

IN THE EAST LONDON FAMILY COURT

11, Westferry Circus,  
LONDON,  
E14 4HD

Date: 9 February 2024

**Before :**

**HER HONOUR JUDGE MADELEINE REARDON**

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**Between :**

**The London Borough of Newham**

**Applicant**

**- and -**

**Respondents**

**Emma**

**Janene**

**Shaun**

**Becky and Michael**

**Thomas (aged 4), by his children's guardian Julie  
Slaughter**

**Maisie (aged 5), by her children's guardian Lenna  
Coker-Thompson**

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Mr Prout for the local authority  
Ms Chan for Emma  
Ms Cservenka for Janene  
Ms Ahmed for Shaun  
Ms Lewis for Becky and Michael  
Ms Kang for Thomas through his guardian  
Mr Lamb (and Mr Clarke on 9 February) for Maisie through her guardian

Hearing dates: 29 – 31 January 2024, 2 and 9 February 2024

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**JUDGMENT**

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## **HER HONOUR JUDGE MADELEINE REARDON :**

### Introduction

1. The two children who are the subject of these proceedings are Maisie, aged 5, and Thomas, aged 4.
2. The relationships in this family are complex. In order to make this judgment intelligible I have referred to all family members by (anonymised) first names. I mean no disrespect to them in doing so.
3. Maisie is the child of Shaun and Janene, who are both in their late thirties. Shaun and Janene have an older daughter, Emma, who is 18. Both Shaun and Janene have other children, who were born during relationships that each parent had with other partners during a period of separation between the births of Emma and Maisie. Three of those children are subject to care orders and are living in long-term foster placements. Two of them, Janene's sons, are currently subject to a separate application made by their father to discharge the care orders.
4. Thomas's mother is Emma, Shaun and Janene's daughter. His paternity was unknown until after these proceedings were issued. During the course of the proceedings it has been established that Thomas's father is Shaun, Emma's father and also, therefore, Thomas's maternal grandfather.
5. The local authority issued proceedings for Thomas on 1 July 2022 and for Maisie on 13 July 2022. Initially the proceedings were case-managed separately by DJ Landes, although usually listed on the same day. In November 2023 both sets of proceedings were transferred to me and I consolidated them. The parties to the consolidated proceedings are:
  - a. Janene, the mother of Maisie;
  - b. Emma, the mother of Thomas;
  - c. Shaun, who is the father of Maisie and both the father and the maternal grandfather of Thomas;
  - d. Becky and Mark, who are the paternal aunt and uncle of both children (Becky is Shaun's sister);
  - e. Maisie, through her children's guardian Lenna Coker-Thompson;
  - f. Thomas, through his children's guardian Julie Slaughter.
6. All the parties have been legally represented throughout the proceedings. Emma has, in addition, had the support of an intermediary. Special measures were in place to ensure her participation, including regular breaks.
7. Because by the time of the final hearing the issues had narrowed, it was not necessary for any of the lay parties to give oral evidence at this hearing.

### Background

8. There has been significant local authority involvement in this family and this is the third set of litigation in relation to Shaun and Janene's children.
9. Shaun and Janene were in a relationship for about one year, separating in 2005 when Emma was a small baby. After they separated Emma lived with her mother, and subsequently with Janene's new partner, Greg, and Janene and Greg's sons, Benji and Jack. Both Janene and Greg were misusing drugs and there was significant violence in the home. A different local authority issued care proceedings and Emma, Benji and Jack were placed in foster care in April 2016.
10. In 2017 Janene separated from Greg and stopped misusing drugs. She and Shaun resumed their relationship and the three children moved to their care over the course of 2017. Also living in

the home was Lara, Shaun's eight-year-old daughter. Those proceedings concluded with 12-month supervision orders in June 2017.

11. In March 2018 Lara, Shaun's daughter, was accommodated with his consent in foster care by this local authority, in whose area the family were then living, after a series of reports that she was being scapegoated and mistreated in the family home. The local authority did not, however, issue care proceedings at that stage, and the other three children remained at home.
12. Maisie was born in 2018.
13. The local authority issued proceedings for all five children in September 2018, alleging physical and emotional abuse. In February 2019 Janene and Shaun separated and Janene left the family home. In March 2019 Benji and Jack moved into foster care under interim care orders. Emma and Maisie remained in Shaun's care.
14. A final hearing in those proceedings took place before me in November 2019. It was agreed that the threshold criteria were met on the basis that the children had experienced harsh treatment, including punitive discipline and physical and emotional abuse. By the time of the final hearing, however, there was professional agreement that Shaun was meeting Emma and Maisie's needs to a satisfactory standard and could continue to do so provided that a robust plan of support was in place.
15. By consent, I made supervision orders for Emma (then 14) and Maisie (1). I also made final care orders for Lara, Benji and Jack. That meant that Emma and Maisie remained with their father. It was recorded in the order that the local authority planned to support the parents to work towards a shared care arrangement.
16. At the end of the proceedings in 2019 Janene was living with Shaun's parents, Robert and Paula. Shortly after the proceedings concluded, Robert and Paula separated and Janene formed a relationship with Robert. That relationship is continuing.
17. Unknown to the court or professionals, when the final orders were made in November 2019 Emma was pregnant. She gave birth to Thomas in 2020 when she was still just 14 years old. Initially, she said that Thomas's father was a boy at school. The local authority accepted this account, although the school said that they were not aware of a relationship. Support was put in place and Emma and Thomas continued to live with Shaun. Thomas was brought up alongside Maisie, who was believed at that stage to be his aunt.

### The current proceedings

18. After Thomas's birth the local authority provided support to Emma and she cared for Thomas at home under a child in need plan. A parenting assessment was carried out and day to day support from the Family Nurse Partnership was put in place. However Emma struggled to provide a good enough standard of care and in December 2021 Thomas was placed on a child protection plan under the category of neglect. The local authority documentation records significant weight loss, failures by Emma to arrange appropriate medical treatment for Thomas, and a lack of emotional warmth in her interactions with him.
19. It is not completely clear from the evidence when suspicions began to arise about Thomas's paternity. In 2019 Janene had expressed concerns about the close nature of Shaun's relationship with Emma, but I do not think at that stage that there was any real suggestion of sexual abuse. However in August 2021 a member of the wider family made a report to the local authority that Shaun and Emma had been seen naked in bed together. Emma was referred to a sexual abuse support service but denied that any sexual contact had taken place, and the police undertook an investigation but this concluded with a decision to take no further action. As part of the Public

Law Outline pre-proceedings process, initiated in March 2022, both Emma and Shaun were asked to submit to DNA testing, but refused.

20. The local authority issued proceedings in July 2022, and on 18 August 2022 an interim care order was made on a plan for Emma and Thomas to move into a mother and baby foster placement. However Emma left the placement after a few weeks and returned to her father's home. Thomas remained; he has continued to live in the same foster placement throughout the proceedings.
21. Maisie also was placed on a child protection plan in December 2021. Between December 2021 and June 2022 Maisie made several allegations at nursery that she had been hit and slapped by adults in the home, including her sister Emma, her father Shaun and other wider family members. On 9 July 2022 Maisie was bitten by a dog while spending time with her mother, Janene, and not taken for medical treatment until a social worker encouraged Janene to do so two days later.
22. Proceedings were issued for Maisie on 13 July 2022. For the first part of those proceedings Maisie remained living with Shaun under an interim supervision order.
23. On 21 November 2022, after both Shaun and Emma had failed to comply with a direction to submit to DNA testing, District Judge Landes heard evidence and made a finding, based on an inference, that Shaun was Thomas's father and therefore that he had sexually abused his older daughter, Emma. An interim care order for Maisie was made at the same hearing and she was removed into foster care. She has remained in foster carer throughout these proceedings, in a separate placement from Thomas, although the children have had contact with each other arranged by their foster carers.
24. During the course of proceedings Shaun's sister, Becky, and her husband Mark were assessed as prospective special guardians for Thomas. That assessment was negative and Becky and Mark were joined to the proceedings on 6 September 2023 after indicating an intention to challenge its conclusions.
25. The initial information obtained by the local authority in respect of DNA paternity testing for Thomas had suggested that in order to obtain a reliable result both of the putative parents – Shaun and Emma – needed to provide a sample. Later in the proceedings, further enquiries established that it was possible that paternity could be determined through testing of both children and members of their wider family, including Janene, Becky and Robert. These persons consented to give samples and the testing was carried out by DNA Legal in December 2023. That testing established – to a probability of 99.9999% - that Shaun is Thomas's biological father. The evidence of DNA Legal is not challenged.
26. Shaun and Emma have continued to live together throughout the course of these proceedings. Emma has maintained contact with Thomas, although her attendance has not always been consistent. Becky and Mark have also had contact with Thomas.
27. Shaun has had regular contact with Maisie and has also had contact, albeit less frequently, with Thomas.
28. Janene has had regular contact with Maisie. This currently takes place on a fortnightly basis.
29. It is important to acknowledge that, as the history demonstrates, on several occasions professionals and the court have made decisions for the children of this family that have turned out to be wrong. The pattern, I am afraid, has been one of the authorities repeatedly under-estimating risk, and failing to act swiftly enough to protect.
30. Most seriously, the order which I made in 2019 left Emma in a home where she had already suffered, and would continue to suffer, sexual abuse (including rape) perpetrated by her father. I recognise that when that order was made there was no evidence before the court to indicate that Emma was exposed to the risk of sexual harm; had there been such evidence, it goes

without saying that the order would never have been made. Nevertheless it is important to recognise that, with hindsight, that decision was wrong and that Emma has as a result suffered very significant harm.

### The positions of the parties

31. The local authority is seeking care and placement orders for both children. Its plan is that each child should be placed for adoption, with a fallback plan for a placement in long-term foster care if no adoptive placement is found within a reasonable period of time. The local authority does not consider it to be in either child's best interests for them to be placed together.
32. If the placement order application is refused the local authority seeks an order under CA 1989, s34(4) permitting it to refuse contact between Shaun and both Maisie and Thomas.
33. When this final hearing was listed in November 2023, Emma was seeking the return of Thomas to her care and each of Shaun and Janene was seeking to care for Maisie. Becky and Mark were putting themselves forward as alternative carers for Thomas if he could not return to his mother.
34. There were some significant shifts in the positions of the lay parties in the period leading up to the final hearing. Because it was agreed that none of the lay parties should be required to give evidence I do not know what led to these changes in position. I suspect that, although the finding about Thomas's paternity was made on the basis of an inference by DJ Landes as long ago as November 2022, the confirmation of that finding through the recent DNA paternity test results has brought home the reality of the situation to the family members, and perhaps also to professionals.
35. The positions of the lay parties are now as follows:
  - a. Emma accepts that Thomas cannot return to her care. She opposes the application for a placement order. She seeks ongoing direct contact with Thomas.
  - b. Shaun and Janene accept that Maisie should be made subject to a care order but oppose the application for a placement order. They each seek ongoing direct contact with her.
  - c. Becky and Mark oppose the application for a placement order for Thomas but agree that he should be made the subject of a care order. They seek ongoing direct contact with him. In submissions it was suggested on their behalf that the door might be left open, through an amendment to Thomas's care plan or otherwise, to a possible move for Thomas to live with them at some point in the future.
36. Maisie's guardian, Lenna Coker-Thompson, was also her guardian in the 2019 care proceedings. She supports the application for a care order but opposes the application for a placement order.
37. Thomas's guardian, Julie Slaughter, also supports the application for a care order for him and opposes the local authority's application for a placement order.
38. Both guardians support the local authority's application to withhold contact under CA 1989, s34(4).

### The law

39. The court may only make a care order if it is satisfied that the threshold criteria in CA 1989, s31(2) are met. s31(2) reads as follows:
  - (2) A court may only make a care order or supervision order if it is satisfied—
    - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to—

(i) 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

(ii) the child's being beyond parental control.

40. It is not disputed in this case that the threshold criteria are met.

41. In deciding which order to make the children's welfare is my paramount consideration. Because the local authority is seeking placement orders which would enable it to place both children for adoption, ACA 2002, s1 applies and I am required to consider the children's welfare not just over the course of their childhoods but throughout their lives. Welfare is to be evaluated by reference to all relevant factors including those in the welfare checklists in CA 1989, s1(3) and ACA 2002, s1(4).

42. I have regard to the guidance of the Supreme Court in *Re B (A Child)(Care Proceedings: Threshold Criteria)* [2013] UKSC 33 and the Court of Appeal in *Re B-S (Children)(Adoption Order: Leave to Oppose)* [2013] EWCA 1146, [2014] 1 FLR 1035. An order which has the effect of severing ties between a child and his or her parent may only be made "if justified by an overriding requirement pertaining to the child's best interests'. In other words, the test is one of necessity. Nothing else will do': *Re B*, per Baroness Hale.

43. In *Re B-S* the Court of Appeal re-affirmed what had been said earlier by McFarlane LJ in *Re G* [2013] EWCA Civ 965:

*"In most child care cases a choice will fall to be made between two or more options. The judicial exercise should not be a linear process whereby each option, other than the most draconian, is looked at in isolation and then rejected because of internal deficits that may be identified, with the result that, at the end of the line, the only option left standing is the most draconian and that is therefore chosen without any particular consideration of whether there are internal deficits within that option.*

*The linear approach ... 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."*

44. The children and their parents have rights under ECHR, Article 8 to respect for their family life. To the extent that the orders I am asked to make interfere with these rights, I must satisfy myself that the interference is both necessary and a proportionate means of addressing the identified harm.

45. CA 1989, s34(1) provides that subject to its duty to safeguard and promote the child's welfare, under CA 1989, s22(3)(a), the local authority must allow a child in its care reasonable contact between a child in care and his parents. The local authority has a linked duty to promote contact between the child and his parents, relatives and others connected with him: CA 1989, Sch 2, para 15.

46. S34(4) gives the court power to authorise the local authority to refuse to allow contact between the child and his parents. The power may be exercised on application by the local authority or the child, or of the court's own motion when making a care order. In the absence of permission under s34(4) the local authority may refuse contact only for a limited period in circumstances of urgency, and if satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

47. In submissions on behalf of Shaun it was suggested that as the local authority's care plan does not include provision for contact between either child and Shaun, an order permitting the local authority to refuse contact under s34(4) is not required. I do not think that is right: it does not seem to me that a local authority can sidestep its duties under s34(1) and Sch 2, para 15 simply by drawing up a care plan which does not contain any provision for contact.

### The evidence

48. The written evidence filed in these consolidated proceedings is substantial, running to more than 2,500 pages. Because of the concessions made by the lay parties in advance of this hearing, it will not be necessary to review all of the evidence during the course of this judgment.
49. An important source of evidence has been the sexual harm risk assessments carried out by Andrew Smith, a specialist in sexual risk at the Lucy Faithful Foundation, in respect of Janene, her partner (and Shaun's father), Robert, and Shaun. These assessments highlight both the loose or blurred sexual boundaries within the family network, and the lack of reflection and insight, on the part of the adults in the family, into the impact on the children of both the direct sexual abuse which has taken place and the distorted family relationships. This evidence is unchallenged. It is significant, despite the fact that no family member is putting themselves forward to care for the children, because it underlines the risks faced by the children even in the context of ongoing contact and the difficulties that both Maisie and Thomas will face in navigating their relationships with birth family members in future.
50. The expert evidence before the court includes the report of a geneticist, Dr Irving, who assessed Thomas in August 2023. Her report is reassuring in terms of his general development, as I set out below, and she did not detect any clinical features suggestive of a genetic disorder. She recommended a review of his progress after a year.
51. At no point in these proceedings has either Shaun or Emma accepted the finding made about Thomas's paternity. Earlier in the proceedings both filed witness statements denying that Shaun is Thomas's father. Even at this final hearing, whilst accepting that the finding as to paternity could not be and was not challenged, Shaun's counsel made clear that he did not accept it.
52. Shaun's denial of the finding that has been made by District Judge Landes (and that is now corroborated by robust DNA evidence) significantly heightens the risk that he poses and will make it much more difficult for both Maisie and Thomas to understand and come to terms with this aspect of their family background.
53. Emma has experienced physical and emotional abuse and familial sexual abuse. She has borderline low cognitive functioning and her current living arrangements expose her to ongoing sexual harm. Through her legal representatives Emma has asked for support from the local authority during the course of these proceedings. Her welfare is not the focus of this hearing but it seems to me that it is crucial that the local authority should consider, as a matter of urgency, its duties towards this young person who remains highly vulnerable.
54. Janene has suffered a number of traumatic experiences, including childhood sexual abuse, domestic abuse and substance misuse. She has worked hard, in the 2019 proceedings and more recently, to achieve a degree of stability which has allowed her to maintain regular and good quality contact with Maisie. She has, in my view, taken a realistic and child-focused decision not to put herself forward as Maisie's full time carer.
55. The primary evidence about the children and their needs comes from the local authority social worker allocated to both children, Temitope Ayodele, and from their respective guardians. All three of these witnesses gave oral evidence.

56. Ms Ayodele struck me as a committed social worker who was keen to achieve the best possible outcome for each of these children. I did find it difficult at times, however, to understand the reasoning process which had led the local authority to reach the conclusion that adoption would be in the best interests of these particular children and I found Ms Ayodele's arguments in favour of adoption to be, on the whole, generic rather than specific to the needs of either Maisie or Thomas.
57. Ms Coker-Thompson had the advantage of having been Maisie's guardian in the 2019 proceedings. She has as a result a broad and deep knowledge of the family and a thorough understanding of Maisie's history and her needs.
58. Ms Coker-Thompson's original recommendation, in an analysis filed in November 2023, was that Maisie should be placed for adoption. In the period between that recommendation and the final hearing Ms Coker-Thompson's recommendation changed and her final position, set out in an updating analysis, was that Maisie should remain in the care of her current foster carers under a care order. In formulating her final recommendation Ms Coker-Thompson put considerable weight on the evidence that appears to have emerged in recent months about Maisie's high level of need, and on the views of a team providing her and the placement with a package of therapeutic support within a clinical service offered by the fostering agency, the Multi-Disciplinary Assessment, Treatment and Therapy Service or "MATTS". This evidence led Ms Coker-Thompson to conclude that Maisie would struggle to adjust to a move to a new placement and to form new attachments to prospective adopters.
59. I recognise that I need to take care in evaluating the MATTS evidence. This is not expert evidence obtained during the proceedings within the Part 25 framework. The MATTS team have not produced a formal report for court purposes and there has been no opportunity for their views to be tested. However it does not seem that there is any dispute about the very troubling behaviour which Maisie has exhibited and her overall presentation, and it is my understanding that the evidence about this comes primarily from her foster carers and the school.
60. Ms Slaughter maintained in her oral evidence her very firm recommendation that it would not be in Thomas's best interests to be subject to a placement order. Her main reason for reaching that conclusion was Thomas's relationship with his current foster carers, who have made it clear that they are committed to him, and ultimately may put themselves forward to adopt him, but are not prepared to do so until they have a clearer picture of his needs and are confident that he will receive the support that he is likely to require.
61. Ms Slaughter observed in her analysis that the local authority should have acted to remove Thomas from the home where he was living with Emma and Shaun much sooner than it did. With hindsight, it seems to me that that is unarguable.

#### The threshold criteria

62. There can be no dispute in this case that the threshold criteria are met for both children, as pleaded by the local authority, on the basis that Shaun sexually abused Emma when she was a child; that he has been unwilling or unable to protect his children from sexual harm; and that he is unable to implement appropriate sexual boundaries within the family.
63. It was said on Shaun's behalf by his counsel that he did not accept that he is Thomas's biological father. However when asked counsel confirmed that the evidence to this effect was unchallenged. In those circumstances it does not seem to me that any challenge to the pleaded threshold is tenable.



64. The agreed threshold filed for these proceedings included two paragraphs seeking to rely on findings I had made in the 2019 proceedings about the harsh parenting techniques used by Shaun and Janene when parenting the older children. In submissions the local authority accepted that it was not appropriate to rely on those findings for the purposes of these proceedings: see *Re S & Others (Children: Care Order)* [2019] 1 FLR 363.

#### Welfare evaluation: Maisie

65. Until her removal in November 2022 Maisie had always lived in her father's primary care. She has, as a result, a strong relationship with him. She has consistently maintained a wish to return to live with him. I evaluate that wish in the light of her young age and, particularly, her limited understanding of the factors which led to her removal. Maisie has no idea, as yet, about the sexual abuse suffered by Emma or the fact that Thomas is in fact her half-brother.
66. When I left Maisie in Shaun's care at the end of the proceedings in 2019 I recognised the risk that, as she grew older, Shaun might struggle to meet her needs and might resort to the sort of punitive treatment that the older children in the family had experienced. It was for that reason that I made a supervision order, acknowledging that the placement would be likely to require considerable local authority support. I did not, of course, know then that Maisie was already living in a household where her older sister was being subjected to sexual abuse.
67. Because of the concessions made by the parents, it has not been necessary at this hearing to explore in any detail the nature of Maisie's experiences in the family home. However the evidence indicates that she is presenting with a very high level of emotional and psychological disturbance and dysregulation. The MATTS assessment carried out in August 2023 records that her foster carer and school were reporting frequent tantrums, stealing (various items including medication belonging to another foster child), and the use of fabrication and fantasy as a coping mechanism. Since then it seems that there was some improvement in Maisie's presentation but in recent months this has deteriorated again. That may have something to do with the ongoing uncertainty caused by these proceedings. However overall Maisie's presentation indicates an underlying emotional and psychological vulnerability, almost certainly created by her experiences.
68. It is now accepted that Maisie's needs cannot be met on a permanent basis within the birth family. She requires reparative, therapeutic parenting. Her current foster carers have recognised this and have been providing it, assisted since August by the MATTS team who are providing a high level of therapeutic support. The MATTS team is part of a service offered by the fostering agency. If Maisie moves to an adoptive placement, the local authority has agreed to ensure that similar support is in place, funded by the adoption support fund, but the provider will be different and so the therapeutic relationships Maisie has developed will be disrupted.
69. Despite her difficulties, Maisie is a strong and determined personality who has huge potential. She is curious and has a wide range of interests. When she feels safe she is loving and affectionate. Her health visitor has described her as a "lovely" little girl. She is a little behind her peers at school but the school believes this to be a result of her emotional difficulties rather than a cognitive issue.
70. Maisie will turn six in April. She has a clear understanding of who her family are and is likely to retain a number of memories of living with them. She is at the upper limit of the age range within which it is generally thought that children will be able to adjust to a move to an adoptive family where they will be expected to form lifelong family relationships.

71. Maisie sees her mother every two weeks and the time she spends with her is of benefit to her. Maisie is also close to her maternal grandmother, Paula, and grandfather, Robert. She has a sibling relationship with Emma, more distant relationships with her older half-siblings who are in care, and a very significant relationship with Thomas who is close to her in age and who lived with her for nearly two years.
72. The local authority has assessed Maisie's and Thomas's relationship in a "Together and Apart" assessment and concluded that because of each child's high level of need they should not be placed together; this is also the view of both foster carers, and is not challenged by any party in these proceedings. A placement of the children together is likely also to complicate the process of life story work which will need to be undertaken for both of them in due course.
73. Maisie's relationship with Shaun is a complex issue. She loves him very much and her contact with him is very important to her. However he poses an obvious risk to her of very serious sexual harm. Even if steps are taken to mitigate the direct risks, her relationship with him is likely to be a cause of real distress and anguish in future as she finds out about, and then has to try to come to terms with, what has happened in her family: the fact that her father raped her older sister, and that Thomas is not only her nephew but also her half-brother.
74. There is substantial evidence, particularly the Lucy Faithful evidence and the social work evidence, including the assessment of Becky and Mark, that suggests that the wider family members have turned a blind eye to, if not colluded with, Shaun's behaviour and the lack of sexual boundaries within the family. This means that all future contact with birth family members is problematic, because it may undermine the work that will need to be done with Maisie to help her to understand issues of sexual risk and harm, to protect herself, and to form safe and boundaried familial and intimate relationships.

#### Welfare evaluation: Thomas

75. Although he is only four, Thomas's wishes and feelings are clearly ascertainable. He has found a place in his foster family and has formed attachments to his carers, particularly his foster mother. His transition to their care was smooth because he moved with his mother, and remained there when she left the placement. He now views them as his family and wants to remain in their care.
76. A full picture of Thomas's needs is yet to emerge. An adoption medical completed in March 2023 suggested that he may have mild to moderate global developmental delay. At that stage he did not have much speech, but by the time he was seen by Dr Irving in April 2023 (aged 3) he had a wide vocabulary, although his speech was indistinct, and she did not think he had any cognitive delay. He has brachycephaly, a mild skull deformity, but Dr Irving has firmly rejected the suggestion made following the adoption medical that he has any "dysmorphic" facial features, and in my view this suggestion is unhelpful and should not follow him around in the local authority's records.
77. Thomas struggles with emotional regulation. He has tantrums and will test out the boundaries in his foster home; he will then apologise and become distraught until he knows his apology has been received and accepted. His foster carer has raised a concern that he has episodes where he appears vacant and "zoned out" for a few seconds; he is awaiting a paediatric appointment to check on this.
78. Despite the challenges which he faces, Thomas is clearly a delightful child. Ms Slaughter described him as energetic, bright and cheerful. Dr Irving thought he was very polite and engaging. He has won the hearts of his foster family, including their older daughters who adore

him. He is keen to learn and loves books. He can pick up new skills quite quickly, especially mechanical skills.

79. The life story which Thomas will have to face in due course includes the fact that he is the child of a rape perpetrated by his grandfather against his mother. At various points in the evidence the professional witnesses expressed a sense of dismay and perplexity at how this issue can possibly be explained to either child in a way that will allow them to come to terms with their history, while preserving a positive sense of their own backgrounds and genetic identities. For obvious reasons this issue is particularly acute in Thomas's case. However and whenever this work is done, Thomas's carers are likely to need considerable expert advice and assistance in supporting him to understand.
80. Thomas's paternity will, inevitably, be a factor in any search for an adoptive placement for him. The evidence includes statements from a family finding social worker from the adoption agency, Adopt London East. That evidence suggests that Thomas will not be a straightforward child to match with prospective adopters.
81. Thomas has a relationship with his mother, Emma, and with Shaun whom he knows as his grandfather. He also has contact with Becky and Mark. One of his most significant relationships is with Maisie. These relationships have some value for Thomas, but – for the reasons I have identified – they also (with the possible exception of his relationship with Maisie) have the potential to cause him harm.
82. Thomas's primary relationships are with his foster carers. In turn they are committed to him and see him as a part of their family. The evidence suggested that the relationships he has with them have deepened and strengthened over the course of these proceedings. They have made it clear that adoption is very much within their contemplation. They are not prepared to put themselves forward now, because they are anxious to ensure that the full extent of his needs is known and that sufficient support will be in place to meet those needs. But Thomas's guardian, Ms Slaughter, made it very clear that she does not question their commitment to him and that she has no concerns at all about placement breakdown. The extent of that commitment has been demonstrated in a number of ways: there are photographs of Thomas in the home alongside the pictures of their three older children; when it became clear last summer that Thomas could not join the family on a booked holiday because he did not have a passport, the holiday did not go ahead.
83. It is clear that Thomas's foster carers love him for who he is: for his individual personality and characteristics, his strengths and vulnerabilities. It is impossible to overstate the value of that love for a child whose paternity will, sadly, put off many prospective adopters who have not met him and only have access to what is written on paper.

#### Placement decisions for each child

84. Having conducted the holistic evaluation of factors relevant to each child's welfare, my task is to balance the advantages and disadvantages of each realistic option: adoption or long term foster care.

#### Maisie

85. For Maisie the decision is quite finely balanced. Adoption could, in theory, offer Maisie the stability of a permanent family to whom she could belong, and where she might grow up free

from risks of physical, sexual and emotional harm. If Maisie were younger, that factor might well carry decisive weight.

86. However it is important to carry out a realistic evaluation of the prospects of a successful adoptive placement for Maisie. Maisie is nearly six, and is a child whose behaviour suggests that she would struggle to make a successful transition to a new placement with carers who are presently strangers to her. She will inevitably experience distress and probably resentment when she fully understands that she cannot return to her father. Those feelings will, in my judgment, be exacerbated if she is told that she has to move from her current placement. Maisie is already struggling with her own sense of self-worth. She is likely to experience a placement move as a rejection, and that will put any new adoptive placement under very significant strain. There is a real risk, in my judgment, that prospective adopters will simply not be able to manage her. All placement breakdowns are traumatic, but the breakdown of an adoptive placement is usually more so because of the huge investment that the child is encouraged to make in the placement from the outset.
87. The evidence is that Maisie's current carers, who are long-term foster carers with another child in a long-term placement, are willing to confirm her placement with them as long-term. They have done an excellent job so far of meeting her needs and, importantly, there is no suggestion that the placement has been at risk despite the challenging behaviours that Maisie has demonstrated over the period that she has been living there. The reports from the therapeutic team are that the carers are "unfazed" by the challenging way in which Maisie can sometimes present.
88. Long-term foster care carries a number of disadvantages. The main one is the risk of placement breakdown or, simply, the coming to an end of a placement because the carers wish to do something else with their lives. There is no obligation on foster carers to continue fostering indefinitely and they need only give 28 days' notice of an intention to cease doing so. A secondary disadvantage of long-term foster care is the ongoing statutory role of the local authority, which mandates regular social work visits, ongoing monitoring of the child's health and education, and local authority involvement in some even quite minor decisions about things like school trips and sleepovers.
89. Maisie has a good relationship with her mother, and ongoing contact with her will preserve the benefits of that relationship, but she has not lived with her mother since she was very small and her primary relationship is with her father. For the reasons I have given, it is difficult to see the continuation of that relationship, legal, social or psychological, as something which will bring Maisie more benefit than harm in the future. In this case, unusually, I see the continuation of the birth family relationships which a placement in long-term foster care would facilitate as a feature which brings with it at least as much risk to both of these children as it does benefits.
90. On a fairly fine balance, I consider that the better outcome for Maisie is a placement in long-term foster care. The compelling features in the balancing exercise for Maisie are her age, and her high level of need. There is too much of a risk for Maisie that the local authority will not find an adoptive placement, or that if they do she will be unable to form successful relationships with her new carers. Either of those outcomes would be a huge blow for Maisie and would compound the feelings of rejection and worthlessness that she has already had to cope with. In that context, the disadvantages of a placement in long-term foster care are less significant.

Thomas

91. For Thomas, the decision in my view is far more clear-cut than it is for Maisie. In his case, both the advantages of adoption and the disadvantages of his current placement are more theoretical than real.
92. I accept that if an adoptive family were found for Thomas, this would give him the chance to become part of a new family where he could develop a new and more positive legal, social and psychological identity.
93. However, the evidence suggests that the local authority may be unlikely to find prospective adopters for Thomas, or, if they do, that the search will take some time. As Ms Slaughter pointed out, while this is happening Thomas will be growing older and his bond with his current carers will be strengthening.
94. A compelling factor for Thomas is that he has already found a home and a place with his current carers where they feel, and he certainly feels, that he belongs. The paternity issue which might put off strangers is clearly not an obstacle for them, probably because they have had him living with them since he was quite young and the relationship is founded on the love they have for him, and he for them.
95. I have identified the disadvantages of long-term foster care when carrying out the balancing exercise for Maisie. For Thomas, the ongoing involvement of the local authority is less of a concern, and in fact a high level of involvement is likely to be necessary. His foster carers have recognised this and identified the ongoing need for support as the main factor which is preventing them, for the time being at least, from putting themselves forward as prospective adopters.
96. As is the case for Maisie, and again unusually, Thomas's relationships with his birth family are not a decisive factor in my decision. For the reasons I have given, these relationships have the potential to cause him at least as much harm as good. He enjoys the time he spends with Emma but, through no fault of hers, her ongoing relationship with Shaun and the fact that she too denies that any sexual abuse has taken place means that her contact with Thomas in future will need to be very carefully monitored and boundaried.
97. Becky and Mark have shown a great deal of commitment to Thomas, and, again, some limited contact with them and their children may be of benefit to him in future. However this too will need to be carefully monitored because the evidence, including that of Ms Slaughter, indicates that they have a long way to go before they can provide Thomas with a safe, truthful and positive understanding of his background and the family relationships. I say this not to cause hurt, and I fully understand that the task facing them is one which most families would struggle with. But I am concerned about the way their case was put in closing submissions and it is important, in my view, that they are not given false hope.
98. My decision therefore is that Thomas's best interests are very clearly met by a placement in long-term foster care.
99. I recognise that things change and that Thomas is very young. However it needs to be understood that from my perspective, at this hearing, the decision to refuse the application for a placement order has been driven by the quality of Thomas's current placement, and his need to remain there, rather than (as is more usually the case) the relationships he has with his birth family members. It would be premature to go further than that at this stage, other than to make it clear that the fact that I have refused the local authority's application for a placement order at this stage must not be misinterpreted as a barrier to any future adoption application by Thomas's current carers.

#### Contact issues

100. There is a considerable amount of agreement about the contact arrangements for each child if the placement order applications are refused. The local authority's plans have been refined during the course of the hearing. They are as follows:
- a. Maisie will have contact with Janene on six occasions per year (school holidays); with Emma twice a year (joined, if she would like to do so, by Paula, Emma and Maisie's paternal grandmother); and with Thomas once every six weeks. There will also be some video contact between Maisie and Janene.
  - b. Thomas will have contact with Emma six times a year (with Paula joining from time to time); with Becky and Mark four times a year; and with Maisie every six weeks.
101. No party suggests that the contact arrangements should be reflected in an order of the court and I agree that would be inappropriate. It will be important that the local authority retains the flexibility to adjust the arrangements in response to the children's changing needs.

### Shaun

102. The local authority does not intend to arrange any form of contact for either child with Shaun. I am asked to make an order under CA 1989 s34(4) order permitting it to withhold contact.
103. During the proceedings, Shaun's contact with Maisie has taken place on a weekly basis. He has had monthly contact with Thomas. He is seeking ongoing direct contact with both children, but accepts that the frequency will reduce.
104. The local authority's position is supported by the guardians for each child. Thomas's guardian has been raising concerns about his ongoing contact with Shaun for some time.
105. The arguments in favour of a total cessation of contact are as follows.
106. As the Lucy Faithful assessment points out, and as is frankly obvious, Shaun poses a direct risk of serious sexual harm. That risk is probably higher for Maisie than it is for Thomas, given her gender, but because Shaun's denial of any sexually harmful behaviour means it has not been possible to conduct a thorough and informed risk assessment, the unavoidable conclusion must be that the risk is present for both children.
107. On behalf of Shaun it is said that supervision of contact, or indirect letterbox contact, could reduce or even eliminate the risk of direct sexual harm. I consider this to be true only to a very limited extent. It is unlikely that Shaun would have the opportunity to perpetrate physical harm during the course of supervised contact. The opportunities for grooming behaviour, however, would be significant even in supervised contact, and would exist in some form if any means of communication between Shaun and either child is permitted. Grooming is, by its nature, subtle and difficult to spot. I am very mindful that throughout the previous care proceedings Shaun was at the very least grooming, if not sexually assaulting, Emma, and this was missed by all professionals who observed and assessed the family.
108. Both children will have to come to terms with a very difficult life history. Maisie will have to be told that the father whom she knows and loves and who was her primary carer throughout her life until she was removed was, over that period, in a sexual relationship with her older sister. Thomas faces the even more difficult reality that he is the child of an incestuous relationship, during the course of which his mother was subjected to one of the most harmful forms of sexual abuse.
109. Both guardians and the social worker expressed the view during their evidence that it will be important, particularly in the context of both children's life story work, not to give the message that Shaun's behaviour is in any way 'state-sanctioned'. The children must be supported to

understand that what Shaun has done is deeply harmful and that it cannot be endorsed or tolerated. The need for that very clear message to be delivered is reinforced by the evidence in the Lucy Faithful assessments of the loose sexual boundaries within the family, and the passive way in which the adult family members have responded to the knowledge of Shaun's abuse of Emma.

110. I can see no circumstances in which any form of contact with Shaun could bring any benefit to Thomas.
111. The situation is a little more nuanced for Maisie. She knows Shaun as her father; her primary attachment relationship is with him. Although her experiences in his care seem not to have been wholly positive, contact has generally been of a good quality. She will experience the termination of contact as a loss.
112. However, Ms Coker-Thompson expressed the view in evidence that any benefit Maisie might derive from knowing her father is still in her life would be likely to be undermined when she comes to understand her father's actions. I agree. Maisie may well in those circumstances wonder why the decision was taken that she should have ongoing contact with a father who had harmed her older sister, and she herself indirectly, in such a profound and significant way. Ongoing contact in any form would be likely, in my view, to dilute and undermine the very clear message which Maisie must receive that her father's behaviours have been entirely unacceptable: a message that the widespread blurring of sexual boundaries within the family makes it crucial that Maisie should receive and understand.
113. I accept that if Maisie's relationship with her father is terminated, there is a risk that she will seek him out in future, potentially without the support or supervision of her carers and the local authority. The best way of addressing that risk, in my view, is not to sanction harmful and potentially confusing contact now, but to ensure that when she is ready to understand the reasons why she no longer sees her father Maisie is given a clear and accurate explanation.
114. I am entirely satisfied, therefore, that it is both necessary and proportionate in this case for the local authority to be permitted to withhold contact with both children from Shaun under CA 1989, s34(4).
115. I observe finally that, while I am prepared to endorse the arrangements for contact between the children and the other members of their family that have been agreed between the parties, I consider it crucial that these arrangements are carefully monitored so that the children are not exposed in future to the risk of direct or indirect sexual harm. That applies particularly, in my view, to Thomas's contact with Emma.

#### Disclosure to the police

116. The local authority seeks permission to disclose a copy of the recent DNA Legal paternity test results to the police. There has, it seems, been a strategy discussion at which the police have been informed of the outcome of this testing. I do not understand any party to be actively opposing this disclosure, although the position of Shaun was not entirely clear: it seemed to be that disclosure was unnecessary because the police could obtain a sample of his DNA by arresting him and then carry out their own testing, but it seems to me that there are some flaws in that argument.
117. I have had regard to the factors in *Re EC (Disclosure of Material)* [1996] 2 FLR 725. There is, in my view, a powerful public interest in making information available to the police which will assist them in investigating an allegation of what is, of course, an extremely serious crime. Inter-agency cooperation is particularly important in such a case. The fact that the police are already

aware of the information, as a result of appropriate information-sharing between the local authority and the police, is a relevant factor. It is also relevant that there is nothing preventing the local authority, under the Family Procedure Rules, from providing the police with a copy of this judgment in which the DNA test results are referenced.

118. The arguments against disclosure are limited. I do not consider that either child's welfare is likely to be impacted directly by disclosure. In any potential future prosecution the criminal court will have power to protect their identities if it considers it appropriate. This is not a case where CA 1989, s98 is engaged. Shaun has made no relevant admissions and refused to cooperate with DNA testing.
119. I will give permission therefore to the local authority to disclose a copy of the DNA Legal paternity test results to the police.