

IN THE FAMILY COURT AT CHESTER  
IN THE MATTER OF THE CHILDREN ACT 1989  
IN THE MATTER OF S AND H  
BEFORE HER HONOUR JUDGE HESFORD

B E T W E E N:

<b>A Council</b>	<b>Applicant</b>
- and -	
<b>The Mother</b>	<b>1<sup>st</sup> Respondent</b>
- and -	
<b>The Father</b>	<b>2<sup>nd</sup> Respondent</b>
- and -	
<b>S and H</b> <b>(By their children's Guardian)</b>	<b>3<sup>rd</sup> Respondent</b>

**APPROVED JUDGMENT**  
**DATED 4 FEBRUARY 2025**

Hearing dates: 30, 31 January & 4 February 2025

<b>Ms Withers</b>	for the	<b>Local Authority</b>
<b>Mr Carey</b>	for the	<b>Mother</b>
<b>Ms Hardy</b>	for the	<b>Father</b>
<b>Mr Matthews</b>	for the	<b>Children</b>

## **INTRODUCTION, PARTIES AND POSITIONS**

1. This case is about 2 children, S aged two and a half and H aged one and a half. The decision for me is whether to make a care order with a plan for adoption for the children or to urge the local authority to change their care plan to one of long-term foster care, preferably with the children remaining with their current carers.
2. I have no doubt that the mother loves S and H and that she would not seek to deliberately harm them. She has been committed to attending contact even though the travel has been arduous and contact has been a lovely experience for all. She has been brave but realistic in deciding not to challenge the local authority decision not to rehabilitate the children to her care. I am pleased to hear that the mother's assessment in respect of her unborn child being undertaken by the different local authority where she now resides is looking positive. I also want to thank the foster carers for everything they have done to date.
3. The local authority seek final care orders and placement orders for S and H with a plan for them to be adopted. The mother opposes this plan and would like the children to remain in long term foster care in their present placement but with a view to her resuming their care at some point in the future. The father has not engaged with this hearing but his previous position was that he supported the plan for adoption. The Guardian supports a plan of long-term foster care with the children remaining with these existing carers. She admitted in her oral evidence to being more anxious about the future if the children had to move to an alternative foster placement.
4. No party sought to adjourn this matter on the basis of a need for any further assessment or due to any perceived gaps in the evidence. Despite this, some of the cross examination and carefully phrased submissions on behalf of the mother seemed to come close to implying that the court may not be in a position to undertake a fully holistic evaluation of the matter without more, or alternatively that the absence of further assessments should influence my decision. These submissions related to the perceived lack of a special guardianship assessment report in respect of the foster carers together with a support plan and an up-to-date formal assessment of the mother. Having heard the case and weighed the evidence, I am entirely satisfied that I have sufficient evidence to make my decision; there is no lacuna.

## **THE HISTORY, THE EVIDENCE AND THE HEARING**

5. These proceedings commenced in 2023 and have now been running for around 65 weeks, far in excess of the 26-week statutory maximum. The delays have been caused by the need to assess changing circumstances both with the mother and father but also within the local authority decision making team and with the existing foster carers.
6. The threshold for the making of care orders is conceded and I will set it out here:
  - (i) On [a date] H, aged a few weeks old, suffered an injury to his left mid calf in respect of which his parents were unable to provide a satisfactory explanation. Given his young age necessitating full supervision, this amounts to unreasonable parenting and an inability of the parents to ensure H's safety.*
  - (ii) Both parents suffer with mental health difficulties which can, at times, impact upon their ability to provide safe and consistent care to a child.*
  - (iii) There is domestic abuse within parents' relationship which could impact upon the children's physical and emotional safety.*
  - (iv) At times home conditions have been very poor and inappropriate for a young child.*
7. This hearing has taken place as a face-to-face hearing and has included oral evidence from the local authority team manager and the guardian. It was useful to hear them both give evidence. They were both thoughtful and impressive. The mother was unable to attend for the evidence either in person or remotely due to illness but she and her legal team did not seek to adjourn the matter and were happy for it to proceed in her absence. She did attend remotely for the closing submissions on the second day and she wrote me a brief note which I read carefully.
8. The primary issue for this hearing is relatively narrow which is why although contested, this hearing had a short time estimate of 2 days. The assessments of the mother are negative and she accepts that she is not in a position to care for H and S at this time. She is pregnant and undergoing assessment with a different authority and although not yet complete, the assessment to date appears positive. However it focuses on only one child, being the unborn baby, and does not cover H and S. They have also only been involved with the mother since late 2024 and she has not been caring for any child during that period. The applicant local authority have been involved with the mother and the children since they moved to the area in early 2023 when there was intervention from the Family Nurse Partnership and it became clear that they needed

support in place. A referral was made to children's social care due to the concerns focussing on the mother's own vulnerabilities such as age, finances and primary mental health. Ultimately following the commencement of proceedings there has been a full and an updated assessment of the mother which was negative. There has not been a formal updated assessment of the mother's present circumstances, including her partner, as I will address later.

9. The issue therefore is whether I should approve the plans of the local authority and make care and placement orders or whether I should refuse to make a placement order and approve only plans for long term foster care for the children as sought by the mother and supported by the guardian albeit for differing reasons. For the mother, the long term foster care option is as she hopes that she can seek rehabilitation to her care at some unknown, unassessed and unspecified point in the future whereas the guardian's recommendation supports them remaining with the existing foster carers throughout their lives.
10. There is no option for Special Guardianship. The current foster carers do not feel able to commit to caring for the children as anything other than (agency) foster carers following the local authority confirming that they would not agree the desired enhanced financial package of support in the event that the foster carers sought to become special guardians for the children. This is a very common situation. Foster carers undertake the work as a career and the fees paid are often vital to their home circumstances. Unsurprisingly they cannot agree to a 'pay cut' in order to provide permanence through a special guardianship order.
11. In view of the limited areas of dispute, accordingly I do not intend to review or set out the evidence which I have read. It is contained in the bundle and has all been taken into account in coming to my decisions. Likewise I do not intend to set out all the oral evidence which I heard and again it has all been taken into account. I will address only the most pertinent points and this judgment will mainly address the issues which I have just identified. The oral evidence reflected the written evidence without significant change.
12. This is a lengthy judgment and I make no apologies for the same. There is much case law and guidance in this developing area and I consider that it is important that I should set out my reasons for my decision fully, together with my analysis of the relevant principles as they apply specifically to these two children, S and H.

## **RELEVANT LEGAL PRINCIPLES**

13. The principles are well established and I will summarise them here. The children's welfare is my paramount consideration. Given the issues in the case I am obliged to reflect on this throughout their lives and the relevant checklist is s.1(4) Adoption and Children Act 2002, referred to as the 'Enhanced Welfare Checklist'. I have been conscious of this throughout and will address it later both specifically and in my analysis section.
14. I would only be empowered to make the orders sought if the applicant could establish the crossing of the legal threshold found in s.31 Children Act 1989. This requires proof that the child has suffered significant harm or is likely to suffer significant harm attributable to the care likely to be given to him if the order is not made. The proof of any matters in dispute is on the balance of probabilities and it is the responsibility of the applicant to prove such matters. In this case the threshold is agreed and there is no dispute as to the making of final care orders. It is the plan which remains disputed, including the issue of placement orders.
15. A very well-established general principle is that any delay in determining the question is likely to prejudice the welfare of a child. Here there has already been significant delay in finalising matters and it is important that there should be no further delay.
16. I must also consider Article 8 ECHR and the parents' right to respect for their private family life. This principle restricts state intervention to only where necessary and limits the intervention to only that which is reasonable and proportionate. It would be disproportionate to intervene beyond the level required to meet the perceived harm. It would also be wrong to consider a plan of placing for adoption simply because it was felt adoptive parents might provide the children with a better standard of life.
17. In this case I am asked to consider the making of placement orders with plans for adoption. This is the most draconian outcome and would sever family life with lifelong implications. This requires a particularly high level of justification which has been encapsulated in the notion that such a decision can only be reached 'if nothing else will do', but this is a 'cross-check' to be applied following the weighing of the welfare checklist factors and the realistic options. Consequently, the court must identify the realistic options and subject each of them to a full assessment identifying both the positives and the negatives of each option. The options must be further weighed against each other in a holistic fashion to ensure the Court does not reach a 'last man standing' conclusion by assessing and rejecting each option in turn and without any cross comparison.

18. I remind myself of the considerations as set out in *Re B (A Child)* [2013] UKSC 33 and *Re B-S* [2013] EWCA Civ 1146. It is an order of last resort and where no other compatible order with the child's long-term welfare prevails and it must be both necessary and proportionate. The interests of the child self-evidently require his or her relationship with his natural parents to be maintained unless no other course is possible in their interests. Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations where appropriate to rebuild the family (*YC v The United Kingdom* [2012] 92120 55 EHRR 967).
19. It is important also to have regard to those authorities in which guidance has been given by the Senior Courts, in particular the decisions of the Supreme Court and the Court of Appeal in *Re B (Care Proceeding: Appeal)* [2013] UKSC 33, *Re B-S (Children)* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 597, *Re A* [2015] EWFC 17 *Re S (A Child)* [2014] EWCC B44 and *Re P (A Child)* [2018] EWCA (Civ) 1483. I have also considered the authority of *F (A Child - Placement Order- Proportionality)* [2018] EWCA Civ 2761.
20. Behind all this there lies the general principle, derived from the no order principle under s.1(5) of the 1989 Act, to be read in conjunction with s. 1(3)(g) as to the range of powers available to the Court, and now similarly embodied in s.1(6) of the 2002 Act, that the court should adopt the 'least interventionist' approach.
21. As Hale J, as she then was, said in *Re O (Care or Supervision Order)* [1996] 2 FLR 755, 760:  
  
*"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 interests of the children ... unless there are cogent reasons to the contrary."...*
22. Implicit in all this analysis are the three important points emphasised by Lord Neuberger in *Re B*.
23. There must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option. My task then is to evaluate all the options, whilst not excluding any, and to undertake a global holistic and multifaceted evaluation of the case and the children's welfare which takes into account all the negatives and the positives, all the pros and cons of each option.

24. At the end of its assessment the court may be minded to make placement orders which the mother is wholly opposed to. In such circumstances the court can only make the order after having dispensed with the parents' consent to the same pursuant to s.52(1). It can only do so if the welfare of the child requires the court to dispense with such consent.
25. The primary area of dispute in this matter is whether the care plan should be for long term foster care or adoption. There has been a plethora of recent cases, guidance and evidence concerning this issue and the relevant and linked issue of post adoption contact and I have balanced these cases in my decision making, including *Re R and C (Adoption or Fostering)* [2024] EWCA Civ 1302; *Re Joe (a child) (Long term foster care versus adoption)* [2023] EWFC 174 (B); *Re DS (A Child Adoption or Fostering)* [2024] EWCA Civ 948; *Re ADA (Care & Placement Orders)* [2023] EWCA Civ 743; *Re K (Child: Placement options: Concurrent planning)* [2024] EWFC 98; *Re H and J (Placement Orders)* [2024] EWCA Civ 429; *Re T and R (Refusal of Placement Order)* [2021] EWCA Civ 71; *Re N (Refusal of Placement Order)* [2023] EWCA Civ 364 and *Wakefield Metropolitan District Council v A & Ors* [2024] EWFC 345. Some of those cases were first instance decisions and are therefore not binding on me but are useful barometers of judicial approaches in a changing world.
26. I have also considered recent developments in these areas. There is increased public discussion about the future of adoption in general and of contact and open adoption in particular and these issues have been addressed by the President on several occasions including his two recent lectures – “Adapting Adoption to the Modern World” (the Mayflower lecture in Plymouth, 9 November 2023, and “Adapting Adoption to the Modern World – Part Two” (the POTATO conference lecture, 17 May 2024). These were neither binding nor guidance but more his own personal thoughts on the development of the law.
27. These were followed by the Public Law Working Group publishing its report ‘Recommendations for best practice in respect of adoption’ calling for reforms across the adoption system on 7 November 2024. The report reflects upon the evolution of support needs, particularly understanding identity, for children as they grow and develop and calls for ‘a change in face-to-face contact between adopted children and birth families, with training and greater support and counselling for birth parents’ and recognises that contact with members of the birth family can be hugely beneficial to adopted children and can be key to developing their sense of identity, extending into adulthoods.

28. I remind myself that these again are examples of judicial thinking but they are not binding authority or statute.
29. The statutory provisions governing contact on the making of a placement order are set out in ss.26 and 27 of the 2002 Act. Under s.26(1), on the making of a placement order, any existing contact order under s.8 or s.34 of the Children Act 1989 ceases to have effect. Under s.26(2), while an adoption agency is authorised under a placement order to place a child for adoption, no application can be made for a contact order under either of those provisions, but the court may make an order for contact under s.26(2)(b) “requiring the person with whom the child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for the person named in the order and the child otherwise to have contact with each other.” Such an order may be made on the application of persons identified under s.26(3) or, under s.26(4), by the court of its own initiative. Under s.27(1), “a contact order under s.26(a) has effect while the adoption agency is authorised to place the child for adoption or the child is placed for adoption, but (b) may be varied or revoked by the court on an application by the child, the agency, or a person named in the order.” Under s.27(4), “Before making a placement order, the court must (a) consider the arrangements which the adoption agency has made, or proposes to make, for allowing any person contact with the child, and (b) invite the parties to the proceedings to comment on those arrangements.”
30. The Children and Families Act 2014, inserted s.51A into the ACA 2002 which introduced an express power to make a contact order in all cases where an adoption agency has placed or was authorised to place a child for adoption and the court is making or has made an adoption order in respect of the child: s.51A(1). S.51A(2) provides: “When making the adoption order or at any time afterwards, the court may make an order under this section
- (a) requiring the person in whose favour the adoption order is or has been made to allow the child to visit or stay with the person named in the order under this section, or for the person named in that order and the child otherwise to have contact with each other, or
- (b) prohibiting the person named in the order under this section from having contact with the child.”

Further provision is made in s.51A as to who may be named in, and apply for, an order under the section.



31. Another issue often considered is the availability of adoptive placements and whether the plan is in fact a realistic option. When choosing between fostering and adoption the court does not need to have evidence of available placements for the children, save in cases ‘at the margins,’ for example placement of large sibling groups or older children. Clearly that is not the case here. They are young, there are no health issues and recent evidence from family finding and the social worker suggests available placements. I also remind myself that the court does not have jurisdiction to attach conditions to a placement order: *Re A (Placement Order: Imposition of Conditions on Adoption)* [2013] EWCA Civ 1611; [2014] 2 FLR 351. This is particularly relevant if I were to consider a time limited search for an adoptive placement.
32. I note that in this case the local authority propose to seek placements where direct contact would be considered for the first six months before returning the matter to court. I cannot stray across the line that divides the role of the court and the role of the local authority. Accordingly, I do not have the power to impose a condition for a time limited search.

### **DISCUSSIONS INCLUDING WELFARE CHECKLIST ANALYSIS**

33. I set out earlier that the children’s welfare is my paramount concern and I intend to address now this in detail as part of my analysis. As the local authority seek placement orders, I will address the “enhanced “ checklist from s.1(4) ACA 2002.

(a) the child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding)

At their young ages, neither S nor H are of an age or understanding to comprehend the nature of these proceedings, but it has to be assumed that they would wish to be placed with one or both of their parents if it were safe for them to do so, where they could develop a true sense of their identities. It must also be assumed that they would wish to be placed with carers who can meet all their needs and provide them with safe and consistent care so that they can reach their full developmental potential. Sadly, neither their mother nor father are in a position to offer such care and whilst mother clearly hopes for a rehabilitation to her care at some point in the future, at the present time and for the purposes of these proceedings, this is no more than an aspiration. There is no assessment or evidence that could support any potential time frame for reunification, let alone in line with the children’s need for no further delay. In addition to this, mother appears likely to be looking after a new and wholly dependent baby in the next few months and this will certainly

affect her ability to care and devote time to S and H for the foreseeable future.

If they cannot be with their parents and there are no other suitable family members, then they will need to be looked after by either foster parents or by adoptive parents who can provide the care they need.

34. (b) the child's particular needs

S and H are happy, lively children who are settled and thriving in the care of their foster parents. They have previously experienced a lack of consistent parenting that led to them being likely to suffer harm as a result of their mother's poor mental health, exposure to domestic abuse and inconsistent parenting. They need routine and structure or they can become dysregulated. Whilst they love each other, they can become aggressive towards each other and lash out. They need constant monitoring. The foster carers have raised the issue of ASD or trauma related behaviours but this is only a suggestion and has not been assessed. I note from the evidence of the social worker that the female foster carer, who has a mental health nursing background, has also raised concerns about other issues such as H potentially having the eating disorder Pica and other substance abuse or genetic related issues. H has a high palate and slight tongue tie but this has improved and does not cause him problems. There are no concerns raised in either of the children's medicals undertaken for the adoption planning. They have no particular needs and there are no medical issues which would adversely affect their prospects of adoption,

By virtue of their young ages they are entirely dependent on their carers to meet all their needs and they require a safe, consistent and stable home environment with carers who can afford them attuned parenting, including love and affection, stimulation to promote their development, and protection from potential harm. They need to live where they can continue to thrive. They are meeting all their developmental milestones, developing appropriately and have coped remarkably well having experienced a number of significant changes throughout their young lives.

They have developed close bonds with their foster carers. They are provided with stability and security with clear routines and nurturing and opportunities to develop. They have grown in confidence in placement and clearly view their foster carers as their primary attachment figures and a move from their care at this stage in their lives is likely to be difficult for them and would need to be managed sensitively and carefully. There is, however, no reason to suggest that these attachments cannot be

replicated to potential adoptive carers, if plans are made to secure permanence for them as soon as possible, and the transition to an adoptive placement takes place within their timescales. It is vital that any transition takes place over a period of time with them adapting slowly to the new people in their lives. Research has shown that this is vital, including ongoing contact with their foster carers until they have settled. Time is crucial and any delay will certainly impact upon this given their ages. They would of course be able to maintain their attachment to each other as a joint placement will be sought by the local authority and indeed the local authority plans an “open” adoption with direct contact between the children and their mother (as well as potentially their new sibling) so that relationship could continue. It is very important that they are not separated as the sibling relationship has been shown to be an enduring and important relationship for adopted children.

35. (c) the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person

The plan of adoption would eventually sever S and H's relationship with their foster carers and significantly limit their relationship with their mother which is likely to cause them distress as they become older and are able to comprehend their circumstances. Life story work and good quality occasional direct contact with their mother (and sibling) will ensure that their identity needs are met and would enable their adoptive parents to give them an appropriate child centred understanding of why they could not remain in their parents' care.

I have given considerable attention to the impact upon the children the reduction in their contact with their mother. It is clear that they have a very good relationship and bond with their mother. She loves them and they love her and they both look forward to seeing each other at contact. The mother's commitment to contact has been excellent and it was only curtailed due to her health when she became pregnant. If I were to approve adoption as the plan, the contact would change from twice each week to three times each year, a very significant reduction. If I approved long term foster care the reduction would be less, to monthly, but this would still be a significant reduction. The children will suffer loss and possible emotional harm whatever I decide. The local authority have, to their credit, taken the issue of ongoing contact very seriously and are committed to seeking an adoptive placement where this direct contact will continue in the future. If they are unable to find adopters who are agreeable to this contact within six months of the search commencing they have agreed to return the matter to the court for further consideration.

If the children are adopted, they would also need sensitive explanations at the proper time as to why they were unable to remain with their mother yet their half sibling was, if that is ultimately the outcome for mother's unborn baby.

36. (d) the child's age, sex, background, and any of the child's characteristics which the court or agency considers relevant

There are no additional relevant characteristics save for those addressed elsewhere in this judgment.

37. (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,

S and H suffered harm in the care of their mother and father. The assessments do not support rehabilitation to mother in the foreseeable future and additionally the birth of a third child is likely to impact this further. Mother was unable to care for two children successfully; three would be even harder. There is no gap in the evidence concerning the mother's present position despite the lack of a formal update, it has been considered by the social workers and the IRO and in any event no further assessment has been sought.

The children have been afforded protection from harm by their foster carers and thankfully seem to have coped remarkably well with the number of significant changes throughout their young lives.

The issue of potential future harm, particularly emotional harm, is a relevant factor in the decision-making process concerning foster care or adoption and I will address this further later in this judgment.

38. (f) the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so,

(ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs,

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

The plan of the local authority is that there should be ongoing face to face contact between the children and their mother when an adoption order is made. There would of course be a significant reduction. S and H would continue to have contact with their mother following the making of a placement order as per the proposed reduction plan until it becomes monthly supervised contact for 1.5 hours until the children are placed with prospective adopters. Thereafter it is proposed that H and S would have direct contact with their mother and half sibling a minimum of three times per year during school holidays. The local authority would exclusively search for prospective adopters who are in agreement with the proposal of ongoing direct contact for 6 months, after which the search would be widened to include prospective adopters who are not exclusively in agreement with the proposals for contact. The local authority agreed to return the matter to the court in the event that prospective adopters committed to facilitating direct contact as set out above have not been found from a time period of minimum six months for further consideration.

39. The present foster carers would support ongoing contact between S and H and their mother; indeed they have a good relationship. Their supervising social worker comments *“I’d also like to commend the foster carer for her amazing efforts in supporting mum during family time, helping her build confidence in caring for the children, and even facilitating additional family time.”*
40. Again, and as with the mother, I have not underestimated the impact of the loss of the relationship with the foster carers upon the children if adopted as it is clear also that the children have a very good and close relationship with the foster carers and they have offered to care for them long term or even under a Special Guardianship Order – although they were not prepared to pursue the latter in the absence of significantly more financial support than the local authority were able or prepared to offer, the local authority having already increased their offer above the amount calculated by means testing. A SGO for S and H is not an option.
41. As with the question of harm, I will discuss the issue of relationships further in my analysis.

## **ANALYSIS OF REALISTIC OPTIONS**

42. There are numerous issues and factors which have been aired in this case and each advocate has argued for me to place greater or less emphasis on many of the same issues raised. I have considered them all, even if they are not specifically mentioned and my emphasis has not

been on individual aspects but on the full picture and on the children's lifelong welfare, my paramount concern.

43. The mother has undertaken two parenting assessments within these proceedings. The first assessment filed was inconclusive, finding that a further period of assessment was needed and the addendum filed thereafter was negative. Mother is now pregnant with her third child, and remains in a relationship with the father although she does not live with him. In making her recommendation not to recommend rehabilitation to the mother in her final statement the social worker highlighted her concerns that the mother would need ongoing support and *"There is evident uncertainty as to whether the interventions offered would result in any lasting, meaningful change. Mother has been provided with a significant level of support and intervention within these proceedings however this has not been sufficient to lead to the children being able to be safely return to her care... Observations of mother's Family Time with the children highlight that practically she knows how to meet their needs, however, can struggle with balancing the children's competing needs. Mother will express that after two hours she is tired and will begin to withdraw from children; the Local Authority are of the view that mother would not manage both children in her care full time given that she struggles with caring for the children for a 3 hour period."* This was not challenged.
44. The IRO acknowledged that there was a gap in the evidence relating to the mother's present situation but ultimately concluded that the assessments undertaken by the local authority were adequate in evidencing the difficulty that the mother has had in meeting the children's needs. She considered that *"the likelihood that further assessment would conclude that mum can safely care for three children, S, H and the unborn, is very slim. To undertake such assessment would require a further period of time and further delay, which I believe would be detrimental to the children, given the already prolonged timeframe taken to reach a plan of permanence for S and H. I do not believe that such delay is justifiable given my view that the likelihood that further assessment would conclude that mum can safely care for three children is very slim. I do not believe that I require these assessments to endorse the long-term care plan for the children."* That conclusion is accepted by the guardian in her analyses.
45. I acknowledge that there may potentially be positive changes but the likelihood that further assessment would conclude that mother can safely care for three children, S, H and the unborn within a reasonable time, is very slim and it is not appropriate for me to realistically consider the

potential for rehabilitation as part of my options – it is simply too remote, unlikely, unsupported by evidence and beyond the timescales of these children according to the evidence of both the social worker and the guardian. These proceedings are already long delayed and need to be resolved. It would not be appropriate for me to approach this matter on that basis and agree to long term foster care based on a rehabilitation to the mother at some unplanned and indefinite point in the future and I must rule this out. The risks noted within the evidence, which is unchallenged, are long standing, and S and H have had social care intervention since birth. Whilst mother submits that the concerns are in the past, the local authority and the guardian consider that the concerns are still present today. The mother was unable to look after two children successfully. The added stress of a third completely dependent baby makes successful care of S and H even less likely. Delay is not in the best interests of S and H nor is ongoing uncertainty.

46. The option of long-term foster care suggested by the guardian is not with a view to rehabilitation to the mother in any event. The guardian recommends long term foster care predominantly on the basis that the children remain with these particular foster carers throughout their lives, rather than placement in long term foster care in general. She is satisfied that they are committed to care for S and H, having done so for 9 months and that there is a real attachment. She relies on the case of *Re: Joe (a child) [2023]* (above) where the court approved long term foster care for a young child instead of adoption as proposed by the local authority. In that case, *Joe*, aged 4 had lived with his foster carers for 16 months and the Judge was critical of the social worker and guardian for not properly considering the foster carer's commitment to the child and the emotional impact on the child if he were to be removed from his foster care placement. The judge was clear that the child could achieve good outcomes being cared for by his existing foster carers and that the foster carers were fully prepared to support the child's emotional needs long term to ensure he understood his family arrangements. I am conscious that this is a case decided at circuit judge level and I accept that some of the facts are similar as the guardian suggests. However there are differences too. Here, S and H have been in placement for a much shorter time (particularly pro-rata to their lifeline) and of course they are two children together and considerably younger, H being only 18 months old. *Joe* also had a number of existing half siblings where relationships could develop in the future. Here they have one future sibling who may well remain with the mother. The local authority include him/her in the plans for the mother's contact post adoption

47. I commend the foster parents for the commitment they have shown to S and H and for their offer to do this throughout their lives. S and H have thrived in their care, they have been safe, nurtured, and are likely loved and adored by their carers. It is clear that they are excellent professional carers and this is their job, they do not have other careers and they rely on their agency foster payments as their income; they would have no income without. I do not criticise them for refusing to proceed with special guardianship in view of this as the loss of income for them would have a very significant impact upon their lives.
48. As I have already set out, the guardian recommends the children remain in long term foster care but whilst she supports the plan of long-term foster care generally, it was very clear that she would prefer this to be with these current carers. Whilst the Court can offer an opinion on any placement under a care order and the local authority would consider such an opinion, I have no formal assessment of the current carers for long term foster care, they not having been formally matched to care and there are absolutely no guarantees that S and H would be placed with them following the matching process, let alone remain with them for the next 16 and a half years. The matching process for long term foster care was detailed by the team manager at paragraph 2.10 of her recent statement. *“The children will transfer to a social worker in the permanence team. The new social worker would need to update the children’s Child Permanence Report. Before any foster carer was approved as a long term carer for the children consideration would need to be given as to whether the Local Authority should undertake a search for any other available long term foster placements (in order that these can be considered alongside the current carers), a matching matrix would need to be completed and once the most appropriate match was selected the information would need to be presented at fostering panel and any decision about whether the carers would be matched as long term foster carers would need to also be agreed by the ADM. It is envisaged that this process would take at least 3 months once the children have been allocated to a new social worker.”*
49. It is important that I record that the Court does not have the power to direct a local authority to place a child in a particular placement under a Care Order – in short, I cannot make an order approving placement of the children in long term foster care with only these carers.
50. There are undoubtedly many positives with these carers and these are highlighted not just in the guardian’s report but also in the local authority evidence. I note that they have another child in their care (now aged [an



age]) for whom they have cared since he was younger, although I do not have precise details.

51. I am aware that the foster carers have also previously sought respite care for S and H for when they have taken a family holiday in the past which will have caused some disruption to their care. I was told that this was due to the plans already being in place. According to the team manager Ms Rigby the local authority consider that there is a risk this will happen again in the future as she understands that they wish to spend time and go on holiday together as a family without their foster children. This, she stated in her oral evidence could negatively impact the children, as they would be treated differently to the birth children. The guardian's understanding was that this would be minimal and for specific reasons and either family or their foster carer network friends would care for the children in their absence. It was suggested by the local authority that this was evidence of the carers continuing to consider themselves as professional carers with S and H as foster children having a different standing than their own birth children. If it did happen, then H and S may grow up not feeling full and proper members of the family within which they are cared for, over a very significant period of time. I have no evidence as to the actual plans and only time would tell, but I do not consider this to be a particularly significant issue either way and it is only one of many issues to be considered. It is factual that they are professional foster carers and of course the children as such would have a different standing. That would not be the case in an adoptive placement, they would likely always be included and would be full members of the family.
52. My understanding is that the carers have rejected the suggestion of caring for S and H under the auspices of a special guardianship order purely on the basis that the financial package was insufficient. SGO of course is not only about financial issues but also about a child becoming part of a family. Since the guardian's latest report was filed, the local authority reflected and held further discussions with the foster carers shortly prior to this hearing. The social worker's statement sets out the reasoning behind their motivation for caring for S and H and I accept that they are well motivated, their reasoning is appropriate and they clearly want the best for them. However, it is clear from her evidence that they may struggle and be anxious with the issue of adoption and potential severance of family ties and they may conflate the issues such that foster care could be justified as a recognition of the mother's positive improvements.

53. Either of the options could offer suitable parenting and permanence for S and H. S and H need stability and security. Permanence of course is not connected to legal status. If I was to approve long-term foster care they could potentially remain with the carers to whom they are already attached and the evidence suggests that they would receive suitable and entirely satisfactory care from them. They would not have to suffer the immediate emotional harm of having to move to a new placement and being separated from the carers together with a significant reduction in time spent with their mother. Whilst there appear to be no real impediments to being matched and ultimately be approved to care long-term by the local authority, there are no guarantees that it would happen and that the placement would continue indefinitely and there is a risk that a future move with the resultant harm would happen anyway. There is a wealth of research on both long term foster care outcomes and on adoption. Neither is without the risk of breakdown, but there are far fewer changes for most adopted children. Sadly, long term foster care can and often does lead to multiple changes of placement, more criminality and worse educational outcomes.
54. In submissions and cross examination there was mention by both the mother's and children's advocates of the potential for a special guardianship arrangement in the future in place of long-term foster care. I make it clear that this is not something which has been factored into my consideration of the outcome of this matter, it is a red herring which in my judgment has been put forward in an attempt to sway me towards long term foster care. It would be wholly erroneous and inappropriate of me to consider this relevant as it is not an option which is open to me at this time or at any foreseeable point in the future. There are no plans for assessment, no agreement for any assessment and no suggestion that the financial issues which derailed this suggestion would be over come at any point in the future.
55. There are many differences between adoption and long-term foster care which were set out in the written evidence and also dealt with in oral evidence. Many of the differences and their potential effects are not disputed, it is merely the conclusion which is disputed. Accordingly, I will not address these in much detail in this judgment. Instead I will concentrate on the issues which I consider to be of the most relevance, being the children themselves with all of their personal attributes, their ages, the amount of time they could be subjected to statutory intervention, the risks of each type of placement, the question of ongoing contact and the relationships with the foster carers, all of these being linked with the very relevant issue of potential emotional harm.

56. Some facts are, however, indisputable. If I was to accede to the plan of long term foster care, the children would grow up in the care system with the stigma attached to it and the statutory interventions and this would be until they are aged 16 or 18 years of age – up to 16.5 years more as a looked after child for H and 15.5 for S. Those timescales are different from “Joe’s” timescales, they are longer and follow a shorter period of existing foster care and they also have the benefit of their ongoing close attachment to each other which will continue as they will remain together. Whilst some of the daily effects can undoubtedly be offset by delegation, the children would remain subject to regular social work visits (with changing social workers), foreign holidays would require permission and planning, the children would have medicals and reviews, and a number of restrictions which would not apply in an adoptive placement all taken by a corporate parent. They could be identified by their peers as being foster children and stigmatised. At age 18 they would no longer be subject to foster care and there are no guarantees that a foster placement would endure longer, whereas in an adoptive placement they would remain part of the family.
57. In foster care, the children could be subjected to repeated applications for discharge of the care orders or contact and this could be destabilising. I am, of course, aware that the mother still seeks rehabilitation in the future so this is a realistic risk.
58. In foster care there is an increased risk of future breakdown of placements and as I have already set out, I cannot legally commit the local authority to place only with these foster parents for the next 16.5 years. Statistically, and well-established knowledge, is that the risk of foster care breakdown is greater than the risk of adoption breakdown. The solicitor for the guardian highlighted some statistics which address the percentage of likely breakdown following periods of time in foster care and numbers of placement. I do not dispute these figures but I am dealing with these specific children and not generalisations. These are very young healthy children with no impediment to adoption. They do not have any significant emotional issues which would negatively affect a move if this was managed appropriately.
59. I was impressed by the evidence of the social worker relating to the local authority plans for transition and the planned use of the UAE model. The model is based on six principles and these aim to address the concerns that when children move to an adoptive family, their feelings of loss and separation can be overlooked, especially when contact with foster carers is abruptly cut off. It is a thoughtful and child focused model which involved the children getting comfortable with the adopters before any

move is finalised and the timescale is flexible, based on the need of the child. I note that the model is underpinned by a framework for providing therapeutic caregiving in foster care and adoption, the Secure Base model. The fact that the foster carers would be significantly involved in the same is a great positive and here, the fact that the foster carers have been excellent carers for the children, helping them to grow and develop trust and understanding of attachments will assist in transferring to new carers. Much was appropriately made of the excellent care given by the foster carers in the child's closing submissions including their nurturing, promotion of the mother's involvement and contact and their commitment, to mention a few points, and I do not dispute that they have been excellent carers. However, there are many foster carers who offer the same support, commitment and undertake the same roles and offer excellent care for children. In short it is not a unique situation to have good carers and S and H have benefited from this. It will benefit them in the long run too and even assist in any transition. The local authority also accepted that they could still have some involvement in the future.

60. Here also the local authority propose an "open" adoption with direct contact in the future with both their mother and their new sibling, and this if successful, will support their identities and could help to stabilise any adoptive placement. Research by the leading UK charity Adoption UK in 2024 (the Adoption Barometer) suggests that 93% of prospective adopters believed direct contact can be beneficial and there has been an increase in direct contact. If the direct contact is properly promoted, planned and supported it will benefit all the family/families.
61. I have already contrasted this case to "Joe's" case, as relied upon by the guardian. I set out earlier the main recent cases in relation to these issues. In *Re H and J (Placement Orders)* [2024], Lord Justice Baker refused a mother's appeal against care and placement orders despite the potential devastating consequences to the sibling relationship. Here the issue is not the sibling relationship as it has not been established but the issues of the attachments to the foster carers' attachment (and the mother's contact) which have been advocated by the mother and Guardian as being very significant; they are analogous. The Court of Appeal's comments in relation to the balance between sibling relationships and the security that adoption can offer were striking. In the case, the guardian concluded in her final analysis that, permanence, stability, and security for the younger boys outweighed the benefits of maintaining direct contact with their parents and siblings. The court emphasised the paramount importance of providing the children with a permanent and secure family environment, which adoption could best

offer, even at the expense of severing existing sibling relationships (here the foster carer relationship).

62. Here there is no existing sibling bond but the local authority is committed, if circumstances allow, to facilitating a relationship when the new baby is born. In *Re DS (A Child Adoption or Fostering)*[2024] Peter Jackson LJ, when overturning a decision of a circuit judge not to grant a placement order and preferring long term adoption and in setting out his welfare evaluation, identified that '*At the heart of the matter, she needs a lifelong family where she can feel that she belongs.[...] this can only happen through adoption*' Long-term fostering '*was obviously a very poor plan for C's future.*'
63. The case of *Re R & C* offers considerable guidance in relation to many of the issues in this matter and relevant facts are similar, the youngest children there being aged two and three and the local authority seeking to promote some direct contact being of particular relevance. The Court of Appeal granted the placement orders for the two younger children when hearing the appeal rather than submitting for a re-hearing. The court emphasised that the welfare of the children necessitated adoption as it offered a more permanent and stable environment compared to long-term foster care, which, despite potential for continuity, lacked the irrevocable commitment inherent in adoption.
64. I have no hesitation in supporting the plan for direct contact between the mother (and the baby) and the children in the event of adoption, indeed I consider that it is certainly in the best interest of these children to continue to see their mother 3 times each year and I express a hope that this may develop further by agreement if appropriate. The contact should be seen as supporting any adoptive placement, not damaging it. I do not consider that the making of the placement orders is inconsistent with the children's needs for continuing contact with their mother, albeit at a reduced level and this relationship can thus be preserved. I fully appreciate that I cannot force this but I am satisfied that the plans of the local authority to seek adopters who will agree to direct contact are appropriate as well as proportionate and clearly in the best interests of the children, as is their plan to return the matter to court if such adopters cannot be found. *Re R & C* made it clear that it is for the court to set a template for contact at this stage, so that prospective adopters know what is expected of them. If done it will then mean that prospective adopters will be clear as to the expected arrangements before making the decision whether to adopt the children. I would also invite the adopters to consider a role for the foster carers going forward too. The local authority do not seek an order for contact under s.26 and this was

not supported by the guardian. There should, however, be recitals as to the contact proposed by the local authority

65. Throughout the evidence in this matter there are several analyses of the risks and benefits of adoption versus foster care and the arguments before me were carefully crafted to emphasise each party's case as they had put it and as they wished me to decide it. The differences were rarely factual but instead were differences of opinion perceived by the local authority and the guardian. I have read these carefully and I have addressed many of the relevant issues throughout this judgment.
66. In my judgment the Guardian's position is based strongly and is almost fixated on the placement being only with these foster carers. It would be fair to say that she found it very difficult to see that they might not ultimately be matched as and become long term carers, might have a change of career or family circumstances "I see no reason..." and in my assessment she has not given sufficient consideration to there being no guarantee of matching, the fact that the court has no power to dictate the placement and that their status as agency carers may well be relevant in any matching process. It is easy to say that financial constraints should not impact upon children's welfare but we do not live in that ideal world. Whilst the guardian stated in evidence that she has seen long term agency foster care placements work as well as adoptive placements, she admitted when put to her by myself, that this had never involved such young children and was not for such a long period of time as 16.5 years.
67. When faced with a choice between adoption and fostering, the court's primary task is to take a decision as to whether one or the other is right for the child in question, balancing their welfare as well as matters of principle. There are powerful advantages to adoption for children of these ages and manifest disadvantages of long-term foster care. These are summed up clearly in the evidence and statement of Ms Rigby and I accept her analysis. I consider it to be a more detailed and thorough analysis not just of long-term foster care and adoption but also of the position where there was a change of foster carer – either now or at some stage in the future. The guardian's "Early permanence analysis" section in her final analysis mentions only the children staying with these existing carers. There is no real analysis of the harm which could occur if they had to move placement in the future or were not matched and moved to strangers.
68. In my judgment the detailed and considered evidence of the local authority together with their careful and thoughtful plans for both contact and the transition outweighs the evidence of the guardian and I am

unable to rely on her opinion. The local authority have shown a high level of thought and consideration of the needs of the children throughout this case and are to be commended for their approach. I am satisfied that the inevitable emotional harm which will occur to S and H can both be mitigated by a careful plan for transition and also by contact going forward and that the benefits of adoption outweigh the risks of long-term foster care, particularly at the ages of 18 months and 29 months. The local authority has clearly given very considerable thought to these issues as set out not only in the recent social work statement but also in the evidence from a very experienced IRO who has been IRO for the children since 2023. Whilst accepting that the matter was finally balanced, her conclusions were clear and she, like me, was satisfied that there was no gap in the evidence regarding either the carers or the mother.

69. Baker LJ's reasoning in *Re R & C* was as follows: "*Having considered the relevant factors in the statutory welfare checklist, and analysed the advantages and disadvantages of the two options, I have come to the clear conclusion that adoption in accordance with the local authority's plans is the only option which meets the children's needs. "[The youngest two children] need a placement that will provide them with the greatest level of security and a family in which they can grow up feeling a sense of belonging. They also need a placement which will enable them to maintain a relationship with their brothers through regular contact.*

*"Long-term fostering can meet the latter need but not the former. Adoption in accordance with the local authority's plans is the only option which meets both of these needs. This will mean that the children no longer have direct contact with their mother, but that is necessary in order to ensure that they have the opportunity to achieve the degree of stability and security which only adoption can provide. This will, of course, be an interference with the mother's Article 8 rights, but that interference is necessary and proportionate in order to secure the children's right to a stable and secure family life."*

70. I have applied that reasoning in this case. Long term foster care is not an appropriate option for these very young children and for such a long period of time. As I have already addressed, there is no prospect of rehabilitation to the mother in the foreseeable future. It provides too many risks and uncertainties. Additionally in this case there should be the additional benefit of ongoing contact with the mother (and sibling) which was not the case in *Re R & C*. I am satisfied that the only option which will meet these children's needs is for them to have the option of

an adoptive placement where they can settle into a family and have the security they require to develop to their potential.

71. I have considered whether I should make a s.26 ACA contact order to set the template for contact between S and H and their mother. I do not intend to make a specific order for contact pursuant to s.26 ACA 2002, this was not supported by the guardian. I do, however intend to ensure that there are recitals to the placement order setting out the detail of the proposed contact and that it was strongly supported by the court for the reasons set out in this judgment. In making this decision I considered the recent case of *Re: F (A Child) (Future Welfare: Post-Adoption Contact: Unconscionable Delay)* [2025] EWFC 13 in which Ms Justice Henke concluded: “*I have accepted the local authority's care plan and their commitment to match F with an adoptive placement which will facilitate direct contact for identity purposes.*”
72. As I have set out throughout this judgment, there are of course negatives of adoption including significantly reducing contact with their mother and this affecting their identity, there are more positives. These include them ceasing to be looked after children subject to corporate parenting, being placed with carers who have effectively chosen them and will care for them throughout not only their childhood but also the rest of their life and the possibility of having their own new family and family unit. The plan is also for direct contact. This is the only option that offers S and H the option of secure and safe family life according to the local authority and I accept that assessment, although finely balanced. The risks to them of being placed in the care system in long term foster care are simply too high and too risky. Given S and H's ages and personal attributes, there are few if any difficulties which would complicate the process and prevent their early placement.
73. S and H's immediate needs are for stability, security and permanence. In my judgment this can only be achieved by way of adoption and their welfare requires this, and accordingly I dispense with the consent of their mother and father. I accept that this interferes with the rights of S and H and their parents to a family life together but in my judgment the making of such an order and the interference that entails are proportionate. I am satisfied that the plans of the local authority are appropriate, including the plans for direct contact in the future.

## **THE DECISION**

1. I make the final care orders



2. I dispense with the consent of the parents
3. I make the placement orders
4. Whilst I do not make a contact order, there should be clear recitals about the proposed contact arrangements post adoption including that the court has strongly supported it.

Relevant suitably redacted parts of this judgment can be made available to any prospective adopters during the process to assist them in considering the issues of contact and even the continued input and support of the existing foster carers.

5. A full copy of the judgment can be provided to adopters when finalised.