

Neutral Citation Number: [2024] EWFC 243 (B)

Ref. ZC23C50424

IN THE CENTRAL FAMILY COURT

**In the matter of the Children Act 1989
And in the matter of A, B, C, and D (Children)**

Before MR RECORDER CRAGG KC

BETWEEN

A local authority

Applicant

and

M

1ST Respondent

and

F

2ND Respondent

and

**A, B, C, and D
(Through their Children's Guardian)**

3RD- 6TH Respondents

**MR S PROUT appeared on behalf of the Applicant
MX K MUFTI appeared on behalf of the First Respondent
MS H ROUGHT-BROOKS appeared on behalf of the Second Respondent
MS A LEWIS appeared on behalf of the children, through their Children's
Guardian**

HEARING DATES 29, 30, 31 JULY, 1 AUGUST 2024

Approved Judgment

This judgment was handed down remotely at 3pm on 9 August 2024 by circulation to the parties or their representatives by email.

This judgment was given in private. The judge gives permission 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 this judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

RECORDER CRAGG KC:

1. The court is concerned with A who is nearly 15, B who is 13, C (who is 9 and D who is 6 years old. M is their mother and is a party. F is the father of the children and is a party.
2. CG is the Guardian for the children. The social workers who gave evidence in this case are K and L.
3. The application before the court is the local authority's application for a care order for each of the children.

4. Although the making of care orders was opposed by both Mother (M) and Father (F) until close to the final hearing, in fact by the time the case came before me they had both accepted that this was the right outcome for the children. The section 31 Children Act 1989 (CA 1989) threshold was also agreed between the parties at the final hearing.
5. In addition, the parties had considered the care plans produced by the local authority for each child. There was negotiation in relation to changes to the care plans which I will discuss below, and the mother's position was that the care plans are unsatisfactory in particular in relation to D, C and B's contact arrangements.
6. The main issue I have to decide, and the main dispute between the parties, relates to contact between mother and father and the children. In summary, M disputed the frequency of proposed contact between herself and B, C and D. She also opposes any contact between these three children and F. F seeks continuation of contact with C and D (which is currently by way of video contact), and would like to progress to face to face contact. In relation to A the parents accept that any contact is a matter for her. At present she is choosing not to have contact with her mother, but has had video contact with her father and expressed an interest in meeting him face to face.
7. I have to consider whether or not to make any orders in relation to contact, taking in account the provisions of s34 CA 1989, and if I do decide to make any orders what those orders should be.

THE BACKGROUND

8. The sibling group of A, B, C, and D has complex needs:-

(a) B, C, and D all have a diagnosis of Autism and have incredibly complex needs. C and D are not able to communicate verbally and B's verbal communication is limited. All three children have various sensory needs. They attend schools that specialise in teaching children with learning disabilities;

(b) C and B are significantly delayed in their cognitive and social functioning (likely falling in the lowest one percent of their peers in those domains);

(c) B, C, and D have experienced additional physical needs associated with their conditions and difficulties. C and D are doubly incontinent and B required feeding by feeding tube (albeit progressed through 2023 to solid food);

(d) A has an uneven cognitive profile on assessment but engages well in the academic and social side of mainstream school. She has strong verbal reasoning and vocabulary skills, which can mask difficulties in her understanding of visual material and short-term memory. She has some difficulties with sustained attention and concentration and presents as a young person with ADHD.

9. Care proceedings in respect of all four children (case number ZC22C50415) concluded in May 2023 with the making of 12-month Supervision Orders. The children were taken into police protection only four months into that supervision period.

10. Observations of the children and family home between May 2023 and September 2023 highlighted concerns about the way in which M was managing the home environment and the children's hygiene, health, and dietary needs.
11. On 22 September 2023 there was an incident of domestic abuse or volatility between M and her then partner. The police were called and all four children were taken into police protection as a result of the exceptionally poor conditions in which officers observed the children to be living. M was arrested.
12. M and F refused their consent to the children being accommodated by the local authority when police powers of protection expired. Proceedings were issued and interim care orders were made.
13. In these proceedings the court has received expert psychological assessments of all four children and a paediatric assessment of the younger three children as part of a multi-disciplinary analysis considered necessary by the court (which also featured Occupational Therapy, Speech and Language therapy, and Physiotherapy assessments).
14. The children are the subjects of interim care orders made on 26 September 2023. A is placed with her maternal great aunt Z; B and C are placed in foster care; D is placed separately in foster care.

THE LAW

15. The burden lies on the Local Authority to prove the allegations which it makes. Facts need to be proven to the civil standard, that is the simple balance of probabilities. When considering the credibility of a witness, I must have regard to the guidance in *R v. Lucas* to the effect that a conclusion that a person is lying or telling the truth about one thing does not mean he or she is lying or telling the truth about another thing.

16. Section 31(2) CA 1989 states that the court may only make a care 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 children or likely to be given to him if the order were not made not being what it would be reasonable to expect a parent give him.

17. The relevant date in this case is the date on which the proceedings were brought. If the threshold is established, the children's welfare is my paramount consideration. I must consider the provisions of s.1 CA 1989 including the welfare checklist.

18. Section 1(5) CA 1989 provides that the court should not make an order unless it considers that doing so would be better for the child than making no order at all. I remind myself of the words of Mrs Justice Hale (as she then was) in the case of *Re O* that:

The court should begin with a preference for the less interventionist rather than the more interventionist approach. This should be considered to be in the better interest of the child unless there are cogent reasons to the contrary.

19. Section 1(2) CA 1989 provides that any delay in determining questions relating to the upbringing of a child is likely to prejudice the welfare of the child. The orders I am being asked to make in this case represent a significant curtailment of the rights of the parents and of the children to respect for family life under Art.8 of the European Convention of Human Rights (ECHR) and the orders I make must be necessary and proportionate to the risk of harm.

20. In reaching its decision on whether to make a Care Order the court must consider the 'permanence provisions' in the care plan but is not required to consider all other elements of the care plans (s.31(3A) CA 1989; see also *'Make Every Hearing Count' Case Management Guidance in Public Law Children Cases*: March 2022 Sir Andrew McFarlane P, paras.5-11). 'Permanence provisions' is defined in s.31(3B) CA 1989.

21. Section 34 CA 1989 is entitled 'parental contact etc. with children in care. Materially for this case it reads as follows:-

34.— Parental contact etc. with children in care.

(1) Where a child is in the care of a local authority, the authority shall (subject to the provisions of this section and their duty under section 22(3)(a)...) allow the child reasonable contact with—

(a) his parents;

...

(2) On an application made by the authority or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by—

(a) any person mentioned in paragraphs (a) to (d) of subsection (1);

...

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of a local authority, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) An authority may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—

(a) they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and

(b) the refusal—

(i) is decided upon as a matter of urgency; and

(ii) does not last for more than seven days.

(6A) Where (by virtue of an order under this section, or because subsection (6) applies) a local authority in England are authorised to refuse to allow contact between the child and a person mentioned in any of paragraphs (a) to (c) of paragraph 15(1) of Schedule 2, paragraph 15(1) of that Schedule does not require the authority to endeavour to promote contact between the child and that person.

...

(7) An order under this section may impose such conditions as the court considers appropriate.

(8) The Secretary of State may by regulations make provision as to—

(za) what a local authority in England must have regard to in considering whether contact between a

child and a person mentioned in any of paragraphs (a) to (d) of subsection (1) is consistent with safeguarding and promoting the child's welfare;

(a) the steps to be taken by a local authority who have exercised their powers under subsection (6);

(b) the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the local authority and the person in relation to whom the order is made;

(c) notification by a local authority of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.

(9) The court may vary or discharge any order made under this section on the application of the authority, the child concerned or the person named in the order.

(10) An order under this section may be made either at the same time as the care order itself or later.

(11) Before making, varying or discharging an order under this section or making a care order with respect to any child the court shall—

(a) consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

22. Thus, the local authority is obliged by s.34(1) CA 1989 to allow children in care reasonable contact with their parents. The starting point is that the involvement of each parent in a child's life is beneficial to that child's welfare (s.1(2A) CA 1989). The court's evaluation of appropriate contact for a child will be guided by that child's welfare (as under s.1 CA 1989).

23.M cannot apply under s.34 CA 1989 for an order preventing reasonable contact between the children and another parent but may seek an order relating to her own contact (see s.34(3) CA 1989). M can invite the court to exercise its own discretion to prevent the local authority from arranging for F to have contact with the children (s.34(5) CA 1989).

THE EVIDENCE AND POSITIONS OF THE PARTIES AT THE HEARING

24.During the hearing, I heard evidence from L and K for the local authority and CG (Children's Guardian).

25.There were reports from psychiatrist Dr Lyall, psychologist Dr Maguire, the ISW Ms Walker, and from MP the Occupational Therapist (OT).

26.Before the hearing began the parents had indicated that they would require the court to hear evidence from Dr Maguire and Ms Walker. The position in relation to Dr Maguire changed on day one and she was not required to attend. Similarly, and given that Ms Walker was unavailable to attend during this hearing, the parties agreed on day one that it would not be proportionate to adjourn proceedings for her to be cross-examined on the limited issue of contact.

Parents

27.Neither of the parents gave evidence at the hearing but submitted witness statements. I gave permission for M to attend the hearing

remotely throughout. F attended the last day of the hearing. I accepted that both parents found attending in person stressful and difficult.

28. M agreed a final version of threshold. She did not oppose the making of final care orders for all the children, and was also satisfied that the local authority has now agreed to 'parallel plan' for C and B to be cared for together and apart.

29. However she was of the view that the current final care plans were unsatisfactory and inchoate in respect to contact and should be amended. M agreed that it is in the children's best interests for her contact to shift to an individual 1:1 session with each child. She is also pleased that the local authority also accept that this shift makes it more feasible for the supervised contact to take place outdoors/in the community.

30. M agrees that contact with A should be led by A due to her age and presentation.

31. However, M disagreed with the plan that the contact sessions should take place at monthly frequency for D, C, and B. She did not consider this to be in the children's best interests.

32. M considers that the contact sessions for D, B, and C should remain at fortnightly frequency, and that change should first be monitored and reviewed before any further change to frequency is considered. It should also be made clear in the care plan that the proper basis of reviewing any change to contact should be the specific needs and best interests/welfare of these children, with their limited capacity for other

social interactions. She disputes that good reasons have been provided for the change in frequency for contact with the children.

33. Further, M does not consider that the current final care plans regarding F's contact are choate, thought through, or reflective of the expert evidence/recommendations and risks. She says that that amongst other failings, there is a fundamental practical failing within the plans with respect to the supervision of contact, and the method of assessing impact on the children of the same (for the purposes of decision making and review of contact). She points to Dr Maguire's comment that:-

It is possible that because he has been aggressive, for example towards B, that they feel anxious during contact. I think that any contact with their father needs to be carefully managed and built up slowly. The children should have support from an adult they know well and trust and who understands their communication and behaviour so that this adult can monitor the children's responses.

34. M says that with respect to B and C, the court cannot be satisfied that there are any professionals (save for the teachers who no party seeks to involve in contact) who are equipped to assess their communications, presentations, and cues. On that basis she says there is no satisfactory plan for safe contact, or process of assessment as to progression of contact, bearing in mind all the circumstances.

35. F has agreed the threshold in this case, and also does not oppose the making of care orders for all four children. He is content with the proposed placements for D and A, but is also concerned about the prospect of B and C being separated, noting that the local authority has agreed that they will parallel plan and look for placements for them

together as well as apart, and will also parallel plan for the option of the children remaining in their current placement. He also does not have any difficulties with the local authority's proposals for contact with M.

36. F is keen to rebuild his relationship with all the children and would like this to progress to direct supervised contact and eventually to unsupervised contact. In relation to A, regular weekly video contact has been taking place which has been going well. She has requested direct contact at the contact centre and F would want this progressed by the local authority.

37. He notes that the professional witnesses are all in agreement that it is in the younger children's best interests to rebuild their relationship with F, and has taken on board professional advice and guidance about contact sessions. The video contacts with C and D have gone well and the evidence is that they were positive. The evidence of the professionals is that any risk can be managed in the way that is proposed by the local authority. F has been polite and engaged with the professionals in this case and understands that his contact with B must be built up slowly.

38. F takes issue with M's suggestion that no professional (including their foster carer) can effectively and safely manage C and B's contact with F and notes this view is not accepted by the professionals.

Local Authority

39. A summary of the care plans for the children was contained in the local authority opening note for this hearing and reads as follows:-

<u>Child</u>	<u>Placement</u>	<u>Contact</u>
A	Long-term foster care. Remaining placed with Z.	M alone: 3 hours each fortnight, supervised, in the community. Siblings: during school holidays, supervised / arranged by foster carers. F: Weekly by video, up to 30 minutes. To be led by A's wishes.
B	Long term foster care. Moving to new, suitable placement once identified.	M alone: 2 hours once per month, supervised. Siblings: during school holidays, supervised / arranged by foster carers. F: Gradual preparation for a 5-minute video call, then review.
C	Long-term foster care. Moving to new, suitable placement once identified.	M alone: 2 hours once per month, supervised. Siblings: during school holidays, supervised / arranged by foster carers. F: 5-minute video calls once per fortnight. Subject to review, plan to progress to supervised face-to-face contact at a contact centre.
D	Long-term foster care. Remaining in present placement.	As for C above.

40. Prior to the final hearing, the parties further discussed the care plans in the light of expert reports and reports from contact visits and the

local authority has agreed to amend its care plans for C and B to reflect:-

- (a) That its priority is finding a long-term placement for each child which fully meets that child's individual needs and in doing so it will search for placements for the children separately, together, in foster care, and in residential care;
- (b) In line with that objective, the local authority is in agreement with the Children's Guardian that it will parallel plan for the option of the children remaining together in their current placement if no more suitable placement/s (together or apart) are identified which better meets each child's individual needs;
- (c) The additional ways in which it will support the current placement for as long as the children remain placed there;
- (d) For the parents' reassurance the local authority recognises there would be benefits to the children being placed together in future providing that each child's individual needs are fully met in any such placement. For the avoidance of doubt, together placement options are being searched for as actively as separate placements options are being searched for; placement decisions will be made as options become available.

41. I have already set out the concerns that both parents have expressed about B and C being separated. As explained above these amendments

to the care plans, mean that contact arrangements between the parents and the three younger children formed the main focus of the hearing.

42. As set above the oral evidence for the local authority came from L (social worker) and K (social worker).

43. In relation to **F's contact with the children** K accepted that F had been assessed as high risk, but that it had been assessed as being in the children's best interests to encourage appropriate contact with them, to give them a sense of belonging to a family and especially as their placements were to be out of home. It was right that only one of the video sessions with D took place, with F having forgotten about one session and there having been technical difficulties for F on the other two occasions. Alternative options were being considered. There had been two sessions with C and one had been successfully completed.

44. K said that she had viewed the sessions remotely while the children had been with their foster carer. Her view was that the children had responded positively, but she could not say whether C had recognised his father. The foster carer had reported no upset behaviour. There had been preparation beforehand with the children C and D being shown a picture of F, and liaison with the school to ascertain what they thought appropriate.

45. Both social workers accepted there was little detail about how contact with F would progress and be monitored in the care plan, in circumstances where the children were disabled with complex needs

including difficulties with communication and had not seen their father for three years.

46. Both social workers accepted that no one with specific expertise and training in relation to the communication needs of the children were involved in the assessment of contact by video and how these were progressing. This included the foster carers and it was accepted that the lack of training was a concern to the experts. However, K said that she had seen each child 5-6 times for a period of an hour each time (as had L), and that with the help of the foster carers, who have formed strong bonds with D and C, she felt able to make an assessment that the contacts had not been upsetting for the children.

47. There was an email dated 26 July 2024 presented to the Court in which K had detailed the progress of video contact between the children and F. She accepted that although the foster carer had thought that C's hand-biting during the call was not unusual, all the Part 25 experts had noted that this indicated a negative reaction for C.

48. The social workers said that any contact with F would only be agreed if it was in the best interests of the children and would be subject to review and ongoing assessment. There would be no rush to face to face contact with F. K accepted that as a starting point Ms Walker's advice that there should be no direct contact with F until he had secured long-term accommodation was a sensible approach.

49. F more recently had been receptive and open to the local authority's plan in relation to contact. K accepted that planning for face-to-face contact with A had not started and this needed careful planning and

risk assessment. L was also positive about the contact and said that no concerns had been raised by Z about the contact.

50. The current care plan had been agreed by social workers, team manager and the IRO for the children to include contact with F. There had been no video contact yet between B and F. B had been shown a photograph and matters were proceeding with caution.

51. **In relation to contact between M and the children** K was of the view that a change to monthly contact would not be harmful to the children and she thought they were more capable of coping with change than had been presented.

52. L said it would be advantageous to have contact with one child per weekend (Saturday) for two hours as this would take some pressure out of the situation for both the children and M. The fortnightly arrangement had been for the interim when the final care plan was uncertain but a monthly contact for each child on separate Saturdays was more sustainable in the long term. L said that the local authority was open to enabling the contact to take place in the community once a routine of contact had been established.

53. It was accepted that it was important for the children to have a close bond with M as the experts say it is unlikely that these children will have many close long-term relationships. K repeated that monthly contact would be reviewed and she did not think that if it needed to be changed this would have had a detrimental effect on the children.

54. K accepted that F did not support separation of C and B, and L accepted that they were now tolerating each other in the joint placement. Possibilities for keeping them together were being explored. L accepted that foster carers for B and C would need more training.

55. L confirmed that there would be frequent meetings of the professionals involved in the care planning for the children.

Children's Guardian

56. The guardian's position on the parents' contact was aligned with that of the local authority throughout this final hearing and the guardian adopted the submissions made by the local authority in this regard.

57. In relation to M's contact the guardian's position was that contact once per month for B, C and D establishes a routine for the children that takes into account that B and C may move to new placements, that these could be anywhere in the country and there may be an expectation on M to travel long distance.

58. A day per month dedicated to each child's contact with M allows for flexibility within the contact arrangements for each child moving forwards without any changes affecting the contact of their sibling(s). The frequency of contact once per month makes room in the children's weekend routines to enable the local authority to work towards face-to-face contact between the children and F and also for M to have contact with A, should A seek to resume this.

59. The guardian noted that Dr Maguire supports contact taking place at a frequency of once per month (and this was confirmed by her by email during the hearing).
60. In relation to F's contact the guardian's position was that there should be an updated risk assessment of the father at the point that face-to-face contact between the father and B, C and D is ready to commence. The father's contact with A should be dictated by her wishes so long as it is considered safe.
61. In evidence the guardian, CG, confirmed this approach, including the change in frequency in relation to M's contact with the younger children, which would be kept under careful review to see how it affected both children and M. She also supported the continuation of contact with F with the younger children. She had no concerns about the feedback from video sessions but contact also needs to be kept under review.
62. CG also explained that there had been concerns about care-planning in this case especially when the guardian had first been involved, especially about the care provided by the foster carers. However, with the encouragement of the guardian the concerns had been recognised and care had improved. She was confident that D's carer, in particular, could meet the child's long term needs. There were still concerns as to whether B and C's current foster carer was the right long-term option, even with further training for the carer in relation to the needs of Autistic children and these children in particular, but keeping the children with this carer was still an option given the reality that finding appropriate care placements for the children was very difficult.

63. At the guardian and child's solicitor's joint visit with B and C on 25 July 2024, the foster carer reported she had witnessed some increased bonding between the brothers and increased physical interaction.
64. The guardian is of the view that the possibility of B and C remaining together should of course be explored and it would be ideal if such a placement could be identified. However, it is crucial to ensure that their individual complex needs are met and this must take priority over the brothers remaining together. Their relationship can be nurtured via well supported and structured contact sessions where direct therapeutic work can be undertaken to encourage them to interact. It can also take place indirectly via life story work and virtual contact if appropriate.
65. The guardian was anxious to raise matters of significance and highlight (a) the urgent need for training on neurodivergence for child protection and family justice professionals; (b) and also systemic change in cases like this, while being anxious not to direct any direct criticism towards the professionals in this case.
66. The guardian noted that the local authority's evidence dated 25 September 2023 in support of interim care orders and removal, did not consider the need for training of the carers and sharing of core information with them as to the children's functioning, to ensure they understood and could meet the children's complex needs 'even at a basic level'.

67. When the children had been placed for almost a month the guardian's detailed position statement raised significant concerns about the lack of toys and specialist communication tools and sensory equipment in B and C's placement and also the foster carer and support workers lack of understanding of the children's specialist needs and therefore the need for urgent training.

68. D had been attending a soft play provision daily with a support worker since she had entered care due to a delay in transferring her EHCP. The support worker had no understanding or training in relation to D's complex needs.

69. At the request of the guardian and child's solicitor the local authority agreed to convene an emergency professionals meeting, which took place on 30 November 2023 and this was chaired by the child's solicitor. The meeting highlighted:-

- (a) Lack of sensory equipment, toys and books for B and C, and training for carers as to how the children could use them.
- (b) Lack of SEN transport to school.
- (c) The foster carers and support workers requiring training in autism and the children's individual neurodivergent profiles.
- (d) No 'all about me' documents for the children. Preparation of such documents are likely to be extremely helpful for the foster carers and support workers as a basis upon which to better understand the children's functioning and needs.
- (e) The occupational assessment for B and C's placement had not been undertaken yet. The OT had not responded to the LA referral.

- (f) D was still not attending school. She was still taken to soft play daily by the support worker.
- (g) ECHPs for the children needed updating.
- (h) Clarity required in relation to any medication or supplements the children should be receiving.
- (i) No consideration had been given to whether B and C might be dyspraxic or have any other neurodiverse needs.
- (j) None of the professionals around B, C and D seemed to know what work, if any, should be undertaken with them to help them make sense of the changes that had happened in their lives.
- (k) The foster carers did not have hidden disability or access cards for the children, which would assist them in the community. DLA was not being received for the children, it is understood this was still going to M.

70. The evidence in this case was that the local authority and the present foster carers are working with the guardian and the team of experts to ensure that the complex needs of these children are met.

Experts

71. Expert psychological assessments of all four children and a paediatric assessment of the younger three children took place as part of a multi-disciplinary analysis considered necessary by the court (which also featured Occupational Therapy, Speech and Language therapy, and Physiotherapy assessments). Below I have set out what I think are some of the important passages which underpin the approaches of the parties in this case. I note that the intention is to keep this expert team

involved in care planning and reviews for this very difficult case. None of the experts were called to give evidence at the hearing.

72. Dr Maguire's psychological report on the children dated 4 April 2024 contains the following:-

Because each of the children have a high level of need for supervision, interaction, and engagement, and practical support I think that it is hard for any adult to manage caring for them together. I think that within any setting, other than a residential setting, the carers/parents will need some respite and support within the home. As discussed above I would be concerned if this support is required on a 24-hour basis because of the impact on family life and this could lead to problems with the consistency of carers used. I think that any carer/parent is going to need some respite support or help with the children at home, for example in the form of overnight respite, or at those times of the day when the children's needs are greater such as bedtime or getting ready for school. It is possible that alternative practical support, for example to help the parents clean their home, would also be useful and reduce the demands on the parents/carers. The level of support may differ depending on the placement, for example the family may need less support if the children are separated, and each placed with two non-working carers than they might should they all return home to one parent.

....

...I think that should the children not return to their mother then A's needs may be better met should she live without or with only one of her siblings (therefore reducing the demands on carers) and maintain their relationships through regular contact. I anticipate that A would possibly like to live with D because they appear to share the closest bond and because D may have less need and be able to engage more with others meaning that A gains a sense of being worthwhile and loved when supporting and playing with D.

...

B, C, and D play alongside but do not engage with other children. On observing B, C, and D within contact and within B and C's placement I noticed that none of the children interacted with the others. There were occasions when I saw that each child would seek distance from the others, and I did not get a sense that they show interest in the other children or share a close bond. All of the younger children have very high levels of need, and these needs are different and will require different support and strategies as outlined in my own and the occupational therapy reports. Their level of need means that they each require high levels of supervision, engagement, and management and I am worried about how any carer might offer each of the children this when needing to care for more than one child. B and C's carer requires 24-hour support and in my experience, this impacts on children's and the wider family's relationships and enjoyment of time spent at home, and especially home environments which have not been designed around the need to give carers and families some separation. I think that each of the children may stand a better chance of receiving the support they need if separated.

73. Dr Maguire noted how M spent some time giving each child attention and recognised when they were distressed. However, '[a]t other times, I felt that M engaged with the children in ways which confused them, did not encourage their engagement, or even made them anxious'. Dr Maguire felt that M's 'attention was focused on A and D, and [...] she spent what seemed like long periods not interacting with either C or B [...] C and B showed signs of being disengaged and anxious in response to their mother's interactions and engagement'.

74. Dr Maguire considered 'the children can be hard to manage together and that each needs a high level of engagement and therefore the children may respond better to contact if they each met with their mother individually. I think that each child needs to see their mother regularly enough that they can remember the relationships and

maintain/build bonds but that this should also not impair their engagement with other activities meaning that contact once per month or bi-monthly may suit their needs, however the impact of this should be regularly reviewed'. It was clarified during the hearing with Dr Maguire that 'bi-monthly' in this last passage meant 'every two months' rather than 'twice a month'.

75. The parenting assessment for M prepared by the ISW Janet Walker and dated 6 June 2024 concluded as follows:-

I do not consider M would be capable of meeting any of the children's needs now, for the reasons set out in the body of this report. In my report dated 07.03.23 I expressed concern as to the likely impact on the children of removal from their mother's care and potentially from each other (appendix 1 to that report, paragraphs 6.e.ii.1 – 6.e.ii.2). The children were distressed on separation from M. B stopped eating and D would become very distressed and hit out at others. This has now settled, albeit that Dr Maguire has concerns about whether the boys' placement would be suitable for them in the long-term.

In my report dated 07.03.23, I also discussed that while the children's physical and emotional safety were paramount, if their basic care needs were not consistently met, A, B, C and D would not reach their developmental potential. This would have long-term consequences for their physical and emotional wellbeing. I expressed the view that if M could not engage with the supports and services considered necessary and/or exposed the children to the risk of harm in the future, the Court may have no option but to sanction their removal from her care (appendix 1 to that report paragraph 6.e.ii.3).

In my opinion, M has exposed the children to the risk of serious harm by means of her cocaine use and her relationship with her then partner. There is evidence to indicate the children's basic needs were neglected. A particular difficulty is that M cannot be relied upon to work openly and honestly with those

professionals tasked with monitoring the children's care. I sadly do not consider that it would be safe to return any of the children to their mother until she has completed all of the necessary work in terms of longer-term abstinence, PTSD and EUPD. If she does engage fully with those interventions, it will be necessary to re-assess her parenting capacity at that stage.

In my opinion it would benefit each of the children to see their mother as individuals. This would enable M to focus on their separate and specific needs, and provide the children with opportunities to maintain and develop their bond with her. Given the difficulty of knowing whether or not M might expose the children to contact with inappropriate adults, I would recommend contact remains supervised. In B, C and D's case this would need to be professional supervision. I agree with Dr Maguire that the setting for contact would need to be an appropriate space, taking into account each child's individual needs.

A is more likely to benefit from contact taking place in a less formal setting, for example enjoying a meal or visit to the cinema etc with her mum. If A remains with her great aunt and Z is willing to supervise their visits, this may be a more natural and comfortable type of arrangement for A. It would be important however for Z to receive appropriate support from the local authority so that she is able to manage any issues which might arise.

I would recommend that contact between each of the younger children and their mother takes place roughly every six weeks, in each of the school holidays. In the observation which I completed of M with B, C and D, it seemed the children really had had enough by the end of the session. However, it may be that on an individual basis, M could engage and stimulate each child for a longer period of time. I would suggest this begins with two-hour sessions. The frequency and length of sessions would need to be reviewed regularly.

76. In Ms Walker's addendum parenting assessment of the father dated 7 June 2024, she agrees with Dr Maguire's recommendation "that contact between each of the younger children and their father will need to be

managed and built up slowly” and “should be in an environment where the children can distance themselves or leave, should they need this and have access to strategies to calm” Ms Walker states that “[t]he children have not seen their father for three years and D in particular may not remember F at all. The boys are more likely to have conscious memories of their father, but these may not be positive ones. In my opinion, the recommendations made by Dr Maguire in terms of having familiar and trusted adults present, and the ability for each of the children to leave the contact if they need to, are appropriate for all three of the younger children”.

77. Ms Walker “would not recommend that any direct contact is arranged between B, C or D until they are settled in long-term placements (if they are not to return to their mother’s care)”. It is noted that the father has now commenced having video contact with D and C. Ms Walker stated she does “not consider that video-call contact would be in B, C or D’s best interests. They are unlikely to settle or to manage to engage with their father in this way. There is also a possibility that seeing their father, as it were, in their home, could cause anxiety and impact on their sense of safety”.

78. Ms Walker concludes that ‘[i]f it is decided that direct contact between any or all of the children could potentially experience direct contact with their father as positive, I would recommend they see him individually, for no more than 30 minutes to begin with, and with the emotional safeguards which Dr Maguire recommends in place’.

79. Ms Walker goes on to “recommend that contact between each of the younger children and their mother takes place roughly every six

weeks, in each of the school holidays. In the observation which I completed of M with B, C and D, it seemed the children really had had enough by the end of the session. However, it may be that on an individual basis, M could engage and stimulate each child for a longer period of time. I would suggest this begins with two-hour sessions. The frequency and length of sessions would need to be reviewed regularly'.

80. In her assessment of B dated 28 February 2024, MP the Occupational Therapist, stated that 'B's needs are very different to the needs of his brother, and that makes it very challenging for any carer to attend to both boys at the same time (even with support worker in place)'. MP notes how '[a]t home, B does not engage with his brother' and that 'it is apparent that B does not want to engage with his younger brother and can hurt him'. MP comments that it is B who 'has the highest need (compared to his siblings) with regards to attachment and trust'. MP's final conclusion reasserts that as B's 'needs are very different to his younger brother's [that] makes a dual placement difficult for him'.

81. At the professionals' meeting held on 14 June 2024, L stated that C has started to 'tolerate B a bit, of late, whereby he can actually go and lay next to B, and B would tolerate his presence. So, just parallel, spending time with each other'. MP, the occupational therapist, informed the meeting how she saw that B and C 'can make the other anxious and irritated. Obviously, they've got such significant needs that they're being aware that each other are there might be comforting, but even within the contact session, there was no interaction. They withdrew from the whole family'.

82. Representatives from B and C's schools who attended the professionals' meeting stated they do not consider it would be beneficial for contact sessions to be held at the children's respective schools. C's teacher said 'school, it is very much his secure, safe place. He knows how the day works, how his routines work, and hearing how contact has gone, I don't think it would be particularly effective for those sessions to happen at school. I think that would muddy the water for an already confused little boy with not a clear grasp on what's happening and why'. B's teacher echoed this stating 'it would just muddy the waters. Then B may start to feel that this isn't his safe place to actually be in, whereas he's got a safe place here, and he feels secure here with us. He's built positive relationships with us as well. So, I'd like that to carry on with B'.

THE THRESHOLD CRITERA

83. The local authority, M and F have reached agreement on facts which they say are capable of satisfying s.31(2) CA 1989. The court has considered this agreement in the light of all the available evidence and is satisfied that at the relevant time, that being when the children were taken into police protection on 22 September 2023, the children were suffering and were likely to suffer significant harm and neglect attributable to the care they were given (or were likely to be given) not being what it would be reasonable to expect a parent to give.

84. Thus, the Court found that threshold to be satisfied as a result of the following facts agreed between the parties:-

- (a) Care proceedings concluded in respect of the children on 30 May 2023 at final hearing before Deputy District Judge Kumar sitting at the Central Family Court with the children remaining with M under a 12-month Supervision Order made to the local authority. F had not been living in the family home since Feb/March 2021. The following final threshold was agreed at court to evidence that at the relevant date (that being 12 October 2022) A, B, C and D were suffering or were likely to suffer significant harm and that the harm, or likelihood of harm, is attributable to the care given to them, or likely to be given to them, if an order is not made, not being what it would be reasonable to expect a parent to give.
- i. The family has an extensive history of social work involvement: At the relevant date the children were subject to their third Child Protection plans and have been known to social care since 2009 when concerns were raised about the mother's mental health prior to A's birth. Concerns that the family are not coping have persisted throughout that time.
- (b) The parents' relationship featured instances of domestic abuse, including violence between the mother and the father to which the police were called. On 18 June 2021 the mother obtained a non-molestation order against the father.
- (c) On 21 February 2021 the father hit B and was arrested (but subsequently released without further action).
- (d) In September 2021, the Local Authority became aware that the mother had a new partner who has a violent background, including convictions for violence / violent offences. He has served custodial sentences. The mother was encouraged to separate from him which she did, but he was seen near the family home in July 2022, harassing the neighbours and leading to a further Child Protection plan and the start of the PLO process.
- (e) On 22 August 2022, the mother reported that following an argument via Messenger, her then partner had threatened to stab her and abduct her children. She acted to protect them by reporting and assisting the police investigation, but by 23 September 2022 the mother was minimising the concerns and was exploring ways to move her family out of the

borough to be with her then partner either in Newcastle or other locations.

- (f) Despite a great deal of support from school and social care, the condition of the family home and the children deteriorated. The younger children's personal hygiene deteriorated, faeces was noted in the boys' bedroom, unexplained scratches and bruises were noted on the children leading to a CP medical on 15 September 2022 and the condition of the house became unkempt. On 26 September 2022 the local Safeguarding Community police team wrote to the mother informing her that there were multiple complaints of antisocial behaviour by people attending her home, including vulnerable local children under the age of 18.
- (g) On 8 December 2022, a time when F was not living with or seeing the children, F tested positive for consuming cannabis and excessive quantities of alcohol. He reported having consumed cocaine six months previously and nail testing produced a low-level detection result.
- (h) M and F have agreed the following, noting that F has not been living in the family home since March 2021:
 - i. The mother accepts that during a home visit on 24 July 2023 that the social worker observed that there was faeces in C and B's room.
 - ii. The mother accepts that the police exercised their powers of police protection in respect of the children on 22 September 2023 as a result of the mother being arrested for child neglect and assaulting a police officer.
 - iii. The mother accepts that her mental health was not well managed at the time leading up to her arrest for assaulting a police officer.
 - iv. The mother accepts that bail conditions were put in place after her arrest on 22 September 2023 preventing her from having direct or indirect contact with the children.
 - v. Mother accepts that she resumed her relationship with her then partner shortly before the children were removed.
 - vi. Both parents accept that they were not in a position to care for the children on 25 September 2023 when the police powers of protection expired.

- vii. The father admits smacking B in February 2021 and that this was inappropriate, and he is remorseful.
- viii. The father accepts that prior to him leaving the family home in February 2021 the parties had a difficult relationship whereby they would row with each other.

85. On that basis in this case, I am satisfied that the threshold criteria under s.31 CA 1989 are satisfied.

MAKING AN ORDER

86. The next question is whether the court should make an order and, if so, what that order should be. I have already referred to the rights of the parents, and the children under Art.8 of the ECHR to the respect for family and private life and that the children's welfare is my paramount consideration in the care proceedings.

87. Section 1(3) CA 1989 provides a checklist of factors to be taken into account when determining where the children's welfare lies and what orders should be made.

88. In this case, the particularly important elements for the children are their wishes and feelings; their physical, emotional and educational needs; the likely effect on them of any change in their circumstances; their various ages, sex and background; any harm the children are at risk of suffering; and how capable M is of meeting their needs.

89. In relation to wishes and feelings, the guardian's report is clear that A wants to remain with her maternal aunt and in fact does not want to see M at all for the time being at least. She has shown interest in

contact with F and consideration is being given to face-to-face contact. For the other children it is much more difficult if not impossible to ascertain or gauge their wishes or feelings through a combination of age (D especially) and disability (all three of the younger children). Thus, for example, although C and B are now said to tolerate each other better in a joint placement, there is no real indication that this is what either of them would want or prefer.

90. In relation to physical, emotional and educational needs: in the view of the guardian and the experts, there is a very real concern that in their mother's care these needs would not be met. As the experts say, any parent would struggle alone (even with help) to meet the needs of the three younger children together. They are all disabled but all have particular needs which need to be met.

91. The likely effect on the children of any change in their circumstances: A has settled in well in her current placement. The evidence is that the other children found change very difficult first away from M but have now adapted better than expected. It is accepted that these changes need to be carefully managed.

92. In terms of age, this is especially relevant to A who is well able to express her preferences to remain in her current placement and whether or not she wants contact with her parents. Given their disabilities, this is less of a factor for the other children. The younger children especially need long term stability wherever they are placed and an ability to develop appropriately.

93. In terms of harm, it has already been set out above how the children have suffered significant harm in M's care. The parenting of M and F was not good enough to prevent the children from suffering harm

94. I turn now to the realistic options in this case. In the case of *Re B-S*, Sir James Munby identified two essential things required where a court is being asked to approve a care plan for adoption and/or to make a non-consensual placement order. First there must be proper evidence, both from the Local Authority and from the Guardian.

95. The evidence must address all the options which are realistic, possible and must contain an analysis of the arguments for and against each option.

96. The second thing identified by Sir James Munby as essential is an adequately reasoned judgment and he quoted the passage from the judgment of Lord Justice McFarlane in *Re G* [2013] which ended with the comment that:

“The linear approach, in my view, is not apt where the judicial task is to undertake a global, holistic evaluation of each of the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare.”

97. As this case has progressed the two realistic options argued for by any party are on the one hand rehabilitation of the children with M and on the other hand various long-term foster care placements,

98. Option 1 is a return to the mother: this was M's wish until shortly before the hearing and I accept that she loves her children very much. However, she does not now contest the making of care orders and

long-term foster care placements. Realistically this is a sensible decision (however hard it was to make) given the various assessments and expert views that it would be very difficult for anybody to care for all these children, given their needs, even with assistance.

99. Option 2 is for long term foster care for each of the children. The advantages and disadvantages of making care orders with care plans placing the children in long term foster care have been explored during the hearing, for each of the children, as discussed above. Both M and F now accept that this is in the children's best interests, and it is an option strongly supported by the guardian. The advantages of long term foster care are, first of all, that the children are in a home where their physical, educational, health and emotional needs should be met; they will be kept safe and protected from the risks posed by care provided by the parents. As highlighted above, there is a need for specialist training for foster carers, and the particular needs of the children mean that it would be extremely difficult for these to be met by the mother and/or if the children are kept together. A's wishes to remain with her maternal aunt should be respected. All parties are content with the present placement for D and the local authority has undertaken to carry out parallel planning for C and B which will include considering whether the children are best kept together in a placement.

100. The disadvantages of long term foster care are that the children will not be living with their mother, and contact with M will be limited.

101. In conclusion, I remind myself as set out above that care orders and placements away from the home should only be the result of these

proceedings if necessary and proportionate. Furthermore, there is of course no absolute guarantee that the long term foster placements will continue to meet the children's needs, although that is the current proposal. As mentioned both the local authority and the guardian have reached a firm recommendation that the children's welfare requires care orders to be granted with foster care as the only option as of today, and the parents have made the difficult decision to agree to this conclusion.

102. In my judgment, the evidence in this case fully complies with the requirements identified by the Court of Appeal in the case of *Re B-S*. The realistic options for future care, a return to M or care orders on the basis of long term foster care, have been properly analysed and the advantages and disadvantages of each carefully considered by the Local Authority and the Guardian and I accept their analyses.

103. In this case, having conducted the balancing exercise, I conclude that there is no realistic prospect of the children being safely returned to M's care and that their need for stability and development and – in the case of the younger children – the need for specialist care, can only be met at the present time in long term foster care placements. In terms of the welfare checklist in s.1(3) CA 1989 and the factors set out above it is clear to me that the children's needs, the difficulty in M meeting those needs, the history of the case and the risks to the children mean that it is in the best interests of the children to make such orders. There is no other option that would meet the children's needs and I consider that this outcome is a proportionate interference with theirs and the parents' Art.8 rights.

CONTACT

104. In relation to contact, this has been the main focus of the hearing before me. My view is that there is no need for the Court to make an order. There is a primary duty on the local authority already to allow reasonable contact between the children and the parents in s34(1) CA 1989. As set out above section 34(11) CA states that:-

(11) Before making a care order with respect to any child the court shall—

(a) consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

105. I have considered the proposed arrangements and all parties have been able to comment on them in these proceedings.

106. I also bear in mind what was said in the case of *Re W (Section 34(2) Orders)* [2000] 1 FLR 502 at page 507 about the role of the court under s34 CA 1989:-

The power of the judge to supervise and control is the power to require the local authority to go further in the promotion of contact than the authority itself considers appropriate. The other power is to monitor the local authority's proposal to refuse contact in order to ensure that its proposal is not excessive. We do not believe that the legislation ever intended the jurisdiction of the judge under s 34 to be deployed so as to inhibit the local authority in the performance of its statutory duty by preventing contact which the local authority considers advantageous to welfare.

107. From what I have read and been told there is a well-considered plan for contact between the children and both parents. The main objections to the plans outlined for contact have come from M.

108. First of all, although she accepts that, for her, individual contact with the younger children is the right approach she does not want the frequency of contact to be reduced from fortnightly to monthly.

109. Whilst I understand that concern it does seem to me that the approach presented by the local authority is a sensible one at least for the time being. The experts cited above recommended regular contact at various periods, and monthly was actually the most frequent (six weekly and bimonthly also being proposed). The plan to ensure good quality contact with each child for two hours on one particular weekend each month, which would enable M, foster carers and professionals to focus on the individual child on that day seems to me to be likely to be in the children's best interests, and not one which I should seek to interfere in. It was made clear that regularity and frequency of contact will be kept under review by the local authority and the team of experts assembled in this case.

110. In relation to contact with F I understand the concerns of M based on F's past behaviour and the way that this has affected the younger children. However, I agree with the guardian and the local authority that the experience and skills of the social worker and the foster carers is sufficient to properly monitor video remote contact and I am satisfied that the local authority plan is to review very carefully

progress with remote contact before considering whether there can be any move to face-to-face contact.

111. On the basis of those observations and taking into account the evidence from the local authority and the guardian in this case, in my view it is not appropriate or necessary for the Court to interfere with the exercise of the s34(1) CA 1989 duty currently being performed by the local authority.

112. For the avoidance of doubt, I make the following orders that:

- Threshold is met as described above.
- A care order for all four children is granted.
- I approve the Local Authority care plans to include the proposed amendments contained in the recitals in the final order.
- I make no order in relation to contact.
- In my view it is appropriate that this judgment be published.
