CASE NO: [2024] EWFC 253 (B)
Date: 8th August 2024

IN THE FAMILY COURT

Before:

Recorder HELLENS

Re A, B, C and D (Delay: Assessment of Harm)

Mr Ashworth for the **Applicant Local Authority.**
Ms Mackenzie for the **Mother**
Mr Scott-Phillips for the **Father**
Ms Porter for the **Intervenors**
Ms Ford for the **Children.**
(By their Children's Guardian)

Hearing of substantive matter: 8th, 9th, 10th, 12th, 15th 16th and 17th July 2024
Summary of Judgment delivered: 17th July 2024
Draft written Judgment circulated: 26th July 2024
Judgment handed down: 8th August 2024

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Judgment

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

Recorder Hellens

1. I intend that this Judgment is published for the purposes of transparency. Accordingly this judgment has been anonymised and drafted to prevent identification whether directly or by jigsaw identification.

2. **The Parties, Witnesses and Children's Names**

   The Parties and Children (together with dates of birth and gender) are listed in a schedule to this Judgment which must not be published.

3. **The Representatives**

   Mr Ashworth, Counsel, represents the Local Authority, Ms MacKenzie, Counsel, represents Mother, Mr Scott-Phillips, Counsel, the Father, Ms Porter, G and H, and Ms Ford the Children through their Children's Guardian.

4. I have been very much assisted by Counsel in this matter. At the outset I had very helpful Position Statements and Case Summary from the parties. Throughout the hearing they have kept their questioning of the witnesses to those matters only that would assist the Court and treated all witnesses in matters which included the utmost sensitivity in a dignified and compassionate way. I am grateful for the manner in which they conducted this hearing which, in other hands, could have made the hearing much more difficult for the parties.

5. **Application**

   The application before the Court is the Local Authority's application for public law orders dated 12th July 2023. The proceedings are in their 53rd week – double the statutory time limit. That is through no fault of the parties but due, in large part, to the very complex issues which have needed detailed investigation including issues relating to Particular Harm between the elder children, and the mechanism that may have led to such behaviour, the management of future risk, the risk, if any, of the parents to the Children and the circumstances of the parents including the Criminal Proceedings of the Father in which X is the complainant.

6. **<u>The Law</u>**

The law is well known and I can limit the detail given it is settled.

7. In relation to issues of fact the law could not be clearer. If any party seeks a finding against another which is not accepted, the burden is on, and only on, the party seeking the finding. The seeking party must satisfy the Court on the balance of probabilities, that the finding sought is made out on the evidence. It is not for the person against whom the allegation is made to 'disprove' the allegation – that is not a concept known to the Court when it comes to standard findings sought by a party.

8. If the Court is persuaded that a contested finding is demonstrated to have happened on the evidence on the balance of probabilities, the Court will find the allegation found. It happened, for the purposes of all proceedings between the parties going forwards.

9. If the Court is not persuaded that a contested finding is demonstrated on the balance of probabilities on the evidence, the Court will find the allegations as 'not found'. It did not happen.

10. There is no recognised concept of 'it may have' or 'I'm not sure' in the Family Court. The decision is binary when it comes to findings of fact. Either I am satisfied on the evidence that something happened, or I am not. In the former case, the allegation becomes a finding, in the latter, it did not and that allegation has no place in the decision-making of the Court.

11. Findings are made on the evidence although I can make inferences if the evidence supports the making of those inferences. However, I cannot rely on mere suspicion or speculation. Neither suspicion nor speculation is evidence and they cannot form any part of my decision-making.

12. In relation to the making of public law orders, the Court cannot make public law orders unless 'threshold' is made out under section 31 of the Children Act 1989. But threshold only gives me the key to make public law orders. I do not have to use that key. I must consider all issues in relation to the welfare of the Children having regard to their welfare as my paramount consideration – it

is front and centre in all my decision-making when it comes to determining their welfare.

13. In assessing welfare, I must ensure any orders I make are both necessary and proportionate. As part of those tests I remind myself that in making decisions in relation to their welfare I may interfere with the Article 8 rights of the Children and family members but can only do so to the minimum extent commensurate with the Children's welfare. That is I should not take a step if a realistic alternative is available that is compatible with the welfare of the Children and each of them.

14. **Issues for the Hearing**

There are a number of issues which I have to consider. They include:

15. Issues in relation to threshold. The Mother accepts threshold as drafted. The Father disputes two elements of threshold. I need to decide whether those disputed issues need determining for me to make the decisions I am being asked to consider and, if so, determine whether the issues are proved having regard to the burden and standard of proof referred to above to earlier in my judgment

16. Whether I can make a final order today or whether I should wait, at the very least, until 5th August 2024 when the Specialist Unit will report of issues relating to risk and recommendations as to risk management and any appropriate roadmap for the treatment of the family member.

17. If I am not satisfied that I can make final orders for all children, can I make the order for any of them? And what consequential directions would follow?

18. If I am satisfied that I can make final orders for all children, where should the children be placed and under what orders?

19. **The Parties' Positions**

In relation to C and D there is an agreed position as to where they live and the nature of the orders. Accordingly I do not need to make decisions about where they will live.

20. There is, though, an issue with contact between the Father and the Children.

21. In relation to A, they currently live with G and H, extended family members. There is no dispute that A will continue to live with them, but all, except G and H, say that should be under a Care Order rather than, as G and H would wish, a Special Guardianship Order.

22. In relation to B, it was planned that they may be able to join A to live with G and H and contact to G and H was increased as a result. But following further recommendations by the Specialist Unit, the plan to move B to be with A with G and H was halted. The level of contact remains, though, high at a weekly level and will remain so under the plan of the Local Authority.

23. G and H ask the Court, though, to consider placing B with G and H so they can be with A. They say that, not necessarily now but in the foreseeable future, a plan for B to move in together with A and G and H, should be approved by the Court rather than leaving future decisions in relation to B to the Local Authority under the auspices of a Care Order.

24. All other parties consider that it is too soon for the Court to make that determination – whilst it may be hoped that B would be able to move in together with A that is not something that can be decided with any degree of confidence now and that, per the view of the Psychologist, such consideration may have to be made many months from now. They urge me to make a final care order in relation to B and they will have to make decisions as to the best place for B to live will have to be left to the future.

25. <u>A Brief History</u>

The Children have been on the Child Protection Plan as a result of circumstances in relation to the Particular Harm since 7th March 2022. The Children were a risk to each other given the reports made by the elder children – it is plain that the Local Authority, given the level of reports made by the Children, were right to take the action they did.

26. Since 6th April 2023, A has lived with G and H, initially under section 20, and latterly under Interim Care Orders with G and H being approved as foster carers.

27. D is at home with the Mother under the auspices of an Interim Supervision Order they both having spent time together in a parent and child placement and C in a residential placement.

28. Earlier this year there was a plan for transition for B to move from their residential placement to move into the home of G and H with A. However, that was paused on the expert recommendation of the Specialist Unit that there was no, or insufficient, assessment of the risks to A and B of the Particular Harm.

29. Whilst there some concerns in relation to the Mother and her care of D, they have listened to Social Workers and other experts and as a result, as the Guardian would tell me in evidence, has been something of a 'success story'.

30. <u>The Hearing</u>

I heard this matter over 7 days. The first three, 8th, 9th and 10th July, were held in person. I heard the evidence of the Psychologist: they were due to have been heard on 9th July 2024 but unfortunately they were unable to attend due to ill-health. They very kindly notified the Court in good time and arranged for them to be heard remotely on the afternoon 12th July 2024. The final two days of evidence, 15th and 16th July 2024, were in person with this judgment being today, 17th July 2024, in summary form.

31. Throughout the hearing the Father was remote. His mental health was such that he, and his intermediary (to whom I express my thanks for their assistance throughout), considered attending at the Court building so far from home would mean he simply would not be able to get to Court. The intermediary has worked with the Father for some months and told me she had noticed a real decline in his mental health. Accordingly, special measures were granted for the Father to attend remotely from his solicitor's office together with the Intermediary.

32. I am satisfied that the Article 6 rights of all those involved have been protected and that all those with an interest in proceedings were able to fully engage.

33. <u>Evidence and Submissions</u>

I have read all of sections A and C of the bundle, being preliminary documents and the statements. I have also read the whole of sections D, care plans and E, including experts' reports. I have also read the whole of any document referred, whether in part of whole, to by any of the parties.

34. I have also heard live evidence as follows (all of whom attended to give evidence except as noted):

- The Allocated Social Worker (Monday 8th July)
- The Parenting Assessor (Monday 8th July)
- The Foster Care Social Worker (Tuesday 9th July)
- The Father (Tuesday 9th July)
- The Specialists' Representative (Wednesday 10th July)
- The Psychologist (Friday12th July (remote))
- G
- H
- The Children's Guardian

35. I heard submissions on the afternoon of Tuesday 13th July 2024 – again, I am very grateful for their careful, sensitive and focussed submissions. I was very much assisted by the submissions.

36. My judgment cannot deal with all the matters raised in evidence, whether written or oral, nor submissions. Just because I have not mentioned any particular piece of evidence or element of submissions does not mean I have not considered it, only that that I have not considered it necessary to refer to it

in the judgment. All of the evidence and submissions are important – they are none the less so simply because they are not referred to in this judgment.

37. **<u>The Central Issue</u>**

There is no doubt that the children are at risk of harm from each other. The elder four children have been involved in the Particular Harm between themselves and as a result they all pose a risk to each other. The Specialist Unit is undertaking work with the whole family, the Children and the parents. They are due to report on 5th August 2024 and the report seems, so far as I know, to be on track. One more appointment is due with the Father. That meeting was due to have happened by now but through no fault of the Father that has not been able to have taken place. The Father has made himself available for all appointments.

38. The central question for me is: from all I know, can I authorise B to join A in the care of G and H? That depends on the risks to each to the other and how those risks can be managed.

39. But that is not the only risk I have to look at. Keeping children apart from each other can, itself, be harmful. What is described as one of the "most enduring" relationships, that is sibling relationships, is one of the most important relationships for many individuals. Placing B with A may well provide a comfort to each of them and increase their prospects of the most positive outcomes for their future. Not having the opportunity of living together will deny A and B that opportunity – that is a loss, or a harm, which also must form part of the balancing exercise I must undertake.

40. G and H say I can make an assessment of risk, or a sufficient assessment of risk, either now or when I see the report of the Specialist Unit. If I am persuaded that this is the case, I should, I am urged by them, either adjourn judgment until after the report is filed, or make the decision now that B can and will join A at some point in the future once the risk of the Particular Harm between them have been able to be sufficiently managed.

41. **Matters Not in Dispute**

I have already dealt with the decisions in relation to where the Children will live. In relation to children A, C and D decisions about where they will live are agreed and in relation to the latter three, the nature of orders securing those decisions is also agreed.

42. It is also plain from all that I have heard that G and H are more than able to meet the needs of A – that does not appear challenged by any party. They are more than able to meet the needs of A and have offered them first class care.

43. There is some issue as to whether G and H fully accept and understand the risks of the Particular Harm so far as they exist between A and B. I will turn to that later in my judgment.

44. Matters that are not in dispute do not need me to make further determination. My view is that those matters in relation to placement and the nature of orders not in dispute are in the respective Children's welfare.

45. **The Evidence on the Non-Agreed Matters**

The Social Worker's position was that of the Local Authority in relation to the arrangements for B. The risks were insufficiently understood at this time and, even when they are, so much work will be required with A and B, and possibly other family members, that the decisions need to be made now otherwise, effectively, we are putting the matter off to a date that is so far ahead it is outside the Children's timescales. Decisions in relation to the future can be made, I am told, under the auspices of a Care Order the Local Authority seek. The Resources Finances Panel has already authorised, effectively, such work as the Children need and as will be recommended by the Specialist Unit's report.

46. The Social Worker said that, in respect of A, the care that G and H could give would be far greater than A could receive in either foster care or a residential placement.

47. I should say, all things being equal, it is not being suggested that G and H do not have the capability to care for another child. The care they offer A is first

class. G and H have done all they can to educate themselves in relation to issues relating to neurodiversity and the Particular Harm.

48. It is not the capability of G and H to offer a secure and stable home that is in question. The issue is can they mitigate the risks of the Particular Harm in this case.

49. The central evidence on this issue was built on the evidence of the Special Unit and the Psychologist who told me of the risks as they understood them to be. I also heard from G and H who told me how they could mitigate any risk to the point they could be sufficiently managed.

50. <u>The Specialist Unit, 'The Unit'</u>

The Report from the Specialist Unit is not due until 5th August 2024 but I was helped in my understanding of the process and possible outcomes by the attendance of T.

51. It was clear to me from T that all adults they had worked with in this case have engaged fully.

52. The set up in the Unit was explained to me with the multidisciplinary team that are working together to produce the upcoming Report. I was told that interviews with family members would be transcribed and that recommendations for strategies and road-mapping will be hopefully available when the Report is finalised. It may cover the structures and drivers of the Children's behaviours, what protective factors may be able to be put in place and indicators of why and in what circumstances that risk would be heightened.

53. It is hoped that the report will make recommendations for both the longer term but, importantly, the intermediate period. It may be that there will need to be 'sequencing' that is the order, or sequence, in which particular work may need to happen. That may include family therapy: the Report will consider each role that the parties will have going forward. The Unit are keen to work with any adult involved in the care of the Children.

54. In relation to the possibility of further allegations being made by the Children or any of them (and in relation to the aspects of Particular Harm I am referring to the eldest four children as ‘the Children’) I was told about how the Unit will work with the Local Authority and the safeguarding arrangements that would be in place.

55. They told me, in relation to whether I would be in a better position to make decisions for A and B if I had the report due on 5th August 2024, that “I don’t think we will have enough information to aid the decision” although they did accept that that was said without the report being completed.

56. What was noted by T, as each witness of whom the Guardian asked, was that this is a complex matter. It will assist if there is an allocated Social Worker for the Children given the careful need for assessment and the management of the needs of the Children.

57. I was impressed by T as a witness: she was able to explain to the Court her views and the reasons she held them. When challenged she was able to explain the position of the Unit. Her evidence is such that I can rely on it as it was given.

58. <u>Other Evidence</u>

The Social Worker gave very clear evidence. Her assessment of risk is based in large part on the experts in the case but she also gave very clear evidence substantiated by cogent explanation. Very importantly, the Social Worker acknowledged what have been described as ‘missed opportunities’ in the past in relation to the markers that may have required better or more thorough investigation. This was not a Social Worker who came to make excuses or offer platitudes: she came to help the Court with understanding the Care Planning for the Children.

59. The Social Worker has been to Resources Panel and they had given the green light to the work already undertaken and any recommendations of the Unit. This is not a Social Work team who are sitting back: they are actively seeking to support the Children together notwithstanding that finances would, in the vast majority of cases, be an impediment to that.

60. I also heard from the foster care social worker, K. She has worked with G and H for a considerable period, since January of this year, and is the person most likely to be able to help me understand G and H and their capacities in relation to the particular needs of A and B.

61. Importantly, and I heard it from G and H themselves, K told me that G and H wanted the same orders for both A and B. When I heard from G, I heard very clearly that B's sense of 'fairness' was, it seemed, a foundational part of who they are. G told me that B is 'driven by fairness'.

62. It was also clear, as was a characteristic of the descriptions of the professionals, that G and H worked openly and eagerly with K. A suggestion that the school had that G was fairly forceful and sought, my words, to control meetings was not something K had seen at all. Indeed K was surprised at the strength of the views that the school had expressed in that regard.

63. One other matter that was cleared up first by the Social Worker and then by K was that there was no suggestion or hint in the working that anyone had done with the parties that there was any indication of coercive or controlling behaviour by G or between G and H in their relationship. That had found its way into minutes and been repeated. It is one of those occasions when something is said and then picked up as a fact or 'concern'. I make it clear, there is not a drop of evidence that would seek to point to anything in the way of coercive or controlling behaviour in the relationship between G and H. There is no evidence of such and so I am satisfied that there are no issues whatsoever in relation to domestic abuse of any kind, or evidence to support such a concern, in the relationship. There is no evidence, no 'smoke', no hint. There is no domestic abuse between them.

64. It was clear from K that G and H's love and support for the grandchildren was unfailing and unconditional. I heard from G and H about the hurdles they have had to overcome, but what they have to offer, and them offering what they do, is out of both love for the children and because they genuinely consider that A and B living together with them is in the best interests of both of them.

65. K did accept that there was a gap in the information before the Court, namely that we did not have the Specialist Unit's report but, as I have already mentioned, K did not consider I would have sufficient information even when I received the report.

66. The Psychologist also gave evidence.

67. They undertook a psychological assessment of the family and answered various emails the latter of which were drawn together into an addendum report.

68. The Psychologist's view has adapted throughout the Court process as they became aware of more information. That is not meant in any way critically: to the contrary, it is an obligation on all experts to consider the evidence and views of others and when additional information is received it is incumbent on such experts to review their position.

69. That is highlighted in relation to a planned transition for B to move to live together with A in the home of G and H. The Psychologist was in support of that proposal until the Unit expressed concern which cautioned against completing the transition given the unquantified, indeed unquantifiable, risk to the Children something with which, when informed, the Psychologist agreed. The contact, by then, had been increased to weekly. Whilst the transition was not completed, the level of contact remained at, and remains, at weekly between B and G and H (and so A).

70. The Psychologist, in evidence, was almost apologetic that they had changed her mind. They had no need to be – they were simply re-visiting their recommendations in light of further information as it arose.

71. The Psychologist told me that the children were some of the most guarded children she had worked with. H told me in her evidence that part of the reason for that may well have included that A and B, in particular, were not open with strangers and that their diagnosis likely impacted their openness or guardedness. The Psychologist has raised in her report that the children may have been embarrassed at their actions in relation to Particular Harm when

they realised what they had done was wrong but had not appreciated that at the time given their additional needs..

72. One of the Local Authority's threshold allegations relates to A reporting that they enjoy kissing their father. I had not understood how that impacted issues relating to threshold. However, the Psychologist told me that, in the context of the Particular Harm, what A had said was 'very worrying' when one looked at the whole picture. It was enough for them, the Psychologist, to be 'very concerned'. It was not a usual thing for a child to say, they told me, such as 'I like it when I get a goodnight kiss from Dad'. It was, effectively, more sinister in light of the Particular Harm.

73. What it is clear in this case is that everyone wishes that it will be possible for B to join A with G and H. The question for all the parties and the witnesses is: is that possible now, or in the near future, or further into the future? The Psychologist told me that B would need to feel 'psychologically safe' to be able to live together with A at the home of G and H.

74. That introduced an additional layer into the risk of harm: not only was there a need to protect the Children from the Particular Harm, but also there was a need for them, particularly B, to be 'psychologically safe'.

75. It was clear from what the Psychologist said that there was much work that needed to be undertaken by the Children given the circumstances in which they find themselves in light of the experiences they have had. That work needed to be undertaken to ensure that the children would be able to undertake, in language often used in cases, reparative work and would take a long time. How long? Well, in answers to questions of the Guardian in relation to the father's future Criminal trial, the Psychologist said that "in terms of therapy that would be continuing beyond [then], definitely beyond that. There may be a year of counselling for these children".

76. Whilst the psychological safety of the children was important, more important was the physical safety of the children, with the psychological safety coming a very close second according to the Psychologist.

77. A and B would be better placed separately whilst they had the opportunity to 'let their guard down in terms of the trauma' the Psychologist told me.

78. The Psychologist accepted that it may very well be that A and B would provide a comfort to each other. It was not just about the risk of Particular Harm, I also had to balance the benefit of A and B being together. That is not to be overlooked.

79. So what am I left with?

80. I am told that A and B, will require a good deal of therapy. That simply knowing the outcome of the Report of the Unit will take is unlikely to be able to take me any further. Whatever else comes out of it, both T and the Psychologist were of the view that there was a sequence of work that needed to be done. Firstly, in relation to the Unit's Report: with that T told me that there would be likely to be recommended more work, including with the Children and the adults involved in their care, and then a likelihood of family therapy. On the evidence of the Psychologist, that work for the Children will go beyond Criminal Proceedings.

81. Other professionals were called, including the parenting assessor, J, of the parents. He was called in relation to one aspect of threshold namely whether, as J asserted, the Father had admitted to the matters alleged against him whilst he was a minor against X which had similarities to the Particular Harm.

82. The Father denies what J says namely that J said that the Father made the admissions in relation to the matter the subject of the Criminal Proceedings. The Father's denial is based on his account that he has no recollection of the events.

83. I heard from the Father on this issue in particular, although he also helped me with other matters. Of note he told me that his mental health had declined: his anxiety . had worsened. He had the benefit of intermediaries throughout the hearing and gave his evidence remotely given his inability to travel. I bear in mind that giving evidence particularly on such a sensitive matter would likely be very difficult for any person. For the Father that is compounded by his

anxiety and having to manage his mental health as best as he is able. All of that is information I take on board when assessing his evidence.

84. The Father told me clearly that he did not make the admission J says that the Father made: he could not. The Father says he has no recollection of the events that form the allegations the subject of criminal proceedings, so could not have made the admissions.

85. J was also clear: that having met the Father over a 3 or 4 sessions totalling 6 to 7 hours of assessment, the Father had told J that he accepted what was alleged against him that formed the basis of the criminal proceedings he is facing in the future.

86. Do I need to make this finding? Threshold is crossed in this case without this finding but making a decision on it may very well assist the Local Authority in Care Planning. If the Father had made the admission asserted by J but now denies it is likely to form part of any risk assessment of the Father. I accordingly consider the finding is necessary to be made. It is well placed in Threshold if it is found as it will provide a single document of the facts found in the case. Accordingly, I consider it is appropriate for the finding to be weighed and determined.

87. I prefer the evidence of J. He was clear in his recollection and, I find, was honest and accurate in that recollection. He indicated that he had the recordings of the discussions with Father taken on his Dictaphone as written notes were sub-optimal when undertaking an assessment.

88. I do not go as far to say the Father was lying – he was trying to assist the Court but has, I find, convinced himself that he cannot remember.

89. I am satisfied that what J reported he was told he was in fact told. Accordingly I find that element 2(a) of the Threshold is made out as I do 2(g) in relation to A enjoying kissing the Father.

90. I heard from G and H.

91. I make this plain: no more could be asked of them than they have given. They have welcomed A into their house and are willing and ready, they say, to do so for B.

92. They have undertaken their own research and sourced their own training in relation to the particular needs of A and B and, of note, the Particular Harm.

93. They have at times, particularly H, been frustrated by what they see as the lack of support by the Local Authority. In part that will seem the case because of what they will have perceived as lack of activity in relation to the therapy that A and B desperately need. It took, I was told, 3 weeks for approval for dental treatment to take place for A as they needed the Local Authority's permission as it was them who held the corporate parental responsibility?

94. Proceedings, also, will have been painfully slow for them. At times in cross-examination by the Local Authority, H clearly felt that the Local Authority were challenging her personally, and 'twisting' her words. H was defensive at times in her evidence. Given her experiences, from her perspective, and the questioning she had to deal with in cross-examination, it is perhaps of no surprise. The sadness is that the process of Court proceedings is adversarial and seems almost designed to pitch parties against each other – it does not lend itself to an inquisitorial approach.

95. As the Guardian told me in evidence, H in particular can present as defensive when dealing with the Local Authority.

96. I say again: there is no more that G and H could have done to prepare themselves for the further addition of B to the household to join A.

97. G and H are clear in relation to harm: they consider it highly unlikely, if not quite impossible, that any of the Particular Harm occurred in their home. They both accepted there was a possibility, but H in particular considered that the Particular Harm suffered by A and B (focussing on them for now) was, my word, 'environmental'. It was at a different property with different rules and boundaries. There was, in the sense of the evidence given by H, no real risk to A and B if they lived together with G and H being able to meet their needs.

98. In relation to psychological harm, or safety, H was very clear: neither Child demonstrated any signals that, when together, they were, again my word, 'unsafe'. H was again clear that she would have been able to tell if B had shown any signals of that.

99. There was a particular issue namely A and B watching a film in A's bedroom in which A was sat up with the duvet over their legs, and B sitting and may at times have had the duvet over their legs. H had said at one time that she was always supervising the Children with A's door open. That was similar to what was recorded in the Foster Care log. In evidence, though, we were told (and it may have been for the first time as I understand) that G had been in the bedroom throughout and H had joined 10 minutes or so into the film.

100. I say this loud and clear: G and H have, and are doing, an incredible job with A. In relation to the evidence in this regard though, I was not entirely convinced by H and her explanation as to what the provision in terms of supervision was. I don't know what happened, and mere suspicion is not enough. But there was a sense that H felt rather cornered by the questioning and felt the need to grapple for an answer. I don't know what happened that day and I do not have sufficient evidence before me, I consider, to say that H had not spoken accurately either to professionals or the Court.

101. What I do take away from it is that G and H had not considered that B may have felt uncomfortable or 'unsafe'. Again, this is most certainly not a criticism. It is simply a demonstration of the hypervigilance that any carer for A and B together would have to employ. Issues that are not issues in other households can be enormous issues with A and B.

102. A further example was given by the Children's Guardian who, in her own time this past weekend and going about her own business, had a Social Media account that suggested that B may be someone to follow. That was the first time anyone knew that B had a social media account. It transpires that A has too but no-one knew. Again, whilst raised by the Guardian, this was not a criticism of the Guardian towards G and H but rather a paradigm example of the vigilance, above and beyond what many carers have to do, that A and B

needed. Again, 'things' that are not 'things' in the vast majority of households have the capacity to become harmful with these Children. The worry, in particular, for the Guardian in this case is that that Social Media platform may become a pathway that might lead to grooming by strangers or private communication between the Children.

103. G and H were ready for this possible risk by having set out in detail a risk management document in which they set out very clear methods of control for online risks including using both Google and Eero apps to control internet communications. Despite those exceptional efforts, still A found a way through. That would not necessarily be underhand, but it is a clear demonstration that even with the real care and protections put in place, still the Children are able to unknowingly put themselves in the position of some additional, and perhaps needless, risk.

104. I heard from the Guardian whose position had not changed from her final analysis. She stood by her conclusions. They, as other witnesses before them, had asked about the level of contact between the Father and the Children. The Mother is to have, effectively, monthly contact with the children as an overview, the Father six weekly to tie in, broadly, with school holidays. The Guardian considered that there were so many children and the arrangements would take considerable time out of each of the Children's regular arrangements that the levels of contact proposed were in the Children's best interests together and for each of them. The Father had much to deal with in the forthcoming months, including any work recommended by the Unit (as has the Mother of course) but also has his criminal trial to face. Video contact should be allowed to continue with the Mother (and that is accepted by the Local Authority until further decisions at future review meetings) and it may be possible with the Father. But the Guardian's view in relation to contact was aligned with the other professional witnesses asked about it, namely four weekly for the Mother and six-weekly for the Father.

105. <u>Analysis</u>

Firstly, let me make this clear: the parents and the G and H have done all they can to assist the Court. G and H have gone so much further than 'above and

beyond' for A and offered her what I find to be the very best level of care A might expect to receive.

106. The parents and G and H love the Children, all of them, to the ends of the earth and back. The parents have demonstrated that in part by the decisions they have made for the Children: they have put themselves second to what is best for the Children. G and H have done that by 'walking the walk' with A and their very real wish to provide B with the safe home they say they can offer. The Children find themselves in very difficult circumstances: the family have done what they can to minimise the conflict between the family and focussed instead on what is best for the Children.

107. Whenever I make any decisions about Children that involve their welfare I have to have regard to the welfare checklist. However, in this case I am also being asked to make Care Orders and a Supervision Order: I can only do that if 'threshold' is satisfied.

108. Threshold is set out in section 31 of the Children Act 1989, I must be satisfied on the balance of probabilities that a child has suffered or is likely to suffer significant harm attributable to the care being given by the parent(s) not being what it would be reasonable for a parent to give.

109. No-one argues that threshold is not crossed in this case. There were two elements that were disputed: I have found those two elements earlier in this judgment.

110. In relation to paragraph 3 on page A(i)41 in relation to Particular Harm, the proposed threshold currently records:

a. "*It is likely that some or all of the children's accounts are true. The children are aware of and have witnessed…*"

111. Mr Ashworth has tried to steer a very careful course through a very narrow strait in this drafting. I cannot, though, determine as a finding that something is likely or not. I have to decide whether it been demonstrated on the evidence that something *has* happened on the balance of probabilities.

112. The reporting of the children is so clear, and graphic, that there can be little uncertainty in what they have described, witnessed and participated in to greater or lesser extents. I am satisfied that the elder 4 Children have all had engagement in some level of the Particular Harm so will replace the words above removing the first sentence**.** The following sentence will read to the end of the paragraph:

a. "*The children are aware of, have witnessed and been directly involved in, [the Particular Harm].*"

113. Threshold is made out in this case on the basis of the threshold as set out from A(i)37 with this one amendment.

114. I turn then to the issues of welfare.

115. The Children's welfare, and the welfare of each of them, is my paramount consideration. It is front and centre of my considerations for the Children. My more detailed analysis below is in relation to A and B: I am satisfied that, as agreed by the parties, C and D's outcomes met the welfare needs of the children.

116. Contact will remain under scrutiny and the time will come, I would anticipate, that the Father's contact will move closer in alignment to that of the Mother but the future Criminal proceedings may impact that. I am satisfied that the Local Authority will keep matters under review.

117. In relation to D, they will remain with the Mother which, as the Guardian rightly labelled it, a 'success story'.

118. <u>Wishes and Feelings</u>

119. I have no doubt that B wishes to live with A. And I have no doubt that A wishes to live with B.

120. B's current placement has, previously, been considered not appropriate for long-term placement. However, I am told that B is settled now and although there may be more suitable placements, B being settled is a priority to enable

her to begin the therapy and other work that the psychologist tells me is going to be necessary for her.

121. The Needs of the Children

122. The physical needs of the children are being met where they are.

123. The question is can the physical and emotional needs be met going forwards if, as G and H ask me, B moves into their care.

124. Whatever else is the case, A and B now, both need a 'safe' space to enter into a period of some considerable likely disruption with the work of therapy that the Psychologist says will be required and the Unit will, it is hoped, set out in their Report.

125. I need not concern myself with educational issues at this stage. Whilst, of course, crucial for the Children, that has not formed a part of the issues placed before me. I take it that wherever the Children are placed, sufficient education resource will be in place.

126. In relation to emotional needs, and I include in that category, psychological needs, A and B have a need to be 'psychologically safe'.

127. I turn then to harm and the management of the harm.

128. The difficulty for Unit when the transition plan was being undertaken was that the risk of Particular Harm was unassessed. How to manage any such risk and whether such management would be effective necessarily follows from what is learned from both the Report and the therapy the children will undertake.

129. As I indicated yesterday, without the Report the magnitude of the harm to date is itself unknown. The extent of the harm until now may not be known even when the Report is available. And then the management of harm, the intervention of therapy to help manage that physical and psychological harm, won't be known until that therapy has occurred.

130. The Report may well set out a roadmap – but it will give a direction of travel. What is not known, though, on that road map is, whatever the direction of

travel, how long that journey will be. That is wholly uncertain and necessarily will remain so at least during some, if not all, of the therapy with which the Children will engage.

131. This is a case that demonstrate why the words 'planned and purposeful delay' are rightly deprecated. I could delay this matter. It would be a planned delay and it would be purposeful, but it would leave the Children languishing. We would come back after the Report, but the effectiveness of the therapy that may ameliorate that risk will not, and cannot, be known without that therapy being undertaken, its being a process with an indeterminate period. Any delay in decision-making by the Court would therefore be without any indication of when the Court will be in a better decision to make Orders (save that therapy is likely to take us past the current date trial date in the Criminal Proceedings). The Court today is as well informed as it likely to be in making decisions as it will be for many many months to come. I conclude the decision has to be made today.

132. A and B would benefit from being together: I have no doubt. There are positives. A and B shine when together. I accept that entirely, but what I cannot accept is that that 'shine' doesn't come at some cost to the psychological safety of the Children. For B, I don't know what they make of the experiences they have engaged in, and I don't know even that they know they are wrong. Of real concern will be: when B goes through the therapy, how will they perceive A? All of that is unknown and unknowable both now and on 5th August.

133. What would be the effect on A and on B of a change in circumstances. Much of this overlaps with what I have said about 'need'. There are plainly benefits of A and B living together – children, all being equal, should be brought up together. But in this case I would place B in a place of unassessed risk, with no ability to understand the management of that risk at least not until therapy has been undertaken. I would be exposing B to an unquantifiable, at this stage, risk of harm. It would, accordingly be unmanageable.

134. I have dealt with the age, sex and other characteristic of the Children in this Judgment I have already identified the issues that arise.

135. I have already dealt with the risk of harm, the inability to currently ‘quantify’ that risk and the impossibility of managing it, or indeed managing for it.

136. I have no doubt that G and H can offer either A or B first-class care. And, when the risks are better understood and therapy undertaken, there may very well, and we all hope, there will come a time when A and B can live together. The difficulty is that with the risk of harm, and the effect of that risk happening being so enormous, no-one is able to manage those risks and consequences if they happened: that is not a criticism of G and H – to the contrary. There are few who could provide the care to A that they have. It is just that the risks of them A and B being together are too large, the consequences of the risk happening so mighty, that the benefits of the two being together, at this time, are not demonstrably ample enough to outweigh those risks. I have no sufficient evidence that enables me being able to envisage any person or family being able manage them.

137. I turn then to the range of powers. I could make a Special Guardianship Order, together with a Care Order, in relation to A and B.

138. I do not yet know, although I very much hope, that B will be able to join A with G and H. If any people can meet the needs of A and B together in the future when risks and management are better understood, it is G and H. But I cannot say now that it *will* happen.

139. B, themselves, is driven by a sense of fairness. They would ask if I made an SGO for A: “why is A under a different order to me? How is that fair?”

140. I have struggled with this. But I agree with G and H that the orders should be the same for A and B for now. Not being able to know now that B will join them, I cannot, having regards to the Welfare of B, make an SGO in her favour. An SGO for A would give parental responsibility for A to G and H, but that would provide different orders for A and B. That is not determinative, but the support the whole family needs will need to be undertaken with the

Local Authority who will be providing the most intensive of packages of support. And for that they will need to share parental responsibility. I do take note of paragraphs 50 and 51 of *Re F & G (Discharge of Special Guardianship Order)* [2021] EWCA Civ 622 and consider that, as set out in that judgment, that the correct order is the making of the Care Order now with the expectation in the future of there being an SGO for A and, we would all hope, for B.

141. The plan for A is that they will reside with G and H. If the Local Authority were to seek to change their plan for A they would, at the very least, have to give notice to G and H so they are able, if the matter arose and this wished to challenge it, to bring it back to Court.

142. The plans for B, and C, are set out in the Care Plans of the Local Authority and are approved.

143. The plans are the least interventionist plans that are compatible with the Children's welfare and, whilst it keeps the children away from their family, that is necessary for the purposes for the needs of the children, in particular their psychological safety and to be protected from the Particular Harm that they have suffered. Accordingly, I am satisfied that the infringement of the parties' and children's rights under, in particular, Article 8 of the European Convention on Human Rights is both necessary and proportionate.

144. Accordingly I make final care orders on the plans set out in relation to A, B and C and a supervision order in relation to D

145. This Judgment was delivered in an abridged form on 17th July 2024. I indicated that the time for any subsequent application pursuant to the Judgment would not begin to run until this Judgment was formally handed down which I intend to do in the week beginning 5th August 2024. No parties need attend for the handing down: the Judgment will be formally handed down by delivery to the Advocates by email.