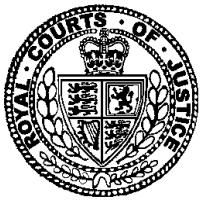

Neutral Citation Number: [2021] EWHC 1689 (Fam)

Case No: MA20P02172/NR18C01387

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Sitting Remotely

Date: 24/06/2021

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between :

Salford City Council	**Applicant**
- and -	
W	**First Respondent**
-and-	
X	**Second Respondent**
-and-	
Y and Z	**Third and Fourth Respondents**
-and-	
B, C, D, E and F (Children acting through their Children's Guardian)	**Fifth to Ninth Respondents**
-and-	
Suffolk County Council	**First Intervenor**
-and-	
Norfolk County Council	**Second Intervenor**

- -

- -

Ms Ruth Cabeza (instructed by **Salford City Council**) for the **Applicant**
Ms Niamh Ross (instructed by **Fosters Solicitors**) for the **First Respondent**
The Second Respondent did not appear and was not represented
Ms Elizabeth Isaacs QC and Ms Yvonne Healing (instructed by **Kenneth Bush Solicitors**) for the **Third and Fourth Respondents**
Ms Rachael Heppenstall (instructed by **Alfred Newton Solicitors**) for the **Fifth to Ninth Respondents**

Ms Gemma Taylor QC (instructed by Suffolk County Council) for the **First Intervenor**
Ms Soria Kajue (instructed by Norfolk County Council) for the **Second Intervenor**

Hearing dates: 10 May 2021

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 24 June 2021.

MR JUSTICE MACDONALD

This judgment was delivered in private. The Judge has given permission for this anonymised version of the judgment (and any of the facts and matters contained in it) to be published on condition always that the names and the addresses of the parties and the children must not be published. For the avoidance of doubt, the strict prohibition on publishing the names and addresses of the parties and the children will continue to apply where that information has been obtained by using the contents of this judgment to discover information already in the public domain. All persons, including representatives of the media, must ensure that these conditions are strictly complied with. Failure to do so will be a contempt of court.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with B, born in July 2009 and now aged 11, D, born in October 2012 and now aged 8, C, born in May 2011 and now aged 10, E, born in September 2014 and now aged 6 and F, born in April 2016 and now aged 5. The children are represented at this hearing through their Children's Guardian, by Ms Rachael Heppenstall of counsel.

2. On 19 January 2021 I handed down my first judgment in this matter, published with the neutral citation *Salford CC v W and Ors (Religion and Declaration of Looked After Status)* [2021] EWHC 61 (Fam), in which, in addition to determining an issue concerning the religious upbringing of the children, I decided, for the reasons set out in that judgment at paragraphs [86] to [94], that this court has jurisdiction under its inherent jurisdiction (as subsumed and incorporated into s.19 of the Senior Courts Act 1981) to grant a freestanding declaration as to the children's legal status. I further decided that, in the particular circumstances of this case, and for the reasons set out in the judgment, it was appropriate for this court to exercise that jurisdiction and determine the application made by the maternal aunt and putative special guardian of the children, Mrs Z, for a declaration under the inherent jurisdiction of the High Court regarding the children's legal status for the purposes of Part III of the Children Act 1989, notwithstanding that that application is made without claim for any other remedy consequent upon that declaration. This judgment should be read with my first judgment in this matter.

3. Within this context, the relevant local authorities having been given permission to intervene on the question of the children's legal status, I am now required to decide whether with B, D, C, E and F are, or have been at any point, 'looked after' for the purposes of the Children Act 1989 and, if so satisfied, to make a declaration to that effect.

4. The local authority now having conduct of the care proceedings in respect of the children is Salford City Council, represented by Ms Ruth Cabeza of counsel. The mother of the children is represented by Ms Niamh Ross of counsel. The children's father is X. He does not appear before the court and is not represented. The children's putative special guardians, Mrs Z and her husband, Mr Y, are represented by Ms Elizabeth Isaacs of Queen's Counsel and Ms Yvonne Healing of counsel. Suffolk County Council intervenes in these proceedings on the question of the children's legal status for the purposes of Part III of the Children Act 1989 and is represented by Ms Gemma Taylor of Queen's Counsel. Norfolk County Council likewise intervenes in these proceedings on the same question and is represented by Ms Soria Kajue of counsel. The Court has the benefit of an agreed chronology.

5. Mrs Z and Mr Y contend that the children were 'looked after' for the purposes of Part III of the Children Act 1989 and, thus, that one or more of the local authorities before the court is under an obligation to pay remuneration to Mrs Z and Mr Y as former local authority foster carers pursuant to r. 7 of the Special Guardianship Regulations 2005. That position is supported by the children's mother. Each of the local authorities, Salford City Council, Suffolk County Council and Norfolk County Council deny that the children were 'looked after' for the purposes of the 1989 Act. The Children's

Guardian contends that the children were 'looked after' for the purposes of the Children Act 1989 but posits a different date on which that legal status arose to that contended for by Mrs Z and Mr Y.

6. The children have been in the care of Mrs Z and Mr Y since 25 June 2017. All parties agree that the placement with Mrs Z and Mr Y should continue and that the final order that best meets each of the children's welfare is a special guardianship order in favour of Mrs Z and Mr Y.

BACKGROUND

7. The broad background to this matter is set out in my previous judgment. As I have noted, the mother of the children is W (hereafter, 'the mother'). The mother is of Romany heritage and of Welsh descent. The father, X (hereafter, 'the father'), is of South African heritage. For the purposes of the decision this court now has to make, the following matters of background are particularly relevant.

8. The family first came to the attention of children's services in Suffolk in August 2009. This followed a referral from the police concerning a disagreement that had taken place between the parents. In August 2012 further referrals were received by Suffolk from the Health Visiting Service, the Youth Support Service and the 12+ Integrated Team, which team reported the family to be homeless. An initial assessment was opened by Suffolk on 14 August 2012 but the case was closed one month later. Thereafter, the involvement of Suffolk with the children continued on and off over an extended period up to and after 25 June 2017.

9. On 11 September 2013 the mother and children were again reported to be homeless. On that date, Suffolk opened an initial assessment. On 16 September 2013 Suffolk allocated the mother and B, C and D temporary accommodation. The initial assessment opened on 11 September 2013 and was discontinued on 26 September 2013.

10. Suffolk undertook a further assessment of the mother in June 2014 following a referral from the midwifery service in the context of concerns regarding the mother's mental health and provision of food, clothes and heating for the children. No further action was taken on the grounds that Suffolk considered the children not to be at risk and the case was closed on 19 June 2014. One day later, a further referral was received from the Health Visiting Service with respect to the mother's preparedness for her new baby. This appears to have led to another assessment being commenced on 11 August 2014. A Child in Need meeting was convened on 18 September 2014. The mother was described as being unable to understand the needs of the children. On 2 October 2014 B, D, C were made the subject of 'Children in Need' (hereafter CIN) plans by Suffolk. E was born on 27 October 2014 and the CIN plans were continued with respect to all four children on 2 October 2014. Suffolk closed the case on 22 January 2015.

11. A further referral was received from the midwifery service in October 2015 and, following the birth of F on 28 April 2016, Suffolk commenced a further statutory assessment of the children on 12 May 2016. On 13 July 2016 the assessment recommended that there be 'Team Around the Child' intervention (which approach involved voluntary engagement with Early Help services). A further assessment was commenced on 24 October 2016 following a MASH referral asserting that the mother had reported lifting F by the arm from her cot, and who would thereafter not stop crying.

The case was again closed with a recommendation that the mother engage with a Parenting Centre and attend a parenting course.

12. On 10 April 2017 E, then aged 2 years old, was found by police to be wandering half a mile away from the family home. No substantive action appears to have been taken by Suffolk in response to this incident. On 28 April 2017 a referral was made to Suffolk by the NSPCC regarding anonymous concerns that had been received concerning the alleged neglect of the children, their lack of supervision, a report of a baby being slapped, drug use and the children being left with an eight year old babysitter and alone in the family home with unknown men. Within this context, on 28 April 2017 Suffolk commenced a further assessment of the children.

13. Social work intervention in the family continued in April and May 2017. In particular, the following matters are relevant:

    i) On 5 May 2017 Suffolk carried out an unannounced home visit to the mother and the children. On this visit, and on other home visits in May 2017, the home environment was noted to be chaotic in terms of clutter, and to be unclean and lacking carpets. The children were observed to lack boundaries and routine and it was considered that the mother struggled to adequately supervise the children.

    ii) On 11 May 2017 the police received a call from the mother reporting that she had separated from her partner. During the attendance of the police at the mother's property the partner was aggressive over the telephone when contacted. The house was seen to be in a poor state and the mother had been asleep on the sofa. It was noted during this period that, until recently, F had been sleeping with mother on the sofa and still had only a travel cot in which to sleep.

    iii) On 17 May 2017, Suffolk carried out a further unannounced home visit at which Suffolk confirmed that the social worker would be giving consideration to the question of whether it would be necessary to implement a further 'Team Around the Child' or CIN approach to supporting the family.

    iv) On 19 May 2017, during a home visit to the mother and the children, Suffolk informed the mother that whilst the children's safety was not considered to be at immediate risk, the mother would need to make changes in response to local authority concerns. The social work records contain the following entry:

        > "W asked me to be honest in my views of the house and I said I did not feel it was to a level which put their immediate safety at risk, however I was concerned and it was clear that changes needed to be made, particularly in regards to a better structure and routine, and the sleeping arrangements."

    v) On 31 May 2017 the local authority made enquiries of E's nursery. The nursery reported that E sometimes attends dirty and smelling of smoke. E's attendance was noted to be approximately 70%. The nursery had no concerns regarding the mother being under the influence of drugs or alcohol and noted that E displayed upset upon separation from the mother.

vi) On 1 June 2017 a referral was received by the local authority relating that the mother had taken alcohol and an overdose of Pro-Plus tablets, resulting in her presenting at the Emergency Department on 28 May 2017. The mother also reported cannabis use. The mother and the children had moved in with the maternal grandmother. Within the latter context, the social work records record that the mother would forget to take her anti-depressants, leading to low mood. The social work records also note that during this period the mother was able to recognise when she was feeling low and to seek out additional support from her own mother to help her look after the children. In this context, on 20 June 2017 the mother is noted as saying that she had gone with the children to stay with her mother as she was feeling low and "knew she wasn't in a good place to look after the children".

vii) On 7 June 2017 Suffolk completed social work assessment sessions with B and C. The children spoke fondly of their mother and father. B was observed to be able to articulate his worries to the social worker in front of his mother.

viii) On 15 June 2017 a MASH referral was made following the mother's partner demonstrating aggressive behaviour in front of the children. B is recorded as having expressed concerns during this period about shouting between the mother and her partner and stated that he had seen the mother's partner push the mother's face into water in the sink and smash plates. On 20 June 2017 B was recorded as telling his mother in the presence of the social worker, with respect to the conduct of the mother's partner and in the context of B's view that the partner spoke to the mother "differently" than to the children, that "I am worried about you, I don't like the way he speaks to you differently." B was considered by the social worker to be too aware of adult concerns.

ix) On 20 June 2017 the Health Visitor raised concerns regarding the mother's partner's presentation when she visited the family home, including the state of his mental health. In circumstances where the mother described herself as her partner's "carer", concern was expressed by professionals that the mother would not also be able to care for the children. The mother however, contended that she did not need any assistance.

x) Also on 20 June 2017 Suffolk undertook a home visit. The mother is recorded as stating that she was worried that the children would be removed. The social work record for that day contains the following recording:

> "We went into the living room and W asked me to be honest about my concerns as she is worried the children will be removed. I again explained social care intervention and the different levels of intervention. I explained to W I was very worried, that the place was very chaotic and messy and was worse today than it had been previously, that the children didn't appear to have a good routine and I am also concerned about W's mental health and her relationship with [her partner]."

The social work records record the view of the social worker that the mother was very vulnerable and at risk of being exploited by others. Within this context, I note that the later social work records also make plain that the mother

was reassured by the social worker that, while Suffolk had concerns, the local authority planned to work with the mother, that interventions would be available and that the social worker would meet with the mother the following week.

xi) On 21 June 2017, a duty social work visit again raised concerns regarding the presentation of the mother's partner in the family home and the state of his mental health. The social worker considered that the mother's partner disrupted conversation about the children with irrelevant questions. In the context of increasing concerns about the mother's partner being in the home with the children, Suffolk informed the mother that if the children were found to be left alone with him then the local authority would be significantly worried about their safety. The police disclosure indicates that during this period the mother's partner was reported to have been exhibiting anti-social and threatening behaviour towards an elderly neighbour. The mother had reported that her partner had become angry and unpredictable and was not on the correct medication.

14. The CFA assessment that had been commenced by Suffolk on 28 April 2017 was completed on 21 June 2017. Noting that the concerns identified were very similar to those seen in October 2016 the CFA assessment concluded that:

> "As detailed within this assessment there are clear concerns across a wide variety of factors including poor parental mental health, domestic abuse, a chaotic home environment, poor routine and boundaries and a lack of appropriate supervision. Therefore it is clear that the children have experienced harm and are at risk of experiencing further harm without the provision of services, which W has stated she is receptive to and welcoming of. However this is not the first time that the children have come to the attention of children and young people's services. W has said numerous times that she would like additional support from professionals, particularly in regards to managing D's behaviour. However, previous social work assessments have made recommendations for early help which W has not engaged with. This raises concerns about W's capacity to engage with services and possible disguised compliance. Therefore this will need careful monitoring and on-going assessment throughout child in need planning to ensure that real and sustained changes are achieved for B, C, D, E and F."

15. It is important also to note within the foregoing context that, in addition to the concerns recognised by Suffolk with respect to the state of the home, the mother's mental health history, children becoming lost, the behaviour of the mother's partner and mother's history of alcohol and drug use, a number of positives were also noted about the parenting of the children by the mother during the course of the assessment.

16. The mother was noted by social workers to have a good relationship with the children and the children were noted to exhibit a good attachment with her. The mother was also seen to be emotionally warm towards the children and responsive to their needs. The children continued to attend school and the mother was reported to have a good relationship with the school. The mother also demonstrated an awareness of her mental health issues, sought help from professionals when her mental health dipped and, as I have noted, demonstrated the ability to ask the maternal grandmother for assistance when feeling low. The mother was also recorded as recognising the need for, and was

requesting support from, children's services with respect to the state of the house, C' behaviour and the children's lack of routine. During the course of the assessment the mother was noted to be co-operative with children's services and always admitted the social workers to the family home. The maternal grandmother and aunt offered support to the mother, E had funding for nursery and the mother was managing financially. In terms of her own needs, the mother was open to the IDT and a referral had been made to adult social care. As I have noted, on 22 June 2017 direct work with B and C noted that the children spoke fondly of their mother and father. B was observed to be able to articulate his worries to the social worker in front of his mother.

17. In the foregoing circumstances, on 22 June 2017 Suffolk took the decision to designate and support the children as Children in Need pursuant to s.17 of the Children Act 1989 whilst they remained in the care of their mother at home. Within this context, the CYP Danger Statement contained in the social work records, and setting out the concerns to the mother, concluded as follows:

> "B, C, D, E and F are completely dependent on you, as their mother, to meet their needs and keep them safe. I know from talking to you that at times you find being a single parent a lonely task and a struggle and that you would like some extra support with caring for the children and managing their behaviour. It is really important that you now work with services to support you with some of the things that you are finding more difficult so that you can make positive changes."

18. Within the context of its CFA assessment, the local authority identified the goals the mother needed to achieve and a support package to assist with this whilst the children remained at home in her care. In particular, information would be sought regarding the offending history of the mother's partner and relayed to the mother in a way she was able to understand in order to better understand the risks presented by him. With respect to the mother's partner's mental health, Norfolk and Suffolk Foundation Trust (Mental health) were to be asked to give their view on whether the mother's partner posed a risk to intimate partners and children. With respect to the mother IDT would be provided with a summary of the concerns regarding the mother's vulnerability and the local authority would seek to work with the mother to be a confident parent who could put in place the rules the children need in order to be safe, to be able to make sensible choices about relationships, to ensure the children are not exposed to frightening adult behaviour and to know when her mental health deteriorates and to use the safety plan and contact health professionals.

19. On 24 June 2017 B was found alone and distressed in the street, having become separated from his mother whilst in town. B was able to give his address to passers by who stayed to help. The mother and B were re-united before the Police arrived. The police made a further referral to Suffolk. Suffolk's records confirm that social workers intended to speak to the mother to discuss strategies to put in place to avoid this happening again.

20. The following day, on 25 June 2017, the mother made arrangements for the children to live with the putative special guardians, Mrs Z and Mr Y. The mother summoned Mrs Z and Mr Y by means of a telephone call. It is noteworthy that the social work records indicate that the maternal grandmother (to whom, as I have noted, the mother had previously turned during June 2017 for support with the care of the children when her

mental health declined) was not available on 25 June 2017 to undertake the task of supporting the mother in the same way she had earlier in the month:

> "Duty Social Worker did however visit Maternal Grandmother who verified that the children were with Aunt in Manchester and had had contact with her - the only reason why she wasn't looking after her grandchildren was because she had medical appointments in London for her own son which we know to be true."

Within this context, I further note that the parenting assessment of the mother undertaken by Salford and dated 18 December 2019 records, with respect to the circumstances by which the children came to be in the care of Mrs Z and Mr Y, that the mother "advised she was having a breakdown so this is why she gave the children to her family to support her and look after the children."

21. On arrival at the mother's home on 25 June 2017, Mrs Z and Mr Y found the children at home alone in poor conditions, with F strapped into her chair. Mrs Z and Mr Y did not contact Suffolk to notify them that the children were in their care. It is clear on the evidence before the court that this was because Mrs Z and Mr Y were not aware of Suffolk's involvement with the children. Mrs Z states as follows in her statement dated 6 April 2020:

> "[9] On 30 June 2017 B and I received a phone call from [the mother] to collect the children from her home in Suffolk for a temporary period as she was not in a good place. We agreed to help her for a short period of time until she got better. We collected the children, from where they had been left at home alone and brought them to Manchester. They had just the clothes they had on. We did not know that at the time, Suffolk Children's Services were already involved in the children's lives. Since then the children of course, have continued to live with us in the Manchester area where they remain to date."

Within the foregoing context, I note that the statement of the Norfolk social worker, dated 19 December 2018, records that Mrs Z and Mr Y considered that they had found the children in "awful" conditions within the home.

22. A number of other documents in the court bundle assist with understanding what professionals working with the family at the time of the children moving to the care of Mrs Z and Mr Y understood the circumstances by which the children came to be in their care in June 2017 to be. The following entries are pertinent in this context:

i) On 27 June 2017, Suffolk Children's Services records record the following:

> "SWA is complete but not authorised as we are awaiting information from the children's aunt who resides in Manchester and who has care of the children - we have only been told this information today. We will ensure that the children are safe and will be contacting Manchester CYP requesting a welfare check as well as police checks on Aunt so we are confident they are being safely looked after."

ii) On 30 June 2017, Suffolk Children's Services documents recorded the following:

> "We could conclude that W has placed her children in a place of safety to protect them from troubles she might be going through- this could be linked to substance misuse, her partner and/or to distance herself and the children from the known London drug gangs in the area."

And

> "In the event the children remain with aunt in Manchester under a private family arrangement then Suffolk C&YP will inform housing and send a copy of the SWA to Manchester Children Services updating them of the children's short term care arrangements - W and the children's father will be need to be informed of this so if there is any news of return the case can then be reopened."

iii) On 4 July 2017 Suffolk Children's Services documentation recorded the following:

> "W confirmed that the she had arranged for the children to be in Manchester and gave permission for CYPS to speak to Z. W was cagey about where she was saying she was staying between friends, and would eventually "move to Manchester with the children". However when discussing this in detail W seemed non-committal saying that she would not hand her notice in on her property at this time in case she 'changed her mind'."

23. On 4 July 2017 Suffolk commissioned the safety checks posited on 27 June 2017 with respect to the placement of the children with Mrs Z and Mr Y and, on 6 July 2017, requested that the police and Salford undertake such checks. On 26 July 2017, following the mother intimating that she sought the return of the children, Suffolk was informed by Mrs Z that she did not want the children to return to the care of the mother as she felt they would not be safe. In response, Suffolk advised Mrs Z that if she felt the children were at immediate risk of harm if and when the mother came to collect the children, then she should call the police. On 31 July 2017 Suffolk Children's Services documents further recorded the following:

> "W asked about how she could get her children back and if we would help her to get them back. Advised this was a private family arrangement so this was between W, B and Z. Advised I was happy to talk with Z about planning. W and I discussed how the children were safe and happy at the moment so it would be good if W started to work on some of the issues whilst they were in Manchester, W agreed that this would be the best option for now. W signed the written agreement about getting the condition of the home sorted and about notifying us first before she collects the children so that we can safely plan for their return."

24. On 20 August 2017, the mother contacted Suffolk EDS and stated that she wanted the children to return to her care. On 21 August 2017, the following entries were made in the records of Suffolk Children's Services:

> "I have advised Z that the current safety plan which was discussed is to stay in place: If W collects the children she is to inform EDS, me or the duty social worker ASAP so that we can put safety planning in place to safeguard the children. If W turns up to collect the children and Z deems this an immediate risk, i.e. W or [her partner] are under the influence of drugs or alcohol then she is to call the police."

And:

> "W has signed a written agreement to agree to the children staying with Z and that would notify Children's Services if she wanted to change her position and wanted to go and collect the children."

25. The children's father contacted Suffolk on 22 August 2017 objecting to the return of the children to their mother and supporting the children remaining with Mrs Z and Mr Y. On 25 August 2017 Suffolk confirmed to Salford that the children remained subject to CIN plans. On 29 August 2017 the mother attended the local authority for a housing meeting. The chronology relates as follows in this context:

> "She is saying she plans on getting her children from Manchester and returning with them to [Suffolk]. W could not understand the concerns regarding [her partner] and said she would get the children to say they were not scared of him. W is asking us to assist in getting the children from Manchester. W has said she will get [her partner] to move out if he is the main concern, but then flits back to no understanding of why he poses a risk; claiming the children have made up lots of things. [The local authority's] assessment was shared with W."

26. On 22 September 2017 Suffolk sent a letter to Salford Early Help detailing the date the children moved to live with Mrs Z in order that Mrs Z could provide that information in her application for tax credits. Suffolk authorised the payment of £150 to Mr Y and Mrs Z for the purchase of school uniforms for the children. On 12 October 2017 Suffolk discussed the case with Salford and confirmed that, from the perspective of Suffolk, there were no concerns and the case was to be closed. In October 2017 Suffolk held a legal planning meeting and it was confirmed that a Family Network Meeting was to be held.

27. On 22 November 2017 the mother and father met with social workers from Suffolk for the Family Network Meeting. At that meeting the mother stated that she would like the children to remain in the care of Mrs Z and Mr Y. She signed a letter giving Mrs Z authority to consent to treatment and schooling for the children. The father however, put himself forward as a carer for the children. On 12 January 2018 the mother is recorded as maintaining her view that the children should remain in the care of Mrs Z and supported a child arrangements order. The father maintained his wish to care for the children. Suffolk held further legal planning meetings on 12 January and 18 January 2018. On 12 January 2018 the mother reiterated that she wished the children to remain with Mrs Z and Mr Y. The father again expressed the wish to be the children's primary carer but it was noted he had inadequate housing and had never cared for the children. On 18 January 2018 it was confirmed that Mrs Z and Mr Y were committed to the children and had made extra space for them. The chronology further records that the family were told that if they sought court orders they would need to take legal advice.

Mrs Z confirmed she was seeking legal advice and the mother is recorded as stating that she would support an application made by Mrs Z. On 22 January 2018 Suffolk formally closed the case, the children to that point had been the subject of open CIN plans in Suffolk.

28. The evidence further records that on 11 February 2018 the mother indicated that she wished the children to be returned to her care:

> "EDS CONTACT: 9 months ago mum walked out on all the children and rang aunt (Z) to tell them to go and get them. They did this and it has been a family agreement. Now mum is ringing up to say she is going to get the children and that she is off the drugs and needs somewhere to live so she needs the children back to get a house.
>
> TC to Y (Maternal uncle) he told me that at about 4pm, W, mother, telephone them to say that she is "off the drugs, in a hostel with [her partner] … and she needs the children back and she is coming round with a police officer to take the children" B sounded very worried and sought reassurance that W would not be able to do this. I advised I would discuss this with the Ops manager and call him back. TC to CJ – CJ advised that although the mother has PR there are safeguarding issues the children are to remain with the aunt and uncle W is not permitted to remove the children and if she does arrive and they are concerned they need to call the police. Aunt and uncle need to seek legal advice about applying for a child arrangement order (*sic*) or a special guardianship order with regards to their care of the children.
>
> TC to B I gave him advice set out by Ops manager. Advised the children are to remain with him and wife Z and call the police if W arrives and he is concerned."

29. On 11 February 2018 Mr Y did telephone the police following the mother seeking the return of the children to her care. It is recorded in the papers that Mr Y had expressed concern that he had no legal right to prevent the mother from removing the children. The police were unable to contact Suffolk.

30. Mr Y made a further telephone call to Suffolk on 12 February 2018, again requesting assistance from Suffolk with respect to the position articulated by the mother regarding the return of the children. Suffolk again advised Mr Y in the terms set out above and, in addition, provided him with the telephone number for Children's Services in Salford and a number for obtaining legal advice. Advice to contact the police if the mother turned up was also reiterated to Mr Y. Within this context, Mrs Z states as follows in her statement in these proceedings:

> "[13] On 11 February 2018 B was advised by Suffolk that mother was threatening to take the children back and advised that there were significant safeguarding issues, that we should seek legal advice and that we should call the police if the mother turned up. During the entire period when Suffolk were involved we received no support, practical or financial save for £150 for the children for school uniforms. It is unclear to us how Suffolk believed the placement of the children with us was supported by them."

31. On 16 March 2018 Salford Children's Services contacted Suffolk seeking an update on "the current Suffolk Status" in circumstances where the mother had contacted Salford to seek its assistance in securing the return of the children to her care. The chronology records the following response by Suffolk:

> "Advised that Suffolk currently have no role with the family and that there has always been limited contact with the mother due to her chaotic and transient lifestyle. Actions – info only for Suffolk – Salford to refer to relevant LA should they become aware that children have returned to mother's care."

32. In April 2018 the mother's partner committed suicide shortly after the mother had found out that she was pregnant with her sixth child. A pre-birth assessment of the mother was undertaken by Norfolk County Council, the mother having by that time moved to Norfolk. The child, G, was removed from the mother's care immediately following his birth and made the subject of an interim care order.

33. On 19 December 2018, Norfolk was informed that B, D, C, E and F were again in the care of the mother and the maternal grandmother, the mother asserting that the placement with Mrs Z and Mr Y had only ever been intended as a temporary arrangement. As a result, on 20 December 2018 Norfolk issued care proceedings under Part IV of the Children Act 1989 with respect to the four elder children but requested that the court grant child arrangements orders in favour of Mrs Z and Mr Y.

34. The Form C110A instigating the care proceedings was completed poorly by Norfolk. The application does state that the order being applied for is a care or supervision order, but also specifies "Child Arrangements Order to Uncle" as the order sought at several points in the application form. The order of District Judge Reeves of 20 December 2018 however, makes clear that the court treated it as an application for a public law order, notwithstanding the idiosyncratic manner in which the application form had been completed.

35. On 21 December 2018 the four elder children and F were made the subject of child arrangements orders in favour of Mr Y and Mrs Z at a directions hearing before District Judge Russell. Directions were also given for the further management of the public law proceedings. The mother did not oppose this course of action and the father was not in attendance at the hearing.

36. On 2 May 2019 Salford City Council commenced an assessment pursuant to s.37 of the Children Act 1989 in respect of the children pursuant to a prior order made by the Family Court sitting at Norwich on 11 February 2019. It identified no safeguarding concerns with respect to the children at that time. At a hearing on 9 May 2019 the proceedings were formally transferred to the Family Court sitting at Manchester, and Salford City Council became the designated local authority for the children by consent, with Norfolk being discharged as a party to the proceedings. In September 2019 Salford applied for permission to amend the original application for care orders.

37. Within the foregoing context, Suffolk, Norfolk and Salford each contend that the children were placed with Mrs Z and Mr Y pursuant to a private family arrangement throughout the period between 25 June 2017 and the present, and that therefore Mrs Z and Mr Y were not entitled to any weekly fostering allowance. That assertion is

disputed on behalf of Mrs Z and Mr Y, who submit that the children were accommodated with them by Suffolk pursuant to s.20(1) of the Children Act 1989 and therefore that they should have been in receipt of financial support as foster carers for looked after children from June 2017.

THE LAW

38. As I have noted, in my first judgment in these proceedings (*Salford CC v W and Ors (Religion and Declaration of Looked After Status)* [2021] EWHC 61 (Fam)), at the urging of all parties I decided that this court has jurisdiction under its inherent jurisdiction, as subsumed and incorporated into s.19 of the Senior Courts Act 1981, to grant a freestanding declaration as to the children's legal status. Within this context, it is important to be clear that the task of the court therefore is to decide, based on the evidence before the court, whether as a matter of *fact* the children are, or have at any stage been, 'looked after children' as defined in Part III of the Children Act 1989.

39. Within this context, there was some debate during the course of the hearing of the extent to which the court, in addition to considering whether the evidence demonstrates that the children *did* appear to Suffolk to require accommodation by reason of the mother being prevented from providing suitable accommodation or care, can also consider the question of whether the children *should* have appeared to Suffolk to require accommodation by reason of the mother being prevented from providing them with suitable accommodation or care when determining whether to make a declaration as to the children's status. Within this context, Ms Cabeza submitted that the court is not engaged in a judicial review of the local authority's decision making and that the question before the court is simply did the local authority conclude that the children appeared to require accommodation for one of the statutory reasons? In this context, Ms Cabeza points out that s.20(1) of the Act says "appears" and not "appears or should have appeared". Against this, Ms Isaacs and Ms Healing submit that to adopt this approach would mean that a local authority could defend any application for a disputed declaration by simply asserting that it did not appear to it that the subject child required accommodation for any of the statutory reasons. Within this context, Ms Isaacs and Ms Healing submit that, accordingly and where there is a factual dispute, the court must consider for itself whether, on the evidence before the court, the local authority should have concluded that it appeared the children required accommodation.

40. In circumstances where the court is now asked to determine, by way of declaration, a dispute of fact between the parties regarding the status of the children, I am satisfied that the task of the court is to take its own view of the evidence and come to a conclusion as whether, on the balance of probabilities, the children appeared, at the relevant time, to require accommodation by reason of the mother being prevented from providing them with suitable accommodation or care for one of the statutory reasons set out in s.20(1) of the 1989 Act. Where one party in proceedings for a declaration has already taken a decision as to what the evidence demonstrates as a matter of fact, but that factual determination is disputed, it will be necessary for the court to determine for itself whether the evidence can bear that conclusion or not. That is not to judicially review the decision making of the local authority but, rather, is simply the necessary consequence of asking the court to determine a now disputed question of fact and to declare, or not, the fact that remains in issue. That this is the correct approach is clear from the authorities, in particular *London Borough of Southwark v D* [2007] 1 FLR 2181 at [49] and [59].

41. Part III of the Children Act 1989 commences with a section governing the general duty placed on local authorities with respect to children in need and their families. That section provides as follows:

> "**17 Provision of services for children in need, their families and others.**
>
> (1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—
>
> (a) to safeguard and promote the welfare of children within their area who are in need; and
>
> (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,
>
> by providing a range and level of services appropriate to those children's needs.
>
> (2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
>
> (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.
>
> (4) The Secretary of State may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.
>
> (4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—
>
> (a) ascertain the child's wishes and feelings regarding the provision of those services; and
>
> (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.
>
> (5) Every local authority—
>
> (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B; and
>
> (b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.
>
> (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include providing accommodation and giving assistance in kind or in cash.
>
> (7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of universal credit (except in such circumstances as may be prescribed), of income support under Part VII of the Social Security Contributions and Benefits Act 1992, of any element of child tax credit other than the family element, of working tax credit, of an income-based jobseeker's allowance or of an income-related employment and support allowance.

(10) For the purposes of this Part a child shall be taken to be in need if—

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled,

and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

"development" means physical, intellectual, emotional, social or behavioural development; and

"health" means physical or mental health.

(12) The Treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.

(13) The duties imposed on a local authority by virtue of this section do not apply in relation to a child in the authority's area who is being looked after by a local authority in Wales in accordance with Part 6 of the Social Services and Well-being (Wales) Act 2014."

42. The definition of 'looked after' is provided by s.22(1) of the Children Act 1989. That section provides as follows:

"**22 General duty of local authority in relation to children looked after by them.**

(1) In this section, any reference to a child who is looked after by a local authority is a reference to a child who is—

(a) in their care; or

(b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions within the meaning of the Local Authority Social Services Act 1970, apart from functions under sections 17, 23B and 24B.

(2) In subsection (1) "accommodation" means accommodation which is provided for a continuous period of more than 24 hours.

(3) It shall be the duty of a local authority looking after any child—

(a) to safeguard and promote his welfare; and

(b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child's educational achievement.

(3B) A local authority must appoint at least one person for the purpose of discharging the duty imposed by virtue of subsection (3A).

(3C) A person appointed by a local authority under subsection (3B) must be an officer employed by that authority or another local authority.

(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

(a) the child;

(b) his parents;

(c) any person who is not a parent of his but who has parental responsibility for him; and

(d) any other person whose wishes and feelings the authority consider to be relevant regarding the matter to be decided.

(5) In making any such decision a local authority shall give due consideration—

(a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;

(b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and

(c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(6) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so.

(7) If the Secretary of State considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of their powers with respect to a

child whom they are looking after, the Secretary of State may give such directions to the authority.

(8) Where any such directions are given to an authority they shall comply with them even though doing so is inconsistent with their duties under this section."

43. With respect to the question of provision of accommodation by a local authority in the exercise of any functions which are social services functions, s.20 of the Children Act 1989 provides as follows:

"**20 Provision of accommodation for children: general.**

(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

(a) there being no person who has parental responsibility for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b) such other longer period as may be prescribed in regulations made by the Secretary of State.

(2A) Where a local authority in Wales provide accommodation under section 76(1) of the Social Services and Well-being (Wales) Act 2014 (accommodation for children without parents or who are lost or abandoned etc.) for a child who is ordinarily resident in the area of a local authority in England, that local authority in England may take over the provision of accommodation for the child within—

(a) three months of being notified in writing that the child is being provided with accommodation; or

(b) such other longer period as may be prescribed in regulations made by the Secretary of State.

(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—

(a) ascertain the child's wishes and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(7) A local authority may not provide accommodation under this section for any child if any person who—

(a) has parental responsibility for him; and

(b) is willing and able to—

(i) provide accommodation for him; or

(ii) arrange for accommodation to be provided for him, objects.

(8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.

(9) Subsections (7) and (8) do not apply while any person—

(a) who is named in a child arrangements order as a person with whom the child is to live;

(aa) who is a special guardian of the child; or

(b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children agrees to the child being looked after in accommodation provided by or on behalf of the local authority.

(10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.

(11) Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section."

44. It is also important to note in the foregoing context that the Children Act 1989 s.105(6) provides as follows:

"**105 Interpretation.**

…/

(6) In determining the "ordinary residence" of a child for any purpose of this Act, there shall be disregarded any period in which he lives in any place—

(a) which is a school or other institution;

(b) in accordance with the requirements of a supervision order under this Act;

(ba) in accordance with the requirements of a youth rehabilitation order under Chapter 1 of Part 9 of the Sentencing Code; or

(c) while he is being provided with accommodation by or on behalf of a local authority."

45. Finally, with respect to the statutory regime, the statutory regime also makes provision for the type of accommodation that the local authority must arrange for the child where the duty under s.20(1) of the Children Act 1989 has arisen. Within this context, s.22C of the Children Act 1989 provides as follows:

> "**22CWays in which looked after children are to be accommodated and maintained**
>
> (1) This section applies where a local authority are looking after a child ("C").
>
> (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).
>
> (3) A person ("P") falls within this subsection if—
>
> (a) P is a parent of C;
>
> (b) P is not a parent of C but has parental responsibility for C; or
>
> (c) in a case where C is in the care of the local authority and there was a child arrangements order in force with respect to C immediately before the care order was made, P was a person named in the child arrangements order as a person with whom C was to live.
>
> (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
>
> (a) would not be consistent with C's welfare; or
>
> (b) would not be reasonably practicable.
>
> (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available.
>
> (6) In subsection (5) " placement " means—
>
> (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
>
> (b) placement with a local authority foster parent who does not fall within paragraph (a);
>
> (c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2); or
>
> (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.

(7) In determining the most appropriate placement for C, the local authority must, subject to subsection (9B) and the other provisions of this Part (in particular, to their duties under section 22)—

(a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;

(b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and

(c) comply with subsection (9) unless that is not reasonably practicable.

(8) The local authority must ensure that the placement is such that—

(a) it allows C to live near C's home;

(b) it does not disrupt C's education or training;

(c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;

(d) if C is disabled, the accommodation provided is suitable to C's particular needs.

(9) The placement must be such that C is provided with accommodation within the local authority's area.

(9A) Subsection (9B) applies (subject to subsection (9C)) where the local authority —

(a) are considering adoption for C, or

(b) are satisfied that C ought to be placed for adoption but are not authorised under section 19 of the Adoption and Children Act 2002 (placement with parental consent) or by virtue of section 21 of that Act (placement orders) to place C for adoption.

(9B) Where this subsection applies—

(a) subsections (7) to (9) do not apply to the local authority,

(b) the local authority must consider placing C with an individual within subsection (6)(a), and

(c) where the local authority decide that a placement with such an individual is not the most appropriate placement for C, the local authority must consider placing C with a local authority foster parent who has been approved as a prospective adopter.

(9C) Subsection (9B) does not apply where the local authority have applied for a placement order under section 21 of the Adoption and Children Act 2002 in respect of C and the application has been refused.

(10) The local authority may determine—

(a) the terms of any arrangements they make under subsection (2) in relation to C (including terms as to payment); and

> (b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).
>
> (11) The Secretary of State may make regulations for, and in connection with, the purposes of this section.
>
> (12) For the meaning of "local authority foster parent" see section 105(1)."

46. In this case, the subject children were not the subject of care orders, so in determining whether the children were 'looked after' for the purposes of the Children Act 1989, the question for the court having regard to the foregoing statutory regime is whether the children were provided with accommodation by the local authority. On the facts of this case, in answering that question the court must consider whether it can be said that it appeared to the relevant local authority that the children required accommodation by reason of the person who had been caring for the children being prevented, whether or not permanently, and for whatever reason, from providing the children with suitable accommodation or care.

47. In *London Borough of Southwark v D* the Court of Appeal considered the point at which the duty under s.20(1) of the Children Act 1989 arises and the manner in which that duty can be fulfilled. In *London Borough of Southwark v D* the local authority had instructed the child's school not to permit the child's father to remove her from school premises. The local authority sent a social worker to the school, who met with the father. The father was said to have agreed not to have contact with the child. With the father's consent the local authority contacted father's ex-girlfriend, who was asked by the local authority if she would agree to care for the child and agreed to take care of the child, having been informed that she would be offered unspecified assistance by the local authority. Thereafter, the local authority sought to argue that the placement was a private fostering arrangement. In dismissing the appeal against the decision of Lloyd-Jones J (as he then was) that the children had been 'looked after' by reason of the local authority having fulfilled its duties under s. 20 of the Children Act 1989, Smith LJ observed as follows at [49] and [50]:

> "[49] We are prepared to accept that, in some circumstances, a private fostering arrangement might become available in such a way as to permit a local authority, which is on the verge of having to provide accommodation for a child, to 'side-step' that duty by helping to make a private fostering arrangement. However, it will be a question of fact as to whether that happens in any particular case. Usually, a private fostering arrangement will come about as the result of discussions between the proposed foster parent and either the child's parent(s) or a person with parental responsibility. But we accept that there might be occasions when a private arrangement is made without such direct contact. We accept that there might be cases in which the local authority plays a part in bringing about such an arrangement. However, where a local authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that, in doing so, it is exercising its powers and duties as a public authority pursuant to ss 20 and 23. If a local authority wishes to play some role in making a private arrangement, it must make the nature of the arrangement plain to those involved. If the local authority is facilitating a private arrangement, it must make it plain to the proposed foster parent that she or he must look to the

> parents or person with parental responsibility for financial support. The local authority must explain that any financial assistance from public funds would be entirely a matter for the discretion of the local authority for the area in which the foster parent is living. Only on receipt of such information could the foster parent give informed consent to acceptance of the child under a private fostering agreement. If such matters are left unclear, there is a danger that the foster parent (and subsequently the court) will conclude that the local authority was acting under its statutory powers and duties and that the arrangement was not a private one at all.
>
> [50] In the present case, the local authority took a central role in making the arrangements for S to live with ED. It directed the school that the father must not be allowed to take S away. It arranged a meeting attended by all the relevant parties. The father was told that he must have no contact with S. Those factors are far more consistent with the exercise of statutory powers by Southwark than the facilitating of a private arrangement. The father consented to the proposed arrangement with ED. S was consulted as to her wishes. Mr Dallas contacted ED to ask her if she would take S in. Mr Dallas delivered S to ED's home and checked that the arrangements were satisfactory. Those factors were equally consistent with an exercise of statutory powers as with the making of a private arrangement. However, there was no contact between ED and either parent. Mr Dallas said nothing to ED, either on the telephone or the following day at his office, about the arrangement being a private one, in which she would have to look to the parents for financial support or to Lambeth for s 17 discretionary assistance. Far from it, he gave her to understand that Southwark would arrange financial support. In our judgment, the judge was quite right to conclude that this was not a private fostering arrangement. Indeed, it is hard to see how he could have come to any other conclusion."

And later at [55]

> "In our judgment, the child is being looked after by the local authority as soon as the s 20(1) duty arises. It is not necessary that the child should have been accommodated for 24 hours before she or he is being looked after. We accept Mr O'Brien's submission that the child becomes looked-after when it appears to the local authority that (for one of the reasons set out in the section) the child appears to require accommodation for more than 24 hours. If that condition is satisfied, as it was here, the s 20(**1**) duty arises immediately and the authority must take steps to ensure that accommodation is provided. Either it can provide it itself by making a s 23(2) placement or it can make arrangements for the child to live with a relative, friend or connection, pursuant to s 23(6). Usually, and ideally, a s 23(2) placement will be temporary and s 23(6) arrangements for a child to live with someone will provide a longer term solution to the child's needs."

48. In *London Borough of Southwark v D* the Court of Appeal did not demur from the conclusion of Lloyd-Jones J (as he then was) at first instance that the word "prevented" in s.20(1)(c) must be construed widely. Within this context, I note that in *R (on the application of G) v Barnet LBC; R (on the application of A) v Lambeth LBC; R (on the application of W) v Lambeth LBC* [2004] 2 AC 208, concluding that the concept of

prevention under s.20(1)(c) involves an objective test, Lord Hope of Craighead observed at [100] as follows with regard to the ambit of s.20(1)(c) of the Children Act 1989:

> "[100] The appellants must show, in the second place, that the respondents were under a duty to provide their children with accommodation. Local social services authorities are under a duty to provide accommodation for a child in need within their area who appears to them to require accommodation as a result, among other things, of the person who has been caring from him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care: section 20(1)(c). This provision must be read in the light of the general duties set out in section 17(1). Among these duties there is the duty to safeguard and promote the welfare of the child. At first sight the concept of the carer being prevented from providing the child with suitable accommodation or care does not sit easily with the situation where the carer has chosen to refuse offers of accommodation or other forms of assistance by the relevant local authority. But the words "for whatever reason" indicate that the widest possible scope must be given to this provision. The guiding principle is the need to safeguard and promote the child's welfare. So it makes no difference whether the reason is one which the carer has brought about by her own act or is one which she was resisting to the best of her ability. On the facts, it is plain that the respondents were under a duty to provide accommodation for the appellants' children under section 20(1)."

49. Following the decision in *London Borough of Southwark v D* a number of decisions at first instance gave further consideration to the circumstances in which a child could be said to be accommodated for the purposes of s.20(1) of the Children Act 1989. In *R (on the application of L) v Nottingham CC* [2007] EWHC 2364 (Admin) at [24] Burton J (as he then was) set out the following analytical approach with respect to the question of whether a child has been accommodated pursuant to s.20(1) of the Children Act 1989:

> "[24] I return to the central question, which is whether s 20 does apply. At the end of the day, as really by the end of the very helpful argument by both Mr Wise and Mr Leslie Samuel for the defendant had become clear, the questions are largely one of fact for me to resolve. Looking at s20(1) there are four requirements which must be satisfied in relation to my concluding that the accommodation was provided under s20, which would render the claimant a "former relevant child":
>
> (1) The child must have been at the material time "a child in need" (see s20(1)). This is conceded.
>
> (2) The child in need must have been "in the [defendant's] area". Once again this is conceded.
>
> (3) The child must have been a child who, at the relevant moment "appears to them to require accommodation". That is the first issue in which there is battle between the parties.

> (4) One of the three sub clauses must apply.
>
> The one that is relied upon by Mr Wise is this (I reincorporate the words with which subparagraph (1) is predicated):
>
> 'who appears to them to require accommodation as a result of …
>
> (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.'"

50. In *R (A) v Croydon London Borough Council* [2008] EWCA Civ 1445 the Court of Appeal set out a similar analytical approach to that adopted by Burton J (as he then was) in *R (on the application of L) v Nottingham CC*. In *R (on the application of G) v Southwark London Borough Council* [2009] 1 WLR 1299 the House of Lords considered the operation of s.20 of the Children Act 1989 and made clear that if the s. 20 duty has arisen and the children's authority have provided accommodation for the child, they cannot "side-step" the issue by claiming to have acted under some other power. Within this context, at [28] Baroness Hale endorsed the analytical approach that had been promulgated by the Court of Appeal in *R (A) v Croydon London Borough Council* as follows:

> "[28] Section 20(1) entails a series of judgments, helpfully set out by Ward LJ in *R (A) v Croydon London Borough Council* [2008] EWCA Civ 1445 , at para 75. I take that list and apply it to this case.
>
> (1) Is the applicant a child? That was the issue in the Croydon case (in which leave to appeal has been granted) but it is not an issue in this.
>
> (2) Is the applicant a child in need? This will often require careful assessment. In this case it is common ground that A is a child in need, essentially because he is homeless. It is, perhaps, possible to envisage circumstances in which a 16 or 17 year old who is temporarily without accommodation is nevertheless not in need within the meaning of section 17(10): perhaps a child whose home has been temporarily damaged by fire or flood who can well afford hotel accommodation while it is repaired. There are hints of this in the social worker's view that "A is quite a resourceful teenager - by his own admission he has spent the last 1-2 months moving around amongst friends and girlfriends and sourcing his own accommodation. Furthermore, it appears that A has attempted to adhere to his own values around personal hygiene despite these circumstances…" But it cannot seriously be suggested that a child excluded from home who is "sofa surfing" in this way, more often sleeping in cars, snatching showers and washing his clothes when he can, is not in need. Mr Brims also pointed out that "A's lack of permanent housing will have a long term impact upon his educational attainment and will also impact upon other practical areas of his life. Without permanent accommodation, A does not have a base level of stability on which to build other areas of his life, and daily tasks such as personal hygiene, washing clothes and maintaining a reasonable diet will pose significant challenges."

(3) Is he within the local authority's area? This again is not contentious. But it may be worth remembering that it was an important innovation in the forerunner provision in the Children Act 1948 . Local authorities have to look after the children in their area irrespective of where they are habitually resident. They may then pass a child on to the area where he is ordinarily resident under section 20(2) or recoup the cost of providing for him under section 29(7) . But there should be no more passing the child from pillar to post while the authorities argue about where he comes from.

(4) Does he appear to the local authority to require accommodation? In this case it is quite obvious that a sofa surfing child requires accommodation. But there may be cases where the child does have a home to go to, whether on his own or with family or friends, but needs help in getting there, or getting into it, or in having it made habitable or safe. This is the line between needing "help with accommodation" (not in itself a technical term) and needing "accommodation".

(5) Is that need the result of:

(a) there being no person who has parental responsibility for him; for example, where his parents were unmarried, his father does not have parental responsibility, and his mother had died without appointing a guardian for him;

(b) his being lost or having been abandoned; or

(c) the person who has been caring for him being prevented from providing him with suitable accommodation or care.

As Lord Hope pointed out in the *Barnet* case, (c) has to be given a wide construction, if children are not to suffer for the shortcomings of their parents or carers. It is not disputed that this covers a child who has been excluded from home even though this is the deliberate decision of the parent. However, it is possible to envisage circumstances in which a 16 or 17 year old requires accommodation for reasons which do not fall within (a), (b) or (c) above. For example, he may have been living independently for some time, with a job and somewhere to live, and without anyone caring for him at all; he may then lose his accommodation and become homeless; such a child would not fall within section 20(1) and would therefore fall within the 2002 Order and be in priority need under the 1996 Act.

(6) What are the child's wishes and feelings regarding the provision of accommodation for him? This is a reference to the requirement in section 20(6) of the 1989 Act, as amended by section 53(2) of the Children Act 2004 :

"Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare -

> (a) ascertain the child's wishes and feelings regarding the provision of accommodation; and
>
> (b) give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain."

Some have taken the view that this refers only to the child's views about the sort of accommodation he should have, rather than about whether he should be accommodated at all: see *R (S) v Sutton London Borough Council [*2007] EWHC 1196 (Admin), para 51. This is supported by the opening words, which are "before providing" rather than "before deciding whether to provide"; contrast the equivalent provision in section 17(4A) , "before determining what (if any) service to provide …" On the other hand, as explained in Hammersmith and Fulham , it is unlikely that Parliament intended that local authorities should be able to oblige a competent 16 or 17 year old to accept a service which he does not want. This is supported by section 20(11) , which provides that a child who has reached 16 may agree to be accommodated even if his parent objects or wishes to remove him. It is a service, not a coercive intervention. Whether one reaches the same result via a broader construction of section 20(6) or via the more direct route, that there is nothing in section 20 which allows the local authority to force their services upon older and competent children who do not want them, may not matter very much. It is not an issue in this case, because A wanted to be accommodated under section 20 . But a homeless 16 or 17 year old who did not want to be accommodated under section 20 would be another example of a child in priority need under the 2002 Order.

(7) What consideration (having regard to his age and understanding) is duly to be given to those wishes and feelings? As Dyson LJ pointed out in *R (Liverpool City Council) v Hillingdon London Borough Council* [2009] EWCA Civ 43 , para 32, "children are often not good judges of what is in their best interests". But that too should not be an issue here. A had been given legal advice as to which legal route to accommodation would be in his best interests. He needed help to get back into education and get his life on track towards responsible adult independence and away from whatever influence the gang culture was exerting over him. That would be better provided for him if he were accommodated under section 20 and became an "eligible" child."

51. With respect to point (4) in the foregoing list, in *The Queen (on the application of T) v Hertfordshire County Council and Derby City Council* [2017] 1 WLR 2153 Lord Justice Burnett (as he then was) held as follows at [12] and [13]:

> "[12] In the Court of Appeal in the same case, [2008] EWCA Civ 1445, [2009] PTSR 1011, Ward LJ distilled nine questions that might arise under section 20 of the 1989 Act, an approach which was endorsed by Lady Hale in paragraph 28 of her speech in R(G) v Southwark London Borough Council, [2009] UKHL 26, [2009] 1 WLR 1299 . The question in issue in this appeal is "(4): Does the child appear to the local authority to require accommodation." In considering that question Lady Hale observed:

> 'In this case it is quite obvious that a sofa surfing child requires accommodation. But there may be cases where the child does have a home to go to, whether on his own or with family and friends, but needs help in getting there, or getting into it, or in having it made habitable or safe. This is the line between needing "help with accommodation" (not in itself a technical term) and needing "accommodation."'

> [13] The clear implication of this observation is that if a child has a home to go to with a family member, it cannot be said to require accommodation under section 20 of the 1989 Act."

52. Within this context, Burnett LJ (as he then was) further observed in *The Queen (on the application of T) v Hertfordshire County Council and Derby City Council* that in respect of local authority contingency planning that may have taken place prior to a child moving to live with a family member:

> "[26] It matters not that Hertfordshire, in conjunction with the police, had laid contingency plans to accommodate him in the event that his mother did not make arrangements. As Mr Cohen QC, for Hertfordshire, submitted the duty would arise only if the person with parental authority did not make suitable arrangements. The police envisaged the use of statutory powers under Part V of the 1989 Act which, independently of section 20, would have required Hertfordshire to receive and accommodate R, who then would have become a looked after child. The need for the police to act under Part V of the Children Act did not arise because independent arrangements were made between Mrs T and her daughter. There was no question of R requiring accommodation to be provided by Hertfordshire on 17 October because private arrangements were made for him which did not involve the local authority."

53. Finally with respect to the authorities, I turn to consider the recent decision of the Court of Appeal in *Re B (A Child) (Designated Local Authority)* [2020] 1 FCR 633, a case which concerned the question of which local authority was the designated local authority for the purposes of s.31(8) of the Children Act 1989. In that case the Court of Appeal held that a failure to complete the relevant formalities associated with a child becoming accommodated for the purposes of s.20(1) of the Children Act 1989 will not prevent the child from being a 'looked after' child for the purposes of the 1989 Act. In this regard, King LJ noted as follows at [46]:

> "[46] It is not necessary for the purposes of this appeal to set out or to consider the requirements of best practice which apply upon a child being accommodated under s20 CA 1989 . It is common ground that if this is s20(1) accommodation, it was effected without any of the proper formalities. It is very properly accepted by Mr Roche that the fact that, contrary to good practice, the formalities were never completed, whilst pointing away from a s20(1) CA 1989 accommodation placement, does not mean that J could not be held to have been accommodated under s20(1) CA 1989. Whether this was or was not s20(1) CA 1989 accommodation Mr Roche accepts is an issue that turns on the facts."

54. Of particular significance on the facts of the case before this court, in *Re B (A Child) (Designated Local Authority)* King LJ, in deciding whether a duty had arisen in under s.20(1) of the Children Act 1989 considered the situation of the child *prior* to the father telephoning a relative to enquire whether that relative could care for the child. Having regard to the home situation of the child, and the nature and extent of the local authority's response to that home situation prior to the father contacting his relative, King LJ concluded that the duty under s.20(1)(c) had, as a matter of fact, *already* arisen at the point that the father made the telephone call. Within this context, King LJ, noting a different of view as between Smith LJ in *London Borough of Southwark v D* and Christopher Clarke LJ in *R (GE (Eritrea)) v SSHD* [2015] 1 WLR 4123 regarding when the s.20(1) duty arises, concluded as follows at [64] to [67]:

> "[64] It is not necessary for me to express a view as to which analysis is the correct one, it being irrelevant for the purposes of this appeal. I would however, with respect, wholly endorse the view of Christopher Clarke LJ that the s 20 CA 1989 duty to provide accommodation arises when it appears to the local authority that the child requires accommodation as a consequence of the matters specified in section 20 . It does not, therefore, matter when J became a looked after child, because the duty arose to accommodate her by virtue of the application of the factors in s20 CA 1989 which arose on 11 February at the latest and not on 12 February when the father telephoned DB. Thereafter Lincolnshire could no more 'sidestep' that duty by facilitating the move to DB, than they could have finessed it away under the pretext of acting under their general s17 CA 1989 duty (*H, Barhanu & B v. L.B. Wandsworth* [2007] 2 FLR 822). As Christopher Clarke LJ said at [41] "… in respect of a child in need who requires accommodation there is no period when no duty arises."
>
> [65] The fact that it was the father who contacted DB in the first instance makes no difference to the duty to accommodate J. Whenever a child is taken into care, the local authority always looks to place the child with a friend or relative. Indeed, pursuant to s22(6)(a) and (7)(a) CA 1989, when determining the most appropriate placement for a looked after child, the local authority "must" give preference to such a placement. But even before a child formally becomes a looked after child pursuant to s22(2) CA 1989 , when the duty to accommodate a child under s20(1) CA 1989 first arises, parents are always asked to put forward the names of possible alternative carers in the same way as they do in care proceedings. With respect to the arguments put forward by Mr Roche, he is seeking to build bricks without straw in submitting that when the local authority was unable to find a foster carer for J, the father had, in some way, made a private family arrangement by virtue of having rung up DB to see if he might be willing to take J to live with him.
>
> [66] In *LB Southwark v D* (above) the Court of Appeal considered at [49] circumstances in which a private fostering arrangement might become available in such a way as to "permit a local authority which is on the verge of having to provide accommodation for a child to 'side step' that duty by helping to make a private fostering arrangement". Smith LJ went on:
>
> > 'We accept that there may be cases in which a local authority plays a part in bringing about such an arrangement. However, where a local

> authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that, in doing so, it is exercising its powers and duties as a public authority pursuant to section 20 and 23 . If an authority wishes to play some role in making a private arrangement, it must make the nature of the arrangement plain to those involved.'
>
> [67] I fully accept that on the face of it the absence of any formalities other than the PNC check on DB would seem to point away from the placement with DB being a s20(1) accommodation. However, in my judgment, the placement with DB was, notwithstanding the failure properly to carry out any of the requirements which good practice demands, still unequivocally a placement pursuant to 20(1) CA 1989, the local authority's duty to provide accommodation having arisen prior to the move to DB. I would add in this regard that no criticism can or should be made of the direct social work and the support that J received from both CM and her Early Help Worker. From my review of the case notes it is clear that they did all in their power to support J, but, as was noted in CM's supervision, the challenges presented by J were simply too great to be managed and for J to remain at home became unsustainable."

55. In the context of the rather complex procedural and legal course this case has taken, in addition to the issue of whether the children were accommodated pursuant to s.20(1) and whether, in consequence, they were 'looked after children' for the purposes of s.22 of the Children Act 1989, a number of further issues arise. First, in 2018 the children become the subject of a child arrangements order in favour of Mrs Z and Mr Y. With respect to the impact of an order made under s.8 of the Children Act 1989 with respect to a child who is 'looked after' for the purposes of the 1989 Act, the child ceases to be a looked-after child if parental responsibility is vested in another by the making, for example, of a residence order or special guardianship order (see *Suffolk CC v Nottinghamshire CC* [2013] 2 FLR 106).

56. Within the context of the foregoing exegesis, in determining the application before it, the court must have regard to the following principles:

i) In determining whether a child was or is 'looked after' for the purposes of the Children Act 1989 the court must consider the following questions asked by s.20(1) of the Act:

a) Is the child "a child in need"?

b) Is the child in the relevant local authority's area?

c) Does the child appear to the local authority to require accommodation by reason of:

A. there being no person who has parental responsibility for him or her;

B. he or she being lost or having been abandoned;

C. the person who has been caring for him or her being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

ii) The words "for whatever reason" in s.20(1)(c) indicate that the widest possible scope must be given to the term 'prevented' in order to ensure children do not suffer for the shortcomings of their parents or carers. The guiding principle is the need to safeguard and promote the child's welfare.

iii) The duty under s.20(1) arises as soon as it appears to the local authority that the child requires accommodation for one of the reasons specified in s.20(1). Within this context, the duty under s.20(1) can arise *prior* to any steps having been taken to accommodate the child.

iv) Once the duty under s.20(1) has arisen, the child is being 'looked after' by the local authority for the purposes of the Children Act 1989.

v) Once the duty under s.20(1) has arisen the obligation on the local authority to provide accommodation for a looked after child is a mandatory one and the authority must take steps to ensure that accommodation is provided in accordance with s.22C of the Children Act 1989. Once it has arisen, the duty under s.20(1) cannot be sidestepped or finessed away by reliance on the general duty under s.17 of the Act.

vi) In circumstances where the duty under s.20(1) can arise *prior* to any steps having been taken to accommodate the child and where, pursuant to s.22C(5) and (6) the local authority must consider for a looked after child a placement with a relative or friend, an offer or action by a relative or friend to care for the child *after* the duty has arisen will not prevent the child being 'looked after' for the purposes of the Children Act 1989.

vii) Whether and when the duty under s.20(1) has arisen is a question of fact to be answered having regard to all the circumstances of the case.

viii) A distinction can be drawn between a child who does not have a home to go to, and a child who has a home to go to, whether of his or her own or with family or friends, but who requires assistance getting to or into that accommodation.

ix) Where a local authority takes a major role in making arrangements for a child to be accommodated, it is more likely to be concluded that, in doing so, it is exercising its powers and duties as a public authority pursuant to s 20(1).

x) If the local authority is facilitating a private arrangement, it must make it plain to the proposed foster parent that she or he must look to the parents or person with parental responsibility for financial support. If such matters are left unclear, there court may conclude that the local authority was acting under its statutory powers and duties and that the arrangement was not a private one at all.

xi) Whilst the absence of compliance with the proper formalities applicable to the provision of accommodation pursuant to s.20(1) of the Children Act 1989 may point away from the duty under that section having arisen, the absence of

> compliance does not prevent the court from concluding that the child is nonetheless accommodated under s.20(1) of the 1989 Act.

57. Overall, the task of the court is to ask itself a straightforward question. Namely whether, at the material time, the child in need and in the area of the local authority appeared to that local authority to require accommodation for one of the statutorily defined reasons. If the answer to that question is yes, the children were 'looked after' children.

DISCUSSION

58. Having regard to the evidence before the court, I am satisfied on a fine balance that it cannot be said that as a matter of fact the children are, or have been, 'looked after' for the purposes of Part III of the Children Act 1989 and that, accordingly, the application for a declaration to that effect must be dismissed. My reasons for so deciding are as follows.

(i) Were the children 'Children in Need?

59. There is no dispute between the parties that the children were 'children in need'. As I have set out, following an assessment that commenced on 28 April 2017, Suffolk decided to designate the children as 'children in need' for the purposes of s.17 of the Children Act 1989 on 22 June 2017.

60. Whilst Ms Isaacs and Ms Healing submit that the fact that Suffolk had concluded that the children were likely to experience further harm without local authority intervention (as evidenced by it having designated them as Children in Need on 22 June 2017, before the placement with Mrs Z and Mr Y began, and having drafted a CIN plan which required safety planning by the mother and her partner) demonstrates that the duty to accommodate under s.20(1) arose in respect of each of the children, some care is required with that submission.

61. As Ms Isaacs and Ms Healing properly concede, the question of whether the children were 'children in need' is but *one* element of the statutory test and is insufficient by itself to ground a finding that the children the duty under s.20(1) had arisen. For that duty to arise, all of the elements of the statutory test must be satisfied. As the court observed in *Re O (A child) by her litigation friend and Doncaster MBC* [2014] EWHC 2309:

> "…Parliament has decided, exercising its power to determine its priorities, that there must be boundaries to the obligations of Local Authority social care departments toward children. Parliament has set where those boundaries lie. Thus these cases turn on the careful application of the statutory framework, underpinned as it is by legal authority, to the facts of the individual case."

(ii) In which local authority area were the children?

62. With respect to the second question asked by the statutory framework, again there is no dispute that, prior to Mrs Z and Mr Y taking care of the children on 25 June 2017, the children were in the area of Suffolk County Council.

(iii) Did the children appear to Suffolk to require accommodation as a result of the mother being prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care?

63. This is by far the most difficult issue in this case having regard to the evidence that is available. Within this context, I have found this question of fact to be a finely balanced one to determine.

64. It is accepted by Mrs Z and Mr Y that it was the mother who requested on 25 June 2017 that they come and collect, and thereafter care for, the children; the mother making her own arrangements for the children to go to live with her brother and sister-in-law. I am satisfied on the evidence that the mother made this request because her own mother, from whom she had sought support earlier in June 2017 when her mental health declined, was not available on 25 June 2017 to provide support by assuming care of the children.

65. It is further accepted by Mrs Z and Mr Y that Suffolk was not aware until 27 June 2017 (at some points in the documentation before the court the date is given as 30 June 2017) that that request had been made or that the children had moved into the care of Mrs Z and Mr Y. Within this context, Mrs Z and Mr Y do not seek to assert, and indeed I am satisfied that it cannot be said, that Suffolk was in *any way* involved in making the arrangements for the children to be accommodated with Mrs Z and Mr Y on 25 June 2017, whether by way of taking a major role in that step or otherwise. Again, as I have noted, Mrs Z and Mr Y accept that Suffolk was not even aware that this arrangement was being made on that date.

66. However, on behalf of Mrs Z and Mr Y, Ms Isaacs and Ms Healing submit, relying on the observations of the Court of Appeal in *Re B (A Child) (Designated Local Authority)*, that all this is irrelevant in circumstances where the duty on Suffolk to accommodate the children had arisen pursuant to s.20(1) of the Children Act 1989 *prior* to the mother requesting Mrs Z and Mr Y to care for the children such that the children were *already* 'looked after' at the point the mother requested Mrs Z and Mr Y to look after the children, the local authority thereafter discharging its duty under s.20(1) by allowing the children to remain in the care of Mrs Z and Mr Y.

67. Within this context, it is necessary to examine whether, having regard to the nature and extent of Suffolk's involvement with the children prior to their move to the care of Mrs Z and Mr Y, it appeared to Suffolk that the children required accommodation by reason of the fact that the mother was prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care. As I have noted above, in circumstances where the court is now asked to determine, by way of declaration, a dispute of fact between the parties regarding the status of the children, the task of the court is to take its own view of the evidence and come to a conclusion as whether, on the balance of probabilities, the children appeared at the relevant time to require accommodation by reason of the mother being prevented from providing them with suitable accommodation or care for one of the statutory reasons set out in s.20(1) of the 1989 Act.

68. Mrs Z and Mr Y contend that the evidence plainly demonstrates that, by 25 June 2017, the children appeared to require accommodation by reason of the mother being prevented from providing them with suitable accommodation or care because:

i) The mother had informed Suffolk on 20 June 2017 that she did not feel able to look after the children properly at that time and that she was worried the children would be removed.

ii) Suffolk concluded on 22 June 2017, before the placement with Miss Z and Mr Y began, that, having regard to the difficulties identified in the assessment, including the state of the home, the lack of supervision of boundaries for the children, the children's school attendance, the mother's mental health difficulties, the mother's alcohol and drug use, the mental health and aggressive behaviour of the mother's partner, the children were likely to experience further harm without local authority intervention and had drafted a CIN plan which required safety planning by the mother and her partner and which it was envisaged would be reviewed within a month.

iii) In the days following the decision on 22 June 2017 to designate the children as 'children in need' the difficulties identified in the assessment did not decline. On 24 June 2017 B was found alone and distressed in the street. The police made a further referral to Suffolk. On 26 June 2017 the police made a further referral to the local authority concerning events occurring between 23 March 2017 and 23 June 2017, during which period the mother's partner was reported to have been exhibiting anti-social and threatening behaviour towards an elderly neighbour. The mother had reported that her partner had become angry and unpredictable.

69. Accordingly, Ms Isaacs and Ms Healing submit that when the mother had moved the children to Mrs Z and Mr Y on 25 June 2017, the evidence demonstrates that it *already* appeared, in light of the assessment that the children were 'children in need' and the assessed risk of harm to the children arising from the state of the home, the lack of supervision of boundaries for the children, the children's school attendance, the mother's mental health difficulties, the mother's alcohol and drug use and the mental health and aggressive behaviour of the mother's partner, that the children required accommodation by reason of the mother being prevented, whether or not permanently and for whatever reason, from providing them with suitable accommodation or care.

70. Further and in any event, Ms Isaacs and Ms Healing submit that by 27 June 2017 (or at least by 30 June 2017), the evidence demonstrates that Suffolk knew *definitively* that the mother was prevented from caring for the children, whether permanently and for whatever reason, because Suffolk became aware on that date (or at least by 30 June 2017) that the children had moved to the care of Mrs Z and Mr Y on 25 June 2017. In this context, so the argument runs, at that point the children *did* appear to require accommodation and that apparent need for accommodation *was* by reason of the mother being prevented, for whatever reason, from providing suitable accommodation or care for them. Once again, Ms Isaacs and Ms Healing rely on *Re B* to submit that the fact that by then the children were in a family placement arranged independent of the local authority makes no difference in circumstances where, pursuant to s.22C of the Children Act 1989, the local authority would have been required to consider a placement with relatives in any event upon the duty under s.20(1) of the 1989 Act crystalising.

71. Ms Isaacs and Ms Healing submit that the foregoing analysis is reinforced by the actions taken by Suffolk following the children coming into the care of Mrs Z and Mr Y.

Namely, that Suffolk continued to regard and treat the children as an open CIN case for a further 7 months until the case was closed by Suffolk on 23 January 2018; that Suffolk took action to ensure that the placement with Mrs Z and Mr Y was safe and in the children's welfare interests; that Suffolk provided financial support to Mrs Z and Mr Y via Salford to pay for the children's school uniforms; that Suffolk actively contemplated whether the case should be escalated to a child protection level; that Suffolk required the mother to sign a written agreement confirming the children's placement with Mrs Z and Mr Y and positing legal action if the agreement was breached; that Suffolk required the mother to give advance notice to the local authority if she wished to remove the children from the placement with Mrs Z and Mr Y; and that Suffolk told Mrs Z and Mr Y on one occasion that the mother was not permitted to remove the children from their care.

72. On behalf of Suffolk, and with the support of Salford and Norfolk, Ms Taylor accepts that Suffolk had full knowledge of all the matters that are of concern relied on by Ms Isaacs and Ms Healing by reason of the completion of its CFA assessment on 22 June 2017, including the poor state of the home, the mother's mental health history, children becoming lost, the behaviour of the mother's partner and mother's drug use history. However, Ms Taylor submits that careful scrutiny of the contemporaneous records prepared by Suffolk fails to disclose any evidence that Suffolk had concluded, or should have concluded, that the children appeared to require accommodation because the mother was prevented from providing them with suitable accommodation or care.

73. In particular, on behalf of Suffolk, again with the support of Salford City Council and Norfolk County Council, Ms Taylor relies on the following matters in support of the foregoing submission:

i) Whilst on 20 June 2017 the mother said she knew she could not look after the children (Ms Taylor asserts that the records do not, in fact, reflect this and I note that the entry records "W said the reason she'd gone to stay with her mother is because she was feeling so low and knew she wasn't in a good enough place to look after the children"), to her credit, in acknowledging that fact, the mother sought her own support by going to stay with her own mother in early June 2017.

ii) Whilst the records do show that on 20 June 2017 the mother also was worried the children would be removed, subsequent records make equally plain that the mother was reassured by the social worker that while Suffolk had concerns the local authority planned to work with the mother, that interventions would be available and that the social worker would meet with the mother the following week. Within this context, the mother went on to complete her assessment, which did indeed recommend a series of interventions with the children staying in the care of their mother under a 'children in need' plan.

iii) On 22 June 2017, in addition to the concerns recognised by Suffolk with respect to the state of home, the mother's mental health history, children becoming lost, the behaviour of the mother's partner and mother's drug use history, a number of positives were also noted about the parenting of the children by the mother. In particular, the mother was noted by social workers to have a good relationship with the children and the children were noted to exhibit a good attachment with her. The mother was also seen to emotionally warm towards the children and responsive to their needs. The children continued to attend school and the

mother was reported to have a good relationship with the school. The mother also demonstrated an awareness of her mental health issues, sought help from professionals when her mental health dipped and, as I have noted, demonstrated the ability to ask the maternal grandmother for assistance when feeling low. The mother was also recorded as recognising the need for, and was requesting support from children's services with respect to the state of the house, C's behaviour and the children's lack of routine. During the course of the assessment the mother was noted to be co-operative with children's services and always admitted the social workers to the family home. The maternal grandmother and aunt offered support to the mother. E had funding for nursery and the mother was managing financially. In terms of her own needs, the mother was open to the IDT and a referral had been made to adult social care. On 22 June 2017 direct work with B and D noted that the children spoke fondly of their mother and father. B was observed to be able to articulate his worries to the social worker in front of his mother.

iv) Within the context of its assessment, and the balance of concerns and positives noted, the local authority had expressly identified the goals the mother needed to achieve and a support package to assist with this whilst the children remained at home in her care. In particular:

a) Information would be sought regarding the offending history of the mother's partner and relayed to the mother in a way she was able to understand.

b) Norfolk and Suffolk Foundation Trust (Mental health) were to be asked to give their view on whether the mother's partner posed a risk to intimate partners and children.

c) IDT would be provided with a summary of the concerns regarding the mother's vulnerability.

d) The local authority would seek to work with the mother to be a confident parent who can put in place the rules the children need in order to be safe, to be able to make sensible choices about relationships, to ensure the children are not exposed to frightening adult behaviour and to know when her mental health deteriorates and use the safety plan and contact health professionals.

e) *If* the mother did not engage with the 'children in need' plan, the children would be made the subject of Child Protection Plans and Suffolk *may* seek legal advice.

v) With respect to the incident on 24 June 2017 where B was found alone, B had become separated from his mother while out shopping and had been returned to the mother's care before the police arrived, Suffolk's records confirm that Suffolk intended to speak to the mother to discuss strategies to put in place to avoid this happening again. There is no suggestion that a legal planning meeting was organised or that it was felt necessary to seek an EPO or an ICO in the light of the incident on 24 June 2017.

74. Within this context, and having regard to balance of concerns and positives with respect to the care of the children as evidenced in Suffolk's assessment of the mother, Ms Taylor contends that there is no proper evidential basis for concluding, prior to the children being cared for by Mrs Z and Mr Y, that the children's required accommodation by reason of the mother being prevented from providing them with suitable accommodation or care. Ms Taylor submits that, whilst Suffolk had legitimate concerns regarding the welfare of the children, the records clearly demonstrate that, in the context of the balance of concerns and positives identified by the CFA and the intention to support mother to address Suffolk's concerns whilst the children remained in the care of the mother, Suffolk had not concluded that the children required accommodation by reason of the mother being prevented from providing suitable accommodation or care for the children and nor should it have so concluded.

75. Whilst Ms Isaacs and Ms Healing contend that the actions of Suffolk subsequent to the children being taken into the care of Mrs Z and Mr Y are supportive of the conclusion that the duty under s.20(1) of the Children Act 1989 had arisen *prior* to that point, Ms Taylor submits that such actions are in fact consistent with the opposite.

76. In particular, Ms Taylor points to enquiries made of Mrs Z and Mr Y on 4 and 5 July 2017 that indicated that their care of the children was temporary, and to the social work records indicating that, at that stage, it was anticipated by Suffolk that when the children returned, they would be cared for by their mother, within the context of the 'children in need' plan and support services being provided. Whilst Ms Taylor acknowledges that in November 2018 there is one record in which it is suggested that the mother was not entitled to remove the children from the care of Mrs Z and Mr Y, Ms Taylor points out that in July 2017, in respect to Mrs Z indicating that she would like the children to stay with her, Suffolk made clear she did not have the power to make such decisions and should seek independent legal advice. With respect to the welfare checks carried out once the children were in the care of Mrs Z and Mr Y and the support provided to them, Ms Taylor submits that Suffolk was simply following the Statutory Guidance for Local Authorities on Family and Friends care, published March 2011 by ensuring that there was a welfare check by local children's services, police checks were undertaken, advice and support was provided, including advice about benefits and a discretionary payment made towards the school uniforms in September 2017.

77. Finally, in further support of her contention that no duty under s.20(1) of the 1989 Act arose in this case, Ms Taylor points to the fact that Suffolk, and a number of agencies thereafter, treated the placement of the children with Mrs Z and Mr Y throughout as a private family arrangement, relying on the contemporaneous and subsequent statements set out at paragraph [22] above.

78. Within the context of the foregoing submissions, and having regard to the evidence before the court, I am on balance satisfied that it cannot be said that *prior* to Mrs Z and Mr Y assuming care of the children on 25 June 2017 it appeared that the children required accommodation as a result of the mother being prevented (whether or not permanently, and for whatever reason) from providing them with suitable accommodation or care.

79. I accept that prior to that date there was clear evidence that there were deficiencies in the care provided to the children by the mother, and risks to the children's welfare within the household presented by those deficiencies and by the mother's partner.

However, in my judgment it is equally plain on the evidence that these difficulties were to a certain extent balanced by clearly identified positives in the mother's parenting. In particular, it was well established, in what is accepted by all parties to have been a well conducted and thorough CFA assessment, that the children had a good attachment to their mother, who in turn had a good relationship with them, that the mother was capable of being responsive to the children's needs, that the mother was able to demonstrate some insight into the impact of her mental health difficulties (as evidenced by the action she took earlier in June 2017), that the mother was seeking, and was co-operative and accepting of, social services intervention, that the children continued to attend school or nursery and the mother was open to the IDT and a referral had been made to adult social care. Further, within this context, and it might be said not unreasonably in light of the positives that had been identified as a counterweight to the accepted difficulties, Suffolk determined on 22 June 2017 that the appropriate course was to designate the children as 'children in need' pursuant to s.17 of the 1989 Act and to seek to support the mother to care for the children at home.

80. In the foregoing circumstances, I am not satisfied on balance that it can be said that, as a matter of fact, *prior* to Mrs Z and Mr Y assuming care of the children on 25 June 2017 that the children appeared to require accommodation by reason of mother being prevented from providing them with suitable accommodation and care nor that it should have so appeared to Suffolk. Whilst the mother faced difficulties with respect to her parenting, resulting in deficiencies in her parenting of the children, I am not satisfied that the evidence demonstrates that she was being *prevented* from providing suitable accommodation or care for the children, being careful as I am to adopt the widest possible interpretation of that statutory term. Rather, in my judgment the evidence demonstrates that the mother had been assessed, in what is again accepted by all parties to have been a well conducted and thorough CFA assessment, as requiring support to assist her in providing suitable accommodation and care for the children, which support the mother expressed herself willing to accept and a CIN plan was formulated accordingly.

81. With respect to the further submission made by Ms Isaacs and Ms Healing that, in any event, the duty under s.20(1) must have arisen by 27 June 2017 or at some point thereafter because Suffolk had by that time become aware, as a matter of established fact, that the children required accommodation by reason of the mother being prevented from providing suitable accommodation or care for the children because the mother had ceded care of the children to Mrs Z and Mr Y on 25 June 2017, after careful consideration I am also not able to accept that argument.

82. As I have noted, it is accepted on behalf of Mrs Z and Mr Y that Suffolk was not, in any way, involved in making the arrangements for the children to be accommodated with Mrs Z and Mr Y on 25 June 2017, whether by way of taking a major role in that step or otherwise. Within this context, upon the mother concluding on or before 25 June 2017 that she was not in a position at that point to care for the children (and it having become apparent that the maternal grandmother could not on this occasion assist) she made arrangements with Mrs Z and Mr Y to care for the children without Suffolk being involved in any way.

83. I accept that in *Re B* the Court of Appeal concluded that the fact it was the parent in that case who contacted a relative in the first instance made no difference to the duty to accommodate having regard to the requirement for the local authority to consider

accommodating the child with a relative. However, in that case that conclusion flowed from the fact that, by the time the phone call to the relative was made, the duty under s.20(1) of the 1989 Act had *already* crystallised, contrary to the position in this case.

84. Within this context, I do not read the decision in *Re B* as suggesting that s.20(1) of the Children Act 1989 can be applied after the fact to arrangements made without any intervention or knowledge on the part of the local authority in order to ground the duty under s.20(1) of the Act absent any evidence that the duty under s.20(1) has crystallised prior to that arrangement being made and simply by reason of the arrangement having been made. The terms of s.20(1) of the Children Act 1989 look to the situation of the child as it is known to the local authority prior to, or at the point accommodation is arranged. Within this context, where there is a dispute, it is entirely legitimate for the court to reach its own view of the evidence concerning the situation of the child as it is known to the local authority prior to, or at the point accommodation is arranged. However, absent any evidence that the duty under s.20(1) has crystallised prior to the family arranging a placement, it would be wholly artificial and indeed unfair for the court to seek to apply s.20(1) of the Act after the fact to such arrangements made and implemented without any intervention or knowledge on the part of the local authority, not least because it would impute to a local authority knowledge for the purposes of s.20(1) that it never in fact had the opportunity of acquiring.

85. Within this context, and in circumstances where I am satisfied that the duty under s.20(1) of the Children Act 1989 had not arisen *prior* to Mrs Z and Mr Y assuming care of the children for the reasons I have already given, I am likewise not satisfied that that duty under s.20(1) of the 1989 Act arose upon the local authority discovering, on 27 June 2017 or thereafter, the existence of the private arrangement made between the mother and Mrs Z and Mr Y without any involvement on the part of Suffolk two days earlier on 25 June 2017. For the same reasons, I am unable to accept the submissions of Ms Heppenstall that contends for the duty under s.20(1) of the Act having arisen later, in July 2017.

86. Finally, I am not satisfied that the subsequent actions of Suffolk prayed in aid by Mrs Z and Mr Y serve to alter the foregoing conclusions. Both Ms Isaacs and Ms Healing on behalf of Mrs Z and Mr Y, and Ms Taylor on behalf of Suffolk, can identify individual issues that can be said to support their respective cases. To take but one example, whilst it is the case that in November 2018 there is one record in which it is suggested that the mother was not entitled to remove the children from the care of Mrs Z and Mr Y, there are also multiple earlier entries which state that the placement of the children with Mrs Z and Mr Y was, and was understood to be, a private family arrangement, acknowledging that should the mother remove the children from their care, Mrs Z and Mr Y should inform the police and the local authority. Within this context, and having regard to the analysis I have set out above, I am not satisfied that the wider matters prayed in aid by each of the parties materially affect the conclusions that I have reached.

87. In light of the foregoing conclusions, it is not necessary for me to go on to consider the question of the impact on the children's legal status of their removal from the care of Mrs Z and Mr Y by the mother in November 2018 or the granting of a child arrangements order in favour of Mrs Z and Mr Y on 12 December 2018.

CONCLUSION

88. In this matter the court is required to determine an issue of fact having regard to the available evidence and by reference to well settled legal principles. On a fine balance, and for the reasons I have set out, I am satisfied that the children are not, and were not, 'looked after' for the purposes of Part III of the Children Act 1989. In the circumstances I am satisfied that the application for a declaration must be dismissed.

89. That is my judgment.