

IN THE WEST LONDON FAMILY COURT

West London Family Court,
Gloucester House, 4 Dukes Green Avenue
Feltham, TW14 0LR

Date: 10/02/2021

Before :

HIS HONOUR JUDGE WILLANS

Between :

THE LONDON BOROUGH OF EALING

Applicant

- and -

(1) MOTHER

Respondents

(2) FATHER

(3) R &

(4) A

**(through their Children's Guardian Ms Annette
O'Callaghan)**

Ms Phillipa Parry Jones (instructed by **Ealing Legal Department**) for the **Applicant**
Ms Ella Shaw (instructed by **Duncan Lewis Solicitors**) for the **First Respondent**
Ms Jennifer Youngs (instructed by **GT Stewart Solicitors**) for the **Second Respondent**
Mr Mark Rawcliffe (instructed by **Blaser Mills Law**) for the **Third & Fourth Respondents**

Hearing dates: 2-5, 8-10 February 2021

JUDGMENT

His Honour Judge Willans:

Introduction

1. I am concerned with two children who I will refer to within this judgment by the initials R and A. R is a boy aged 14½ years and A is his full sibling sister who will turn 13 in April. Their parents are party to the proceedings and I will refer to them by their initials M (the children's mother) and C (their father). The other parties making up these proceedings are the local authority (the London Borough of Ealing) and the children through their children's guardian (Ms Annette O'Callaghan).

2. These are the third set of proceedings concerning these children. The first set of proceedings concluded in June 2018 with the making of a 6-month supervision order. The second set concluded in December 2018 with the withdrawal of proceedings. These proceedings commenced in April 2020. The children have an older half-sibling (K) who is cared for by their maternal grandmother and a younger half-sibling (B) who lives with their father and his partner, L.
3. I have heard evidence over 4 days from the following individuals, the previously allocated social worker (until January 2020); an independent social worker; a family finder within the local authority; two workers from within R's specialist school; M; C and the guardian. I have also considered the documents contained within the bundle; documents filed by the representatives of each party and oral submissions made on behalf of each of the parties. I have regard to all of this information although it is neither helpful nor necessary to recite all the evidence within this judgment. I will focus on the evidence and information required to reach my decisions. I have though continued to bear in mind all the information put before me.
4. This hearing was conducted entirely remotely - on the video platform Microsoft Teams - with the agreement of the parties. This was broadly successful albeit less so when C was giving evidence. Nonetheless I am satisfied that this departure from normal principles did not undermine either the effectiveness or fairness of the hearing.
5. These proceedings have exceeded the 26-week timetable provided for under the Public Law Outline. Having commenced in April 2020 they should have concluded at the latest by October of 2020. The failure to do so is substantially due to complications surrounding evidence gathering and the threshold relied upon by the local authority. This was added to by delays arising out of finding Court space for the hearing in these Covid-19 days. However, it is important to note that during this period of delay R has remained in a stable foster care placement which is intended to provide for him on all party's case for the immediate future, and A has been living with her father. Whilst the impact on the children cannot be denied it has at least been limited by these features.
6. A full understanding of the proceedings can be found in section B of the final hearing bundle. I will not detail the history of the proceedings within this judgment save to importantly note that the children were removed from their mother following an Emergency Protection Hearing (16 April 2020), a situation that was maintained following an Interim Care Hearing before me on 23 April 2020. At that hearing I made an interim care order placing R into the care of the local authority and an interim supervision order and child arrangements order ('lives with') placing A with her father.

Legal Principles

7. I intend to keep this section short focusing on the key legal principles. There is nothing unusual about this case to warrant specific reference to case law. There is no disagreement between the parties as to these points.
8. Most importantly I hold each of the children's welfare paramount. It is my first and last consideration. I am guided in my assessment of their welfare by section 1(3) Children Act 1989 ('the welfare checklist'). In due course I will set out my welfare assessment drawing particular attention to aspects of this checklist.
9. I am asked to consider making a public law order. To do so I must find as established the legal threshold found in section 31 Children Act 1989. This sets a test of significant harm and requires the proof that the child has actually suffered significant harm (this need not be physical harm) or is likely to suffer significant harm if an order is not made. The harm must be attributable to the care given to the child (or likely to be given if an order is not made) not being that which the Court would reasonably expect a parent to give. The threshold in this case also raises an issue of R being beyond parental control. In this case the harm must be attributable to being beyond parental control. The assessment of this threshold is conducted on the relevant date which in this case is 16 April 2020. The Court is entitled to have regard to events occurring both before and after this date to the extent that they help answer the question of whether the threshold is crossed.
10. The threshold requires proof of facts not anecdotal evidence or suspicions. The facts proven must be causally linked to harm to the child. The Court is not assisted by simple proof of parental failings or deficits in parenting skills or indeed unconventional parental style when considering threshold. Proof in this context means to the civil standard, being more likely than not ('the balance of probabilities'). It is for the local authority to prove the allegations it makes and not for the parent to disprove what is alleged. The Court operates a binary system such that proof beyond balance equates to a finding of fact whereas anything falling short of this leads to the Court wholly disregarding the allegation. All evidence must be considered with care when assessing threshold allegations and the evidence of the parents will always be of significant importance. The Court must be cautious when assessing evidence if it finds evidence of lies being told. Any temptation to thereafter disbelieve that witness should be resisted. In such a situation the Court has to have regard to the context and circumstances surrounding the lie and bear in mind that a dishonest witness on one aspect of the case may be entirely credible on other aspects of the case. This is a brief summary of a what is known as the 'Lucas Direction' but I have regard to the sophisticated explanation of this principle found within the caselaw.
11. If the threshold is crossed the Court is empowered to make public law orders with respect to the children. If it is not crossed, then the Court has no power and

the application for such orders must be dismissed. However, the crossing of the threshold is not the same as suggesting that public law orders should then be made. The assessment of whether to make such orders is shaped by the children's welfare and by the need to have regard to Article 8 Human Rights Convention. This principle highlights the need to have respect for the party's private family life when considering whether it is appropriate to intervene in that family's life. Any intervention has to be justified to be approved. The justification process requires regard to the test of proportionality, necessity, reasonableness and lawfulness. Another way of approaching this question is to subject any proposed intervention to the question as to whether there is a lesser form of intervention which would meet the children's welfare needs. If there is then the proposed intervention will be disproportionate and unnecessary.

12. The Court focuses on the real options placed before the Court. The task of the Court is to weigh these options in a careful and holistic manner, judging the pros and cons of each option. This discipline should ensure the Court properly has in mind the real options when reaching its decision and does not fall into the error of rejecting one option and adopting another without subjecting that latter option to equivalent assessment. In such assessment the Court will disregard options which are not realistic.

The Realistic Options Under Consideration

13. The local authority asks me to make a final care order in respect of R. Their plan is for him to remain in long term foster care and at this time they are actively considering whether he can remain in the care of his current foster carers. The guardian supports this plan and endorses the merits of R remaining where he is. C agrees with this planning for his son. M's case is that she would want R to return to her care, but she is happy with his current placement. She would want R to return to her on a phased basis in perhaps 6 to 12 months as she makes progress with respect to A and deals with some other practical issues, such as looking for a larger property. There are issues as to the contact arrangements between R and his parents. This has considerably narrowed as the local authority have come to adopt the thinking of the guardian, but the parties remain apart.
14. In contrast there is a more fundamental dispute with regards to A. Prior to the father completing his evidence the key options were as to whether A should be placed under a final care order separate from her mother (whether with R or not) or returned to her mother (whether under no order, a supervision order or final care order). The key dispute being placement. The local authority and guardian supported a plan of separation from the mother under a care order with the local authority supporting placement with R. The guardian was more guarded as to the placement plan as regards placement with R and was of the view this placement might not be best for A. Prior to his evidence C was in broad support of the local authority planning. However at the conclusion of his evidence he

substantially altered his position and asked the Court to have regard to the potential for A to remain in his and L's care. The timing of this change of planning was not helpful given the case had proceeded on the basis that the father did not feel he could provide a longer-term home for his daughter. Witnesses had come and gone on such a basis. I note though that M would support placement with C were she not able to care for A. This change of planning led to consideration as to adjournment of the case (whether immediately or not). I determined I would have father recalled, hear from the guardian and submissions and determine the appropriate way forward at that point.

15. Ultimately the parties made the following final submissions:

- i) The local authority sought a final care order for R. In respect of A they sought for the proceedings to be adjourned for further assessment of C. They argued M could be ruled out as a carer for A in any event. Pursuant to these proposals they set out their contact proposals.
- ii) M argued the threshold was not established and as such public orders could not be made. She sought for A to be returned to her care and for R to return after 6-12 months. If the threshold was crossed, then A could return under either a supervision or care order. She suggested R's placement should continue under section 20 Children Act 1989 (with parental agreement). If A was not to be returned to her care, then she supported A remaining with C. Failing both she supported an adjournment for further assessment – but argued this should include further assessment of her. Were A to be made subject to a care order and placed into foster care then she considered there should be further scrutiny as to whether the children should be together or not. She sought contact in any event.
- iii) C agreed for R to be placed into foster care and so, whilst he made no positive submissions as to threshold, he plainly argued on the basis that it was. With respect to A he sought for a final CAO and SO placing her in his care. He recognised this would require a short adjournment for his local authority (he does not live within the applicant's jurisdiction) to be informed. He considered this would give an opportunity for the local authority to file a more robust support plan. If the Court was unwilling to make final orders, then he agreed with an adjournment for further assessment. He set out his contact proposals.
- iv) The guardian supported a care order with respect to R and adjournment of the application with respect to A. She argued M should be ruled out as a carer. She considered further assessment of the father was required but, in the alternative, supported a final supervision order with the local

authority / alternate local authority setting out robust support plans. She set out her contact position.

Background Details

16. An understanding of the background circumstances that cause the local authority concern can be found in the initial social work statement for the EPO hearing. There is relatively limited background detail contained within the evidence although I have noted M's history given to Dr Helps¹ and some background contained within the ISW assessments.
17. In assessing this case it is important to note that R has significant personal needs. He is schooled at a specialist school and is described as suffering from autism; Duane Syndrome²; a severe learning disability and limited functional language. I will within this judgment highlight issues that arise from the challenges faced by R and those caring for him. Whilst not subject to these proceedings it is of note that R older brother, K also suffers from significant developmental issues. The evidence suggests that A does not have any apparent developmental concerns although I note M expresses a degree of reservation as to whether she exhibits traits of autism.
18. The social work chronology commences in 2008, and whilst I note the children were on a child in need plan, it is not really until September 2016 that particular concerns arise. Prior to this issues around the state of the home were raised but seem to have been satisfactorily addressed. I note the parents are said to have separated in March 2016 although the chronology at points prior to this questions the quality of the parent's relationship and the father's hands on role in the children's lives.
19. The subsequent issues related to domestic disputes between M and her partners (not C). At this stage there is a limited suggestion of M not fully engaging with the social worker (28/9/16). A year later (30/11/17) R's school were expressing concerns as to an increase in his challenging behaviours. Other students were at risk and his place was in jeopardy. Shortly after (29/1/18) a referral came from the police as to a DV incident involving M and her partner. In the month that followed there is a suggestion of M being hostile to engaging with the social work team leading to the instigation of legal proceedings. Within these proceedings the children were initially placed with the maternal grandparents under ISO's. The proceedings duly concluded with the children returning to M under a supervision order for 6 months. Unfortunately the case returned to Court very shortly afterwards due to concerns that the M's partner was seen at her home. The plan underlying the SO was based upon M and her partner having

¹ E145

² An eye movement disorder which limits eye movement

separated due to concerns as to DV. The local authority was concerned to see video footage which suggested the partner was in the garden of the property and within the home when police attended. M denied any resumption of the relationship and denied inviting the ex-partner to the property. She questioned whether the individual identified was in fact the same person but argued that he may have entered when she was away from the property as he may have retained a copy of a key to the property. These proceedings were ultimately withdrawn in about December 2018 (at about the time of the conclusion of the supervision order) when the local authority accepted, they could not make out the legal threshold on the available evidence.

20. It seems M left the area of the local authority in April 2019, moving into the neighbouring authority of Hillingdon. However, she later returned to Ealing. At first she and the children lived with her mother before finding their own independent accommodation on the same private estate (in close proximity to the MGM and K). It was within a short period of returning to Ealing (and whilst still living with her mother) that M reported an incident in which petrol was said to have been poured through the front letter box and threats made. It was within this ensuing period that concerns arose leading to the current proceedings. In summary the concerns related to poor school attendance; increasing concerns around R's behaviour and issues as to M's poor engagement / disengagement from the social work team. Matters culminated when a series of NSPCC referrals were received suggesting a risk of physical and emotional harm to the children. The local authority received both video and audio recordings. These recordings appeared to show items being thrown from the windows of the property into the street below (by R); a subsequent recording of M and R in the street in which it appeared R might have been struck to the face by M, and; an audio recording of M in the family home verbally abusing A. Lastly, concerns were expressed as to M's presentation at R's school with a suggestion of erratic behaviour indicative of potential substance misuse. As a result the local authority sought and obtained an emergency protection order. The children were temporarily placed with C. At the subsequent interim care hearing R moved from his father's care into foster care (see above).

Evidence

21. I will briefly summarise the key evidence albeit not in the exact order it was received by the Court.

The Evidence from R's school

22. I heard from R teacher (SM) and a family support worker at the school (DO). Both produced statements for the hearing³. In addition:
- i) DO had produced a report dated 21 April 2020 which was relied upon by the local authority at the interim hearing⁴;
 - ii) The bundle also included school occurrence reports⁵ relating to R detailing events/occurrences concerning R during the period 2017-2020. My sense were these records were not kept specifically with regard to R but arose out of the specialist nature of the school environment. An update was provided for the hearing (although within it are contained historically more wide-ranging reports);
 - iii) SM provided a separate update as at 22 October 2020 setting out the perceived changes in presentation since R was removed into foster care⁶.
23. These professionals have a good knowledge of R. DO has worked with him since 2017. SM has been working in a specialist school environment for 11 years and has been R's class teacher since 2019. They are each well qualified in the field of specialist school education and meeting the needs of children such as R. It is fair to say that whilst DO was aware of concerns which have arisen (R being on a CPP on two occasions) he did not have a detailed understanding as to the basis on which the cases before the Court were determined or those factual matters being argued before the Court. He was not aware the local authority was not seeking any findings of inflicted harm. For my part I do not see this impacts upon the value of his evidence as DO has no role in determining those matters which are pursued. However, I have regard to this inevitable partial understanding of all the circumstances of the case.

The focus of this evidence was it appears to me two-fold. First, the school have had concerns with the mother's engagement with them. Second, that R has presented in a manner which causes them real concern.

DO explained that R is echolalic⁷ with limited verbal skills. Nonetheless in the view of DO he presented as a 'traumatised child' and the school was concerned he may have experienced physical abuse/chastisement at home. They were also concerned as to what he may have witnessed and the impact of the same upon him. Mention was made of the belief that he may have seen the DV raised within the previous proceedings. From the perspective of the school this experience

³ C170 & C205

⁴ F110

⁵ F34-109

⁶ F151-F152

⁷ Repeating things heard or said to him

manifested in R have regular emotional outbursts and challenging and often destructive behaviours.

I read the school struggled to meet R's needs at first leading to him working in isolation with 1-2-1 support. In his oral evidence DO made it clear the school had looked to see whether alternative provision might be available for R and he would have been moved if such place had been identified. However, progress seemed to be starting to be made in school year 2019/20. Sadly, this was interrupted when R was absent from school for about 6 weeks between 11/Oct and 25/Nov 2019. DO felt the explanations offered by M for this period of absence were far from satisfactory. On return to school the school had concerns as to (a) R's presentation and personal care with R appearing dirty and suffering from poor hygiene/strong odour; (b) sexualised behaviour: the school being concerned M refused consent for R to be seen by the clinical psychologist as the same had earlier supported the CPP; (c) bruising/injuries: with limited and inconsistent accounts as to the explanation for the same; (d) physical health/wellbeing: an issue arose as to M failure to take R to a further medical consultation when he appeared to be suffering from a sore penis; (e) emotional wellbeing: with R increasingly appearing anxious and distressed and unusually seeking hugs, and; (f) parenting: with M being increasingly difficult to get in touch with. Further, it was felt R was repeating language from home that was suggestive of the M addressing the children in a verbally inappropriate manner.

DO expressed sadness to then be told there was a video capture of R being assaulted by his mother. This did not surprise him. The feeling of the school had been of R experiencing a chaotic home life with his change in presentation manifesting the challenges at home. The school pointed to the complex needs R has and the requirement for skilled consistent care. They were concerned he was not receiving this at home.

DO attaches to his statement various pictures showing marks or bruises on R in the period up to removal. Post removal mention is made of a period when R was tearing his hair out as it had grown longer than was normally the case. DO explained that it had been difficult to reach agreement for R to have his hair cut leading to a period of about 2 weeks when this behaviour continued. Elsewhere in the evidence I understood the local authority ultimately took the unilateral decision to authorise the haircut.

SM in her statement – but also her October updating report – seeks to highlight what is felt to be a significant change in R's presentation since April 2020. The following are particularly noted; (a) R's hygiene has improved which is remarked upon and leads to R appearing happier and more confident; (b) his weight is better regulated: prior to removal his weight was in the 99th centile for his age. His impulse control with respect to food has significantly improved. Previous suggestions of a gluten intolerance (which the school say was never

documented) appears to have resolved; (c) marks and bruises although still continuing are less frequent; (d) school attendance and punctuality is excellent: at the point of removal attendance it was at about 63% but he now attends on time and all days. This is felt to be crucial having regards to his need for routine; (e) behavioural presentation has improved with less swearing and he is no longer repeating certain phrases. DO commented in this regard that whereas R might pick up swear words from other children the concern was that the swearing and sentences repeated appeared contextual to the home environment. He is said to be no longer having outbursts of unexplained screaming or tears and does not urinate in the playground or steal food; (f) his impulse control has improved and he is no longer acting out or self-harming when he cannot have what he wants; (g) his communication with other pupils has started to improve and he can focus more on lessons and for longer periods. This is said to have increased from 10-minute stints to periods of 50 minutes (the whole lesson). Apparent reduced anxiety means he is no longer 'grounding himself' (lying fully on the floor to the extent he did previously 4-5 times an hour – now 1-2 times per day); (h) he is now working more independently without needing constant 1-2-1 support; (i) his relationship building is developing both with his peers and teachers. Previously he did not seem to be aware of others, but he is now seeking out friends and will now listen to less familiar members of staff whereas he would previously ignore them.

As noted above DO was not aware of the historic outcome of proceedings or those matters being actively pursued. He accepted the 'petrol incident' would have been worrying but at that time the reason for the absence was changing and, in any event, logically it would have been better for R to be at school not kept at home at the location of the suggested threats. He spoke about the attempts to organise local authority transport for R. He had helped with the forms, but he had never heard back on the issue and later M spoke of getting a car. He found it difficult generally to engage with M; to get her to come in and go through the necessary process together. As to hygiene issues they had sought support from the occupational therapist who had worked with R with respect to showering and there were no evidenced difficulties. He accepted with respect to sexualised behaviour that R was proceeding through puberty, but the school had wanted to refer for help and he was clear M had refused this due to her differences with the psychologist. As to the suggestion M was not being kept updated this was not correct. He agreed issues had continued post removal with R harming himself. But he noted particular issues arose on the day following contact sessions. He agreed though it was difficult to pinpoint the reason for this. He acknowledged M gave accounts for some of the marks and these were consistent. He also agreed marking had continued since removal, but this was less so than previously. The change in R has been remarkable and particularly his 1-2-1 engagement. The school can now meet his needs whereas previously they were doubting whether they could. Communication is now much better,

and the carers are pro-active in informing the school as to issues whereas M would only occasionally give reasonable explanations. He was specifically asked as to the suggestion R might be suffering from Tourette's. Whilst he was not in a position to provide a diagnosis, he felt the behaviour was echolalic and contextual.

SM whilst accepting continual issues with marks and bruises confirmed her opinion that R 'was punching the walls less frequently...punching his penis less frequently...and issues were occurring less often'. She had advised M to call the local authority about transport but was not aware what had happened. She has sometimes found it difficult to get in contact with M and had found her combative. She sensed the issues after contact with his mother were not related to missing his mother but rather reflected upset and stress on his part.

The Family Finder

24. This evidence⁸ included a 'Together or Apart Assessment'⁹ considering the placement options for the children. Both M and C were supportive of R's foster carers and sought for the children to be placed together (if not placed with themselves). The local authority supported the children being placed together. The guardian was more guarded as to whether this placement, which was working well for R, would be ideal for A. Moreover the guardian questioned whether A needed a separate placement. By the time of final submissions M agreed with the guardian. In her written evidence this witness supported the children being placed together in a nurturing therapeutic placement with two carers experienced in caring for children with autism/special needs. In addition the carers should be open to post-18 support and care. The children should be the youngest members of the household. The assessment acknowledged the complexities around short- and long-term planning and the need for R in particular to have consistent routines. It concluded that were the children not to be able to be placed together within 12 months of a final order then separate placements should be pursued.

Prior to her evidence the Court had been informed that the local authority was working towards the children being placed with R's carers and this was being considered as a long-term option (subject to appropriate assessment). It did not appear to me the witness was fully aware of this. In any event she was clear one would need to await an appropriate matching assessment. She was of the view they were experienced (10 years' experience) and would apply a therapeutic approach but it was not clear to me to what extent they had received any specialist therapeutic training. When questioned she felt they would be able to ensure the needs of each child were met and that A would not be 'left in the

⁸ C138

⁹ E191

shadows' of R's undoubted needs. The guardian's questioning expressed concern that previous meetings had not been notified to her and she had been rather taken by surprise by the announcement of the planning. It was confirmed that in the previous week the placement had been approved as a viable short-term placement but its appropriateness as a long-term placement would require further assessment.

The ISW

25. The ISW carried out an assessment of both M¹⁰ and C¹¹ and has provided follow-up answers to questions in regard to both assessments¹². Both assessments are dated 1/Sept 2020. Both are negative in regard to the respective parent.

M

26. The ISW concluded M demonstrated no insight into the local authority's concerns save for the incident when she was said to have been verbally abusive to A. Her assessment was that M had her own clear understanding from which she is unwilling to depart. In this regard her thinking is rigid. Additionally she felt M was improperly using suggestions such as Tourette's to cover for her own responsibility for R's behavioural presentation. She noted R was not presenting with tic's as might be expected and the poor language appeared symptomatic of echolalia and situational in nature. It was of concern to the ISW that M was unable to evidence any substantial level of insight into the concerns expressed and that her presentation of the children's lives was very different from the information provided by third parties.

In respect of M's understanding of, and ability to meet, the children's needs the ISW was concerned that M presented in an idealised and unreal manner. She used language and concepts that suggested understanding but the ISW felt this was a smoke screen without real depth of understanding. She felt it was as if M was reading from a script; and was more concerned with the presentation of a picture of perfection than the reality of everyday life in her home. This was demonstrated by the inability of M to note any of the concerning behaviours R was exhibiting at school being present at home. Further her account of the process under which A had come to be home schooled did not appear realistic or truthful and the suggested efforts made towards home schooling did not stand up to scrutiny. She drew the conclusion that the home schooling served M's needs rather than her daughters and that again the language she used in such regard was a smoke screen hiding the poor reality. She was struck by the inability of A to speak about the work she had been doing with her mother in

¹⁰ E108

¹¹ E156

¹² E186 and E216

contrast to the manner in which she spoke about work she had done at school and projects completed with her grandfather. Ultimately, she had reached the conclusion that A required therapeutic intervention and that M has neither insight in this regard nor a willingness to engage with those providing such services. The ISW is concerned as to A's autonomy and lack of real independence from her mother being significant dependent on her mother cues to evidence her own emotional presentation. She feels A needs the emotional freedom and space to develop her self-identity and is concerned that without this she is storing up very serious issues for later adolescence.

The ISW was asked to comment as to the form and level of support that might enable M to care for the children at home. She was in no doubt that M would need support as whereas she can vocalise what is needed, she shows no evidence of an ability to implement such understanding. What she would need would be a specific family support worker on a daily basis and beyond conventional hours (9-5). The ISW was however concerned that having regard to M's attitude and unwillingness to accept any deficiencies in her skill set this would not likely be successful. She was asked as to whether M herself would benefit from therapy or other emotional support. In answering this question she drew on the expert report of Dr Helps¹³ (23/Aug 2020). This psychological assessment found M not to be exhibiting symptoms of any psychological or psychiatric disorder. I note that similar to the ISW this expert also was of the view M was seeking to present a positive picture of herself and that she might be under reporting current issues. The expert recognised the challenges of caring for two children with significant needs and wondered whether such care may have tailored M's communication style such that she communicated with other individuals in an unmodified manner. She also expressed the view that potentially M was resistant to the views of others who she considered less informed on these issues than she was. Finally she noted the stresses arising from such care and wondered whether the inability to build a good working relationship derived from M's sense that the local authority did not fully appreciate the challenges she faced and had not responded with the support she needed. She felt M had the ability to sustain positive change in the future having done so in the past. She felt some systemic psychotherapeutic work was required between M and A to enable them to reflect on how things went wrong and to enable them to build a relationship.

The ISW was asked to identify the likely supports M would need if caring for the children. In respect of R she noted M had essentially failed to properly engage to obtain the support. She noted the failure to pursue school transport; objection to a psychological referral to deal with sexualised behaviour, and; refusal to consent to CAMHS process. In respect of A's need for therapy she doubted M would engage with or support this. In reality a return home would

¹³ E140

require a care order, and this would not address all issues. It might assist with schooling and keeping appointments, but it would not deal with the deeper emotional needs of the children. Furthermore M made it clear she did not want social services involved and made clear she would not accept unannounced visits but would want 24 hours' notice of any visit.

The ISW was concerned that A appeared disconnected and dependent on her mother for emotional cues. Separate from her mother A gives little away and does not instigate non-verbal communication. When questioned she appeared like a 'rabbit in the headlights' and only opened up when she sensed she had emotional permission from her mother.

Ultimately, she was of the view that M could not care for either child. A needed therapy whilst being supported and receiving good care away from her mother. The work suggested by Dr Helps could then be instituted. She felt M was unable to meet R's needs. She expressed her views on contact which I will deal with separately below. The ISW denied she had not given M sufficient time to respond to her questions or that she had not permitted sufficient time for her assessment. She allowed M time to fully set out her narrative only interrupting to bring her back on focus. With respect to the schooling issue she had considered the information provided by M, but it didn't give her real confidence. A was unable to detail any of the work undertaken by her mother and she considered the certificates supplied were dated. She agreed C through his limited efforts had contributed to the situation in which A was to retake year 7.

She felt A was under the influence of her mother. She drew this conclusion from observation of contact; the contact notes, and; seeing her at home with her father. She was heavily reliant on her mother for emotional cues with the ISW considering this needed therapeutic assessment. It could not be done whilst in the care of her mother. First, she needed to build a relationship with a new carer supported by a youth worker. This would take a long time and need to be undertaken out of the care of her parents. It would be too much too soon to skip the preliminary stages and seek to do this in situ with M.

The ISW was worried about A being seen as a 'tag-along' behind R. She has complex needs of her own requiring focused support. She expressed concern with the local authority as to the level of support offered to the father and to A and as to the social workers willingness to engage with her around these issues. The father was poorly supported. This did not necessarily equally apply to the mother as she had been offered support. She did not feel it was an answer for A to return on her own at first with R following later.

A significant concern was as to M's likely engagement. She doubted M would accept the concerns and would likely only engage on her own terms leading to the position returning to its previous state. She questioned whether M would

maintain her commitment to statutory schooling if A returned home given the observations she made during the assessment. These concerns existed with respect to the engagement with a family support worker. Whilst it was true M had engaged with her assessment, she noted that M had wanted her not to meet with A alone. Generally parents are willing to engage with ISW's, this is different to FSW's. The essential issue is that when M thinks she is right then she leaves no room for doubt meaning she would not see the other side of the argument and would make excuses for not complying. As a result she did not support a placement of A at home with M. M presented as entirely positive in her outlook and could not see any real deficits in her care other than the admitted language towards A. She referred to the works she had undertaken such as 'strengthening families' but there was no evidence of implementation and maintenance. The reality is that M will only do things when they fit with her view.

She was surprised by the 'together or apart assessment' as whilst she would ordinarily support sibling placement together, on the facts A's needs might be overlooked. She felt separate placements might be appropriate. She considered a 1-week transition from father into care would be far too quick and likely needed 4-6 weeks.

As to contact there was a balance between the need for the children not to lose a sense of their parents against the need for a settled placement. She felt A needed fortnightly contact with M and unsupervised weekend contact with her father. R needed regular contact due to his particular needs.

C

27. The ISW's assessment of C was negative having regard to the following points. A's relationship with her father and his partner was strained at the time of the assessment with them just managing the situation. They wanted things to be better but were unable to focus on A's emotional needs. They were struggling to understand how aspects of A's behaviour and distancing from them flowed from her experiences and the need for them to seek to empathise and engage with her to resolve matters. Whilst she did not doubt, they could meet A's basic needs she had significant concerns relating to meeting her emotional needs. This concern was exacerbated by their inability to take on points made by her as to the effect on A of previous neglectful parenting. This led her to worry about the longevity of the placement. Whilst matters might be more positive if A behaved in the way sought by C and L, this was an unrealistic expectation and would require A to bury her own feelings leading to possible emotional suffocation.

As to understanding of the local authority's concerns it was said that C expressed a lack of understanding having had no contact with the children since July 2019. He demonstrated difficulty in grasping the issues in expressing the

feeling that A should go home as this is what she wanted. Her view was not that C did not accept the concerns but rather that he did not understand the risks associated with the care provided to A and consequently seemed to close himself off.

In considering the question of failure to protect the ISW noted C appeared not to be proactive in his approach and highlighted his lack of previous action involving himself in the children's lives. This led her to doubt his commitment and the prospects for the future if L became tired of pushing C to act. She did though acknowledge that this situation would not have been helped by the apparent lack of local authority engagement with C during the prior period.

The ISW expressed concerns as to C's commitment to maintaining contact between A and her mother. At the time of the assessment C was expressing concerns as to the existing indirect arrangements and was worried as to how things would likely deteriorate with direct and unsupervised contact. The ISW was of the view that C was being selfish and not child focused when expressing concerns as to future contact. The ISW also drew attention to the limits of support for A that C had offered during the lock down period. She highlighted L's criticism of C in this regard with C failing to engage with A and support her through this period.

At the time of the assessment C was supportive of A returning to her mother (or grandmother – who was being assessed at that time). He wanted A to be happy but the ISW felt he was not keeping sight of risks to A linked to returning home. When the ISW told him she felt he was unable to meet A's emotional needs he agreed with her saying he wanted the best for A but didn't know what to do. In this regard the ISW considered whether C's own traumatic childhood was acting as a barrier for him. Her conclusion was that C/L could not provide care for A and meet her needs whether she had therapy or not. They would need significant work to develop their own insight and knowledge, but the placement was not sustainable, and C lacked the motivation and commitment to make progress.

She did not feel there was support that could maintain the placement whilst work was undertaken as A needed more than good enough parenting during this period. She commented as to the need for an immediate support worker for A to help with the necessary future transition planning. She commented as to the lack of support offered by the local authority to C and whilst this would not have altered her recommendation it would likely have made a difference to the family environment. She supported regular monthly weekend contact between A and C from Friday to Monday with additional holiday contact. In the case of R the monthly contact should be visiting and there should be continuing video contact.

Due to C's late change of position the ISW was not questioned or challenged as to her conclusions with respect to C.

The social worker

28. The social worker had drawn on the ISW report in reaching his conclusions as to final care orders for both children. Initially the local authority had proposed contact every four months with each parent but revised this position to monthly contact prior to the commencement of the hearing.

He was taken through the threshold elements to the case. I will deal with my findings below. He accepted R continued to throw items. He accepted there was no evidence to suggest that the language used to A was anything other than a one-off. Tourette's had not been raised as a concern other than by M. Although R continues to swear it is at a lower frequency. He accepted the incident with the petrol would have been frightening for M. He was clear there has been a dialogue with M about the need to complete and send home schooling registration documents. He noted that since A had returned to school, she had made improvements both educationally and socially. At a Child in Need meeting in December (2020) it was clear she now looked forward to going to school and was making progress.

He disputed a Child Protection Medical was set with an hour's notice. This notice was his wish to see the children. He agreed R had been distressed following a CP Medical a few years earlier. As to engagement he felt whilst there were some areas of engagement, M would say she would do things but not follow through. They had discussed support for M. There had been suggestions with respect to respite and training opportunities, but M said she was coping. There was a wish to engage a clinical psychologist but M objected. She started a Triple P programme but felt it was not relevant to her experience. She had not engaged properly with the CAMHS assessment leading to it being closed.

He agreed A wished to return home and had a positive relationship with her grandmother. He agreed there had been no specific conversation with A about the plan for foster care. He agreed she would find this transition distressing. He agreed that since the ISW report there had been improvements in the care of the father, but A still wanted to return to her mother. He agreed R was settled in his placement when compared to April 2020 and would struggle with a change of placement. The current carers had put themselves forward to care for both children. The social worker would be supportive of this plan. He felt it might require a change of school for A (this was subsequently confirmed as not being the case). He felt it was important for A to remain at her current school. He accepted the local authority were no longer alleging a physical assault on R or substance abuse on the part of M. He noted M was now saying she would support schooling, but he was not convinced. During the period that M was meant to be home schooling nothing of note was done. He noted the supports that might be put in place were A to be returned to her mother but didn't know whether M would be willing to engage.

He agreed contact had been positive and that there had been good levels of engagement. However he agreed the levels of contact in place whilst with C had destabilised the placement. Ultimately the local authority supports monthly contact subject to review. It needs to be supervised. The foster carers agree M can be destabilising.

He agreed there were no issues with school attendance in 2020/21 and A is doing well at school. She is engaging well and enjoying school. There is good communication between the school and father. He was questioned as to the support offered to the father and did not challenge the critical points put on the father's account. He accepted more support could have been offered and should have been offered earlier. He accepted his final statement did not consider the father as a realistic option. By this time the father was making it clear he did not feel he could care for A. Pending foster care A should remain with her father. She is at no risk there. She should stay there until a permanent placement is found. It is not in her interests to move twice without a good reason. He agreed the planning for a move within the space of the week seemed too quick given A had been with her father for 10 months. He confirmed his understanding that since he had left the local authority in January 2021 the children had not had an allocated social worker.

The Mother

29. M disputed threshold was crossed. She accepted poor language used to A but stated this was a one-off. The language repeated by R did not reflect verbally abusive language in the home although she accepted a need to refine her language. She challenged the suggestion that she could be held responsible for any of the marks seen on R stating these derived from his behaviour patterns. She denied failing to explain the cause of the same or giving inconsistent accounts. She noted the local authority were no longer pursuing concerns around substance misuse or of assaulting R. She pointed to the context of being a single mother coping with two children, one of who had significant needs. This was exacerbated by reason of the lockdown and issues with transport and the concerns around the petrol incident. Further there were family stresses as a result of the ill health of her father.

She told me she supported the children having contact with their father and stated that contact had stopped between July 2019 and the children's placement with the father in April 2020 due to his failure to inform her as to his residential address. She supported therapy for A and was willing to fund the same but appeared to want to have a central role in the selection of the therapist and wanted to accompany A to sessions. She now supported schooling and noted A was now settled and that a move would be detrimental. There was no need for concern about this being maintained as A wanted to go to school. When questioned M initially stated home schooling commenced when A came home

and suggested this was something she wanted. She noted that A knew children who were experiencing a positive experience of home schooling. But elsewhere she also pointed to other factors leading to this decision. She was questioned as to whether she had taken the necessary steps to register this change. I understood her evidence to accept this with hindsight albeit at the time she felt she had done what was required. She accepted this was not adequate education and insufficient steps were taken to rectify the position. When questioned about A's inability to identify work done with her mother, M put this down to A being intelligent and appreciating how her answers might be perceived. It was put to her that the evidence of work done was largely historic. Subject to her acceptance as to the quality of the home-schooling M seemed to dispute this contention. M described friends who kept in contact with A when she was home schooled, however this seemed somewhat limited as to the amount of peer group interaction.

In relation to R she saw a need for a realistic 6-12-month transition home allowing for A to settle and have therapy and for a larger property to be obtained. As regards A's emotional presentation, M felt this had developed since A was removed. She accepted the concerns but was of the view they post-dated her care. A's closed presentation reflected her experience of social workers and being told she was lying. M did not feel the ISW's assessment gave her sufficient time to form these views. With regard to R she complained of not receiving support when requested. The link with Q House had not been lost due to her disengagement. A big issue was transportation to school. She accepted she lived very close to A's school and accepted she was perhaps over protective in not letting A walk to school. She discussed the completion of transport forms for R and these had been said to have not been received. She asked why it was necessary for her to fill in the forms a second time. This was not deflection.

As regards R's hygiene she noted a range of allergy related skin issues and commented that it was better for R to have an odour but be well than smell good and have skin complaints. She considered the perceived improvements were associated with the emergence of skin rashes. She denied there had been an offer of support from the occupational therapist in respect of a home visit to support bathing. She had not failed to engage with CAMHS leading to the withdrawal of the service. She had not refused a referral to the clinical psychologist but had rather questioned her qualifications for the work. As to R's bruises she disputed she had not communicated with the school and disputed there had been any material change in levels of marking since removal. As to a proposed haircut, she had not been oppositional but had suggested alternative solutions which would work better for R. She had not refused to seek help with a urinary tract infection (UTI) but rather had very recently received assistance thus removing the necessity for further consideration.

M agreed R had made some improvements but to an extent these improvements were being unfairly overstated. He was still self-harming and bed wetting every night. She was supportive of the foster carers but there were skin rashes and things were not straightforward. She disputed R was managing his impulses better or that he was functioning better on an emotional level. Some of the progress would be expected by reason of the passage of time. It was not correct to suggest she accepted no fault. She accepted the points were being made but did not agree with many of the points. She did though accept there were concerns and was open to working with the local authority.

It was alleged she had passed messages to A at the end of contact. M said this had only happened once. It was pointed out that she had persevered with passing pocket money cards to the children despite being advised not to. When asked as to whether she had any positive relationships with professionals she pointed to a relationship with a social worker from an earlier period. She accepted an element of chaos but noted the surrounding circumstances. She was now much calmer, but this was not a function of the fact she did not have the children in her care. She accepted she was strong willed, but this does not impact on her parenting capacity. In the last year she has learnt coping techniques and developed her support network and now focuses on one thing at a time rather than trying to deal with everything. When asked about the need for therapy she appeared to link this to the impact on A of being removed from her care. Even if the ISW was right it would be more harmful to remove A from family life than to work in situ. M said she would be willing to work with professionals and has made changes but did not see the need for a FSW. There would be no need for support until R came home.

The Father

30. His position is set out above. Importantly C completed his evidence on the basis that he was not seeking to care for either child. It was quite clear he felt conflicted in his decision making. Following his evidence he clarified that in the light of everything he had heard he did wish to be considered for A. He was recalled and gave further limited evidence. However, his revised case had not been put to the preceding witnesses. He did though confirm that A was doing very well at this time. She was enjoying school, was settled and happy. She is now a different girl from her previous presentation. Her daily structure is now working although it took time to get her into a routine. She is now getting herself up in the morning and is keeping herself clean. Her relationship with L has improved. C felt the problem had been that A came with some barriers which had taken time to break down. He supported the local authority plan with some reservations, but any move needed to be taken slowly. He had previously supported a move back to A's mother as this is what she wants. However, these are the third set of proceedings and he has given M two chances in the last

proceedings. Now is the time to do what the professionals advise whether this is what they each personally want.

He observed that previous contact orders had not been respected. He had moved address and there was no need for this to be given to M. He had tried to resolve the dispute through the social worker but made no progress. He would feel better if the local authority were in the driving seat. He accepted if A were returned to M then he could keep 'an eye on things. He disagreed with M as to the suggestion of only one contact outside of the agreed schedule. From his perspective there was lots of illicit contact and this had been destabilising.

Having given his evidence and having been recalled he confirmed that he would like to explore the option of A remaining with him. Having listened to the support that could be offered around contact and the other available support he was more optimistic as to the placement. He had spoken to L and they both agreed this might work. The ISW had come at a time when A was really down but now, she is 'bouncing around'. Before she had her guard up but now, she is getting along well with L and B. His previous worries included being undermined and the size of the property. He had always thought this would be a short-term arrangement and she would return to her mother.

The Guardian

31. The guardian has filed a full analysis which I do not intend to repeat. I have set out her revised proposals above. Having heard all the evidence she was not changing her analysis but did have different recommendations. Her view in relation to R remained the same. It would be best for him to remain where he was and to have regular contact with his parents. She had reached this view as she was not persuaded M had developed insight as to how her parenting had impacted on R. The evidence of his improvement since removal is powerful supporting evidence.

With respect to A, whilst she had considered the possibility of return to M under a care order, on review this would only deal with the practical issues but not resolve the deeper concerns. Having heard the evidence M showed little understanding of how her decisions have likely impacted on A. A requires reparative parenting and to an extent the father has started providing this. The guardian agreed as to the need for therapy but doubted whether this could be properly pursued whilst in the care of the mother. She felt it was right to rule the mother out at this time.

The guardian made clear her conversation with the mother prior to the hearing had preceded the receipt of the mother's statement. This had been a more focused discussion, but she remained concerned as to M's inability to acknowledge the significant changes for her children. The guardian was

concerned as to M's constant resistance to intervention. The mother had spoken of the difficulties getting the children to school but there were simple solutions which she failed to pursue. She had been the consistent guardian throughout the proceedings and whilst good enough care was not an issue in the previous proceedings there had always been a sense of chaos and an inability to give a straight answer. She doubted support such as an FSW would work as M would likely be resistant to advice and would deflect from the issues.

A presents as being resilient but this comes at a cost. She presents with no behavioural issues but when she moved, she had no routine. She went to bed late and could not describe her morning routine or what she did in respect of home schooling. She was not convinced M would adhere to her commitment to funding therapy and is unlikely to accept deficits in her own parenting.

She felt unable to make a clear recommendation as to the father's case. She felt the father was torn in his decision making and his views were affected by his feeling of a lack of support. Whether C is able to meet her needs cannot be answered categorically but she has been in his care for 10 months without concerns as to her wellbeing. He supported her during the first lockdown, and she has now returned to school. Her attendance is excellent. He has provided a nurturing environment. The ISW assessment dates to 1 September 2020 and needs to be revisited. She could not see the obvious logic of placement with C under a care order. As to the alternative of A being placed with R in the current placement, she felt further consideration needed to be given. She felt a longer transition period was required. She felt the father had been let down by the local authority.

Things have moved on since the ISW. Within the last proceedings there was a contact order, but contact had not happened since July 2019. So when A went to her father's this was a big change requiring adjustments. A is happy with her father but wants to be with her mother, although she could not explain why. If she was with her mother, then she wanted to see her father. She said she had not been able to see him before as they did not know his address. It seems there has been a shift emotionally. But it is imperative that therapy starts sooner rather than later.

Threshold Findings

32. I now consider the revised threshold document and references within this section are to the relevant paragraphs of that document. I note the relevant date is 16 April 2020, the date of the EPO application.

§1/2/4/5: I am satisfied the local authority have established these essential facts and that they provide evidence of significant emotional harm arising out of M's conduct.

M concedes the language used towards A cited in §2. I have listened to the audio and whilst it is not entirely clear it evidences an incident in which the mother is not only swearing at A but doing so in a manner which would have likely caused her significant emotional upset. I accept the evidence as to R saying 'let me out' is too unclear to form any particular view on. I also take the view that it is near impossible to place that sentence into any meaningful context. M contends this was a 'one-off' incident. Were this the case then I agree one would need to apply a degree of proportionality to the assessment. It would not excuse the event but would place it into a different context. However, I find the incident was not a 'one-off'. I have had regard to §4 and consider this provides good evidence of more widespread behaviour of this nature. On balance I find R was repeating the words set out at §4 having heard them said within the family home. I agree with DO as to this likely being an aspect of R's echolalia but disagree with M that this relates to words R has picked up outside the home. The phrases used point strongly to the home environment and behaviour akin to that recited in §2; i.e. "I'm tired of your behaviour"; "little pain in the arse is what you are". The phrases suggest a context in which M in losing her calm has been verbally abusive to both children. In the light of the audio I am persuaded that the incidents in which these words were used (and then repeated by R) likely had a context similar to in §2. The Court has to be mindful of different parenting styles and the Court cannot be overly censorious as to language used in the family home. However, the context is important. In my assessment these were abusive incidents that would have been frightening for the children and distressing for them to experience. Further, R is said to have a particular sensitivity to loud noises, and I heard how some of the injuries in question arise when noises cause him to grip his ears. In the light of this the language and context of the language would have caused particular harm to R. I agree with the local authority that it is likely the recording placed before me arose in circumstances in which other similar behaviour had been witnessed leading to that incident being recorded. I agree it is unlikely that the only incident of such behaviour was coincidentally captured on an audio recording. Turning to §5 I am struggling to identify how this amounts to a positive allegation against M. Rather it is said to be supportive evidence as to the preceding allegations. It is said that the change in language on removal supports the contention that R was previously using this language as a result of hearing his mother speak in this manner. As can be seen above I accept this proposition. I also accept that removal had the impact of shielding R from the language and led to a change in his use of language. I therefore accept this point

supports the preceding allegations, but I am not of the view it amounts to a meaningful allegation in its own regard.

In conclusion §1, 2 and 4 are proven. I make no specific separate finding on 5.

§3/10 The local authority establishes the basic facts. However, this is not really in dispute. It is clear R has on these occasions thrown items into the street. I accept this posed a potential hazard to third parties and is therefore a legitimate cause for concern. However, I am not persuaded this is an item which is shown to be attributable to the care given to R by M. I simply cannot dissociate this behaviour from many of the behaviour patterns exhibited by R as a result of his underlying conditions. Indeed I am told he continues to throw things. I was additionally told there were limits as to what M could do in respect of securing the windows as the property in which she lives is listed. I accept this point. Of course the ideal situation would be for M to operate such a level of supervision as to preclude R from having the opportunity to throw things out of the window. But I do not consider it is realistic or proportionate to expect such a level of supervision at all times. M as any parent can only do her best. There is no evidence to suggest she encouraged or permitted this behaviour. In all likelihood she was simply unable to prevent it. I do not think anything turns on the fact that R was not asleep at 10pm. I understand his condition leaves him with disturbed sleep patterns. In any event he was 14 years of age and this is not an issue which deserves statutory oversight. But is the allegation of being beyond parental control made out? In simple terms R was plainly beyond control at that point as he did something contrary to his mother's wishes. However, I do not accept the test is intended to simply cover such behaviour. It requires the additional requirement that this state of affairs places R at risk of significant harm. In this regard I am not persuaded. There will be circumstances in which the fact of being beyond parental control inevitably places the child at risk of significant harm. However, in contrast there will be moments in almost every child's life when they act beyond parental control without placing themselves at risk of significant harm. In my assessment the incident raises grounds for concern, but I cannot on the evidence find R was at risk of significant harm.

In conclusion §3 and 10 are not proven.

§8 It is alleged R attended school exhibiting various marks, bruises and scratches. This is not specifically in dispute. It is agreed since removal he has to some extent continued to attend with markings arising out

of his behaviour which includes behaviour where he hits and pulls/bites himself. Allegations under numbers I to VII of this section all fall within this category of perceived significant harm. I have seen various photographs and I have no doubt R did present on multiple occasions at school with such markings having left his mother's care. However the nub of this allegation is not that R has exhibited markings. It is not said that M has caused or inflicted these injuries. Rather it is said that she has given inconsistent explanations as to the causes and professionals have been unable to obtain an understanding as to how these injuries were caused as M refused a Child Protection Medical. It is this behaviour for which M is criticised and it must be this that is said to have the causal relationship with significant harm. If M is not said to have caused the injuries and if it is acknowledged that the same will have arisen out of R's own likely behaviour, then it is difficult to see the fact of the harm itself as being evidence of threshold. I considered this during submissions, and I am of the view that this allegation cannot stand. If, as noted above, the factual matrix is broadly understood as above, then realistically it is quite clear as to what the Medical would have shown – that R harms himself. Given the concession of the LA that they are not alleging M to be responsible then I struggle to see what it is being suggested the Medical would have shown other than this. This is all in the context of there being significant agreed evidence to the effect that R harms himself on a regular basis. The marks seen are objectively consistent with the same. None of the injuries cause me to pause and reflect and ask as to how R could have done that. Taken individually they are all limited in nature and wholly consistent with the evidence of M; the school and the records of the foster carers. I question to what extent M's lack of explanation and detail can be said to have provided a causal route to threshold. Her explanation or absence of explanation has done no more than fail to provide the final piece of a jigsaw puzzle. A puzzle with a picture which is clear and apparent whether that piece is found or not.

I do not find allegation 8 proven. In reaching this conclusion I extract 8(VIII) to be considered separately.

- §6 On 16 October 2019, M reported petrol having been poured through the letterbox at the address at which she was staying with the children. Associated with this was a threat contained on a piece of paper indicating that an individual had forgotten his/her lighter and would come back later to 'burn you'. Detail around this report are found in

a police CRIS report¹⁴. The circumstances of the report are a little odd in that the report only appears to have arose after a gas engineer was called to the building in which M lives due to a smell of gas in the vicinity. On his arrival he identified a reading outside M's door which he characterised as 'explosive'. He then knocked at the door and M explained to him that liquid had been poured through the letter box. He noticed the paper inside the property with the threat upon it. It seems M then called the police. The hearing did not investigate why it was that M did not act prior to the arrival of the engineer. The hearing has proceeded on the basis that this was a genuine act of criminal damage / threat undertaken by an unknown third party. I proceed on that basis. The circumstances were therefore plainly deeply concerning. As M informed the police her ex-partner's car had been set alight outside the flat in April 2020 and she considered this was a real threat to her and her children's lives. My reading of the papers suggests it was in fact her father's car. He was in prison at this time and it is his family name which was contained in the threat. After some initial investigation the police called M to set up an appointment (15/Nov). She stated that due to the children she would attend the police station at an agreed time and requested a call back. The CRIS on 26/Dec records 'several attempts to chase up' M to obtain a statement. Her request to attend the police station was accommodated but she did not attend. On 6/Jan the CRIS shows a letter was sent to M indicating the need for her to provide a statement without which the case would have to be closed. The note indicated that two appointments had been set to attend the police station and not kept. The CRIS record shows there was no response from M and the investigation was closed.

The local authority contend this was a significant event and the failure of the mother to engage with the investigation amounted to a failure to protect the children from risk of physical harm. M denies she failed to engage and I understood her case to be that she was unaware the investigation had been closed. In my assessment the evidence is quite clear that M failed to properly engage with the police process. I consider I can rely on the CRIS report as a contemporaneous record and whilst one may find limited errors of reporting within that documentation, I consider I can rely upon the chronology given. I accept the police sought to take a statement but accepted this could be done at the police station. I accept appointments were fixed to accommodate M but then missed. I accept a letter was sent to M warning her that a failure to engage would lead to the process being

¹⁴ H71-92

stopped. Importantly there is absolutely no evidence of M taking any proactive steps to clarify what is required from her or to resurrect the process. Sadly this reflects other aspects of the evidence which I will return to below. As with the points above context is important. Were this a road traffic incident then I would consider issues with a different sense of proportionality. However, this was said by M to be a genuine threat to life and repeated an earlier incident. The gas engineer said the situation was explosive. The circumstances had a profound impact and led to M being worried about the children leaving the home. This was far more than a road traffic incident. Yet M not only disengaged from the process but has offered no real explanation for doing so. There might be circumstances in which an individual might no longer support an investigation. But here by not engaging M left herself and the children wholly unprotected and without any grounds for believing the culprit would be apprehended. On these facts I am satisfied this amounted to inaction attributable to M which placed the children at risk of significant physical harm.

I find allegation §6 proven.

§9(a-d) These allegations relate to the children's education and particularly their school attendance. I have school records which show that A did not attend school substantially after October half-term 2019 until her removal. R's attendance was poor and there was a specific period after 16 October 2019 when he did not attend for several weeks. As a result A is said to have had to retake her year 7 in 2020/21. I have considered the evidence as to the process of 'home-schooling' A, post October 2019 with care but I am thoroughly unimpressed by what I have heard. M suggests with one hand that A came home and complained about being 'over worked' and wanted to try home schooling. With the other hand she points to difficulties in getting R to school due to transport issues. Separately she points to the petrol incident and other surrounding issues as explaining the poor attendance. I have found each of the explanations unsatisfactory save to a modest extent. I note the following:

- i) The account around A's home schooling was far from persuasive. Whether A expressed an interest in home schooling or not it was for M to take the necessary steps to facilitate the same. Yet it is quite clear she did not do this. She joined an organisation supporting home schooling, but this fell far below the requirements necessary to home school. She failed to properly complete the registration documents despite knowing this

was required. The end result was that A receiving a wholly deficient education for this extended period. I accept the evidence of A being unable to point to work done with her mother as supporting this conclusion. I have seen what M has attached to her statement, but I am not persuaded this comes close to demonstrating effective home education. This issue arose out of M's exercise of PR, and it was incumbent on her to ensure the plan was effective. She fell far short of what was expected. I am in no doubt this has substantially contributed towards the need for A to retake year 7. In my judgment this is significant harm.

- ii) The arguments around issues with transportation were equally flimsy. Whilst I recognise M was spending significant sums taxiing R to school, as the guardian commented there was a simple solution. R had an entitlement to transportation. M had to complete the application. Yet despite been given help she was unable to take this successfully to completion. Ultimately, she considered she need not complete the forms a second time if the first was lost. The implication of this decision making was to continue the state of affairs which she was complaining about. She was unable to contemplate A walking to school despite this being little more than a stone's throw from her house. I was left with the sense that this intelligent woman (a fact which is clear from the way in which she has articulated her case) was unable to complete essentially simple tasks or advocate for her son to achieve the goal that would resolve her issues. In the case of A she took a decision which made her daily life more, not less, complicated.

I find allegations 9(a-d) proven.

§7/8(VIII)/9(e) I have grouped these allegations together as I consider there is some essential common theme to be found. It is said (§7) that M failed to seek medical attention in respect to concerns around R having a UTI. It is said (§8(VIII)) that R pulled his hair out due to M failing to consent to him having a haircut. It is said (§9(e)) that a dietician referral was discharged due to non-engagement. At heart each of these matters allege a failure on the part of M to properly engage so as to ensure R's needs were effectively met with the consequence that he did or might suffer significant harm. M argued that the further UTI

investigation was unnecessary as R had already recently undergone two similar investigations. The issue around the haircut was due to her alternative suggestions not being considered (using a particular barber / cutting his hair herself). In the case of the dietician the mother denied any disengagement commenting that covid had delayed work and she had received no letter to say the referral had been cancelled. At first blush M's case with respect to the UTI appeared reasonable. If it were the case that R had only recently been seen 3 days before the further request, then given his personal need for routine it might not be appropriate to compel him to undergo a further examination. However, the evidence demonstrated that the suggested 3 days was closer to 5 or so weeks. It also has to be remembered that R has behavioural issues including bed wetting and punching his penis that might conceivably place him at risks of infection. In such circumstances a normal timeline might not apply to R. However as to the suggestion that there was additional disengagement by failing to follow up the appointment on 10/Jan I am less persuaded. My reading of the document [C155] taken with [F123] is that the urine sample was taken and was negative, but it was a neurological referral (unrelated to the UTI) that was not pursued. Nonetheless on the evidence provided I am persuaded on balance that this refusal (without good reasons as I find) was neglectful of R's physical needs and placed him at risk of physical harm.

I have reached a similar conclusion with respect to the haircut. Whilst I understand M's position the reality was that R's hair had grown longer and he was pulling it out. That was not the time for alternative suggestions but for simple consent to be given. The failure to consent continued the harmful reality longer than was necessary. Taken alone I might have taken a slightly different position on this point but sadly it reflects in my judgment a pattern of approach in which M is resistant to approaches other than her own. In the moment she wished to pursue her solution notwithstanding R needed an immediate answer. Her wish to determine the issue was placed before R's needs and he consequently suffered significant harm

I consider the evidence with respect to the dietician is insufficient to make a finding.

In conclusion I find allegations 7 and 8(VIII) proven. I do not find 9(e) proven.

- §9(f) The allegation is of R attending school smelling of body odour. It is assumed the complaint is that M failed to ensure he was properly cleaned leading to emotional harm / neglect. The evidence in this

regard is again not particularly controversial with M agreeing R has had a strong body odour. However, she has pointed to various skin and other conditions which are affected by cleaning products and would therefore consider some odour is a price worth paying for good skin. The local authority points to 'improvements' post removal. This is also not in dispute, but M contends R has presented with a rash on his skin as a result. The evidence from the school was clear in this regard as to a real issue with body odour. An occupational therapist was employed to work on the issue but could identify no issues with R taking a shower or bathing. It is said a proposed home visit to assist was refused. It is said R now presents in a markedly different way, this is commented upon and R exhibits being happy with the change. I find the factual points proven as to consistent poor body odour which has resolved post removal. On balance I consider the evidence is of a failure to manage this when R was at home leading to a neglectful outcome as alleged.

I find allegation §9(f) proven.

33. I find threshold has been crossed in this case based on the above findings.

Discussion

34. In considering this case it is clear each child's needs are required to be considered separately. In making this observation I do not wish to understate the importance of the sibling relationship to each child. It is however clear that the options put before me are markedly different for each child. In the case of R it is agreed that he should remain outside his family pending further developments. There is broad agreement as to the benefits of his current placement. The key issue, now that threshold has been established, is as to whether the circumstances warrant the making of a care order or whether a section 20 agreement would suffice. Matters are different for A. Both her mother and father seek to care for her, and the option of a final care order remains on the table. Her position is more contentious and requires a fuller consideration. Within this section I will outline my broad conclusions having heard the evidence. I will summarise my welfare assessment and my consideration of the realistic options. I will then outline my conclusions as to the orders I intend to make.
35. I have outlined a part of my assessment of M in the preceding section. Whilst I am in no doubt, she loves all her children and wants what she considers it best for them I find that she has in many regards failed to prioritise their needs such they have experienced real harm. I am in little doubt that this flows from her personality and character. She is articulate and capable of presenting a knowledgeable front. In simple terms she can 'talk the talk'. The concern I have

is that she appears to struggle to implement action required. Throughout this hearing I have heard from a range of witnesses who confirm a consistent account of M, despite being assisted, failing to progress required actions or steps. Whether this relates to transport issues or school registration, the police investigation or clinical referrals the picture is essentially the same. For reasons which are puzzling an otherwise intelligent and articulate woman has shown a remarkable inability to progress a range of necessary steps for the benefit of both herself and the children.

36. In the circumstances I am left to speculate as to why this is. Certainly the expert assessment of Dr Helps provides no clinical reason. From the evidence available I have reached the conclusion that this difficulty flows from a range of factors, which likely act in combination:

- i) I am in no doubt M considers she is best informed to meet the needs of her children. In the case of R she has undoubtedly been required to develop a good understanding and knowledge of his condition, presentation and care requirements. I appreciate this experience will have dated back to R's older sibling. As such M has been for most of her adult life a parent carer to children with significant needs. I suspect Dr Helps is correct when she concludes that M may be resistant to advice from those who she considers are less informed than she is;
- ii) The problem with this is that I consider M overstates her state of knowledge such that the majority of professionals are viewed as being less knowledgeable than she is. As a result she is resistant to both advice and help. It is noteworthy that she describes herself as an 'amazing mother' but I also note her broader statement of skills including being a martial arts teacher to the Metropolitan Police; a trained hairdresser and other issues besides. My sense is M misjudges her actual skills but in doing so limits the room for engagement.
- iii) This situation is not helped by a sense of life's adversities which has made her somewhat more inward looking and less receptive to outside involvement. This is a state of affairs which has not been helped by a series of legal proceedings which have challenged her sense of her own capability. The care proceedings put into focus the very issue on which M brooks little ground for complaint – her ability to care for her children. The consequence is a highly confrontational setting in which M takes a combative approach and is not receptive to help. To some extent this has not always been helped by poor authority decision making and social work.

Whatever the reasons the end result is what we see in these proceedings. A passer-by listening to the evidence would have struggled to reconcile the

opposing positions in which the local authority highlighted significant areas of non-engagement whilst M consistently stated there was little room for concern. Of M and the social worker it was M who was most persuasive in putting her case, but the underlying documents and evidence conflicted with her presentation of a largely unproblematic situation.

37. I accept the evidence of the school and other professionals as to a remarkable change in R post-removal from M's care. Whilst time itself might be expected to lead to change, the changes identified were too profound to be explained by time alone. The logical and obvious answer is that something in R's day to day experience has markedly changed allowing him the opportunity to develop. That change can only be identified as his removal. It is tempting to speculate as to some significant but unknown state of affairs previous existing at the family home. Whilst that of course might be the case I suspect the answer does not require this speculation. Rather the answer can be pulled out of the evidence. It is found in the chaos of home life in which rather than organise sensible transportation the mother is left to struggle through each morning and afternoon trying to get the children to and from school at significant cost; it is in the unilateral and unnecessary decision to take on home schooling when M already had enough on her plate; it is in the refusal / failure to accept the offers of help (occupational therapist / psychologist and others) because to do so would challenge M's sense of everything being OK when it palpably was not; it is in the consequence of all of this being M losing her cool and shouting at the children and of neighbourhood disagreements that follow from the same. The end result recommences the cycle by impacting on R negatively leading to him self harming which in turn leads to the school expressing concerns and then to M becoming defensive in the face of her care being open to criticism. In short it is a situation in which M is in many regards her own worst enemy. The concern is that this approach is so embedded that she cannot adjust her approach.
38. In this regard I accept the concerns of the professionals as to limited prospects of M engaging with the very supports that she identifies as being capable of supporting a return of the children. I have no real sense that she would now be open to the guidance of a FSW or other professional if the implications of such was a need to accept, she was not otherwise doing a good job. I am not persuaded her attitude to schooling has materially changed. I say this because the original decision to home school was itself so poorly considered. I also have regard to the actual language used to the ISW and to the evidence that she was supportive of state schooling because this is what A now wants. I am worried that any perceived change in heart from A might set this process off again. I bear in mind the initiating basis for the change was a complaint of feeling 'over worked'.

39. In considering these points I would also ask whether M really has developed a fundamental change in attitude towards the children's contact with C. The guardian tells me (and I accept) the difficulty in the previous proceedings of trying to agree a contact schedule for the father. For that then to fall apart simply because an address would not be provided is hard to accept. As with many of these issues in this case there is no evidence of M then being proactive in seeking to find a solution for the children. The evidence suggests she relied upon this issue and sat back whilst the children lost contact with their father.
40. I do accept that these circumstances have led to a position in which the relationship between A and M has gone beyond a positively close relationship to one in which A has become inappropriately dependent on her mother's emotional cues to set her own response. I appreciate this is a complex issue and I do not have expert evidence, but I consider the views of both the ISW and guardian are indicative of an unhealthy state of affairs which requires correction if A is to develop successfully. Once again, the decision making around schooling points towards an unhelpful unwillingness to allow A to be permitted to successfully navigate the outside world independently and without her mother's oversight.
41. A sad feature is that M does have positive attributes. She is combative but a child with special needs requires a parent who fights for them. The problem is the child needs an advocate and M seems unable to successfully advocate for R. She is also articulate and open minded in her approach in the sense of a willingness to focus on personal improvement. But again she seems less willing to do this if the works does not fit her sense of what is needed. Most importantly, she plainly loves her children and there can be no doubt that in caring for her children for the last 18 years she will have been required to make personal sacrifices and to have shown real dedication.
42. C is very different to M. In many regards the complaint is his willingness to step back and leave the children to be raised by M. The history is of him very much taking a step-back approach in circumstances where (given the above) the children have needed additional input. He has his own difficult history, and this is likely to have affected his decision making. In the first period that A came to her father I am in little doubt he struggled to bond with her and make her part of the family. In this regard I accept the evidence of the ISW as to real distance between M, L and A. The placement was in real crisis and ready to break. I am in no doubt that the failure of the local authority to step up to the mark and offer real support did not help. In this regard they signally failed A. My sense is that they formed the view that A was with her father being cared for and there was no need for them to apply stretched resources to the placement. This was plainly not the case.

43. Yet on the evidence things have moved on. This is not solely based on subjective reporting although I bear in mind the evidence of C as to A presenting in a markedly different manner since the ISW report was completed. In fact C provided a logical rationale for this change as the initial barriers based on loyalty to M broke down. The evidence is also objective through the evidence of the social worker, school and guardian. The guardian speaks now of a level of reparative parenting; of nurturing care. The professionals acknowledge the return to school and the impact this has had on A. She is now viewed as happy and settled and in a routine. The picture is of time and change repairing some of the wounds which were previously present. I must also bear in mind that we are now 10 months into the placement and that an adjournment will push decision making back to a point well in excess of 1 year's placement. I am entitled to ask as to what the Court would likely do if there were no material changes within this period of time.
44. It is right to say that C continues to have challenges including housing and to an extent finance. In respect of the latter I simply do not understand why matters remain difficult. By now child benefit should have been resolved in his favour and child tax credits would have followed. I for my part deprecate the limited and passive role taken by the local authority in respect of financial support offered to C. At previous hearings I contrasted the cost to the local authority were the placement to fail and A were to be placed into foster care. I simply cannot understand why this point has not been properly considered. There is plainly a level of support falling far short of a foster care payment which would have made A's life immeasurably better during this period. Put another way I am now being asked to consider further assessments; delay and legal costs associated with the same and arguably to cure the consequence of a failure to provide earlier provision. This is sadly entirely short sighted. So my overview of C cannot but reflect on the circumstances he has found himself in and the lack of support offered to him.
45. As with M I am in no doubt C loves his children very much. His position with regards to R is not indicative of partiality towards A but reflective of a realistic assessment of his capability. In listening to his evidence it was clear he felt entirely torn as to what to do. I do not lose sight of the fact that despite everything I have said above as to the lack of support he (together with L) has for the best part of the last year kept A from being placed into care. This is a commitment which deserves recognition. I consider it is noteworthy that M despite the issues in the case appears to recognise this contribution.

Welfare Checklist

46. The evidence is quite clear that A would wish to return to M's care. This has been her consistent view throughout the proceedings. As a 12-year-old child her views deserve weight and respect. I understand A to have expressed an

alternative wish to live with her grandmother however that is not an option before me. A has also indicated she would be happy to stay with her father but that is in default of being with her mother.

47. R is unable to express wishes and feelings as to his placement. It appears he has settled in his current placement and there are signs he is happy there. The school report him referring to the female carer as 'auntie' and he is proud when she has come to school and seen what he has been doing. I do though bear in mind the longstanding care provided by his mother and whilst there are suggestions that he is unsettled following contact I personally struggle to clearly determine whether that is upset at having seen his mother or upset at being separated from her. I consider the safest course is to be cautious as to any firm view, I can take as to his wishes and feelings.
48. In respect of needs both children share some basic and common needs. As with all children they have the need for their basic care to be met (food, clothing, housing etc). As with all children they have important educational needs. In reality these children have particular and important needs in this regard. A has experienced a period of significant instability in her schooling and now needs the chance to build on the period since September 2020. She has been put back a year and cannot afford further instability. All parties agree there is a benefit to A remaining in her current school. This is partly due to the friendship groups she has built but also reflects the schools understanding of the circumstances. It is a protective factor in her life. However it is unclear to me whether any of the options can guarantee this beyond the short term. C's case would likely require a move after the conclusion of this school year as transportation out of borough (from his address) would be unworkable. Foster care with R's carers would preserve the schooling but this placement is not guaranteed for A and an alternative placement would come with no guarantees. Even M's case is not certain. Her own plan is to move home into bigger accommodation, and I note that relatively recently she was out of borough. However, M's is perhaps the case with the greatest prospects of maintaining this schooling subject of course to M remaining committed to state schooling. In my assessment A could manage a change of schooling if it was planned and likely to then be stable into the future. I agree with the guardian that there is importance in this year being completed without a further school move. R has equally significant schooling needs. His school is specialist and appears to now be making real progress. He craves routine and consistency and would suffer if he had to move schools and form new relationships. I consider his school relationship to be one of the most significant and important connections in his daily life. There is a real premium on ensuring it is maintained. I bear in mind funding for transport may make this requirement manageable even were he to have to move to some extent.

49. A further need is for a stable and predictable level of home care. In my assessment this is a common need shared with all children. But R in particular requires routine and consistency. His social skills are limited, and he needs carers who he can predict and carers who behave in a way that he expects. Instability and emotions out of control are wholly inconsistent with his need for emotional stability. To a lesser extent A shares this need. She, like R has been through three sets of proceedings and she (like R) cannot afford a fourth set of proceedings.
50. The evidence suggests A requires a home environment in which she is able to develop a greater sense of personal identity and independence. The professionals point to the need for therapy and this will require a carer(s) who are fully subscribed to this work and who will give A the room to engage free from their own influence.
51. Given their recent experiences it will be important for the children to be able to see both their parents on a regular and consistent basis. They need carers who accept the importance of contact and have the capacity to manage this, even if it is at times problematic. Their carers need to be able to prioritise the children's needs over their own. This reference to contact extends to K and the wider family.
52. At the heart of their needs lies the children's individual need for emotional stability and good and consistent parenting. R would benefit from a carer who can advocate for him firmly and sensibly.
53. This judgment is considering the future options for both children. This may lead to a change in their circumstances. I have highlighted above R's need for consistency and predictable care. My understanding is that he may feel real distress were he to be asked to move into the care of a further stranger. Any such move would amount to a learning experience for the new carer and in this period, R could be at risk of real emotional harm. Many carers would find R a real challenge and so a further change in placement would raise real concern as to stability. The alternative change would be into his mother's care. This would not suffer from a lack of familiarity, but concerns are raised as to whether the previous difficulties would return.
54. The options for A include no change and a return to her mother. The latter option is in line with her wishes and so would likely be welcomed by A. The issue would be as to whether there was a change in attitude on the part of M. The alternative would be a move into foster care with or without R. The evidence tells me that A would find a future outside the care of her parents (and particularly so without R) very distressing. Whilst I hope she would manage this and would be resilient to such a change I cannot be confident that her reaction would not be entirely negative setting back the progress she appears to have

made in recent months. It is this risk in part that causes the Court to carefully consider whether a family-based option is available for A.

55. It can be seen from the discussion above that whilst a return to the mother has the potential to be a move which could be successfully managed the concern is that previous issues (including as found within the threshold) would return leading to further proceedings and serious harm.
56. It can be seen from this judgment that I have had regard to each child's personal characteristics. I have nothing further to add at this point.
57. The question of harm has been investigated through the threshold document. I note the findings made and the concerns as to the children continuing to be at risk of such harm.
58. I am required to have regard to the capacity of the carers. I will deal with this in greater detail in setting out my evaluation. C accepts that he cannot care for R and M agrees he cannot return at this time. But M does not suggest she is unable to care for R, rather she needs to address certain issues to make this a successful return. By their arguments both parents claim to have the necessary capacity to meet A's needs. The professionals disagree with M but have an open mind with respect to C.

Holistic assessment

59. In the case of R the actual option before the Court is for R to remain where he is. I am asked to consider the legal structure governing the arrangement. As the cases are put to me it is unclear whether I am really asked to compare alternative options.
60. However, I would comment that most of the points made with respect to A below have equal validity in the case of R
61. Turning to A I note the following:

Placement with M

The positives of this option are that it would fit with A's consistent wishes. It would return A to the placement in which she has lived for nearly all her life. This placement would enable family contact at a high level and would permit easy access to A's school. Of the parental options it is the only one which has the real potential to permit A to live with R in the foreseeable future. It also benefits from the close proximity to K. Compared to foster care it would avoid the distress and emotional upset of separation from family and amount to a less significant interference in family life.

The concern about this placement relates to the history of instability in the placement and the concerns most particularly identified within the threshold document. Whilst M articulates a willingness to engage history points against this likelihood. The danger is of a return to what came before with the ultimate risk of further proceedings. Other concerns relate to the ability to pursue therapy in situ and as to whether M is genuinely a facilitator of contact with C.

Placement with C

On the positive side, whilst this is not A's option of choice it is within her contemplation as an acceptable option. This placement does not suffer from the concerns found within the threshold and it is a placement which has now subsisted for nearly a year without real safeguarding issues. There is evidence of meaningful progress over the last 5 months and grounds for optimism. I also have regard to the evidence of good and consistent care provided to B, a child who is being raised without local authority involvement.

Against this I cannot ignore the equivocation expressed by C until quite recently. Whatever his feelings for A does he have the necessary commitment to take her through difficult times? Issues also arise as to whether he is committed to contact between A and M. I bear in mind as at September the placement was in crisis and close to breakdown. The evidence is that C is passive and lacking in a proactive approach to issues. It is arguable A needs a carer who is more engaged and forward thinking.

Foster Care

The likely positives in this regard relate to a settled and stable level of care with a strong foundation of support of the placement. On balance it is likely to remove the concerns expressed above as to unpredictable care. It is an option which can be structured to meet the needs of each child for contact. It is an option which is favoured by the ISW as a base for therapy to be pursued.

Yet A does not want to be separated from family and there is a risk she will rebel against such a placement to her detriment. On any case she will be deeply distressed and the outcomes for her are unpredictable. In addition there can be no guarantees as to the maintainability of an individual placement and there is the risk of placement breakdown with further instability and harm. Although the placement can support contact it is likely to provide family contact at a markedly different level than would arise were A to be placed within her family.

Evaluation

62. I consider the evidence with respect to R is clear. I am being asked to either make a final care order or accept a section 20 arrangement under which he remains in care with parental agreement pending a return home.

63. In my assessment the right answer for R is a final care order in favour of the local authority. I have reached this conclusion for the following reasons:
- i) My assessment of the evidence does not support a temporary arrangement pending return to M. My findings on threshold and assessment of the evidence indicates that M is not in a position to provide consistent and stable care for R (irrespective of some of the practical issues such as housing).
 - ii) I am not persuaded M is in a place to resume care of R at this time. This flows from my conclusion that R's presentation difficulties were significantly exacerbated by M's care and that his improvements since removal reflect the restricted role M has played in his life during this period. I have no confidence that a return to M's care at this time would avoid a resumption of the previous care with a likely similar deterioration in R behaviour. The implications for R would be serious in respect to both his daily life experiences and schooling. I cannot contemplate that outcome.
 - iii) Whilst I recognise the suggestion of M being willing to accept support and engage with professionals the evidence does not give me confidence that this would in fact be the case.
 - iv) I do not consider the answer is a section 20 arrangement. This is a prime case of a local authority needing to share PR so that it can make appropriate decisions for R. The history cautions strongly against leaving decision making in the hands of M.
 - v) In my assessment this intervention is necessary to safeguard R's welfare needs. Indeed there is no other outcome that would meet these needs. It is a proportionate outcome notwithstanding the interference in family life occasioned by the same.
 - vi) There is need for regular contact with his parents. R's experience of life means that lengthy gaps in contact will be confusing and damaging. The evidence suggests C should be having at least monthly contact with R on an unsupervised visiting basis at the weekend. This could be increased on a review basis. In addition there should be regular and at least weekly video contact. Turning to M there is a need for direct contact on at least 1-2 occasions per month. This would need to be supervised in the first instance, but this should be reviewed perhaps after 6 months to assess whether things are stable, and contact can move to unsupervised contact. In addition there should be at least weekly video contact in the weeks when direct contact does not take place.

64. The position with respect to A is less clear but after significant reflection I have concluded it is in her welfare interests to work towards final orders in favour of C. I consider after a period of notification and consultation with his local authority there should be a final child arrangements and supervision order (12 months). I have reached this decision for the following reasons:
- i) My assessment of the evidence has led me to conclude that it would not be best for A to return to her mother. I refer to the points made above with respect to R. I lack the necessary confidence to conclude a return would be into circumstances of change.
 - ii) I am not persuaded M has experienced a change in attitude and approach and I am concerned return would lead to deterioration.
 - iii) I accept the benefits of therapy for A and do not consider this can best be achieved in the care of M. Even when considering her offer of funding for such work it seemed clear she wanted to be in the driving seat on the subject. I struggle to see, having heard the evidence, that this would lead to a productive piece of therapy.
 - iv) I acknowledge this leads to an outcome inconsistent with A's wishes. The difficulty with following her wishes closely is the concern as to A being closely aligned to M's emotions. The evidence is of a need for independence from her mother.
 - v) I have reflected on the uncertainty with regards to C's position. It has not helped that his change in position came so late and particularly as it meant the evidence was not tested fully in such regards.
 - vi) Yet I question how relevant that is. On my assessment of the evidence C does not challenge the assessment as at September 2020. Rather he points to the improvements made since.
 - vii) In this regard he is on strong ground. As noted within this judgment there is both subjective and objective support for the contention that A has made significant strides and that the care, she has received has been positive, nurturing and reparative. I cannot ignore the reality of A's reintroduction to school and the evidence of her being emotionally settled and in a good routine.
 - viii) This questions the real need for adjournment and further assessment. In my judgment the placement has been effectively subject to a form of lengthy and challenging assessment in the community. At this time matters are vastly improved. There have been no safeguarding issues and there is no suggestion other than that C and L are providing good enough care for B. It begs the question as to on what basis I could or would

separate A from C after a period of further assessment unless there was an objective deterioration in the placement. At this point there are concerns but these require support not further assessment. Without support it is likely areas of concern may continue. But the current care being given is frankly good enough on the evidence I have heard.

- ix) Of course I bear in mind the views of the ISW. These observations were substantially valid 5 months ago, but things have moved on. Having made this point I note the following:
 - a) I am not persuaded C's concerns as to contact justify particular criticism. After all it is the current professional view that contact needs to be restricted to permit a stable placement. I question why in principle a different standard should be set when C makes this point.
 - b) I note the argument as to therapy requiring separation from family. For my part I am unsure as to why this is right in principle in respect of C. There is no suggestion of an emotionally dependent relationship between C and A and I would consider it beneficial for the work to be done whilst in the care of a parent who can at the same time provide a healthy caring experience.
- x) I bear in mind such a placement benefits from being supported by both A and M as a default option.
- xi) In my assessment whilst there are risks attendant upon this placement outcome these have to be balanced against the real risks and distress likely to be occasioned to A if she is separated from family. I question as to whether she might be oppositional to therapy in any event if she feels her views have been wholly ignored.
- xii) In reaching this conclusion I appreciate I am disagreeing with the professionals. I do though consider my disagreement with the guardian is limited and I sensed in her evidence a growing acknowledgment that placement with father had merit. It is of course right to observe that the tenor of the evidence was largely set by the father's stated position as to his non-availability.
- xiii) I consider there will be a need to limit M's contact to give the placement the best chance of success. I acknowledge the issues which have arisen and the implications these issues have had for the placement. In my judgment direct contact should be reduce to a level of about every 3 weeks with weekly indirect contact in those weeks where there is no direct contact. Over time this can be reviewed with a view to moving

first to unsupervised contact and then more generous and conventional separated parents level contact.

Conclusions

65. I have found the threshold crossed as set out above.
66. I intend to make a final care order with respect to R. I do not consider a section 20 agreement is appropriate on the facts of the case. The local authority needs to share PR. I set out the contact arrangements for R.
67. I am minded to make a final child arrangements order for A in favour of C. I do not consider further assessment is required. I am minded to make a final supervision order in respect of A. She requires befriending and support. She has not received this to the level required to date. I consider this order is necessary to meet A's needs and to support the placement. It is a proportionate response to the current situation and is supported by C. I have set out my views as to contact between A and M above.
68. I cannot make these final orders today having regard to C living outside of the applicant's area and the need to consider his local authority assuming responsibility for the order.
69. I now need to adjourn for the London Borough of X to be informed and for appropriate liaison to take place between that authority and the applicant. I would ask the parties to consider a timetable in advance of handing down but would propose the matter return before me on 25 March 2021. In the interim the local authorities will need to put together the SO support plan. The following matters require active consideration (whether or not there is temporary covid delay):
 - i) Supporting the father with respect to replacement accommodation in his local area.
 - ii) Therapy for A in line with the advice of the experts and not contingent on meeting CAMHS thresholds
 - iii) Signposting /support for the father to resolve the child benefit / apply for tax credits for A
 - iv) A youth /support worker for A
 - v) Transportation support until at least end of year 7 (summer 2021)
 - vi) Support with application to local education in his area
 - vii) Support with respect to supervised contact during the life of the SO.

This is not intended to be an exhaustive list.

70. This judgment will now be sent to the parties for their consideration prior to handing down on 10 February 2021. I would ask the parties to liaise so as to agree the necessary directions to take the case forward. I will accept any typographical corrections and requests for clarification at the hearing.

His Honour Judge Willans