current placement as the social work and*
193 *Guardian’s evidence shows, but also to maintain her relationship with her parents.*

194 *Any harm the children have suffered or are at risk of suffering is the next relevant*
195 *welfare heading, and this links to the heading considering the parenting capability of*
196 *M and F and C in my view. It is not disputed as I have noted that the parenting each*
197 *child received from M and F caused them significant harm, and the resultant*
198 *developmental trauma is clearly long-lasting and significant based on the evidence of*
199 *Dr Murray. The social worker has also raised a concern about the impact on the*
200 *children of the journey time when they are attending “whole family” contact: “I*

201 *would say that the 1.5 hour / 75 mile journey is unfair on both A and B to be making*
202 *at too greater frequency. I supervised the family time contact on 26/06/2021,*
203 *transporting B to X from Y, and she found the duration of the journey very difficult.”*
204 (C335). The impact on both children of the travelling involved in contact is therefore
205 something that needs to be borne in mind when looking at the dispute around the
206 frequency of contact for B. It seems clear from the social work evidence that B
207 struggles with longer journeys. The submissions made by Ms Styles on behalf of M
208 set out that M seeks for contact to continue initially in the current contact centre under
209 supervision, progressing gradually towards unsupervised contact via the building up
210 of time in the community with C being able to supervise in due course and after 3-5
211 sessions of contact. However, M does want the care plan endorsed today to include
212 provision for her to have contact with B each month from the outset (adding a further
213 4 sessions of contact to the current care plan). That position is supported by F.

214

215 The Together or Apart Sibling Assessment completed by the Local Authority in
216 January this year concluded: *“It is acknowledged that the impact of both A and B*
217 *living apart is significant, both in terms of their sibling relationship and the potential*
218 *lasting impact over the years. They have a shared history and narrative that extends*
219 *beyond the current presenting issues, which should remain at the forefront of future*
220 *planning for the children. It is my view that both children need more support in*
221 *making sense of their experiences separately at this time”* (C289). The question of
222 what frequency of contact between B and her parents is in B’s welfare interests must
223 be considered in this context, I find, since it is clear that their living apart is going to
224 have a long-lasting and significant impact upon each of them based on this evidence.

225 That evidence also highlights how important sibling contact is compared to contact
226 with the parents, I find. It is thus not possible to view parental contact in isolation.

227

228 It was submitted by Ms Styles on behalf of M that there is no welfare analysis of the
229 impact of reducing the frequency of contact on B in either the final social work
230 statement at C262-281 or the Guardian's final analysis at E203-217. This is not
231 accepted by either the Local Authority or the Guardian. On reading the documents in
232 question, I do not find that the welfare analysis in either is lacking. In fact, each
233 contains a very careful and well-balanced analysis in my view, and it is significant
234 that they both refer in detail to the extensive professional and expert evidence filed at
235 various stages in these proceedings in reaching their conclusions.

236

237 The social worker at C230 sets out the reasons behind the Local Authority's proposed
238 contact plans, pointing out that the needs of the children will change as they continue
239 to grow and develop and that "*contact arrangements may need to be amended to*
240 *ensure that their needs continue to be prioritised and met. In order to achieve the*
241 *best possible care plans and outcomes for A and B the local authority understands*
242 *that there needs to be a balance between sustaining and enhancing the children's*
243 *relationships with their parents and each other, providing them with the security and*
244 *stability that they require"* (C320-321). The social worker goes on to note the impact
245 on B of suffering upheaval and instability (C321), though he does also note how
246 settled and well B is doing in the care of C. Ultimately the social worker's
247 professional opinion is that: "*B's long-term planning requires an ongoing opportunity*
248 *for B to remain integrated and settled in her long-term foster placement. In devising*
249 *the contact plan and recognising the importance of supporting B to sustain and*

250 *enhance her relationship with her parents, we are also mindful that the plan needs to*
251 *be sustainable. Parent's contact proposal is of a very high level and the local*
252 *authority take the view that this would be destabilising to B's placement with C"*
253 *(C321). This opinion acknowledges the fact that the parents have not only done*
254 *nothing to try to destabilise that placement, but have actively supported it (see for*
255 *example C308: "Both M and F are happy for B to remain in the care of C. Both*
256 *parents told me that they are satisfied that B is safe and well cared for by C"; and as*
257 *noted in the parenting assessment). M also acknowledged how well B was doing in*
258 *C's care in her final statement at C311: "In respect of B, I accept that she is very*
259 *happy, well cared for and settled with C and I am in agreement with her remaining*
260 *with C under a Care Order."* This is not therefore a case where I have evidence that
261 either parent would actively seek to undermine the current placement.

262

263 However, there is compelling evidence that both parents would continue to struggle to
264 meet B's needs, especially during longer or unsupervised contact (see for example the
265 conclusions in the parenting assessment at C241, the addendum report at C298 and
266 the final social work statement at C306). This evidence shows that they struggle to
267 manage challenging behaviour from A (and thus would struggle if A were to display
268 challenging behaviour as she gets older) and to set appropriate boundaries, in marked
269 contrast to C. C has also been noted to require some support in providing care to B
270 (though at the time she was caring for both children), as well as to have competing
271 demands and pressures arising from her caring and work commitments (C171). It is
272 important, therefore, that whatever expectations are placed upon C about contact

273 whilst caring for B do not add to the pressures upon her as they would potentially
274 impact upon B as well, I find.

275

276 The risk of harm arising from either parent as a result of the previous threshold
277 findings in the first proceedings is also something that must not be overlooked, as Ms
278 Cox for the Guardian rightly submitted. The weight of the expert and professional
279 evidence before me at this stage is that both parents still sadly lack insight into this
280 and therefore this risk has not reduced (see for example the conclusions reached by Dr
281 Dowd about lack of acceptance of the findings at E40).

282

283 The Guardian has also carefully assessed what level of contact is in the welfare
284 interests of both children, I find. Again, she did so taking into account the
285 professional and expert evidence, key aspects of which she highlighted at E205-206
286 and at E211. She set out a very detailed and thoughtful analysis of the significant
287 harm threshold analysis at E209-210 in which she clearly balanced the positive
288 aspects of contact for the children. As a result, she concluded: *“this leads me to*
289 *question their ability to understand the concerns and act upon advice given in order*
290 *to safeguard the children should one or other be in their care” (E211).* Her
291 consideration of the child impact analysis stretches from E211 to E214, and her
292 conclusions in light of all of the evidence and her own professional analysis of that are
293 that the Local Authority proposals would allow the children to maintain a meaningful
294 relationship with their parents which *“would mean that the children would attend*
295 *contact with their parents, or with each other, once a month. I think if it were to be*

296 any more frequent than this it would be unsettling and disruptive for the children in
297 their placements. The frequency of contact will remain subject to review at each
298 Child We Care for meeting” (E216). I have to bear in mind that I have a very clear
299 recommendation from a Guardian about the level of contact and a Court should be
300 slow to depart from such and would need good evidence to justify doing so. In this
301 case I find that I do not have any good evidence to justify departing from this
302 recommendation. As was submitted by Ms Cox, what is proposed by M would mean
303 that B would have contact in some form a little under every 3 weeks which is an
304 exceptionally high level for any child, let alone one that has suffered the level of
305 instability and change that B suffered prior to moving to C’s care in August last year.
306 I agree with Ms Cox’s submission that this would be likely to be potentially very
307 disruptive for B when I take into account the trauma she has suffered, the difficulties
308 she has with travelling to and from contact, and the fact that she has a heightened
309 level of needs. I have also been mindful of the fact that, whilst she is undoubtedly
310 well-settled with C, there is bound to be a difference for her when proceedings end
311 since it is only at that point it can be confirmed to both her and C that she will be
312 staying with C permanently.

313

314 I have also been very mindful of the fact that, as I noted earlier, these are children
315 who are going to need time to come to terms with having been placed separately and
316 the undoubted significant impact of that for them. It is important that contact is set at
317 a level that is manageable for them considering this aspect as well.

318

319 It is also clear from both the social work evidence and that of the Guardian that it is
320 not possible to determine now when it might be in B's interests to move from
321 supervised to unsupervised contact or an increase in the duration of contact. The
322 evidence of ongoing risk of harm is compelling as I have already said. There is an
323 acceptance on the part of M that it is not in B's welfare interests to move to increased
324 or unsupervised contact immediately. However, there is also no evidence to show that
325 it would be in B's welfare interests to adjust things after 3-5 sessions as Ms Styles
326 suggests. The Local Authority, supported by the Guardian, agree to keep contact
327 under review and that any increase in frequency, duration or removal of supervision
328 will therefore happen if a review concludes that this is in B's welfare interests. Given
329 the weight of the professional and expert evidence in this case, I find that is
330 appropriate especially when one remembers B's heightened needs.

331

332 Through Ms Styles, M expressed strong scepticism about the ability of the Local
333 Authority to comply with what they have promised about reviewing contact. M
334 alleged that promised reviews of contact whilst the children were in Madeira did not
335 take place. However, as Ms Ishmael for the Local Authority clarified, the social work
336 chronology at C7-C9 confirms that regular reviews did take place whilst the children
337 were subject to care orders. She explained that these took place in two parts given the
338 distance involved, with the social worker and IRO traveling to Madeira for part 1 and
339 then part 2 taking place back in England with the parents. Ms Cox pointed out that
340 once the care orders had been replaced by the Special Guardianship Order equivalent
341 orders this would have ended regular reviews by the Local Authority in any event.
342 She also pointed out that, as it shows at C7 contact in Madeira moved from being

343 supervised by the social worker to being supervised by the paternal aunt and uncle.
344 There is simply no evidence to substantiate M's allegation that reviews did not take
345 place, I find. In contrast, there is significant and compelling evidence that the Local
346 Authority have actively reviewed contact between the children and their parents and
347 worked collaboratively with the parents about this, and this is further reinforced by
348 the final social work statement at C320. In addition, the Guardian through Ms Cox
349 told me that she would speak to the IRO about the expectations around contact
350 reviews, as well as asking me to permit disclosure of this order to the IRO with
351 recitals around those expectations. This seems sensible to me and would protect the
352 rights of the children and parents about those expectations as that is the role of the
353 IRO. I therefore conclude that, based on the evidence of the social worker and
354 Guardian, the contact proposals in the final care plan for B at D150 are in B's welfare
355 interests and the frequency and duration of contact sought by the parents (albeit not
356 immediately) is not. I also conclude that the Local Authority will keep contact under
357 active review and adjust arrangements when appropriate in accordance with whatever
358 may be in the welfare interests of the children at the time.

359 **Conclusions**

360

361 This has been a very long case, not just in relation to the length of the latest set of
362 proceedings but how long overall these children have waited for permanency. No-one
363 could have foreseen that the placement in Madeira would break down in the way that
364 it did, nor that ultimately both children would be better off living apart from each
365 other. This case does highlight the very significant impact of early childhood trauma
366 upon children and the risk that this will result in complex and heightened need. It is
367 incredibly fortunate for B that C is able to meet her needs and has done so since

368 August last year, but very sad for A that he is now in a residential placement. I note
369 that both parents still hope to care of A at some point in the future. Whilst I cannot
370 rule that out, I should point out that A seems likely to have heightened and very
371 complex needs for some considerable time and that, sadly, the deficiencies in their
372 parenting which caused M and F to inflict significant harm on both of the children are
373 still present on the evidence before me. It is therefore important to point out that A
374 would not be helped by any suggestion that he may return to the care of his parents,
375 especially whilst he is receiving therapeutic input in his residential placement. I know
376 that both parents now support this placement for him and there is no evidence of them
377 trying to actively undermine the placement, but they need to know that they must not
378 inadvertently do or say anything about their hopes for the future which might cause B
379 to feel less secure. I think it is also important to thank C for attempting to care for
380 both children when they returned to the UK, and for continuing to care for B. It is
381 clear from the evidence that B is thriving in her care.

382

383 I will therefore grant care orders to the Local Authority for each child and endorse the
384 final care plans. I will not make a section 34 contact order and will require recitals on
385 the face of the order about the expectations around reviewing contact and disclosing a
386 copy of this order to the IRO as the Guardian suggested.

387

388

389

390

391



7th July 2021