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

IN THE FAMILY COURT

Neutral citation: [2024] EWFC 49 (B)
Case Number: 1692-0990-8288-9034
Neutral citation: [2024] EWFC (B)
Re E and H (Care Orders)

5 March 2024

Before His Honour Judge Middleton-Roy

Between:

The Local Authority

Applicant

- and -

The Mother

1st Respondent

The Father

2nd Respondent

The Children 'E' and 'H'
Through their Children's Guardian

3rd and 4th Respondents

Mr Tautz, Counsel for the Applicant
Mr Frost, Counsel for the First Respondent
Miss O'Rawe, Counsel for the Second Respondent
Mr Wilson, Counsel for the Third and Fourth Respondents

Hearing dates: 26-28 February 2024

APPROVED JUDGMENT

His Honour Judge Middleton-Roy:

1. The issue for the Court to determine in this case is whether two children should be removed from the care of their mother and placed in long term foster care, contrary to the wishes of the children and contrary to the wishes of their mother and father.

2. The two children with whom this Court is concerned are both of secondary school age. They are referred to in this judgment not by name but by fictitious initials, 'E' and 'H' to avoid identifying them. The oldest child is 'E'. The youngest child is 'H'. This Court intends no disrespect to the children by referring to them by initials. Both children have their own unique characteristics and individual physical, emotional and educational needs. The children are parties to the case through their Children's Guardian. The children have lived with their mother throughout their lives. The children are both the subject of Interim Supervision Orders made at the outset of the proceedings.

3. The mother and father of the children are the First and Second Respondents to the case. The parents separated early in the lives of the children. The parents live apart, albeit geographically close to each other. The children have had sporadic, unstructured contact with their father historically.

4. The Local Authority applies to this Court for a Care Order for both children, with the care plan that the children are removed from the care of their mother and placed in Local Authority foster care, together as siblings. The Local Authority asserts that both children have suffered and are at risk of suffering significant harm in the form of physical harm, emotional harm and neglect, attributable to the care given to them, or likely to be given to them, by their parents, not being what it would be reasonable to expect a parent to give a child. The youngest child, 'H', has been diagnosed with Type 1 diabetes. He is insulin dependent and is prescribed both slow-release and quick release insulin. He is under a specialist diabetes clinic for which regular attendance at outpatient appointments is required. The Local Authority is concerned that his attendance at clinics has been poor and he often attends without a parent. There are reports that at school, where his food intake requires monitoring, he had refused to allow staff to monitor his blood sugar levels. 'H' has described "hating" diabetes and blames it for Children's Services' involvement. Within Year 6 at school, his behaviour was noted to decline, with reports of increasing rudeness to staff, walking out the classroom and an increase in frequency of reporting being tired and refusing to engage in schoolwork. 'H's school attendance fell to 66%. It was noted that 'H' is a bright student but he was not working at an age-appropriate level. Staff have observed a clear correlation between his positive engagement in class and the management of his diabetes. In short, the Local Authority asserts that the parents are not manging 'H's diabetes appropriately and are neglectful of his health needs, with concerns that he experiences persistently low blood glucose levels such that he is at risk of acute, long term health conditions. 'E's school attendance fell as low as 16%, with all absences unauthorised. 'E' is reported to have a history of self-harm. Both children are reported to have had their dental needs neglected. The Local Authority asserts that the father struggles with emotional regulation, impacting on his parenting of the children. The parents are reported to have a hostile relationship with each other. Further, the home conditions are reported to be poor.

5. The Local Authority's application, issued on 16 August 2023 is strongly opposed by both parents. The mother seeks to care for both children. The father tells the Court that he is concerned about the mother's care of the children, however, he does not seek to split up the family. He supports the mother's position that the children should remain living with her. In the alternative, he puts himself forward to care for both children.

6. The children have expressed the firm wish to remain in their mother's care. Their Children's Guardian, appointed in the proceedings to promote the welfare of both children, to represent

their wishes and feelings and to make sure the arrangements for the children are in their best interests, supports the Local Authority's application for Care Orders. The Guardian supports the Local Authority's care plan for the children to move together to long term foster care. Although the children's wishes are in direct opposition to the views of the Guardian, no party advances a position that either child is competent to give instructions and to be represented independently.

7. At the outset of the proceedings on 18 August 2023, the Local Authority applied for an Interim Care Order with the plan of immediate removal of the children from their mother's care. On 29 August 2023, the Court refused the Local Authority's application for an Interim Care Order. An Interim Supervision Order was made until the conclusion of the proceedings, with the children continuing to live at home with their mother. Having found the interim threshold criteria to be met, this Court was not satisfied that the Local Authority had demonstrated that the very high standard had been established to justify the interim removal of the children from their mother nor that their immediate safety demanded it. The Court was not satisfied that interim removal of the children was the proportionate response to the risks of harm.

8. At Final Hearing, the Court had the unique benefit of hearing evidence from the Local Authority Social Worker, from both parents and from the Children's Guardian. The mother applied for, and was granted, permission to attend the Final Hearing remotely by video throughout. The father was assisted throughout the Final Hearing by his Support Worker. All parties were legally represented by experienced, specialist advocates. At the conclusion of the Final Hearing on 28 February 2024, the Court reserved judgment. This written judgment was handed down on 5 March 2024.

9. The written evidence relied on is contained in a bundle of documents comprising 954 pages, together with further evidence filed during the Final Hearing. In providing these reasons in support of the Court's decision, it is neither possible nor necessary to address every piece of evidence read or heard nor to address every submission made. The Court has given careful and anxious scrutiny to all the evidence presented.

The Relevant Law

10. Local Authorities owe a duty in law to safeguard and promote the welfare of children within their area who are in need. In carrying out that duty in law, the Local Authority must promote the upbringing of children by their families and must provide services appropriate to the needs of children who are children in need.

11. The purpose of the Family Court in proceedings of this nature is not to establish guilt or innocence or to punish or criticise parents but to establish the facts as far as they are relevant to inform welfare decisions about the child. To prove the fact asserted, that fact must be established on the civil standard, that is, on the simple balance of probabilities. There is only one civil standard of proof, namely that the occurrence of the fact in issue must be proved to have been more probable than not. The burden of proof lies upon the person or body that makes the allegations.

12. In any application for a Care Order or Supervision Order the Court must apply section 31 of the Children Act 1989 to each relevant child. A Court may only make either a Care Order or a Supervision Order if the 'threshold criteria' in s.31(2) Children Act 1989 are satisfied, namely, that the child concerned is suffering, or is likely to suffer, significant harm and that the harm, or likelihood of harm, is attributable to the care given to the child, or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give to them or the child being beyond parental control.

13. If the threshold criteria are met, the choice of whether to make any Order, and if so which Order, in care proceedings is to be determined by the Court affording paramount consideration to the child's welfare under s.1 Children Act 1989. The Court must have regard to the matters

set out in the welfare checklist in s.1(3) Children Act 1989 and the non-intervention principle in s.1(5), namely that the Court in considering whether or not to make one or more Orders under this Act with respect to a child, shall not make the Order or any of the Orders unless it considers that doing so would be better for the child than making no Order at all.

14. By s.31(1)(a) Children Act 1989, a Care Order places a child with respect to whom the Order is made in the care of a designated Local Authority. The Local Authority shares Parental Responsibility for the child but has the power to determine how any other holders of Parental Responsibility may exercise their Parental Responsibility. Where a Care Order is made with respect to a child it shall be the duty of the Local Authority designated by the Order to receive the child into its care and to keep the child in its care while the Order remains in force. A child who is placed in the care of a designated Local Authority under Children Act 1989, s.31(1) is a child who is being 'looked after' by the Authority for the duration of the Care Order.

15. Sections 31(9) and 105 of the Children Act 1989 define "*harm*" as meaning ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another. "*Development"* is defined as meaning physical, intellectual, emotional, social or behavioural development. "*Health"* is defined as meaning physical or mental health.

16. The Human Rights Act 1998 applies to these proceedings. Under Article 8, everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society. Each individual family member in this case has that right, including the children, their mother and their father. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks. The children, the mother and the father are each afforded that protection.

Threshold

17. The relevant date for determining threshold is 15 August 2023 when the Local Authority began these proceedings. The Local Authority asserts that on the relevant date, the children were suffering significant harm in the form of physical harm, emotional harm and neglect and were at risk of suffering significant harm in the form of physical harm, emotional harm and neglect, the harm or likelihood of harm being attributable to the care given or likely to be given by the parents, not what is reasonably expected a parent to give a child.

18. The Local Authority asserts that:
    1. *Physical Harm*
        a. *On 07/03/2017 a referral was made by Diabetes Clinic due to serious concerns that the mother was not managing 'H's care appropriately and was being neglectful of her own health care needs*: The mother accepts she needed some assistance with 'H's diabetes and that she had, and still has, health issues. She does not accept she was not managing 'H's diabetes and she does not accept she was being neglectful of her health needs. She asserts that this specific referral followed the death of the Maternal Grandmother, when the mother's mental health was low and she was struggling. The Local Authority is clear that on the date pleaded a referral from the Diabetes Clinic was made to the Local Authority raising the concerns pleaded. This was followed on 18 May 2017 by a further referral from the Diabetes Clinic due to continued serious concerns. The family was noted to be open to the Local Authority Intensive Family Support Team. The Local Authority evidence records that the case was 'stepped up' and 'stepped back down', noting that the family managed small progress but that was not sustained and the family's engagement declined. On the evidence, the Court finds the Local Authority pleaded statement to be proved.

b. *On 26.06.2023, it was noted that the mother did not download 'H's reading for monitoring and the reading available suggested he was having more 'hypos' which is concerning*: The Local Authority assertion is denied by the mother. The Local Authority evidence is clear. The evidence records that on 26 June 2023, the Diabetes Nurse provided an update informing the Local Authority that the mother had not downloaded 'H's readings since 19 June 2023. The evidence from the Local Authority records, "it looks like he has been having a few more hypos than they would like to see." The Local Authority evidence records that communication was sent to the mother, who replied indicating she was in Cornwall for a funeral "and will download." On the clear evidence, the Court finds as a fact that the mother had not downloaded the readings as pleaded. Further, the Court finds as a fact that the diabetes team was concerned from the results when provided, that 'H' was having more hypoglycaemic events. On the evidence, the Court finds the Local Authority pleaded statement to be proved.

c. *The Diabetes team raised concerns on 02/08/2023 when 'H' missed a second consecutive diabetes clinic appointment and reported that the mother had not made contact since 20/06/2023 or uploaded 'H's diabetes data since 04/07/2023*: The mother accepts that a second appointment was missed. She does not accept she did not communicate with the diabetes clinic. She tells the Court that there were issues uploading 'H's data. In her oral evidence the mother told the Court she was not aware of the August appointment. She told the Court, "It was getting better as far as I knew. There was a lot going on. Bigger picture." The Local Authority evidence it clear and compelling. The Social Worker's evidence records that the concerns were raised by the diabetes clinic as pleaded. The Court finds the Local Authority's pleaded statement to be proved.

d. *On 23.01.2023, 'E' was beaten up by another child*: It is accepted by the mother that 'E' had, "some issues with some boys" on that date. She denies he was, "beaten up." The Local Authority's pleaded assertion does not link the fact relied upon in in paragraph 1(d) of its threshold document with its conclusion that the child has suffered, or is at risk of suffering, significant harm attributable to the care given by a parent. The Local Authority, properly, did not pursue a finding in this regard. On the evidence, the Court finds the assertion not proved.

e. *On a home visit carried out on 03/08/2023, the following concerns were noted: The mother did not have back-up supplies in the home prior to our visit:* This is not accepted by the mother. In her oral evidence she told the Court, "not true at all." She asserts that a friend had picked up the prescription and brought it to the mother's house. She asserts, "there was a fresh bag of insulin on repeat prescription." The Social Worker's evidence records that on a home visit carried out on 3 August 2023 it was noted that the mother, "did not have backup supplies in the home prior to our visit. Her friend collected a bag of supplies from the pharmacy as we arrived. It is unsafe not to have back-up supplies. Current insulin pens were being incorrectly stored in the fridge which can cause more pain when injected. There was evidence that ['H'] has been having more hypos in addition to long periods of high blood sugar levels. There was a lack of evidence of corrections having been given despite multiple alarms going off. Neither [the mother] or ['H'] could remember what ['H'] had been doing prior to or around the time of him having a hypo. This leads to significant concern around the potential risks to ['H's] imminent health. If he was to have a hypo in his sleep or at a time he is not being supervised and cannot recognise this, he could fall into a diabetic coma which could lead to death." The evidence of the Local Authority was recorded contemporaneously and, in the Court's judgement, accurately. The Court prefers the Local Authority's recorded account to that of the mother. The Court finds that on 3 August 2023 no back up supplies were in the home prior to

the Local Authority undertakings its visit. The Court finds the Local Authority's asserted fact proved.

f. *On 08.08.2023, 'H's HbA1c was 72mmol/mol showing significant increase and putting him at risk of complications:* This assertion is accepted by the mother. The Court finds the Local Authority's asserted fact proved.

g. *On 29 December 2023, Dr Mitchell, Consultant Paediatrician, stated in her report that 'H' has persistently low blood glucose levels and he is at risk of acute and long-time risk. She also stated that his parents are not engaging with the diabetes team to enable them to improve his glucose level*: The mother accepts that 'H' struggles with low blood glucose levels at times. She does not accept a failure to engage with the diabetes team. The father disputes that he has lacked engagement. The evidence of the Consultant Paediatrician, as set out later in this judgment, is clear, reliable and incontrovertible. It is a fact that the Consultant Paediatrician stated in her report those matters pleaded by the Local Authority. The Court finds the Local Authority's asserted fact proved.

2. *Emotional harm*

a. *The father struggles with low mood*: The father does not accept this assertion, other than accepting he has low mood at times when he has not been able to see the children. The Local Authority's parenting assessment of the father records, "Previously he was quite low in mood when he was not seeing his children. On 05/10/2023, [the father] said it had been breaking his heart to have to say goodbye to the boys each week when supervised sessions ended. He said he was not doing well emotionally." The Local Authority parenting assessment and Social Worker's evidence records, "When he is well and motivated, he is able to provide fun and stimulating activities which ['E' and 'H'] have enjoyed…he can become emotional and defensive and finds it hard to understand a different perspective or implement ideas. [He] struggles with low mood." On the evidence, the Court finds that the Local Authority's asserted fact is proved.

b. *The father struggles with emotional regulation which impacts his parenting both in terms of his immediate reactions in front of the children and in terms of his consistency in being able to care for them*: This is not accepted by the father. The evidence from the Local Authority in its parenting assessment and in the Social Worker's evidence records, "He struggles with emotional regulation which impacts his parenting both in terms of his immediate reactions in front of the children and in terms of his consistency in being able to care for them." On all the evidence, the Court finds the Local Authority's factual assertion proved.

c. *On 22.11.2022, 'E' talked about worrying about his brother and mother's health and lying awake worrying before going to sleep. He said that his mum shouts at 'H' and 'H' shouts at him and he gets angry and shouts*: This is accepted by the mother. The Court finds the Local Authority's asserted fact proved.

d. *'H's emotions, behaviour and presentation have changed significantly over the year and he has presented as anxious and upset. He is below curriculum expectations in all areas:* This is accepted by the mother. The Court finds the Local Authority's asserted fact proved.

e. *'E' has history of self-harm behaviour by cutting his leg with glass which he found outside playing*: This is not accepted by the mother. The Local Authority evidence records of history of involvement with Child and Adolescent Mental Health Services since the age of 4 years. The evidence records, "There is past history of self-harm behaviour by ['E'] cutting his leg with glass which he found outside playing. This was shared with his mother and social worker. He has

denied any further self-harm behaviour or suicidal thoughts but mother has been advised to monitor closely due to potential risk of recurrence although [‘E’] has not voiced wanting to harm himself again. He has reported that he feels anxious about his brother's health and mother's health and this is impacting on his emotional state.” The Court finds the Local Authority’s evidence to be reliable. The Court finds the Local Authority’s asserted fact to be proved.

f. *The mother and father have a hostile relationship and the boys are frequently caught in the middle of this with the father presently stating that he is holding a grudge against ‘E’ and ‘H’ for not sending him a Father’s Day card and Birthday Card. The boys’ emotional needs are not being prioritised above parental conflict*: This is accepted by the mother. The father accepts the parental relationship is poor and this is “not helpful” for the children. On all the evidence, the Court finds the Local Authority assertion to be proved as a fact.

3. *Neglect*

a. *The father has Type 1 Diabetes which has been poorly managed. Due to this he has developed some complications and is partially sighted:* This is not disputed by the father. The Court finds the Local Authority’s asserted fact to be proved.

b. *A school nurse assessment completed on 20/04/2023 identified that ‘E’ needs an optician and dental appointment. The mother has not actioned this to date stating that ‘E’ has been too anxious to attend*: This is not accepted by the mother. It is a fact, on the clear evidence before the Court that on 20 April 2023, a school nurse assessment identified that ‘E’ required appointments with an optician and a dentist. There is no reliable evidence before the Court of the mother having arranged a dental or optician appointment for ‘E’ from the date of the school nurse assessment to the date protective measures were taken by issuing these proceedings in August 2023. The Court finds the Local Authority assertion proved as a fact.

c. *During a school nurse assessment in March 2023, ‘H’ said he’d never been to the dentist and brushes his teeth sometimes when he remembers:* This is accepted by the mother. The Court finds the Local Authority assertion to be proved as a fact.

d. *During clinic appointments ‘H’s long term blood sugar levels are monitored. This is called the HbA1C. The target HbA1c is 48mmol/mol. ‘H’ has never been within target range since his diagnosis. In January 2023, ‘H's HbA1c was 69mmol/mol, putting him at risk of developing complications:* This is not disputed by the mother. The totality of the evidence before the Court supports the Local Authority’s assertion. The Court finds the pleaded assertion to be proved as a fact.

e. *‘H’s school attendance has declined during the past 12 months from 74% for 2021/2022 to 66% for 2022/2023:* This is accepted by the mother. The Court finds the Local Authority assertion proved as a fact.

f. *‘E’s school attendance has been of particular notable decline in 2022/2023 at 16%. The mother will not say what ‘E’ is doing all day. His last date in school was 20/04/2023. All absence since this date is unauthorised*: This is accepted by the mother. The Court finds the Local Authority assertion proved as a fact.

g. *‘E’ sometimes presents as tired and can have bags under his eyes. During the school nurse assessment on 20/04/2023, he said he had only slept two hours that night*: This is accepted by the mother. The Court finds the Local Authority assertion proved as a fact.

h. *On 05.07.2023, there were concerns from the school with regards to 'H's attitude at school. He was being rude to adults. He spends his days disrupting lessons, not joining in, leaving the classroom and wandering around school. He has knocked over chairs and knocked books off chairs. He refuses to join in any learning. He refuses to eat lunch and frequently does not allow his bloods to be checked*: This is not disputed by the mother. The Court finds the Local Authority assertion proved as a fact.

i. *The home condition is noted to be poor: No sheets on the quilts and mattresses in the bedrooms observed over several home visits. On one unannounced visit, there was a lot of left-over take-away rubbish in the boys' bedrooms as well as medical supplies strewn around 'H's bedroom. There will typically be large piles of clothing and blankets around the house*: The mother does not dispute the description of the home conditions on the date of the Social Worker's unannounced visit. The Court finds the Local Authority assertion proved as a fact.

19. All the evidence in the case leads the Court to find the three elements of the threshold condition under s.31(2), Children Act 1989 to be met. The harm is actual; it is significant; and it is due to parenting that is not reasonable. Threshold allegations are separated out by Local Authorities for forensic purposes, however, there is only one threshold. The Court measures the effect of all its findings against it. Facts, which are minor or trivial if considered in isolation, when taken together may suffice to satisfy the Court of the likelihood of future harm. The Court attaches to all the relevant facts the appropriate weight when coming to its overall conclusion. The conclusion by the Court on the evidence before it is that the threshold for protective intervention is crossed. The harm suffered by the children in the past also gives rise to a real likelihood of future harm, both physical and emotional, that cannot be ignored. The Court finds that the threshold condition under s.31(2) Children Act 1989 is satisfied.

Welfare

20. What is the type of harm that might arise? In addressing this question, the Court must ask itself what type of harm might arise to 'E' and/or to 'H' in the care of their mother and/or their father. Each child is at risk of suffering harm based on their individual circumstances. There are also shared risks. In her oral evidence the Guardian told the Court that for 'H', the management of his diabetes in the care of either his mother or father may lead to an acute risk of immediate and long-term harm to his physical health. In respect of 'E', the risks to his physical health come from a failure to meet his health needs, including immunisations, optical appointments and missed blood tests. Both children are at risk from dental neglect and both children have experienced problems with their teeth. Further, the Children's Guardian told the Court that both children have suffered and are at risk of suffering emotional harm due to the mother's unmet psychological difficulties, due to both parents not being emotionally attuned or emotionally available and due to a long-standing lack of consistent engagement with professional services designed to support the family. Further, both children have suffered significant harm and are likely to suffer significant harm through poor educational attainment. The Children's Guardian described similar concerns in respect of the father's capacity to meet the emotional needs of the children and through his use of illegal substances.

21. 'H' has been diagnosed with Type 1 diabetes. He is insulin dependent. He has an individual health care plan which provides for continuous blood glucose testing and monitoring through a Dexcom G6 system, a glucose monitor. That system receives glucose data continuously from a sensor attached to his body and sends this information to a handheld receiver or phone app. The system has alarms to alert an adult if his glucose level is too high or too low. At times when Dexcom cannot be used, a blood glucose finger prick test is required using a glucometer. Further, the child has an 'Expert' blood glucose monitor, so that he can test his blood glucose. Blood Glucose monitoring is noted to be an essential part of daily

management. ‘H’ requires administration of variable amounts of quick acting insulin with meals, depending on how much he eats.

22. ‘H’s health care plan identifies and explains hypoglycaemia (‘Hypo’ or ‘Low Blood Glucose’) where blood glucose levels are below 4 mmol/l (millimoles per litre). Individual ‘hypo-symptoms’ for the child are described as including feeling shaky or dizzy, feeling weak, looking pale, having a headache, feeling hungry or behaving out of character. The health care plan identifies the aim to treat and restore blood glucose level to above 4mmol/l. The plan further notes that it is the mother’s responsibility to ensure the child’s emergency box is adequately stocked.

23. The health care plan identifies and explains hyperglycaemia (High blood glucose) as being when the blood glucose levels are above 14mmol/l.

24. Diabetes UK describes ‘HbA1c’ as glycated haemoglobin: “This is something that’s made when the glucose (sugar) in your body sticks to your red blood cells. Your body can’t use the sugar properly so more of it sticks to your blood cells and builds up in your blood. Red blood cells are active for around 2-3 months, which is why the reading is taken quarterly. If you have diabetes, an ideal HbA1c level is 48mmol/mol (6.5%) or below. A high HbA1c means you have too much sugar in your blood. This means you’re more likely to develop diabetes complications, like serious problems with your eyes and feet.”

25. The mother’s own evidence in the form of screen shots of ‘H’s blood glucose monitoring data for 1 to 14 August 2023 show on average his blood glucose was high 21% of the time and was very high 38% of the time. The mother considered that these levels were “fine.” For the period, immediately following the issuing of proceedings on 8 August 2023, ‘H’s blood glucose levels were high 21% of the time and very high 11% of the time. The mother has not provided any other data relating to ‘H’s blood glucose monitoring.

26. ‘H’s treating diabetes team nurse informed the Court in a letter dated 26 June 2023 that the mother had not downloaded ‘H’s blood glucose levels since 19 June 2023. The nurse reported, “it looks as though ‘H’ has been having a few more hypo's (low readings) than we would like to see. I have just called mum to speak with her regarding this and she did not answer so I sent a text asking if she had done a download since last Monday and she has replied to say that she is down in Cornwall for the funeral. She will download when she is back at the weekend. I have asked her via text if ‘H’ is still having frequent hypos. I am awaiting her reply.”

27. On 2 August 2023, ‘H’s treating Consultant Paediatrician, Dr Mitchell, provided a report recording the following concerns:

> “[‘H’] was diagnosed with Type 1 Diabetes in August 2014 and has been under my care since that date. The family has received a significant amount of support over the years from school, children's services’ involvement and the Paediatric Diabetes Team. From an early age there were problems with school attendance, which the school addressed directly, and with attendance to meetings arranged with the diabetes nurses, clinic attendance and the follow through of advice given by the diabetes team. There has been the use of the TAF framework and safeguarding escalation to try and support [‘H’] and his family. The family has changed in composition a number of times over the years with [‘H’] living with his mother but varying involvement from his father. One of our long-standing concerns is that [‘H’s] mother has had numerous health concerns of her own about which I do not have details but this has been a frequent barrier to her being able to carry out advice from the diabetes team or attending meetings / clinics. My concern at present comes from both the longevity of the time that we have been concerned about the supervision of [‘H’s] diabetes care and also from acute concerns about recent lack of contact with the diabetes team and in particular over the school summer holidays when there is no school safety net for him…The National Institute for Health and Care Excellence (‘NICE’) Guidelines recommend that children should be seen a minimum of every 12 weeks (i.e. 4 times per year). Our regional…and local guidance for

children with poor glucose control is that this contact should be increased according to their HbA1c, which is the outcome measure of glucose control. The target HbA1c is 48mmol/mol. In January 2023, 'H's HbA1c was 69mmol/mol."

28. Dr Mitchell described acute concerns in respect on non-attendance at clinics, difficulty arranging contacts between the diabetes nurses and the mother and downloading of glucose data. Dr Mitchell noted:

"In summary my specific concerns about 'H' are:
1. Risk of persistently high glucose levels: On his last recorded HbA1c in January 2023 his blood glucose levels were persistently high. This puts him at acute risk of going into a diabetes coma (diabetic ketoacidosis) and having been diagnosed for 9 years at high risk of multiorgan failure as a young man eg blindness, kidney failure and heart disease;
2. His parents are not demonstrating that they are doing anything to bring these blood glucose levels down;
3. His parents are not engaging with the diabetes team to enable us to support them to improve his glucose levels;
4. During the summer holidays there is no school safety net for ['H'];

For these reasons I feel that ['H'] is at both acute and long-term risk."

29. On 16 August 2023 the hospital diabetes team reported that 'H's, "control is still suboptimal as his HbA1c has gone up slightly, 68 mmol/mol to 72 mmol/mol, and this is concerning. Recommended target is below 48 mmol/mol."

30. On 11 October 2023, the Paediatrics Diabetes Team provided an update on the clinical care of 'H's diabetes, covering the period from 12 September to 11 October 2023. The Court was informed of the following:

"['H'] is using the Dexcom G7 sensors for his glucose level monitoring. He uses the receiver to capture his sensor readings and his mother is now downloading the receiver on to the Dexcom Clarity platform and sharing his glucose sensor data and reports with the children's diabetes team. Last downloaded data seen was up to 9 October 2023. I understand that mother has had initial issues with downloading blood glucose readings from his Expert meter on to the Glooko account, but now able to do this and last download seen on Glooko, was on 9th October 2023. With his new mobile phone, he will be able to use the following features: the Dexcom G7 app to view his own glucose levels instantly; the Dexcom G7 follow app to enable his mother to see his glucose readings in real time; the Clarity app which will enable him automatically to share his glucose levels with the cloud-based clarity platform which can be accessed by the diabetes team; The Glooko app which will bring together the combined information from his Dexcom CGMS and his Expert blood glucose meter.

Management of diabetes at school: School plan done and a meeting with the school and diabetes nurse arranged to go through recent concerns with management of ['H's] diabetes in school. School visit on 2nd October2023...['H'] has had a period of sickness absence and was not aware about the importance of not exercising when blood sugars are high. She has agreed to relay this information to the other staff. She did also mention that 'H' does not have spare diabetes equipment in school, and this would prove useful in the event of him forgetting his kit. Diabetes nurse will speak to mum about this and drop a spare meter into school….no further concerns at present.

Diabetes clinic attendance: ['H'] attended the multidisciplinary clinic last on 12/09/2023 with his mother. His diabetes control had improved as assessed by his glycosylated haemoglobin (HbA1c) level. This is a measure of glycaemic control. His HbA1c was previously 72 mmol/mol in August 2023, and now 64 mmol/mol in September 2023. Recommended HbA1c is less than 48 mmol/mol.

Expectation of contact from parent: Parents were expected to contact the team to schedule an interim review for ['H'], 4 weeks after his last clinic as he is currently being seen at a two-month interval based on his last HbA1c result. His mother contacted the team by text on the 18th of September 2023, requesting a review. He thereafter had a review of his diabetes the following day, on the 19th September 2023, by his diabetes nurse…The diabetes nurse also arranged to do a home visit on 27th September 2023, to help set up the Diabetes M app and the Dexcom G7 app on his new mobile phone. Unfortunately, this was an unsuccessful contact. Diabetes nurse arrived at the house on 27/09/23 at the scheduled time, only to find mum getting into the car with her friend…She explained that she was on her way to an emergency appointment for herself and had forgotten to make the nurse aware. Agreed to re-arrange the visit…Telephone call with mum as requested to review blood sugars took place last on 9th October 2023. Data reviewed from Dexcom. ['H'] was still having frequent hypoglycaemia episodes (low blood sugar). Report showed a hypo frequency of 11%. Recommendation is for hypo frequency to be less than 3 - 4 % of readings. Mum reports losing the Dexcom G7 handset on Sunday and Monday. Hence gap in report. Mum described ['H'] as having a sickness bug recently which may have contributed to the frequent hypos…

Summary: There has been an improvement in ['H's] overall diabetes control as shown by his lower HbA1c level. Mum is now carrying out regular downloads of his Dexcom reader and Expert blood glucose meter. ['H'] is now able to share his glucose data with the Diabetes team regularly. Concerns remain regarding frequency of hypos. It is the expectation that parents must contact the Diabetes team as an emergency if he has been experiencing hypoglycaemic episodes at a higher frequency than the guidance set out. That is, more than 3 episodes in a 7-day period. Concerns remain regarding parents ensuring ['H'] has spare equipment at school."

31. Dr Mitchell provided an updated report in December 2023, repeating her concern about, "the longevity of the time that we have been concerned about the supervision of ['H's] diabetes care and also from acute concerns about recent lack of contact with the diabetes team and in particular over the last few weeks, when ['H'] has been spending a lot of time with low blood sugars (hypoglycaemia) and the concerns for the next few weeks of Christmas holidays when there is no school safety net for him. This is despite the ongoing interim supervision order.

Difficulty arranging additional contacts with the diabetes nurses: this is an intermittent issue, for example 2 dates were offered last week (12 and 13th December) for PDSN home visit and both were declined and so the clinic appointment on 15th December was made instead.

Non-attendance or cancellation of diabetes clinics: Cancelled by Mum on the day of clinic 15/12/2023 – this clinic was specifically made following the failure of being able to arrange the additional contact with the diabetes nurses Last seen 21/11/2023 despite being under a supervision order, which stipulated that ['H'] should be brought to clinics.

Persistently raised HbA1c. The target HbA1c is 48mmol/mol. In November 2023, ['H's] HbA1c was 62mmol/mol. While this has reduced from earlier in the year, there is a concern that this is due to an excessive number of hypoglycaemia episodes (as the HbA1c is an average of his blood sugar levels over the last 2-3months), rather than due to an improvement in his overall diabetes control.

Hypoglycaemia (low blood sugars): ['H'] has been having an increased number of hypoglycaemia episodes over the last few months. Dose changes have been made to improve this. For example, in clinic in November 2023 over the last 30 days he was 7% low. His background insulin was therefore reduced. Currently (as of 18/12/23) over the last 30 days he has been low 10% of the time, increasing to 13% over the last 14 days. Acceptable frequency of hypoglycaemia episodes is <4%.

Failure to contact the diabetes team appropriately when high frequency of hypoglycaemia: Children with hypoglycaemia may have the following symptoms: sweaty, dizzy, hungry, shaky, pale, mood changes, glazed expression, or may be asymptomatic. There can also be

more serious consequences, such as seizures, coma or death. We would expect all parents/carers of children with diabetes to contact the diabetes team for advice if a child has more than 3 hypoglycaemia episodes a week and would aim to keep hypoglycaemia frequency to less than 4%.

Failure to respond to low glucose alarms: In relation to the interim supervision order (clause 12) [sic], we would expect the parent/carer to respond to the alarms on ['H's] glucose sensor, to do a finger-prick check of his blood sugar levels if the alarm is for a low blood sugar, and then treat the low blood sugar appropriately by giving him some fast acting sugar, and then rechecking the blood sugar 15mins later to ensure resolution of the hypoglycaemia. ['H'] should then receive some longer acting carbohydrate containing food, to prevent a rebound low blood sugar. There are multiple alarms that are set on his receiver to allow different opportunities to respond to his blood sugar levels, and these alarms repeat, so that if the initial alarm is missed, if the problem persists the alarm will sound again. Looking at the downloaded glucose sensor data in the last 2 weeks we have noted that ['H'] has had hypoglycaemia episodes on most days, including on most nights. While there have been some finger-prick data noted for the last weeks, on one day (Sat 9th December) he had low blood sugars on his glucose sensor, and there is no evidence of any blood sugar checks on that day.

In summary my specific concerns about ['H'] are:

a) Currently a risk of persistently low blood glucose levels. These can have potential serious
consequences as detailed above;
b) His parents are not demonstrating that they are doing anything to manage these blood glucose levels;
c) His parents are not engaging with the diabetes team to enable us to support them to improve his glucose levels;
d) During the Christmas holidays there is no school safety net for 'H'.

For these reasons I feel that ['H'] is at both acute and long-term risk."

32. The risks to 'H' arising from persistently poor management of his diabetes by his parents could not be clearer, including an acute risk of diabetes coma (diabetic ketoacidosis), blindness, kidney failure, heart disease and death.

33. In addition to the harm that may arise to 'H' specifically from the parents' management of his diabetes, both children are at risk of significant emotional harm.

34. In respect of 'E', in September 2023, a Specialty Doctor in Child and Adolescent Psychiatry noted that 'E' was diagnosed with 'Emotional Difficulties.' However, no acute concerns were identified at that time regarding 'E's mental health.

35. A psychological assessment was completed pre-proceedings in respect of 'H' by the Local Authority's in-house Psychologist. In a report dated 27 September 2023, the Psychologist recorded that, when the assessment began in July 2023, the mother declined to meet. Subsequent assessment sessions occurred at the family home in August 2023 where the mother engaged in "some brief interaction." The Psychologist noted that accessing information from the mother or 'H' about his early experiences was difficult as the mother was not able to answer these questions and 'H' was evasive.

36. The Psychologist formed the view that, "When speaking about his experiences and family, 'H' does not appear to draw on his own thoughts. He appears to be coached and prepared for such questions as he used phrases that appear adult and he often said things that were not in the context of the question asked." The report records, "There is a high level of mistrust of professional involvement."

37. The mother's low mood and feelings of anxiety were said to, "manifest as needing to sleep in the day and finding it difficult to organise the schedules and needs of ['H' and 'E']…Common patterns of [mother's] engagement with services has been to blame [father] for the difficulties that she, ['H' and 'E'] experience…"

38. The report records, "['H'] shared that he found his family situation "confusing" and that it was difficult to know who he should believe…[Mother] reported that [Father] has given ['H'] unhelpful information about diabetes management including that it 'makes you angry' and 'you can eat what you want'…It appears that ['H'] does not feel safe to be able to express his feelings at home or with professionals and therefore suppresses them which then can make him feel irritable and on edge…He described anger manifesting in a shaking leg and zoning out from conversations in the initial stages and then explosive behaviour such as shouting or punching walls if things escalate."

39. The Psychologist concluded that 'H' is, "a young person who has experienced multiple adversities in his early years. There are multiple stressors upon the family which mean that all members of the family can feel overwhelmed routinely and may struggle to access positive coping skills. The high levels of mistrust of professionals, risks from community members and ongoing stigma and isolation mean that ['H'] is likely to overestimate threat and danger and feel as though nothing is safe. This will mean that ['H's] neurobiological system is likely to be in 'high alert' and his body remains in a state of fight and flight. The highly conflictual nature of his parents' relationship means that ['H'] prioritises protecting the emotions and wellbeing of his main carer givers which does not allow him space to express or explore his own emotions which leave them supressed and unprocessed. This is likely to present as outbursts of anger. His parents' mental health, physical health and preoccupation with their relationship is likely to have meant that ['H'] will feel concerned about their wellbeing and witnessing his Mum's poor mental health, he is unlikely to want to burden her in order to ensure that she remains close. This is demonstrated through his resistance to engage with professionals and him sharing thoughts and ideas that he believes protects others. In doing so, ['H'] is prevented from trying to understand his own thoughts and feelings which leaves him feeling frustrated and confused."

40. Further, the Psychologist observed that, "The current circumstances in his life, alongside diabetes, mean that ['H'] is likely to feel out of control of many aspects of his life, leading to feelings of anger and injustice. One place where he might seek control is through the lack of maintenance of diabetes. Not monitoring his blood sugar or food intake may be a way of unconsciously seeking caring responses from his parents and may serve as a way of him being noticed in the context of both parents being preoccupied. It may also give him a sense of control and power. ['H'] is therefore placed in a bind, he must either take responsibility of his diabetes and therefore his emotional needs may go unnoticed and unmet, or he continues to avoid and prevent attempts to care for his diabetes which leads to longer term stress in his social network…To support ['H's] emotional development and wellbeing, it is essential for ['H'] that he is able to live in circumstances that are stable and predictable."

41. In the course of these proceedings, the Court gave permission to the parties to jointly instruct an independent expert to complete a global family psychological assessment of both children and both parents, necessary to resolve the proceedings justly. Dr Hardiman, Chartered & Counselling Psychologist, prepared a comprehensive report dated 1 December 2023.

42. In respect of the mother, Dr Hardiman told the Court that she, "appears to present with a pattern of attachment representations which interact to allow her to exert a marked degree of control over the impact of the social world around her…These are…clearly self-protective strategies intended to allow [her] to control the extent to which others may have an impact on her personally. One set of strategies used appear to be oriented around positive feeling states associated with isolation and independence. These can…extend to…protecting [herself] from information which might trigger negative affect states and as a result, key information which may be distressing can be distanced or omitted from her thinking and narrative…She can hold a problem saturated narrative…She sees others as failing her and the family, often causing or

contributing to the difficulties they are facing. In this sense, responsibility for problems and difficulties is shifted [towards others], who [have] not met her needs for support as she sees them. She can be biased towards seeing potential harms and risks in the social world…She spends much of her time seeking to avoid problems that may occur…In addition to these negative interpretations of the social world and interpretations of risks, she holds an understanding of [herself] and children as being in need of additional care and support. This combination of perceived self-need and perceived risk from others can appear to leave her stuck, feeling that she cannot move without help but that others cannot be trusted to provide help.

Her solution to this dilemma is typically to seek to exert control over the nature and extent of help that she may access. She may be less able to accept help which is not under her control or does not exactly conform to her own understanding and expectations…She may do so by rejecting any disconfirming evidence…One consequence of this may be to shut down [her] capacity to access alternative sources of support…they come at a cost in terms of the missed opportunities and stresses associated with using this set of controlling strategies as opposed to more flexible, open and relaxed strategies…Her account often returns to understanding the social world in terms of potential risks and harms to [herself] and her family. There is therefore good evidence to support understanding [her] experiences and presentations in terms of trauma and attachment disruption. She has been diagnosed with Complex PTSD which is consistent with this approach to understanding. In part, her experiences appear to present as mood disturbance, both as anxiety and depression at times.

The effect today is that [she] can seek to control her interactions with others and can find it difficult to accept situations in which she might not be in control or where others may have control over her. In practical terms this can mean that [she] can be difficult for professionals to engage with and they may find that their best efforts may not be accepted by her…She can also tend to prioritise her own viewpoint and dismiss or omit views and evidence which might contradict her own pre-existing points of view…Either others need to act as she understands is needed or she is likely to reject their efforts and see their failure to act as desired as reinforcing evidence for the idea that others do not understand the children's needs as she herself does… Overall…the mother's understanding can be highly self-referential in nature. Focussed on how she sees the safe and enmeshed personal family being misunderstood and let down by others including father."

43. Dr Hardiman continued in respect of the mother, "She sees her relationship with [the children] as particularly close and enmeshed, friendships as well as parent-child based. She values times when the children provide care for her…She…places special emphasis on the closeness of her relationship with them. This may though mean that the children experience this relationship as particularly enmeshed and may find it more difficult to enter into other relationships since they are likely to be so different to their experience of their relationship with their mother…the impact of these disruptions on her day-to-day functioning remain relevant to the experiences of the children. It is likely that from the children's perspective they will experience mother as unpredictable and difficult to engage closely with. At times, their experience of her will reflect the enmeshed characteristics of their relationship, she will be close and probably quite controlling of them. They may often find that their interactions with her are driven by her own needs in the moment rather than their own. At other times, she may be more distanced and unavailable. She may seek isolation and independence much of the time, leaving the children lacking access to an emotionally and psychologically available attachment figure. The children are likely to find it particularly difficult to predict how mother might act at any time. This is particularly concerning since it risks teaching them that others, even those they are close to, are unpredictable. Mother also has difficulties in terms of her capacity to mentalise regarding the children, failing at times to perceive each of them as a unique individual…She draws on a problem saturated narrative to understand [herself] and the children, which is likely to lead to them both being treated as 'children with problems' rather than fully rounded individuals, but will also put them at risk of internalising an understanding of the self as faulty and problematic. There certainly appears to be evidence for this with ['E'] when he expresses that 'I'm stupid' when he can't do things. Additionally, the manner in which mother understands the wider social

world as threatening also risks rubbing off onto the children, potentially leading them to have difficulties engaging openly and confidently with the wider social world around them."

44. With regard to therapeutic intervention, Dr Hardiman told the Court in his substantive report, and in an addendum of 19 January 2024, that "an NHS Complex Post Traumatic Stress Disorder service [will] offer…appropriate therapy for her needs. Mother will need therapy that will take some time, probably at least a year or longer (two years or more is certainly a realistic possibility) for significant recovery. Additionally, the complexity and multi-faceted nature of the work required means that the nature and degree of progress that mother might be able to make cannot be accurately predicted. Consequently, whilst engaging with the C-PTSD team for therapy is absolutely the right next step for mother, the time that progress will take and the uncertainty of outcome must be borne in mind when thinking from the children's perspective about her capacity to offer them good enough care now and for the immediate future…A C-PTSD team can provide support to people who have experienced long standing interpersonal trauma, especially early developmental trauma…as an alternative to what would have been called personality disorder services...There may be a range of interventions available via such a service. Importantly though, the service is likely to have a wraparound element to it, in that they can provide support beyond individual psychological therapies. Whilst these psychological therapies (i.e., CBT and EMDR for trauma, CAT/schema or psychodynamic for interpersonal functioning for instance) can all be provided outside of such a service, non-NHS services will likely struggle to match the full range of courses, individual and group support and therapy that might be available from a C-PTSD service…The core areas of intervention will likely be focussed on the impact of past traumatic experiences (widely defined and including early developmental disruptions) on… present day interpersonal functioning…In principle, [the mother] could undertake the recommended work whilst the children remain in her care. However, I am aware that there are some very practical deficits in the quality of care presently being provided to the children (i.e., diabetes management) which may in my view override this statement if immediate progress is not made in these areas…[the mother] needs to be willing to make this commitment – to engage with a service that can help her, but maybe not always on terms of her choosing."

45. Turning to the father, Dr Hardiman told the Court that cognitively he presents with generalised difficulties across the range of functioning assessed. "Additionally…[there is] evidence of visual deficits which have practical impacts on his capacity to negotiate the world around him…In terms of his general presentation, [the father] seeks to distance [himself]…from information which he might experience as difficult or threatening to his internal self-regulation. He omits and dismisses information and denies knowledge or capacity to understand much of the time. The overall effect can be to cause [him] to present as lacking in understanding when perhaps more accurately he may be seeking to minimise discomfort in the moment by maintaining distance from emotionally threatening information…[he] relies upon strategies of distanced withdrawal and avoidance of close attachment relationships. He maintains distance from close relationships by choice but will also maintain distance from information which might threaten his internal emotional stability. The effect is as described, to markedly reduce the amount of information that [he] might feel comfortable discussing with others. [He] appears to have a very limited understanding of his own emotional world, which is in part likely to explain why he seeks to avoid material with high levels of negative emotional valence. He relies upon quite concrete understandings of the world around him. These concrete understandings largely reflect his underlying attachment strategies. In addition though, they also act to reduce the complexity of the world around him that he feels he needs to understand and with this done, he is able to feel that he is doing well and can understand what he needs to. They therefore also act to protect him from exposure to elements of the social world that he would feel less able to understand, predict or control. He does not appear to have any meaningful insight into his own patterns of thinking and feelings, relying instead on an apparent simplification of the world into concrete events that occur around him.

    Turning to the children, he sees little clear differentiation between them…This is in my view likely to reflect his rather limited capacity to look beyond the superficial in their presentation…

he has not formed independent perceptions of each of them to the extent that might be expected. He generally minimises their difficulties, his own role and their mother's role in those issues… this likely reflects his rather limited conceptualisation of what it means to be a parent as he thinks in practical concrete terms…There is therefore a general absence of interpersonal connection with the children in his account, and he tends to leave a marked interpersonal space between them. This space is likely to be experienced by the children as a boundaried and unavailable form of caregiving…The children report enjoying their time with father…and they make clear that they would like to spend more time with him in future if possible. ['H'] does offer some negative reports regarding father especially when staying overnight with him. Overall though, father's distanced attachment representations and very limited capacity to think about the thinking of self or other are likely to impact on the experiences of the children when in his care. Father can be relatively absent from the intersubjective space between himself and the children. This is likely to mean that the children experience one of their primary caregivers being unavailable to them…Additionally, his limited capacity to think about the thinking of the children (to mentalise) also impacts in that again the children will experience not having their own minds seen by their primary caregivers…in addition it is important to note that father's areas of difficulty mirror some of those of mother and as a result he may not be able to provide the children with a form of care and interaction which may compensate for any deficits in mother's care.

In principle, the sort of distancing attachment representations and limited mentalisation seen in father's presentation can be amenable to psychotherapy…if this route was to be taken, father would probably need at least one year and probably longer of work with a therapist trained in person centred and/or psychodynamic therapies. This work would not be available with the NHS…father's overall presentation strongly suggests that he would not want to engage in such work, or perhaps even see that there is a need for it. The prospects of him engaging with therapy and then being able to use it to support a process of change and growth is unfortunately in my view quite limited. I could not therefore support deferring decision making for the children pending positive therapeutic change occurring."

46. Dr Hardiman continued, "Father is not in my view able to offer the children an emotionally and psychologically engaged connection with him. They are therefore at risk of continuing to experience unavailable primary caregivers when in his care, as they...do when with their mother. Additionally, father appears to have difficulty balancing the needs of both children and may as a result tend to overlook ['H's] needs when they are together…He demonstrates a limited capacity to understand the impact that his actions or lack of action may have on others. He minimises, omits or denies many of the difficulties that the family have faced…This clearly has implications for his actual capacity to effect change that he either does not see any need for or cannot engage with the emotional consequences of accepting that there is such a need."

47. In respect of the child, 'E', Dr Hardiman told the Court that he, "generally keeps a distance from…close attachment figures…He has relatively little insight into his own emotional world or that of others…he reports having close relationships with [his parents]…However, in context these accounts appear to be efforts on his behalf to provide socially expected responses in interview, to minimise the extent to which he needs to have difficult interactions in the moment. In general he appears to describe them as actors in the world around him rather than in terms of being people that he has close emotional and psychological connections with…He describes a relationship with mother which is much more positive than negative. He describes a relationship with father which is significantly less emotionally valent to him and is also more balanced in terms of positive and negative emotional experiences…he feels that ['H'] holds a range of positive emotional responses towards him and acknowledges that he also feels positively towards ['H']. However, he also attributes a large number of negative emotional states to his relationship with ['H'], suggesting that there are both strong negative and positive feelings embedded in this relationship, more so than in any other close relationship that he has. He also feels that ['H'] benefits from marked parental overindulgence. In my view, it is likely that this reflects his experience of ['H'] receiving care in relation to his diabetes. I note that during both contact observations, ['H'] was actually rather excluded at times whilst ['E'] was relatively

closer and more engaged with his parent in both sessions. There is likely to be a degree of sibling competition present in terms of their eliciting of care from their parents."

48. In respect of the child 'H', Dr Hardiman reported, **"**Superficially, ['H'] can present at times as being rather socially distanced and self-reliant. However, his underlying attachment representations and presentation when away from his family can differ from this, though not without complexity…When not thinking about his family…['H'] holds a relatively more positive overall outlook on events…Within his family dynamics, ['H'] can appear to be rather isolated…His relationship with his mother is clearly his primary emotional relationship. His relationship with his father is more nuanced. He describes enjoying the things they do together and wanting to spend more time with him. He expresses no concern about the prospect of staying overnight but then qualifies this by describing being shouted at when he needs his father's help in the night with low glucose levels. He also describes times when his father has acted badly…His relationship with his father does not appear to hold the same level of emotional connection as does that of his mother. He does see both good and bad in the relationship. He understands that his parents' relationship has been acrimonious in recent years. He regrets this and wishes that they could get on. He would choose not to see his dad if doing so would lead to conflict between his parents. He is also able to see both good and bad in his relationship with his brother, though on balance he sees more bad than good. ['H'] understands that professional concerns are oriented around health concerns. Specifically this means his own diabetes regulation. He holds himself responsible for this since sometimes he will have a 'sneaky eat' which means that his blood glucose can rise."

49. Dr Hardiman told the Court, "Both children minimise and deny difficulty to an extent. Of the two, ['E'] clearly does so to a much more significant extent. This can be understood in terms of his underlying attachment representations which are oriented around minimisation and denial in general...In terms of the sibling relationship, both children describe some strong negative feelings within this relationship…It is likely in my view that whilst the sibling relationship certainly has areas of difficulty, at this stage the relationship they have with each other will also be a source of stability and support for them in a time when there may seem to be much uncertainty around them. It will in my view therefore be important to try and sustain this relationship in the future for the benefit of both of them."

50. Dr Hardiman concluded, "I am worried about both children. ['E'] presents as very inhibited and reserved. He is disengaged from school. He will benefit from additional support to help him build his sense of social identity and to build a friendship network which might be expected of someone of his age. He appears to have quite low self-esteem which may at times be masked by his sense of practical ability…He may benefit from more focussed individual therapy in future, but as a starting point I would strongly suggest that fully engaging with school and accessing support through them would be a good starting point. Engaging with something that everyone else his age does and being well supported to do so will be ideal for him at this stage. ['H'] does not present with the same level of individual disrupted interpersonal functioning. I understand that when he is at school then he has moments of doing very well in class. As with ['E'] though, his primary need is simply to be in school more consistently. This will support his developing social identity and sense of personal competence. For both children also, spending time with peers and away from each other will probably have a positive impact on their sibling relationship by taking the pressure off their relationship caused by only having each other as peer company much of the time."

51. In an addendum report of 19 January 2024, Dr Hardiman commented on the likely impact on the children if they remained in the care of their mother: "Mother in my view appears to find it difficult to recognise and prioritise the needs of the children. In the event that the children continue to experience the same caregiving patterns as they have until now, I would be concerned that they would experience ongoing reinforcement of the disrupted attachment representations they already appear to have developed. In ['E's] case…I have outlined the distancing and inhibited nature of his attachment representations. He has learned that care will not be responsive to his needs in the moment. He has learned that he should suppress his own

needs and desire for connection, perhaps even that expressing such needs may be counterproductive leading to rejection by significant caregivers. ['H'] appears to have learned similar strategies to an extent, and the same concerns would be present in this sense. There are more positive signs to ['H's] presentation overall, but I would be concerned about his capacity to build on these positive elements if his caregiving environment remained unchanged. For both children, these learned strategies carry long term risks for their future. Both children risk having difficulties forming close relationships as children but also as adults, this would carry through into their own possible future roles as parents. The sense of distance and isolation may also put at risk their long-term mental health and wellbeing."

52. Dr Hardiman further commented on the likely impact on the children of separation from their mother: "Both children's rather distanced attachment representations may mean that in the event of such a move, they may not show significant superficial distress at the time. However, it is clear that both children are close to their mother and that the relationship between the three of them can have a rather enmeshed quality to it at times. Removing them from this close and enmeshed relationship will likely be distressing for them, whether they express it or not. It would therefore be important for carers to be mindful of both children's limited capacity to show their feelings in this situation. In this situation, therapy may be appropriate for both children. I would suggest that play therapy would be a good option and may be available via statutory services such as CAMHS at the time. If not, privately commissioned therapists could be located…School may also be able to offer options such as ELSA (emotional awareness) support and this would be ideal for both children if available."

53. Dr Hardiman's evidence was thorough and compelling. His expert evidence is an important part of the overall evidential picture in the case. His evidence was not subject to formal challenge. This Court finds no reason to depart from the independent expert conclusions reached.

54. There is further unanimity of professional opinion that the children will suffer significant harm through their educational needs not being met. In respect of 'E', by 4 October 2023 his school attendance had fallen to 33%. He had been suspended from school for five days. He was reported to appear, "extremely tired at school: he often looks like he hasn't slept. [He] regularly comes to school without food or water and often complains to us that he is hungry or hasn't eaten anything all day. [He] often appears down at school and currently we do not see him being particularly happy in school. When [he] is in school he is often not in lessons. Sometimes he will use his safe space well but at other times, he is truanting lessons, sometimes with other pupils from his year group. [He] does have a safe space and key adult which he does access but not consistently. [He] does not always have full school uniform. The school have provided lots of uniform for ['E'] since he joined us in Y7 but this often goes missing. At present, [the school] feel that they can meet the needs with [his] EHCP but the reason he is falling behind his peers significantly is attendance. It is challenging to put [his] EHCP into practice and ensure support for him when he is in school so little. There have been increasing concerns around the children that [he] spends time with in school, with possible connections to drugs. [He] has been found in school talking on the phone to an adult male who was unknown to us. [He] and friends have also been found to be shoplifting at local shops. We have seen an increase in [his] defiance in school since returning to school in September. [He] has been suspended twice this year. On both occasions [he] would not listen to reason or instructions from any members of staff."

55. There is professional consensus that the children are further at risk of emotional and physical harm through parental substance misuse. The mother's GP reported that the mother had a drinking problem in 2014. The father told the Court that the mother drinks a lot of alcohol and has parties on a frequent basis. 'H' also mentioned that his mother has friends over and he is unable to sleep. On an unannounced social work visit on 25 May 2023 a lot of alcohol was observed in the mother's home. The mother told the Social Worker, and tells the Court, that the alcohol had been purchased for a barbeque. The Local Authority continues to have concerns that alcohol is a contributing factor to the variation in the mother's presentation during home visits. Further, the Local Authority is concerned about the number of social work home visits cancelled by the mother.

56. On 14 September 2023 the mother was ordered by the Court to obtain expert evidence in the form of toxicology test results by way of hair strand testing, covering a six-month period and blood alcohol testing by 5 October 2023. The Order included a caution that an adverse inference may be drawn from any failure to comply with alcohol testing. The mother did not comply with the Court's Order. No application was made to discharge or vary that Order. At the Issues Resolution Hearing on 7 February 2024, the Local Authority gave notice that it intended to seek an adverse inference against the mother in relation to her non-compliance. At that hearing, an oral application was made on behalf of the mother to extend the time for alcohol test results to be produced. The Court granted that application, ordering toxicology testing to be made available to the Court by 23 February 2024. The warning in relation to an adverse inference was repeated. The mother failed to comply with that Court Order. No toxicology test results have been provided. In her final statement, which itself was filed late, the mother expressed concern about hair loss and the impact of providing a hair sample for testing. She expressed concern that her health issues would impact the blood test results and she indicated a wish to first discuss this with her GP. In her oral evidence, the mother told the Court that she was worried the children would see her with bald patches if she provided a sample of hair for testing. She was tearful when giving this evidence. She told the Court that she had not spoken with her GP about the impact of giving a blood sample.

57. The Children's Guardian told the Court that the mother's alcohol use, "remains an unaddressed risk, which in my view is heightened given her lack of compliance."

58. In this Court's judgement, the mother's non-compliance with two Orders directing her to provide expert evidence in respect of her use of alcohol is a serious and significant failure. No good reason has been provided by the mother for that failure. There is merit in the Local Authority's submission that the mother's non-compliance with alcohol testing reflects a failure to prioritise the needs of the children. In this Court's judgement, it is right to draw an adverse inference from the mother's non-compliance with Orders in respect of alcohol testing. The Court finds that the mother has sought to conceal her level of alcohol use from professionals and from the Court. Further, the Court finds merit in the Local Authority's submission that the mother's use of alcohol increases the other risks to the children in terms of physical and emotional harm and neglect.

59. In respect of the father's substance misuse, expert evidence in the form of hair strand test results demonstrate repeated active use of cannabis by the father at medium levels during the three-month period tested from mid-August 2023 to mid-November 2023. Cannabis use increased in the period from September to October 2023, before then decreasing in concentration in the most recent period tested but still demonstrating use at medium levels.

60. What is the likelihood of harm arising? A Local Authority parenting assessment of the mother was completed on 19 December 2023. The mother engaged with only three out of ten possible sessions, the mother cancelling six sessions. The mother did not respond to a request from Social Workers to provide a list of the support she needed to complete the assessment. In her oral evidence the mother told the Court that she refused to engage in parenting assessment sessions in the home, as she perceived that she would have to discuss distressing events from her childhood in the presence of the children. The Local Authority submits that the assessment echoes concern from Dr Hardiman. The mother frequently cited her physical health as a problem in meeting expectations regarding her parenting but never talks about her mental health and the impact this may have on the children. The mother was previously assessed by the Adult Social Care team but said that she did not require support. In addition to the troubling issues regarding the management of 'H's diabetes, the parenting assessment highlighted the mother's refusal of a home visit from the diabetes nurse to address technical problems in uploading 'H's data and her failure to correctly estimate and report carbohydrate counts for his meals. The Local Authority concluded that the mother minimised a very worrying extended hypoglycemic episode which 'H' experienced on 9 December 2023. Additionally, as well as highlighting the mother's failure to be honest in relation to the dental care of both children, the parenting assessment detailed two

separate incidents in which the police were involved, where 'H' broke into a school and both children were alleged to have been involved in bullying and physically assaulting a peer. The parenting assessment concludes that the mother, "is not able to make the necessary changes for ['E' and 'H'] within the timescales of these care proceedings. They are emerging into their teenage years and need support now in terms of routine, structure, and therapeutic care by nurturing and experienced foster carers. ['H'] urgently needs support in managing his diabetes and developing his independence and confidence in this."

61. The Parenting Assessment of the father of 19 December 2023 also concluded negatively in that it does not recommend that the children are placed in his care. The father was noted to engage well with the assessment and there were other positives, including his willingness to attend meetings and his demonstration of warmth towards the children. The parenting assessment noted that the father, "said during this assessment he hadn't really thought about the reality and practicalities of having the boys in his fulltime care before. We are concerned about a lack of motivation and preparation on the part of [the father] to care for the boys full-time." The report further highlighted concerns about the father's substance misuse. Although the assessment noted that the father responded well to [H's] diabetic needs during observations, the assessment noted that, "['H'] has spoken about [his father] not meeting his needs during the night times previously. There may be variation in [the father's] awareness during the night-time and we wonder if this may be related to his cannabis use." In his oral evidence the father accepted that, although he is working towards reducing his substance misuse, he takes cannabis in the evening to help him sleep. The assessment also identified the concern that, in light of the parents' relationship, the father would not be able to fully protect the children from parental conflict or communicate effectively with the mother.

62. In her oral evidence, the Guardian considered that the harm to 'E' of the type described is 'highly likely' to happen in the care of his mother, noting that 'E' has continued to experience harm during the proceedings when safeguards were put in place under the Interim Supervision Order, including a detailed written agreement setting out the Local Authority's expectations. The safeguards in place, the Children's Guardian told the Court, were not sufficient to protect either chid. The Guardian assessed the harm to 'H' in his mother's care as being 'likely', telling the Court that the risks were, "slightly reduced because ['H'] does not have the same risk associated with diabetes". The Guardian assessed the harm to both children in the father's care as being 'likely' having regard to the father's own vulnerabilities. This Court finds no reason to depart from that professional analysis.

63. What consequences would there be for the children if the harm arose? The Guardian told the Court that in her professional opinion, there would be a significant impact on 'E's emotional wellbeing and psychological profile that could impact him adversely, including an impact on his ability to form relationships as a young person and into adulthood, "and impacting on parenting children of his own. If he continues not go to school, there will be an impact on careers and prospects and concerns around mental health and antisocial behaviour, putting himself in risky situations." The Guardian noted concerns that 'E', "may be using drugs." In respect of 'H', the Guardian told the Court in stark terms that the consequences for him would be the same as those in respect of his brother, however, "on top of that, death. I am being realistic about that, given evidence and information from the diabetes team: Coma or death and the long term, lifelong implications for unmanaged diabetes." Once again, this Court finds no reason to depart from the professional analysis of the Guardian in terms of her assessment of the consequences for the children if the harm of the type described arose.

64. What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did? The professionals describe a catalogue of support services put in place to assist the family over an extensive period of time. That support has not, either prior to or during the Court proceedings, had the effect of reducing the harm to either child or mitigating the effects. That support includes the following:

(a) A Family Support Worker who has worked with the family since 2015, providing parenting support and advice around routines and behaviour, support with appointments, food bank vouchers and advice regarding housing, relationships, mental and physical health;
(b) An Intensive Family Support Team, providing support to the family from 2017 – 2020;
(c) Safe Space Counselling provided at school for 'H'. 'H' missed most of the sessions due to school absence. He did not engage well with the support as he was anxious about answering any questions;
(d) School Nurse assessments with advice and support to the parents, however, the nurse found it challenging to make contact with the mother;
(e) Provision of a Child Psychologist in school;
(f) Child and Adolescent Mental Health Service, providing ADHD reviews for 'E';
(g) Diabetes Clinical Team, providing training and education, telephone support, home visits, practical support, advice and guidance;
(h) Primary School, which continually sought to improve communication with the mother and find solutions to provide support to 'H' at school. Provided support with school uniforms;
(i) Senior School plans put in place tailored around 'E's needs and the mother's concerns, not consistently attended by the parents. Support with school uniforms and food and drink was provided for 'E';
(j) A Children's Practitioner, offering support to carry out longer observations in the home to provide advice and support: this was declined by the mother;
(k) Adult Social Care Referral to assess the mother's support needs;
(l) Family Group Conference: the mother refused to engage;
(m) Children's Services: regular home visits, Child in Need and Core Group Meetings, Child Protection Conferences and 1:1 sessions with the parents;
(n) DENS worker: the father has a support worker through his housing provider, supporting him with reading and understanding letters and attending meetings;
(o) Change, Grow, Live: the father declined support from drug support services;
(p) Young Carer's Service: the mother did not complete the referral form, notwithstanding multiple reminders and offers of support to complete the form.

65. The Family Support worker noted specifically in October 2023, "I primarily worked with mum for much of the above time. Mum stated that she hadn't been able to trust many people in her life for many different reasons but never disclosed exactly what these reasons where, often stating that it was too painful to even think about, so felt unable to talk about these things. However, mum was willing to engage with me. During these years of working [with] mum she stated that she would regularly ask dad to participate in these planned sessions, saying that she needed dad to also be on board so that they could parent together for the benefit of the boys. Mum acknowledged that she and dad had extremely different views on how to parent in terms of raising ['E' and 'H']. Mum stated that she often felt that she had to parent dad, stating that his emotional maturity was a very serious concern. Mum said that she often felt like dad's mother. Mum often stated that dad's emotional inability and choices was a safeguarding concern without specifically disclosing any reasons at any time, except to say that she won't hesitate to state these reasons when need be.

Dad stated that he had been subjected to abusive behaviour by mum and that he felt bullied by mum. They separately stated several times that their ability to be able work together was impossible and that this caused significant discord and disharmony, which always impacted on ['E' and 'H'].

Mum stated that dad's lack of emotional maturity was frequently the cause of very heated disagreements. Mum stated that she often felt that she had to restrict the boys having contact with their dad, 'as it messed too much with their heads'.

Initially I carried out weekly home visits then moved into fortnightly home visits for most of the duration, however, during the last eighteen months of us working together it was collectively decided following a professionals and parents meeting that my support should now reduce to a monthly home visit, and fortnightly telephone contact which would then allow mum and dad

capacity to also work alongside their named Social Worker and Children's practitioner. All professionals and parents were in agreement regarding this proposal particularly on the basis that ['H'] would soon be leaving…school and therefore it was felt very necessary to transition the family in terms of working with other professionals during this period given his significant health needs.

My interaction with dad was minimal during the first few years, except if dad was occasionally present upon my arrival at the home, whereupon he stated that he would come next time to the weekly sessions. This wasn't the case as dad never attended these sessions. Dad was offered numerous opportunities to engage in 1-1 sessions but declined. Dad agreed to meet with…the family's Social Worker at the time, and me to discuss how he could become more involved regarding parenting as well as working more collaboratively with mum. Dad stated that this would be impossible, stating that he needed to leave the room before he got very angry. Dad stated that he wanted to be a good dad, but that he couldn't cope with mum telling him what he should and shouldn't do. Dad then left the house. Through the passage of time dad agreed after some discussion with…the family's Social Worker, followed by a separate discussion with myself that he would be prepared to commit to twelve 1-1 support sessions with me starting in March 2023. Dad expressed that he felt that this was a positive step. Mum stated that she felt very concerned as to dad's reasons for participating in these twelve 1-1 sessions. Mum stated that she felt very doubtful that dad would ever be able to conduct himself as the adult parent, stating that she had great concerns and worries for both of the boys' emotional wellbeing whenever they were in their dad's care.

When I first started working with the family, we began by looking at mum's relationship with her children. Mum was open about the traumatic birth that she had experienced regarding ['E'] and explained how this had greatly impacted on her ability to bond with him, which mum said had affected her relationship with him, although clearly stating that she loved him. Mum stated that she had a completely different bond with ['H'] because she'd had a very different experience with him, but this made her feel guilty simply because she was able to compare how differently she related to both boys. Mum stated that she found it easier to be more physically affectionate towards ['H'], and that communicating was him was also easier. Mum stated that she didn't show this, but her tolerance towards ['E'] was different...Over the years we worked on many different areas of parenting and all-round wellbeing. I often revisited pieces of work so that we could review the content to ensure that it was appropriate in terms of ['E' and 'H's] growing development in respect of meeting their needs. Mum stated on several occasions that she found it extremely difficult to put all the discussed strategies into place saying that dad's parenting approach was in complete contrast to her parenting approach, which mum stated caused disruption in being fully able to implement the discussed strategies. This remained the case through the years that I worked with both parents. Mum's complex health issues appeared to become much more challenging for her, and in conjunction to several consecutive bereavements within the last three to four years this often-prevented mum from being both emotionally and physically able to fully participate in the necessary work/sessions. However, mum would answer and return my telephone calls if the school office had been unable to contact mum, which would then require me to either telephone or to carry out an unannounced home visit regarding a welfare check to ensure that all was well with both mum and her children… Mum stated that she often felt highly anxious, overwhelmed, and frustrated, and that in combination to her parasomnias she was often left a very exhausted state.

Over the seven years I also provided additional support with reference to mum's health. This meant that on a few occasions I accompanied mum to her GP and hospital appointments. I also provided food bank groceries if mum was experiencing financial hardship…Dad stated that he preferred the 1-1 sessions in comparison to the specific Dads' course that he had been booked on to, stating that during the first session that he objected to being asked what he considered personal questions, and therefore decided to leave before the end of this session. Dad told me that he had no intention of going back with the reason being that he hadn't been told that the facilitators were going to be a female & male. Dad stated that he strongly felt that there should

have only been a male facilitator present given that it was a course for Dads. Dad never returned to the course."

66. Notwithstanding the level of support provided to the family, there is a consensus amongst the professionals that change has not been evidenced by the parents. Whilst there have been short periods of some improvement, change has not been sustained. This Court finds no reason to depart from that unanimity of professional opinion.

67. Placing the answers to those questions alongside other factors in the welfare equation, the Court asks itself, how do the overall welfare advantages and disadvantages of the realistic options compare, one with another? The Social Worker completed a welfare analysis of both children by specific reference to each factor under the welfare checklist under s1(3) Children Act 1989. Respectfully, I endorse that analysis. The Guardian too completed a comprehensive analysis of the physical, emotional and educational needs of both children individually. The analysis had regard to each child's age, sex background and relevant characteristics. The Guardian had regard in her analysis to the harm both children have suffered and are risk of suffering, the capability of both parents of meeting the needs of both children and further, gave careful consideration to the likely effect on the children of any change in circumstances. The analysis considers the strengths in the family system and the impact on the children, by way of 'early permanence analysis' of the various possible realistic placement options, having regard to the range of powers available to the Court under the Children Act 1989. Further the Guardian considered the ascertainable wishes and feelings of both children in the light of their age and understanding.

68. In respect of 'E', the Guardian told the Court that he, "can lack confidence especially in respect of his learning and needs a lot of encouragement and confidence building; he has verbalised these anxieties in respect of him feeling that he cannot achieve in school or meet the expectations of teachers which has influenced his willingness to attend school." His school attendance at the time of the Guardian's analysis in February 2024 was 19%, which the Guardian described as, "extremely concerning." He was noted to be on a reduced timetable, leaving after lunch since November 2023 and spending all his learning in the SEN room. Although he was noted to have had a positive change in his presentation and willingness to engage with the school, 'E' continued to receive suspensions from school, only returning back to school following a suspension on 31 January 2024. This was due to him absconding class and hiding from staff in the school, who spent between 3-4 hours trying to find him. On the second day of this Final Hearing, the Court was informed that 'E' had been excluded from school again. 'E' has a diagnosis of 'mild-moderate attention deficit hyperactivity disorder' (ADHD) and is on an EHCP plan. He is reported to have difficulties with poorly developed language skills, lack of confidence, significant struggles with spelling and difficulties focussing. The Guardian considered that the school can provide the level of support necessary for 'E', should he attend school consistently, which would support him to meet his educational needs. 'E' has been consistent in his view throughout these proceedings that he wishes to remain in his mother's care.

69. In respect of 'H', the Guardian noted that, since starting at his new secondary school he has developed strong relationships with staff who support him. He also regularly visits the safeguarding hub and is provided with emotional support. He has a timeout pass he can use whenever he needs to in class and utilises the support available. The school was noted to have considered whether 'H' is displaying possible traits of ADHD/ASD due to difficulties with attention. He is described to be unable to sit still and is very easily distracted. He also struggles with his social skills and finds it difficult to create friendships with peers. His current attendance is 65.7%, showing an increase since the school provided a minibus service which collects him and other peers at a pickup location at no cost. He described being anxious about the impact of these care proceedings on him and the level of professional input, including professionals visiting his school, causing him a lot of distress and worry. 'H' has repeatedly indicated that he hates all the different people in and out of his life and wants this to stop. 'H' has been consistently clear in his wishes throughout these proceedings that he wishes to remain in his mother's care.

70. This Court has regard each of the factors in section 1(3) Children Act 1989 insofar they apply to both children individually. The Court has regard to the ascertainable wishes and feelings of both children, in the light of their age and understanding. Both children have expressed a clear wish to remain in their mother's care. Both children took the time to write to the Court setting out their wish to live at home with their mother. The Court is very grateful to them for sharing their wishes so clearly. The Court very much respects those strong wishes and feelings, as both children are at an age where their wishes carry weight. The Court takes those wishes and feelings into consideration.

71. The wishes and feelings of a mature child do not carry any presumption of precedence over any of the other factors in the welfare checklist. The child's preference is only one factor in the case and the Court is not bound to follow it. The weight to be attached to the child's wishes and feelings will depend on the particular circumstances of each case. Having regard to the words of s 1(3)(a), it is important in every case that the question of the weight to be given to the child's wishes and feelings is evaluated by reference to the child's age and understanding. Within this context, and on the face of it, the older the child the more influential will be their views in the decision-making process. However, ultimately, the decision is that of the Court and not of the child. Once again, it is important to recall in this context that children's best interests are the Court's paramount consideration. On the specific facts of this case, the overwhelming weight of professional concerns mean that the wishes of both children are not capable of being realised, without causing each of them further significant harm, for the reasons articulated by the Social Worker and the Children's Guardian.

72. Taking an independent view, this Court reaches the same conclusions as those reached by the Social Worker and the Children's Guardian by reference to s1(3) Children Act 1989.

73. The Social Worker completed an analysis of the strengths and weaknesses of the various different placement options available to the children. A glaring defect in that analysis is the lack of consideration of the impact on the children of being removed from their mother' care. The analysis of the Guardian, however, specifically addressed that important factor. The Guardian expressly took into consideration the expert opinion of Dr Hardiman. The Guardian told the Court, "Within the addendum report, Dr Hardiman was asked to give a view of the impact on the children on their emotional health and stability should they be removed into long-term foster care. He shared that both children's rather distanced attachment representations may mean that they may not show significant superficial distress at the time, however it is clear both are close to [their mother] and the relationship between them can have a rather enmeshed quality to it at times. Thus, removing them from this close and enmeshed relationship will likely be distressing for them, whether they express it or not…Dr Hardiman recommends therapy for both children and that play therapy would be a good option and school may be able to offer emotional awareness support which would be ideal for the children if available. This would suggest that although there will be a significant impact on their emotional wellbeing if they were to be separated from [their mother], with the correct support in place, it is hoped that their emotional needs can be adequately met."

74. The Guardian went on to tell the Court, "On balance, it is also imperative to consider that given the children's ages and their strong desire to remain in their mother's care, there is a significant risk that they will 'vote with their feet', and thus any proposed foster placement should have foster carers that are equipped to manage and respond to defiant behaviours as the children will likely be very angry at professionals and those with authority, having strongly expressed that they oppose being removed from their mother's care. It is hoped that within time, settling and receiving the appropriate support, their needs will be met. There is, however, a risk for both children, in particular ['E'] given his more recent choices in friendships and behaviours, that he may be taken advantage of by other vulnerable young people or continue to associate with peers who are displaying their own risk-taking behaviours."

75. In reaching her conclusion, the Guardian further told the Court in her oral evidence that she has considered the impact on the children of any foster care placement breakdown. Such impact, the Guardian concluded, would be significantly detrimental for both children. In reaching that conclusion, the Guardian considered the profile of the proposed foster carers identified by the Local Authority and the likelihood of both children being required to change schools. The lack of a protective factor of consistency of school would, the Children's Guardian considered, be more of a worry for 'H'. The Guardian highlighted the vulnerabilities of both children and their engagement with anti-social behaviour. The Guardian articulated the importance of support being in place for the foster carers to manage the transition with the aim of mitigating the risk of placement breakdown.

76. Respectfully, taking an independent view of all the evidence and placing into the equation the disadvantages of removing the children from the care of their mother or in the alternative, not placing them with their father, removing them to a placement outside the birth family, considering how the overall welfare advantages and disadvantages of the realistic options compare, one with another, the Court is compelled to reach the same unanimous conclusion as that of the Local Authority and the Guardian. As the Guardian observed:

"To summarise, ['H' and 'E'] have continued to experience harm in their mother's care, despite a significantly high level of input being provided. There has been a robust [working together agreement] in place whilst the children have remained on an Interim Supervision Order and despite this, [the mother] has failed to fully and meaningfully engage to ensure the children's safety. Expert parenting assessments of both parents respectively and a global psychological assessment have been carried out…Both the parenting assessments and Dr Hardiman raise significant concerns in respect of [the mother's] and [the father's] parenting capacity. Dr Hardiman recommends long-term therapeutic input for both parents to address their own psychological needs. He clearly sets out the impact of both parents' psychological profiles on their parenting capacity and subsequently the children's emotional wellbeing in which he shares his worries for the children, providing a clear analysis and conclusion as to what these worries are. Thus, if the children continue to remain in [the mother's] care, or alternatively are placed in [the father's] care, they will continue to experience harm and their holistic needs will continue to be unmet. For this reason, the Local Authority recommend[s] Full Care Orders and for them jointly to be placed in foster care. The balance here, is weighing up the risk of them remaining in [the mother's] care (or moving to [the father's] care) versus the emotional impact on them of being removed from [the mother's] care, something that they have been consistently against; with both boys being at an age where they are able to clearly express their views. Dr Hardiman is clear that it will likely be distressing for the children if this is the decision the Judge makes, however he also recommends appropriate therapeutic intervention to support them in these circumstances. A further issue is, considering whether or not the children's outcomes, if placed in Local Authority care until their majority will be better. In particular, due to both boys' more recent anti-social behaviours and ['E's] vulnerabilities engaging with unhealthy peers, should an appropriate foster placement not be identified, further risks are associated with them being placed in a residential setting.

With this being said, ['E' and 'H's] welfare and safety must take priority and therefore although there are vulnerabilities…that may arise should the Court determine that a Full Care Order is made, I believe that given the ongoing risks as set out in this analysis and the Court papers, that the only safe and viable option is for them to be placed in Local Authority care…The children have continued to experience harm in the form of both physical and emotional harm, in addition to [the mother's] minimal engagement throughout these proceedings which has heightened the risks, particularly in respect of ['H's] diabetes management (with the diabetes team concluding he is at 'acute' risk in [the mother's] care). It is clear that [both parents] need to address their own difficulties via the therapeutic intervention recommended by Dr Hardiman; however, the recommended length of intervention is beyond the children's timescales with no guarantee or certainty that meaningful engagement and change can be achieved and sustained."

77. This Court acknowledges that the father is beginning to access support in the form of therapeutic support. That is to his real credit. The mother too has indicated her commitment to accessing support. Both parents are at the very earliest stages of accessing that support. There is some evidence-based reason to believe that both the father and the mother separately are beginning to show they are each committed to making the necessary changes. At this stage, however, there is no solid, evidence-based reason to conclude that either the mother or the father can maintain that commitment. The parenting assessment raised concerns regarding the father's motivation to care for the children himself as he had said he had not really thought about the reality and practicalities of this. Past evidence of both parents' commitment to engage with professional support does not lead the Court to a positive conclusion about either parent's ability to maintain such commitment. In reaching this conclusion, the Court acknowledges that both the mother and the father have their own specific vulnerabilities in respect of their physical health, mental health and in the case of the father, cognitive difficulties and substance use. However, on the totality of the evidence, having regard also to the timescales envisaged by Dr Hardiman, in this Court's judgement, there is no solid, evidence-based reason to conclude that either the mother or the father will be able to make the necessary changes within the timescales of the children.

78. The tipping point between what may be 'good enough' parenting and what is not, must also involve the Court's consideration of how a parent can cope with a reasonable level of support. The concept of 'parenting with support' must underpin the way in which the Courts and professionals approach, wherever possible, parents with additional vulnerabilities and needs. It is incumbent on the Court to satisfy itself that there is no practical way of the authorities or others providing the requisite assistance and support before making an Order. In this Court's judgement, the level of support offered by and provided by the Local Authority has been reasonable, appropriate and tailored to the specific needs of the family. On the evidence, the Court must reach the same conclusion as all the professionals that the mother's care of the children, even with support, has not been good enough, the father could not alone meet the needs of the children, the father co-parenting with the mother would not fill the gaps in the mother's parenting deficits and no amount of professional support could reasonably be put in place to bridge the gap between what the parents could offer the children and what the children need individually. Their need is simply too large to be capable of being bridged by even the most extensive support package under any form of Order, taking into consideration the range of powers available to the Court.

79. As the Guardian noted in her final analysis, "Ultimately…the children continue to experience harm from care givers who cannot provide care to a good enough level despite the significantly high level of input in place which is not sustainable long-term, and even if it could be, it is not bridging the gap to ensure their holistic needs are sufficiently met. Both children's (particularly ['E's]) school attendance is poor, both children's emotional wellbeing is a concern, both have been engaging in anti-social and rebellious behaviours which could have had very serious implications, in addition to the acute risk ['H'] is exposed to due to poor management of his diabetes…Further to this, Dr Hardiman describes that if they continue to receive the same care giving patterns, they will experience ongoing reinforcement of the disrupted attachment representations that they already appear to have developed."

80. Ultimately, is the welfare option necessary and proportionate? Are the risks bad enough to justify the remedy? In deciding issues in respect of the welfare of both children, the task of this Court is not to improve on nature. The best person to bring up a child is the natural parent, provided the child's physical and mental health are not in danger. The Court recognises that there are very diverse standards of parenting. Children will inevitably have very different experiences of parenting and very unequal consequences flowing from it. Some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. The State does not take away the children of all the people who abuse alcohol or drugs or who suffer from physical or mental ill health. The Court makes clear expressly, if it needed to be said, that 'H' is not being punished for having diabetes nor are the parents being punished for experiencing difficulties with their physical health and mental health. Having independently considered all the realistic competing options and having given them proper, focussed attention,

on the facts of this case, this Court finds no reason to depart from the consensus of professional opinion that the balance falls in favour of both children being made the subject of Care Orders with the plan that the children move to Local Authority foster care. In this Court's judgement, having considered the parents' ability to discharge their responsibilities towards the children, taking into account the practical assistance and support which the authorities or others would offer, having regard to all the evidence, the Court is satisfied that this is a case where a Care Order for each child is necessary and is the only option that would meet the need of each child individually. No lesser Order will do. In this Court's judgement, the welfare of both children should not be compromised by keeping them within their family at all costs. The risks remain so great that the children could not be safeguarded adequately. On the specific facts of this case, there is no other suitable course available which is in the best interests of each child motivated by the overriding requirements pertaining to the child's welfare.

81. Furthermore, the high degree of justification necessary under Article 8 is established. That interference is necessary and is a proportionate response, having regard to the risks and having regard to the welfare evaluation. Sympathetic as this Court is to the children in light of their wishes and feelings and the enormous upheaval that will follow in light of the Court's decision, sympathetic as the Court is also to the vulnerabilities of both parents arising for their physical and mental health, and sympathetic as this Court is to the plight of both parents who are facing the loss of their children, it is essential that in reaching this decision the Court maintains focus on the children's welfare as the paramount consideration. With that focus, the Court must conclude that a Care Order with the plan of placement of both children together in long term foster care is the only option necessary to meet their welfare needs and is the proportionate response to the risks.

82. Turning to the Local Authority's care plan of contact, a transition plan is proposed whereby both children will spend supervised time with their mother twice each week for two weeks, moving to once each week and then once each month before settling to pattern of direct contact every six weeks. In respect of contact with their father, the Local Authority plan is for contact once in alternate weeks and then once every three weeks before moving to monthly direct contact. The plan is supported by the Children's Guardian. The aim of the plan is to allow both children time to adjust and settle into their new regime with their foster carers. The Local Authority acknowledges its legal duty to keep contact under review as part of regular statutory Child Looked After meetings to ensure that contact meets the best interests of both children. The Guardian expressed the hope of a move to unsupervised time spent by the children with each parent in the future, should no concerns be raised during the supervised contact sessions. The Guardian was not in support of a move to overnight contact taking place with either parent. Respectfully, this Court endorses that professional opinion.

83. Finally, but not insignificantly, it is imperative that the Local Authority properly and sensitively manages the transition of both children into foster care. The children will benefit from support from both parents in that transition, however difficult that may be. It is of the utmost importance that the foster carers identified by the Local Authority have urgent training to ensure they are equipped in the management of diabetes, noting the potential risk highlighted in the Guardian's oral evidence of 'H' being resentful towards and resistant to the foster carers and the impact this may have on his diabetes management. The Guardian was optimistic, however, that 'H' would engage positively with his foster carers, reflecting his positive engagement with staff at school in his diabetes management. The Guardian was confident that 'H' knows how important it is to manage his diabetes. The Guardian further made plain that no move to foster care should take place unless the foster carer has undertaken that training. This Court wholly endorses that view. Furthermore, the Guardian expressed the opinion that it is imperative that the support provided to the children in Local Authority foster care meets their needs. The Guardian invites the Local Authority to update its final care plan for each child to include the therapeutic input available, including details of the proposed duration of therapy and when it can commence, in line with Dr Hardiman's recommendations. Furthermore, Dr Hardiman is clear that both children's schools play a key role in providing support to them. It is important for the care plans for each child to reflect the specifics of this support, even more so if the children are required to move to new

schools. The Court endorses that view. The Local Authority is directed to file and serve updated care plans within 7 days.

Conclusion

84. For the reasons given, the Court makes a Care Order for each child.

85. The Court endorses the Local Authority's care plans in respect of contact.

86. The Local Authority is directed to file updated care plans in accordance with paragraph 83 of this judgment.

HHJ Middleton-Roy
5 March 2024