



IN THE FAMILY COURT

Case Number: WD18C00848

15/02/2019

Before His Honour Judge Middleton-Roy

Between:

**HERTFORDSHIRE  
COUNTY COUNCIL**

Applicant

- and -

**M**

1<sup>st</sup> Respondent

**P**

2<sup>nd</sup> Respondent

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

3<sup>rd</sup> and 4<sup>th</sup>  
Respondents

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*Miss A. Moore*, Counsel, instructed by Hertfordshire County Council  
*Mr A. Smith*, Solicitor, Blaser Mills LLP for the 1<sup>st</sup> Respondent  
The Second Respondent did not appear and was not represented  
*Miss J. Wright*, Solicitor, David Barney and Company for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents

Hearing date: 15<sup>th</sup> February 2019

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**JUDGMENT**

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**This judgment was delivered in private. The Judge has given leave for this version of the judgment to be published on condition that, irrespective of what is contained in the judgment, in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.**

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## **His Honour Judge Middleton-Roy:**

### Anonymity

1. The names of the children and the adult parties in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018 having regard to the implications for the children of placing personal details and information in the public domain.
2. The Local authority is identified by name, the Local Authority being a public body with a statutory responsibility for the welfare and protection of children and support of families. Where that work has resulted in Court proceedings, the Local Authority is held accountable for its actions with families by the Court. The need for a public body to be identified when acting in respect of citizens is important. The Court concludes that naming the Local Authority would carry with it some risk of identifying the children. Nevertheless, having balanced the risks between transparency of justice on behalf of the State where life changing decisions are made for children, and ensuring their privacy, welfare and safeguarding needs are taken seriously and protected, the Court concludes that the public interest in identifying the applicant Local Authority is so important that it outweighs any risk of identification of the children.
3. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

### The Parties

4. The applicant Local Authority is Hertfordshire County Council (“the Local Authority”).
5. The mother of both children (“M”) is the First Respondent in the proceedings.
6. The putative father of the children (“P”) is the Second Respondent.
7. The children with whom the Court is concerned are respondents to the proceedings through their Children’s Guardian. The children are 2 and 8 years old at the date of this judgment. Child A is the oldest and Child B is the youngest.

### The Applications

8. The Local Authority issued an application for a Care Order in respect of both children on 6<sup>th</sup> August 2018. The Local Authority subsequently issued an application for a Placement Order in respect of the child, B on 3<sup>rd</sup> January 2019.
9. The final hearing commenced on 21<sup>st</sup> January 2019, at which point, the Local Authority care plan was for the children to be separated permanently from their parents and separated from each other as siblings. The Local Authority’s plan for the oldest child, A, was for him to be placed in long-term foster care. The Local Authority’s plan for the youngest child, B, was for him to be placed for adoption. The Local Authority plans were ratified by the Agency

Decision Maker. The plans were supported by the Independent Reviewing Officer and further, the plans were supported by the Children's Guardian.

10. The mother and putative father both recognised at the Final Hearing that they were not in a position to put themselves forward as carers for the children. They did not oppose Care Orders being made. However, the plans for the youngest child to be adopted and for the siblings to be separated was opposed vehemently. Formal applications for Declarations of Parentage were issued by the mother.

#### Background

11. In very brief summary, the children A and B were made the subject of Local Authority child protection plans in May 2018 under the category of emotional abuse arising from concerns that they were exposed to serious domestic abuse and violence within the volatile relationship between their mother and their putative father. Further, the Local Authority held concerns about the mother and putative father's illicit drug misuse, including a long-standing problem with cocaine and cannabis use and their mother's unmet mental health needs, resulting in her displaying volatile and aggressive behaviour. Additionally, the putative father has a longstanding history of drug addiction and criminality, including physical violence to members of the public and the police. The Local Authority was concerned that should the children remain in the care of their mother or putative father, it was likely that the children would continue to be placed at risk of significant emotional and physical harm when their mother's emotions and behaviours become unregulated.
12. At the outset of the Court proceedings, the matter was allocated to Lay Justices and subsequently re-allocated to a Circuit Judge. The Court made Interim Care Orders in respect of both children and the children were placed together in interim foster care, where they have remained throughout.

#### The Relevant Law

13. In any application for a Care Order, the Court must apply both section 31 and section 1 of the Children Act 1989, to each relevant child individually.
14. Section 31(2) of the Children Act 1989 provides that:  
  
"A Court may only make a Care Order or Supervision Order if it is satisfied –  
(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."
15. The category of a child being beyond parental control does not apply in this case.
16. These provisions are commonly called the threshold criteria.

#### Meaning of harm

17. Sections 31(9) and 105 of the Children Act 1989 provide that:

“*harm*” means ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;

“*development*” means physical, intellectual, emotional, social or behavioural development;

“*health*” means physical or mental health.

18. Practice Direction 12J sets out the following further helpful definitions:

“*domestic abuse*” includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;

“*coercive behaviour*” means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

“*controlling behaviour*” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

### Welfare

19. If satisfied that the threshold criteria are made out in respect of the child, the Court must proceed to consider section 1 of the Children Act 1989. At this second stage, the welfare of the child is the Court’s paramount consideration.
20. Section 1(1) of the Children Act 1989 provides that when a court determines any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration.
21. Section 1(3) of the Children Act 1989, commonly referred to as the “welfare checklist,” provides that the Court shall have regard in particular to—
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
  - (b) the child’s physical, emotional and educational needs;
  - (c) the likely effect on the child of any change in her circumstances;
  - (d) the child’s age, sex, background and any characteristics of the child which the court considers relevant;
  - (e) any harm which the child has suffered or is at risk of suffering;
  - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child’s needs;
  - (g) the range of powers available to the court under this Act in the proceedings in question.
22. Under Section 1(5), the Court should not make any Order with regard to a child unless it is satisfied that it is better for the child to make that Order rather than to make no Order at all.

23. In this case the Local Authority's Care Plan for the child, B at the commencement of the Final Hearing was one of adoption and an application for a Placement Order was issued. When considering an application for a Placement Order, section 1 of the Adoption and Children Act 2002 applies to the relevant child. The paramount consideration of the Court is then the child's welfare throughout that child's life.
24. Section 1(4) of the Adoption and Children Act 2002 provides that the Court must have regard to the following matters, among others—
  - (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding),
  - (b) the child's particular needs,
  - (c) the likely effect on the child (throughout her life) of having ceased to be a member of the original family and become an adopted person,
  - (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant,
  - (e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering,
  - (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.
25. In this case, the child's parents do not consent to the child being placed for adoption. The Court cannot dispense with the consent of any parent to the child being placed for adoption or to the making of an Adoption Order in respect of the child unless the Court is satisfied that (a) the parent or guardian cannot be found or is incapable of giving consent, or (b) the welfare of the child requires the consent to be dispensed with.
26. The Human Rights Act 1998 applies to these proceedings. Under Article 8, there is a right to private and family life. Each individual family member in this case has that right, including the children individually, the mother, the father and the wider family. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks.
27. In reaching a decision in relation to each of the children, the Court has regard also to the following principles derived from the legal authorities. These principles have been applied in this Court's decision making, whether or not specifically referred to.
28. Intervention in the family may be appropriate but the aim should be to reunite the family when the circumstances enable that and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child.<sup>1</sup>

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<sup>1</sup> *Re C and B* [2001] 1 FLR 611, at para 34

29. In exercising the jurisdiction to control or to ignore the parental right, the court must act cautiously, not as if it were a private person acting with regard to his own child, and must act in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded.<sup>2</sup>
30. In deciding issues in respect of the child's welfare, the Court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life but to be satisfied that the statutory threshold has been crossed.<sup>3</sup>
31. The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature.<sup>4</sup>
32. Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done.<sup>5</sup>
33. We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities or who espouse antisocial political or religious beliefs.<sup>6</sup>
34. 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.<sup>7</sup>
35. A Placement Order is a "very extreme thing," "a last resort," as it would be very likely to result in the child being adopted against the wishes of both her parents. The interests of a child would self-evidently require her relationship with her natural parents to be maintained unless, "no other course was possible in her interests."<sup>8</sup>
36. The test for severing the relationship between parent and child is very strict. Only in "exceptional circumstances" and where motivated by overriding requirements pertaining to the child's welfare, in short, "where nothing else will do." In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions.<sup>9</sup>
37. The Court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. So

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<sup>2</sup> Fitzgibbon LJ in *Re O'Hara* [1900] 2IR 232

<sup>3</sup> *Re B (A Child)* [2013] UKSC 33

<sup>4</sup> Lord Templeman in *Re KD (A Minor) (Ward: Termination of Access)* [1988] 1AC 806

<sup>5</sup> Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050

<sup>6</sup> *Re B* [2013] UKSC 33, per Baroness Hale

<sup>7</sup> *Re B-S* [2013] EWCA Civ 1146

<sup>8</sup> *Re B (A Child)* [2013] UKSC 33

<sup>9</sup> *Re B (A Child)* [2013] UKSC 33

"before making an adoption order ... the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support"<sup>10</sup>

38. A high degree of justification is needed under Article 8 if a decision is to be made that a child should be adopted or placed in care with a view to adoption against the wishes of the child's parents. The interests of the child must render it necessary to make an adoption order. A Care Order in a case such as this must be a "*last resort*."<sup>11</sup>
39. It is not enough that it would be "better" for the child to be adopted than to live with his natural family.<sup>12</sup> The Court is required to make the least interventionist Order when protecting the welfare of the child.<sup>13</sup> The making of a Care Order is a step that must not be sanctioned by the Judge unless satisfied that that is both necessary and proportionate and that no other less radical form of Order would achieve the essential end of promoting the welfare of the children.<sup>14</sup>
40. The Court's paramount consideration remains the child's welfare.

#### Threshold

41. The relevant date for determining the threshold criteria is 6<sup>th</sup> August 2018, when the Local Authority commenced proceedings.
42. The Local Authority asserts that at that relevant date, both children were suffering significant harm, that harm being attributable to the care given to them, not being what it would be reasonable to expect a parent to give a child.
43. The Local Authority relies upon the following assertions set out in its Final Threshold Statement:

##### *(1) Emotional Harm*

- a. The children have witnessed domestic violence between their mother and their putative father;
- b. The children have witnessed the unpredictable and volatile behaviour of their mother and their putative father;
- c. The children have been exposed to their putative father's mental health difficulties and substance misuse. This has included an incident where their putative father self-harmed in the vicinity of the child, B, where the putative father cut his own neck with a saw;
- d. The mother and the putative father have prioritised their relationship over the children's needs by continuing to see each other, therefore exposing the children to a risk of further emotional and physical harm;
- e. The mother and the putative father have at times attributed difficulties in their relationship and the concerns of the Local Authority to the challenging behaviour of the child, A.

##### *(2) Physical Harm*

- a. Child A has alleged being physically harmed during a domestic incident between the mother and putative father;
- b. The mother has continued to have contact with the putative father throughout the Court proceedings and has not always been honest about this;

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<sup>10</sup> *Re B (A Child)* [2013] UKSC 33

<sup>11</sup> *Re B (A Child)* [2013] UKSC 33

<sup>12</sup> *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17, [2010] 1 AC 678, para 7

<sup>13</sup> *Re O* [2001] EWCA Civ 16

<sup>14</sup> *Re B (Care: Interference with Family Life)* [2003] EWCA Civ 786, [2003] 2 FLR 813, at [34],

- c. The mother and the putative father have exposed the children to a risk of physical harm due to their drug use. The putative father has a history of Class A drug use and has tested positive for cocaine. The mother tested positive for cocaine use between beginning of March and end of August 2018.

(3) *Neglect*

- a. The health needs of Child A have been neglected by the mother and the putative father;
  - b. Child A required fillings to his teeth and was awaiting dental treatment which would require sedation. Their putative father stated that child A did not wish to attend the dentist for the necessary treatment.
44. The threshold facts are not disputed by the parents and the Court proceeds to make findings in accordance with those pleaded threshold facts.
45. Further, the mother and putative father accept that the threshold for the making of public law orders pursuant to section 31(2) of the Children Act 1989 is met. The Court finds that, at the relevant time, namely as at 6<sup>th</sup> August 2018, the children were both suffering significant harm in the form of physical and emotional harm and neglect attributable to the care given to them, not being what it would be reasonable to expect a parent to give a child. On the totality of the evidence and having regard to the concessions properly made, the Court finds that the statutory threshold for the making of public law orders is crossed.

Paternity

46. The putative father, P is named as the father of both children, A and B, on their birth certificates.
47. At the outset of the Court proceedings, a direction was made by Lay Justices on 28<sup>th</sup> August 2018 for paternity testing of P and the oldest child, A. DNA testing established that P was not the biological father of the child, A.
48. Although P consented to DNA testing relating to the child, A, he did not consent to paternity testing in respect of the child, B. Nevertheless, the Lay Justices made an Order requiring P to submit to DNA testing by 14<sup>th</sup> September 2018 together with an Order that if he failed to comply, the Court would draw an inference that P was not the father of B. P did not comply with the Order for paternity testing relating to the child, B. On 3<sup>rd</sup> October 2018, the time for P to comply with the Order for paternity testing was extended to 17<sup>th</sup> October 2018. P still did not comply and time was further extended for compliance to 17<sup>th</sup> December 2018, with an additional direction that in default, he produce a statement setting out why he had not complied. He did neither.
49. On account of P's refusal to provide a fresh DNA sample to establish the paternity of the child, B, the mother then made an application dated 17<sup>th</sup> December 2018 pursuant to s20 Family Law Reform Act 1969, inviting the Court to exercise its powers by granting permission to access P's DNA profile data already supplied voluntarily for the purposes of paternity testing of the child, A in these care proceedings, to be used now for paternity testing of the child, B.
50. That application was considered by the Court on 4<sup>th</sup> January 2019. The application was opposed strongly by P. The application was supported by the Children's Guardian and by the Local Authority who shared Parental Responsibility for the children by virtue of the Interim Care Orders.
51. The Court granted the permission sought by the mother. The Court determined that it was the right of the child, B, to know who his biological father is. It has long been recognised in our domestic law that the interests of justice are best served by ascertaining the truth and there must be few cases where the interests of children can be shown to be best served by the suppression of



truth. It is surely in the best interests of the child in most cases that paternity doubts are resolved on the best evidence, and, as in adoption, the child should be told the truth as soon as possible.<sup>15</sup> Every child has a right to know the truth, unless their welfare clearly justifies the “cover-up.”<sup>16</sup>

52. Strasbourg law is a further ingredient of the rights protected by Article 8<sup>17</sup>. Furthermore, the rights are also recognised in Articles 7 and 8 of the United Nations Convention on the Rights of the Child.
53. DNA is highly personal and sensitive material, attracting a heightened level of protection. Where paternity is in issue in a Family Court, the balance is defined by Pt III of the Family Law Reform Act 1969. The father cannot be compelled to provide a DNA sample. The process of taking a blood sample without consent involves an attack on the integrity of the individual's body. The only remedy for such a refusal is provided by s 23(1), which enables the court to "draw such inferences, if any, from that fact as appear proper in the circumstances". It was P's refusal to give his consent in accordance with s 21(1) that gave rise to the present application.
54. In the current case, a DNA sample had already been taken from P by consent for the purposes of paternity testing in respect of the child, A. P's refusal to provide a DNA sample relating to the child, B, was hard to understand. He asserted that he is the child's father, yet he refused to do the obvious thing which would establish that, namely to agree to DNA testing. The situation was an odd one. More usually a refusal accompanies a *denial* of paternity.
55. The Court sought to balance P's right with the right of the child. First, the interests of justice are best served by ascertaining the truth. Second, the Court should be furnished with the best available science and not confined to such unsatisfactory alternatives as presumptions and inferences. In this case, P was seeking relief from the Family Court. He was seeking, in accordance with the Children Act 1989, a role in the children's lives. DNA, and the information derived from it, demands a high degree of protection. Nevertheless, in the judgment of this Court, giving the application anxious scrutiny and intense focus, on the particular facts of the case, the balance fell down clearly in favour of the child.
56. Accordingly, on 4<sup>th</sup> January 2019, the Court made an Order granting permission to access P's DNA samples obtained in these proceedings in respect of paternity testing for the child, A to be used for the purposes of paternity testing for the child, B.
57. Following receipt of P's DNA analysis, the results showed that P lacks the genetic markers that must be contributed to the child by the biological father, resulting in a probability of paternity of 0% in respect of child, B.
58. Accordingly, based upon these DNA test results for the younger child and having regard also to the DNA testing results obtained earlier in the proceedings relating to the older child, the Court determined that the putative father, P, is excluded as the biological father of both children.
59. On the application of the mother, the Court proceeded to make declarations that P is not the father of the child, A or the child, B.

#### The Local Authority's Applications for Care and Placement Orders

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<sup>15</sup> *S v McC (Otherwise S) and M (DS Intervener), W v W* [1972] AC 24, 57, 59, per Lord Hodson

<sup>16</sup> *In re H (A Minor) (Blood Tests: Parental Rights)* [1997] Fam 89, 106, [1996] 4 All ER 28, [1996] 3 FCR 201, per Ward LJ

<sup>17</sup> *Re Z (Children)* [2014] EWHC 1999 (Fam), per Sir James Munby; *Gaskin v United Kingdom* (1990) 12 EHRR 36, [1990] 1 FLR 167; *Mikulic v Croatia* [2002] 1 FCR 720, 11 BHRC 68, [2002] ECHR 53176/99

60. In the course of the proceedings, the Court received evidence from a variety of sources necessary to undertake a welfare analysis in respect of the children's future placement. This evidence included amongst other things, a psychiatric report in respect of the mother, from Dr Ratnam, Consultant Forensic Psychiatrist, a report from a Dr Claridge, Consultant Psychologist, drug testing reports, a parenting assessment undertaken by the Local Authority and a sibling assessment of the children.
61. The psychiatric report relating to the mother summarises reports of the mother being arrested for drinking and fighting. She received a suspended sentence after being arrested for selling cocaine when pregnant. Further, the mother reported to the psychiatrist that when she would fight, she would "*black out.*" The mother reported that during arguments, she has to "*keep going,*" and that she finds it, "*hard to try and hold myself back.*" The mother reported that she would, "*get into arguments with anyone,*" including for example if strangers bumped into her, stating, "*I've started on people for no reason, I can't help it.*"
62. The mother reported to the psychiatrist that she started smoking cannabis at the age of 12 and at the time of assessment, had been abstinent for only 13 days. She admitted a history of daily use, stating that cannabis, "*got me through every day*" and helped her with her concentration at school. She explained that she found the child, A, to be, "*quite difficult*" and that he could be aggressive, which led to an increase in her smoking cannabis. She told the psychiatrist, "*when we're both up there, you ain't going to resolve nothing.*" She denied that cannabis use impacted adversely on her parenting.
63. Additionally, the mother reported smoking spice and admitted to using cocaine, "*here and there,*" which led to anxiety and panic attacks, as did alcohol. She admitted binge drinking and she reported that alcohol made her irritable. She told the psychiatrist that she did not think she needed intervention from substance misuse services.
64. The mother reported self-harming from the age of 13 years. She reported being unable to concentrate on things and described that her mood can, "*go up and down*" very quickly, "*like a split personality.*"
65. The mother is reported by Dr Ratnam to have understood the Local Authority's concerns but not to accept them and she minimised any concern regarding domestic violence.
66. Dr Ratnam reported that, as an adult, the mother continues to experience restlessness, impulsivity and a poor tolerance to frustration with interpersonal conflict in the relationship with P, members of the public and professionals. She reported emotional instability, poor concentration, distractibility and feeling easily bored. Dr Ratnam concluded that the mother's history and presentation are indicative of adult Attention Deficit Hyperactivity Disorder ("ADHD"), are consistent also with Obsessive Compulsive Disorder and show features of Emotionally Unstable Personality Disorder. In addition, the mother experiences anxiety with panic attacks and symptoms including difficulty breathing and palpitations. Furthermore, Dr Ratnam concluded that the mother's history is consistent with psychological dependence on cannabis but not consistent with alcohol dependence.
67. In Dr Ratnam's opinion, ADHD can impact on the ability to engage consistently with professionals. In addition, due to poor tolerance to frustration and difficulties coping with stress, interactions with professionals could become conflictual, the mother admitting difficulty in tolerating perceived criticism with evidence of aggression towards professionals. Dr Ratnam was of the opinion further that ADHD can impact on the ability to provide consistent care for children, as it is difficult to maintain routines and complete tasks. It can also be associated with a low tolerance to frustration, which is associated with interpersonal conflict. Exposure to such behaviour can impact on the emotional wellbeing of children. Poor impulsive control and low tolerance to frustration can also impact on interactions with children. Dr Ratnam was of the

opinion that if the mother's ADHD is effectively managed, then factors associated with the impact of ADHD on parenting, such as maintaining boundaries and maintenance of routines, will be improved. She will find it easier to tolerate frustration and be less impulsive, which will aid her interpersonal interactions, including with her children. In addition, her ability to engage should improve and her ability to avoid conflict in interpersonal interactions.

68. Further, Dr Ratnam reported that individuals with Emotionally Unstable Personality Disorder have difficulty in understanding their state of mind and that of others which can lead to escalation of interpersonal conflict. In addition, individuals with Emotionally Unstable Personality Disorder have a limited sense of safety in themselves, which raises challenges when confronted with a vulnerable child who needs to feel safe and looks to the mother to provide safety. In addition, the parent finds it difficult to make sense of a child's feelings, as there is often difficulty in understanding the mental states of others. A parent with Emotionally Unstable Personality Disorder finds it difficult to create boundaries which lead to a sense of safety.
69. Furthermore, Dr Ratnam reported that cannabis use can impact on motivation and judgement. At times of intoxication with substances, the mother will not be able to bear in mind her children's consistent need for safety. In addition, alcohol is a disinhibitor, which fuels interpersonal conflict.
70. Dr Ratnam recommended the following interventions for the mother:
  - (a) further assessment and treatment for ADHD;
  - (b) thereafter, Cognitive Behavioural Therapy for approximately 12 weeks for the effective treatment of anxiety and Obsessive-Compulsive Disorder. The need for further therapeutic intervention can be considered once assessment and treatment for ADHD has been undertaken;
  - (c) numerous interventions are available for individuals with Emotionally Unstable Personality Disorder traits including Dialectical Behaviour Therapy, Cognitive Behaviour Therapy, mentalisation based therapy and Cognitive Analytic Therapy lasting from 6 months to 18 months. The duration of intervention will depend on if whether the mother has maladaptive personality traits or a personality disorder;
  - (d) engagement with substance misuse services to help her maintain abstinence. Treatment will take the form of individual and group sessions in order to identify triggers and help her develop adaptive coping strategies in order to prevent relapse. The duration of treatment will be dependent on engagement, but abstinence of a year is taken as indicative of change, as this is when there is the greatest risk of relapse. Abstinence is recommended as cannabis has an adverse impact on medication and also on mental health.
71. The mother does not challenge the psychiatric evidence nor the conclusions of the Local Authority parenting assessment. To her real credit, as recognised by the Children's Guardian, the mother has recently taken steps to attend a number of courses to assist her in gaining insight into her functioning and parenting. She has acted upon the recommendations of Dr Ratnam and has actively sought treatment for her mental health difficulties and long-standing problem with cannabis dependency and is now taking medication prescribed by her GP. Furthermore, she has undertaken a Triple R course (a therapy based domestic abuse programme) and the Children's Guardian acknowledged that reports are positive from course organisers about how well the mother has participated. Further still, the mother has engaged with local services such as "Change, Grow, Live" and "Spectrum" to address her substance misuse. The most recent hair strand test result of 19<sup>th</sup> December 2018 indicated that the mother was no longer misusing cannabis and cocaine. Yet further, the mother has recognised that she has developed an unhealthy relationship with alcohol and is now taking prescribed medication to assist her in reducing her alcohol consumption.

72. The Children's Guardian acknowledged that the mother now appears to show a level of insight from attending such courses on the impact of domestic violence, managing challenging behaviour in children, managing her own anger and the usefulness of attending a mindfulness course. However, the Children's Guardian also noted recent police evidence from December 2018 which highlights concerns about the mother's continued volatility, which the children are likely to be exposed to if returned to her care. This includes evidence of the mother being involved in a public order incident in the street and another incident when P was found by the police to be hiding in her loft. As the Guardian noted, although the mother's evidence indicates points of insight, the question remains as to whether this can be translated into decision making and action when faced with the day-to-day parenting of her children. Further, although the mother's evidence was that she does not want to be in a relationship with P, the Court accepts the concerns of the Local Authority and the Children's Guardian that, given the historical pattern of separation and reuniting with P, this may be very difficult for the mother to maintain over time.
73. The Guardian acknowledges that the mother has attended all contact sessions with the children, has been attentive to their needs during contact and has demonstrated a commitment to maintaining her relationship with both children. However, the mother accepts, to her real credit, that although she has attempted to make changes to address her mental health needs and functioning, she is not yet in a position to offer either of the children the safe consistent parenting they require at this time. The mother does not challenge the professional evidence.
74. P accepts that he too is not in a position to put himself forward to care for either of the children. The evidence before the court indicates that he would not be able to provide either child with the safe consistent parenting required both now and in the future. Furthermore, P did not comply with the Court's direction for further drug testing and the court has no evidence that P has made any significant steps towards reducing his long-standing relationship with illicit drugs.
75. A sibling assessment was undertaken by the Allocated Social Worker dated 7<sup>th</sup> November 2018. Both children were placed together with independent foster carers in the course of the proceedings. The sibling assessment recorded the foster carers observation that there was no sibling jealousy, their observations that the siblings, "clearly love one another despite the significant age gap," and furthermore, noted that A calls B, "his best friend in the whole world and he tells him nearly every day how much he loves him." The foster carer is recorded as describing the sibling relationship as, "very close in a positive way," and that A is, "kind caring and loving towards his younger brother."
76. The sibling assessment noted that the relationship is one based on warmth and an absence of rivalry and hostility between the siblings. The Allocated Social Worker set out in some detail a 'day in the life of' the siblings, which noted love and affection between the siblings from the moment they wake, happy interactions at the breakfast table, A helping B to eat his food, both boys being happy to see each other after school when they will sit together and eat, will play together during the evening and will demonstrate warmth and affection prior to going to sleep.
77. Applying the Lord and Borthwick indicators, the sibling assessment concluded that no evidence was witnessed of intense rivalry or jealousy nor of any sibling exploitation or chronic scapegoating, there was no evidence of maintaining unhelpful alliances nor of maintaining unhelpful hierarchical positions. Further, sexualised behaviour or triggering each other's traumatic material was not apparent.
78. The sibling assessment acknowledged the guidance that siblings should be placed together where possible. Further, the assessment acknowledged the factors in favour of the siblings remaining together, including the benefits of the children being raised together and not being estranged from one another, the continuity of their established, close relationship, the fact that they have been drawn closer together due to their shared experience in foster care, the likelihood

that direct sibling contact would not be maintained in the event that B was adopted and the likelihood of the sibling relationship being severed on B's adoption. It was acknowledged that the siblings would require additional support to manage their feelings in the event of a forced sibling separation.

79. The sibling assessment concluded that the children undoubtedly have a strong, loving, healthy bond between them, yet concluded that the sibling relationship was, "fractured in the care of their family."
80. The Court had the benefit also of considering a thorough and comprehensive report from Dr Simon Claridge, Educational Psychologist, who assessed the child, A, arising from his exposure to domestic violence within the family. Dr Claridge observed amongst other things, that the mother's interaction with both children was good, that A and B were comfortable and content in each other's company and A appeared visibly to relax and smile when B was present.
81. Dr Claridge noted the Allocated Social Worker's observation that there was a close, strong attachment between the siblings and that, "*it might be an issue if A were to be adopted and B was not.*" Further, Dr Claridge noted in discussion with the Allocated Social Worker that previously, A had become jealous of B, but since being in foster care, A had learned to be much more positive towards B and they appear to get on well and be strongly attached to each other.
82. Dr Claridge noted the foster carer's observation that A has communicated that the children are more at ease and feel safer in the foster home. The foster care too observed that the siblings appear very close to each other and that it would be, "*heart-breaking for A in particular if they were separated.*"
83. In his interview with A, Dr Claridge was of the opinion that A is vulnerable to feeling that things are his fault and that he is not as deserving as B. Dr Claridge was of the professional opinion that A is emotionally vulnerable as a result of experiencing a volatile relationship with his mother, experiencing inappropriate boundaries, that A is blamed for events which are not of his making and he is put down publicly. He has experienced significant instability. Further, if his needs are not met, he is likely to become more volatile.
84. Dr Claridge concluded that A is strongly attached to his brother B, as is B to A. Their relationship is strong and, within the stable secure and safe environment of the foster home, each is very appreciative of the other: "*In my opinion, this is a strong and positive attachment.*" Dr Claridge continued, "*although B is of an age where adoption may be considered a viable option, there is a strong connection between B and A which goes both ways. B's needs may need to be considered separately from those of A, but it should not be ignored that their contact has already been substantial and they are the only two who know their story. From A's perspective, it would be likely to be very damaging to be separated from B and in my opinion, every effort to keep them together should be made.*"
85. Notwithstanding the strength of the expert evidence from Dr Claridge and the many positives in the sibling relationship identified in the Allocated Social Worker's sibling assessment, the Local Authority maintained its position at Final Hearing that the siblings should be separated, with B being placed for adoption and A being placed in long-term foster care.
86. Dr Claridge assisted the Court further in his oral evidence at the Final Hearing. Dr Claridge remained firmly of the professional opinion that the effects on A of sibling separation and of B being adopted were, "*likely to be very, very negative and I wonder also about the effects on B going forwards.*"
87. Dr Claridge told the Court that A suffers emotional vulnerabilities and difficulties, which are best addressed through good parenting rather than direct therapy: "*at his age, the notion of time-*

*limited therapy in a room, does not work very well.*” Dr Claridge told the Court that in his opinion, the foster carer is doing very good job: *“it is likely that those relationships will be more therapeutic at this time rather than formal therapy.”*

88. Dr Claridge noted that A was experiencing difficulties at school, with reports that he had hit a teacher and another pupil, that he had torn his hair out, that the police were called to school and that A was the subject of an internal exclusion at school. In Dr Claridge’s opinion, A’s school placement was not meeting his needs as A was in a withdrawal behaviour unit-type class where he was witnessing and experiencing inappropriate behaviour that A was responding to. Dr Claridge observed that these problems at school had persisted for a long time and were compounded by the fact that the school is situated in very close proximity to A’s mother’s home which will result in A experiencing strong emotions, as every time he goes to school, he sees his mother’s house. Dr Claridge observed that the foster carers shared those same concerns about the inappropriateness of the school environment. Dr Claridge noted that there was no current evidence of poor behaviour in the foster home, where A appears to be relaxed. Dr Claridge was of the opinion that the catalysts for A’s poor behaviour at school appear to be from other young people, the general environment at school and the close proximity to the home he wants to be his home in future. In Dr Claridge’s expert opinion, a properly planned change of school is necessary, that A requires an education health and care plan and that it is worth its trying to support A being placed in mainstream school, as the social outcomes would be better for A. Dr Claridge told the Court, *“I don’t see the volatility A presents at school as a behaviour that will go on forever and it is entirely manageable in the foster home. I don’t see this as having biological drivers. He is still very young and this can be worked through in an environment where he has not been volatile in past.”*
89. Having regard to the Local Authority’s concern that the current foster care placement is too close to the mother’s home and the Local Authority’s concern that this may lead to an increased likelihood of placement breakdown, Dr Claridge told the Court, *“I understand the concern about the foster carers’ proximity but I’m not convinced it is a problem. It is not beyond A’s wit to get to his mother wherever he is placed. There is no evidence to say it has been a problem. The Local Authority concern is purely hypothetical. It could be argued that a placement a greater distance from home creates an increased draw for the child and a greater topographic uncertainty because he would not know what is going on. He needs to know his mother is safe. I would prefer he find his way home safely than find himself lost.”*
90. Dr Claridge observed that the children’s current foster carers wish to remain the long-term foster carers for both children together, not just for one of the children. He noted that, if the Local Authority plan for sibling separation is endorsed, the current foster carers would not support the continued placement of one child with them, as they feel so strongly about the sibling relationship being maintained and the impact on the children of separation. Dr Claridge observed that there was a great deal of evidence that A enjoys living with his foster carers, he is settled and he seems to have a good symbiotic relationship.
91. Having regard to the Local Authority’s concern that A will have a difficult adolescence ahead on account of his lived experiences to date, Dr Claridge observed that this too was purely hypothetical: *“I don’t see why that would happen for him. The evidence is that his distress is reducing. It seemingly has become such a central issue in the debate. There is at least as much likelihood for A in his current foster placement to survive adolescence well. To attempt to predict something, as Local Authority does, five years hence, is a concern to me and is not based on the evidence which shows the stable and continuous parenting in foster care is reducing his anxiety. Changing the foster care placement again would increase the likelihood of further difficulties. It is the ‘in and out’ of placements that is the worst of all as there is nothing for the child to attach to. There is no evidence to suggest A is likely to suffer deterioration in his behaviour in adolescence. There is not the evidence to predict he will have a traumatic and difficult teenagerhood. Conversely, if he is separated from his sibling and he moves placement*

*again, this will increase the concerns about his psychological wellbeing. If that were to happen, it would be necessary to be very careful about foster family matching and it would be important that any future family was given appropriate support to work through that difficult period.”*

92. Dr Claridge was of the clear professional opinion that, if A cannot stay with his current foster carers, this would be an enormous loss for him and A would be very angry. It will also be extremely distressing for B. Further, if A is moved from his current foster care placement, A may then need therapeutic support: *“If he can’t stay with the current foster carers, I would anticipate an escalation in his behaviour. He would be without his sibling, B and this would be a double additional loss, the loss of the foster care and the loss of his sibling, in addition to the loss of his mother. He would be very much at sea and would then require a specialist foster care placement with specific work done to go through the pain barriers. This is very likely to happen as he would be a very distressed young boy.”*
93. Further, Dr Claridge recognised that if the siblings remained together in foster care and if the placement fails, the opportunity for adoption for B may have been missed or there may be fewer adoptive placements available for an older child or there may be a higher risk of adoption breakdown if B is placed at an older age.
94. Dr Claridge told the Court, *“I believe, for both boys, the sibling relationship is the longest relationship in life and is the only one that knows the family history. They appear to have a very strong bond. All siblings vie for attention. There is no evidence of any difficulties in foster care and there is an opportunity if they remain together in foster care for them to develop a safe and symbiotic relationship and respond to adult carers, individually and together.”*
95. Further, Dr Claridge told the Court, *“I acknowledge the benefits of adoption for B, but also the limitations. B would suffer from missing A in the short to medium term. I am not anti-adoption in principle but children who are adopted have an additional issue of identity that most adopted children go through in adolescence. I conclude these children ought not be separated in an ideal world.”*
96. Having had the benefit of hearing the Dr Claridge’s authoritative oral evidence, the Court was invited by the Local Authority to adjourn the Final Hearing in order for the Local Authority to consider revising its care plans for the children, the Local Authority accepting the strength of evidence in favour of the children remaining together and with a view to a revised care plan of the siblings continuing in their current foster care placement as a long-term placement under a Care Order. This course of action was endorsed by each of the Respondents, including the Children’s Guardian and was approved by the Court. In the event, it was not necessary for the Court to hear any oral evidence from the mother, from P or from the Children’s Guardian.
97. After a short adjournment, revised care plans were duly filed by the Local Authority. The mother and the Guardian support the making of Care Orders for both children and they support the Local Authority revised care plans for the children to remain in their current foster care placement, together, as a long-term placement, the foster carers having confirmed their preference to continue as foster carers, rather than to apply for Special Guardianship Orders.

### Analysis

98. The only realistic placement options for the both the children individually are outside the direct family. The Court commends the mother for having reached the very difficult decision that she is not yet in a position to provide her children with the safe, consistent, emotionally stable parenting they require. The mother told the Court that she is keen to work on the steps she has taken to date to strengthen her mental health and to learn and maintain calmer behavioural responses. She seeks to continue with support work necessary to address her drug and alcohol difficulties and apply new learning about domestic violence and its impact on her own

functioning and the emotional wellbeing of the children. The mother is to be commended further for the work she has commenced to date in this regard.

99. The Court accepts the Children's Guardian's observation that the mothers parenting indicates a changeable, volatile parenting style which has placed both the children at risk of significant harm. The recent police evidence highlights the continued volatility in the mother's functioning which the children are likely to be exposed to if returned to her care. There remains a considerable amount for the mother to do before the children could be safe in her care. Whilst the Court might be satisfied on the evidence that the mother is committed to making the necessary changes, presently there is no solid, evidence-based reason to conclude that the mother will be able to maintain that commitment. Further, there is no solid, evidence-based reason to conclude that the mother will be able to make the necessary changes within the timescales of the children.
100. P's poor physical and mental health have had a direct impact on his ability to offer consistent parenting to the children. In addition, there is the significant concern about P's long-standing drug addiction and criminal history. Moreover, P did not comply with the court direction for further drug testing and the court has no evidence that P has made any significant steps towards reducing his complicated relationship with drugs.
101. Having regard to the type of risk of significant harm each of the children would suffer if returned now to the care of their M, or P, or both, the very real likelihood of that harm and the likely consequences for each of the children, in the judgment of this Court, placement of the children with either their mother or P or both the mother and P together, are not viable options at this final hearing.
102. There has been no positive assessments of any potential kinship carers. Further, residential care is not a suitable option for either of the children, having regard to their ages and specific needs.
103. Permanent (long-term) fostering of both children or alternatively, long-term fostering of A with adoption of B, are the only realistic options available for the children.
104. Looking first at child A, by reference to s1(3) of the Children Act 1989:
  - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding): A has expressed a clear wish to the Children's Guardian that he wants to live with his mother. At 8 years old, the Court must have regard to and respect his expressed wishes. Those wishes are not determinative but feature as one of several factors the Court takes into consideration. Regrettably, the unanimous opinion of each of the professionals involved in the proceedings, is that the mother is not in a position to offer A or B a permanent home where A or B can receive the appropriate level physical care and emotional security necessary. The mother accepts those unanimous professional concerns. Where the child's wishes for reunification with his mother cannot be put into effect safely without causing further significant harm, it is assumed that A will wish to spend regular time with his mother. Dr Claridge noted in particular that A has a need to know his mother is safe. The making of a Care Order and placement of A with long-term foster carers with the plan of frequent contact between A and his mother is envisaged by the Local Authority and endorsed by the Children's Guardian;
  - (b) the child's physical, emotional and educational needs: all parties accept that A needs to be able to achieve to the best of his ability, he needs the opportunity to develop healthy attachments and emotional responses to his life experiences to date. For this to be possible, he requires secure, safe, stable, positive role models with the acceptance of who he is and how he fits within the family unit. In order for these needs to be met, he



requires a secure and permanent home where he can receive appropriate physical care and emotional security. Having regard to his educational development, the foster carer and the independent psychologist, Dr Claridge are both concerned that A's educational needs are not being met in his current school environment where he is learning more disruptive behaviours in this setting. A is not working at age related expectations and there has been an escalation of challenging behaviour within school which is affecting his ability to learn. He is being taught in a small group environment. The Children's Guardian too acknowledges that the school environment appears to be a trigger for A's more challenging behaviours. Further, both the Children's Guardian and Dr Claridge consider that the proximity of the school to the mother's home may be a factor that contributes to the triggering of the challenging behaviours that are otherwise more contained and managed in the foster carer's home, such that the school environment is not as safe a place for him as it should be and A may associate the school with instability and chaos. The Local Authority acknowledges the recommendation of the Educational Psychologist, Dr Claridge and the Children's Guardian and the Local Authority intends now to give careful consideration to a managed move of school for A. Furthermore, A has a strong emotional need not to be separated from his sibling, B, for the reasons articulated by Dr Claridge. The child's physical, emotional and educational needs can all be best met by the Court making a Care Order and endorsing the Local Authority care plan of placement of A and his sibling B together in long-term foster care;

- (c) the likely effect on the child of any change in his circumstances: Being removed from his mother's and being placed with interim foster carers who were not known to him has already been a significant change for A. The evidence before the Court from Dr Claridge is that A is emotionally vulnerable and that a further change in circumstances, including a further change of carer and in particular, separation from his sibling, would be likely to be very damaging and, from A's perspective, every effort to keep them together should be made. The evidence from Dr Claridge was that the effects on A of sibling separation and of B being adopted were likely to be very, very negative. Further, if A cannot stay with the current foster carers, Dr Claridge's evidence was that A would experience an escalation in his negative behaviour. A would be without his sibling, B, and this would be a double additional loss, the loss of the foster carer and the loss of his sibling, in addition to the loss of his mother: *"He would be very much at sea and would then require a specialist foster care placement with specific work done to go through the pain barriers. This is very likely to happen as he would be a very distressed young boy."* Those negative effects on A of a change in circumstances can best be mitigated by the Court making a Care Order and endorsing the Local Authority care plan of placement of A and his sibling B together in their current foster placement, on a long-term basis;
- (d) the child's age, sex, background and any characteristics of the child which the court considers relevant: there are no features relating to A's age or sex that are of particular relevance to the placement options before the Court. The proposed continuation of his placement with his foster carers provides a cultural match. Having regard to his background and characteristics, it is A's relationship with his sibling that is of greatest significance. As Dr Claridge observed, that sibling relationship is the longest relationship A will have in life. A has a very strong bond with his brother. There is an opportunity for A to remain together with his sibling in foster care, for them to develop a safe and symbiotic relationship and respond to adult carers, individually and together. There is no evidence to suggest A is likely to suffer deterioration in his behaviour in adolescence. There is not the evidence to predict he will have a traumatic and difficult teenagerhood. However, if A is separated from his sibling and he moves placement again, this will increase the concerns about his psychological wellbeing.
- (e) any harm which the child has suffered or is at risk of suffering: The significant emotional and psychological harm already suffered by A, has been set out at length in this

judgment. Placement of A with long-term foster carers, will prevent A from suffering further direct harm, which would otherwise be inevitable if A was returned to the care of M or P or both of them together at this stage. Placement of A separately from his sibling would, on the evidence of Dr Claridge, result in A suffering emotional harm through the significant interference with and likely severance of the sibling relationship, the effects of which for A would be, “very, very negative.” Further, placement of A outside his current foster carers, suffering the loss of his foster carers, the loss of his brother and the loss of his mother, would result in an escalation in A’s negative behaviour: “*This is very likely to happen as he would be a very distressed young boy.*” That further emotional harm A would be at risk of suffering can again best be mitigated by the Court making a Care Order and endorsing the Local Authority care plan of placement of A and his sibling B together in their current foster placement, on a long-term basis;

- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child’s needs: Regrettably, the combination of the mother’s unmet mental health and the work still necessary for the mother to adequately address her use of illicit drugs mean that she is not yet in a position to put herself forward to carer for the children, a position which she accepts. P similarly accepts he is not in a position to meet the children’s needs. There are no other persons who have been positively assessed to be capable of meeting the A’s needs, other than his current foster carers;
- (g) the range of powers available to the court under this Act in the proceedings in question: The unanimous professional opinion is that a public law Order is necessary for A. The unanimous professional opinion is that only a Care Order is in his best interests. M and P do not seek to challenge that assertion. No other form of private law or public order would suffice in securing A’s permanency and meeting his needs. A Care Order is both necessary and in his best interests. Further, a Care Order is the proportionate response, having regard to the risks.

105. I turn to consider child B, by reference to s1(4) of the Adoption and Children Act 2002, the paramount consideration of the Court being B’s welfare throughout his life:

- (a) the child’s ascertainable wishes and feelings regarding the decision considered in the light of the child’s age and understanding: at two years old B is too young to be able to express his wishes and feelings. I accept the Children’s Guardian’s observation that it is reasonable to assume that B would wish to be cared for by his birth family and live with his brother, A, furthering the bond that has been developing between them since his birth. It is also reasonable to believe that B would want his needs met in a safe, consistent, loving environment where he will be protected from emotional and physical harm. B is also likely to wish to feel safe and to be able to make sense of his world. Developmentally he is unable to understand the risks that being in the care of his mother or P may bring, now and in the future. Further, as the Children’s Guardian observed, if B was to be adopted, severing ties with his mother, P, the wider family and in likelihood severing ties with his sibling A, in the future, as B learned about and began to understand the reasons for his adoption, he will begin to develop wishes and feelings about it. These wishes and feelings will be influenced by life story work or letterbox contact that might take place with his birth family. As the Allocated Social Worker stated in her evidence, she would find it difficult to provide any proper justification to B for being separated from his sibling;
- (b) The child’s particular needs: I accept the analysis of the Children’s Guardian in which it was said that to make good enough developmental progress, B requires safe, intuitive care from an adult who is able to think about and predict his needs and respond to these consistently within a timeframe which keeps him calm and settled. In order to achieve

healthy development throughout the duration of his childhood, B needs to be cared for by an adult who will provide him with a permanent, safe, nurturing and caring family. He needs his carer to help him learn about and manage his feelings, emotions and behaviours. He therefore needs to be placed with his permanent primary carer as soon as possible, to avoid disruption to this stage of his development;

- (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: Again, I respectfully accept the analysis of the Children's Guardian who reported that B has been cared for by his mother up until he came into interim care and he knows and recognises her as a familiar adult. Being permanently separated from her will likely cause him feelings of loss, which presently he is too young to understand or make sense of. The loss of his mother is emotionally harmful to B now and will be harmful to him in the future in the event of him ceasing permanently to be a member of his birth-family if he was adopted. The Children's Guardian was of the professional opinion that the impact of such loss will likely affect B in different ways at different stages of his development, across the whole of his life. At his current young age and in the increasingly familiar care of his foster carer, it is likely that any distress or confusion experienced by him will be managed and he will adapt to his mother's absence. Frequent contact with his mother may assist in helping him in this regard. If adopted, all direct contact with his mother would cease, permanently, which will cause him distress and confusion. The Children's Guardian recognises also that B has a relationship with P, although scientific testing has now revealed that P is not B's biological father. More recently, P has not been a consistent figure in B's life but in the event of an Adoption Order being made, B would be prevented permanently from having the opportunity to spend time with P and the Children's Guardian recognises that this will result in B experiencing a sense of loss. Being adopted will prevent B from developing his relationship with his sibling, A, and in all likelihood, that relationship would also be severed or at the very least, severely and impacted upon. Placement of the siblings together in long-term foster care will ensure that the sibling relationship is maintained, developed and nurtured. I accept the Children's Guardian's observation that as B grows older and became more aware of his adoption, his observations about families may trigger a sense of being different and an awareness of his loss. As the Children's Guardian observed, "some children feel the loss most keenly in adolescence when they are striking out for independence and trying to determine an identity which is in some way different and separate to that of their parents. Adulthood and perhaps becoming a parent for others is a time of deliberation." Placing B in an adoptive family will mean that he is denied permanently the opportunity of being cared for by his mother and enjoying a range of birth family relationships. This is a very significant loss indeed, the extent of which will only be realised and felt as B becomes aware of and understands the enormity of his adoption. As the Children's Guardian observed, "B will develop an adoptive identity, which will be his primary identity";
- (d) the child's age, sex, background and any of the child's characteristics which the court considers relevant: B, is a two-year old boy. His speech is only just emerging. He is being considered for referral to speech and language support as there are some concerns that his speech may be delayed. He is otherwise meeting his developmental milestones currently and has no other significant health needs. When he was first placed in interim foster care he is reported to have been anxious at first, which is understandable given his separation from his mother. These behaviours are reported to have settled. The proposed continuation of his placement with his foster carers provides a cultural match. Having regard to his background and characteristics, it is B's relationship with his sibling that is of great significance. The sibling relationship is the longest relationship B will have in life. A and B have a very strong bond with each other. There is an opportunity for B to remain together with his sibling in foster care, to allow them to develop a safe and symbiotic relationship and respond to adult carers, individually and together. There is no

evidence before the Court to suggest B is likely to suffer difficult behaviour in adolescence and no evidence to predict he will have a traumatic and difficult teenagerhood. However, if B is separated from his sibling and he moves placement again, concerns about his psychological wellbeing will increase;

- (e) any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering: B has suffered emotional harm whilst in the care of his mother and P. He is at risk of future significant harm in his mother's care due for the reasons already articulated, arising from his mother's unmet mental health needs, drug use, P's drug use and exposure to the volatile relationship between the mother and P;
- (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, and (iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child: B has maternal birth family relationships with his mother, sibling, his maternal grandmother, maternal aunt and with P. In the event of the Court making an Adoption Order, it is likely that each of those relationships would be severed permanently. B's relationship with his sibling A is a particularly important aspect of B's birth identity. Adoption will in all likelihood deprive B of potentially the most enduring relationship within his lifetime, which will be a very significant loss for B. In reality, the relationship between B and his mother would continue following adoption, only within the context of annual letterbox contact. The purpose of such post adoption contact would be to assist B in understanding his identity as an adopted child and maintaining a theoretical link to his birth family. Maintaining a direct sibling relationship post-adoption would be dependent upon identifying adoptive carers who are willing to promote direct sibling contact. There is no solid, reliable evidence before the Court that that this is likely to be achieved. Furthermore, promoting direct contact between separated siblings, where one is adopted and the other is placed in separate long-term foster care creates a potential for emotional harm arising from each sibling seeking to understand why the other has been treated differently. As the Allocated Social Worker acknowledged, she would find it difficult to justify to B why he was adopted, whilst his brother was the subject of a different plan that allowed him to maintain a more substantial link with his birth family;
- (g) The wishes and feelings of the child's relatives, or of any such person, regarding the child: The mother and P both vehemently opposed the Local Authority's original care plan for adoption. Both wish for B to remain with his current foster carers, in a placement that protects the sibling relationship between B and A.

106. Decisions concerning sibling groups where there is a possibility of sibling separation upon adoption are never easy, this case being no exception. They call for the careful assessment of a range of often dissimilar factors emerging from findings about the past/present and forecasts about the future. All the while, a proper balance must be struck between short and medium-term considerations on the one hand and long-term and lifelong considerations on the other, so that the latter are not eclipsed by the former.

107. The Court takes into account the general advantages and disadvantages of both of adoption and of long-term fostering. As must obviously be the case, it is the advantages and disadvantages for the individual child which are the significant ones. A disadvantage of a long-term foster placement is that the child may grow up without that sense of secure attachment that adoption may offer, and at 18 years of age, the 'contractual' care provided under the foster care arrangement ceases for the foster carer. Placement in an adoptive family, however, allows the

potential for a life without intervention of social work, with secure attachments with parents, or a parent, who will see the child into young adulthood and beyond.

108. The Court makes the following further observations about adoption and foster care:
- a. Adoption has the potential for the child to be a permanent part of the adoptive family to which he fully belongs. To the child, it is likely therefore to 'feel' different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family ordinarily is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted the foster carer is, and who is free to determine the caring arrangement;
  - b. Whereas a parent may apply for the discharge of a Care Order with the aim of seeking the return of the child to living with them, once an Adoption Order is made, it is made for all time;
  - c. Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a Local Authority, the starting point is that the Local Authority is obliged to allow the child reasonable contact with his parent(s) (section 34(1) of the Children Act 1989). The contact position can, of course, be regulated by alternative Orders under section 34 but the situation still contrasts markedly with that of an adopted child. There are open adoptions, where the child has the potential for direct contact with his natural parent(s). However, open adoption placements are a very small percentage of the overall numbers of potential adoption placements available in England and Wales;
  - d. Routine life is different for the adopted child in that, once he is adopted, ordinarily, the Local Authority have no further role in his life, with no Local Authority medicals, reviews or consultations with Social Workers about school trips abroad, for example;
  - e. Adoptive placements can break down as can foster placements.
109. The advantages of adoption for B include the following:
- a. An adoptive placement for B, given his young age, needs and profile has a strong likelihood of providing B with stable, secure attachment relationships throughout his minority into adulthood;
  - b. Given B's young age, having just turned two years old, adoption offers him a permanency option without the Local Authority being involved in the whole of his childhood;
  - c. There is a six-year age difference between the boys. If placed in long-term foster care, when A is 16 years old and ready to leave care, B will be 10 years old, with potentially another six years ahead of him in foster care. Potentially, B will face almost 14 years in foster care, which is a considerable length of time, whereas adoption for B now would avoid the need for a lengthy period of time in the care system;
  - d. If the foster care placement breaks down for any reason, the opportunities for B to find a future suitable adoptive placement will decrease considerably and the opportunity for B to have permanency via adoption will have passed. Making an Adoption Order now would maximise the opportunities for B of finding a suitable adoption placement.
110. The disadvantages of adoption for B include the following:
- a. The sibling relationship will be severed: as highlighted in the Children's Guardian's evidence, there is significant research which indicates that when children are separated from their parents, the negative impact on the child's long-term mental health can be reduced when siblings are placed together, that sibling relationship being the most enduring relationship of a life time. The Allocated Social Worker's sibling assessment and expert independent psychological assessment of Dr Claridge both make clear that there is a strong attachment and a strong positive relationship between A and B, which works both ways;
  - b. A and B are the only two people that have their shared experience of home life and although B is unable now to express this verbally, it may be significant for him at a later stage in his life when he is putting together the pieces of his very early life experiences;

- c. The parental relationship will be severed for B, along with a severance of all ties to the extended birth family, including with aunts, grandparents and cousins;
  - d. The Children's Guardian recognised that the current interim foster care placement has supported and strengthened both A and B in the short time they have been placed there together, during these Court proceedings. In that time, these dedicated foster carers have been able to help A and B manage the trauma of the initial separation from their mother and are sensitively deal with the occasions when A's behaviour required intervention, careful management and support, seeking professional support at that time. The Children's Guardian is of the opinion that this indicates the current individual needs of the children can be met when placed together and provides a basis from which to build on meeting their individual needs in the future if placed together;
  - e. Whilst adoption would offer B a sense of belonging that a long-term foster placement may not, an adoptive parent having 'claimed' B to be part of their family, this must be balanced against the negative impact of A ceasing to be part of his birth-family, with the knowledge that he was treated differently from his brother B and with the knowledge that his adoption was without the consent of his mother.
111. On the facts of the case, whilst acknowledging the benefits that adoption may bring to B, it is the judgment of this Court that the balance falls firmly in favour of B being placed together with his sibling A, preserving that important sibling relationship, in a long-term foster care placement with identified foster carers who are known to the children, who are committed, where there exists an evidential foundation of these foster carers having already provided reparative, safe and consistent care for both siblings together and who put themselves forward as long term carers with their eyes open and with the knowledge of the specific future health, education and welfare needs of both siblings.
112. The benefits to B of adoption, notwithstanding that he is of an age at 2 years where adoption could always be considered to have potential benefits in respect of future permanency, are clearly outweighed by the clear evidence of the benefits to B individually and the benefits to B and A collectively, of maintaining their strong sibling bond, together with the clear evidence of the very negative effects that would result for both children in the event of that sibling relationship being severed.
113. On the clear evidence before the Court, this strong, caring and affectionate sibling relationship is of utmost benefit to both of the children, individually and collectively. The clear evidence before the Court is that the sibling relationship has strengthened as a result of the brothers being in interim foster care together. Further the evidence before the Court is that the strength of the sibling relationship has helped and will further help to reduce the sense of loss experienced given these children are unable at this stage to return to their mother.
114. The best interests of the child, B, self-evidently require the relationship with his natural sibling to be maintained and for his relationship with his mother to be maintained through frequent direct contact. In this regard, the best interests of child B and child A to maintain their sibling relationship, are indistinguishable.
115. In the judgment of this Court, the welfare needs of the child, B, do not demand the very extreme remedy of a Placement Order, leading to adoption. On the specific facts of this case, there is another suitable course available which is in the best interests of both children, A and B, individually and collectively. The exceptional circumstances necessary to sever the relationship between parent and child motivated by overriding requirements pertaining to the child's welfare are not present.
116. Furthermore, the high degree of justification necessary under Article 8 if a decision is to be made that a child should be adopted against the wishes of the child's parents, is not established. Article 8 protects the right to respect for the private and family life of both

children individually in this case, and the private and family life of their mother and wider family. No interference with the exercise of this right is permissible by a public authority, including the Local Authority and the Court, except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

117. Whilst a Care Order in respect of each child is an interference with the Article 8 rights of the children, their mother and the wider family, such an Order is made in accordance with law and with the legitimate aim of promoting the welfare of the child. That interference is necessary and is a proportionate response, having regard to the risks and having regard to the welfare evaluation. Where there is a conflict between the welfare of the child and the rights of an adult, the child's interests will predominate. On the facts of the case, the interference in the Article 8 rights of each child and the relevant adults, including the mother, that would result from the extreme nature of a Placement Order leading to adoption, would amount to an unnecessary interference or one that is disproportionate to the essential end of promoting the welfare of the child.
118. Furthermore, on the facts of this case, B's welfare does not require dispensing with the consent of his mother to the making of a Placement Order, pursuant to Section 52 (1) 9 (b) of The Adoption and Children Act 2002.

#### Conclusion

119. For the reasons given, the Court makes a Care Order in respect of the child, A and a Care Order in respect of the child, B. The Court endorses the revised care plans filed by the Local Authority for both children, with the plan that the children will be placed together, with their existing foster carers as long-term foster carers. Furthermore, the Court endorses the plans for each child that provides for direct contact between the children and their mother every six to eight weeks during the school holidays.
120. Finally, P intimated that he intended at the conclusion of the Final Hearing to make an application pursuant to section 34 of the Children Act 1989, for an Order requiring the Local Authority to allow the child, B, reasonable contact with P, on the basis that, although P has been excluded as his biological father, P has a connection with B and that B thinks of P as his father. The Local Authority care plan for B records that P should not be afforded any contact with B.
121. Section 34 of the Children Act 1989 provides that, where a child is in the care of a local authority, the authority shall, subject to the provisions of that section, and their duty under section 22(3)(a), allow the child reasonable contact with (a) his parents, (b) any guardian of his or any person who by virtue of section 4A has parental responsibility for him, (c) where there was a child arrangements order in force with respect to the child immediately before the care order was made, any person named in the child arrangements order as a person with whom the child was to live; and (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person. None of those categories apply to P, by virtue of the declarations made by the Court as to paternity, arising from the DNA analyses. Accordingly, it was necessary for P to apply under s10(9) of the Children Act 1989 for leave to make an application for a s8 Order. In the event, P did not attend the adjourned Final Hearing date nor was he legally represented. No formal application was made pursuant to s10(9) and P was not present at the hearing to pursue such application orally. In the circumstances, the Court declined to grant leave.