OUTER HOUSE, COURT OF SESSION

[2019] CSOH 25

AD8/18
AD9/18

OPINION OF LADY WISE

In the petitions of

GLASGOW CITY COUNCIL

Petitioner

for

Permanence Orders in respect of two children AN and BF

against

RN

Respondent

and

BF

Minuter

Petitioner: Inglis; Glasgow City Council (Edinburgh Court Services)
Respondent: Guinnane; Balfour + Manson LLP (for Rutherford Sheridan Ltd)
Minuter: Aitken; MBS Solicitors

14 March 2019

Introduction

[1] This is a single opinion in respect of two applications for Permanence Orders both at the instance of Glasgow City Council. I intend to give the children involved names that do

not correspond to names on their birth certificates but that give them an identity as individuals for the purpose of this opinion. They are both boys. The elder boy is 11 years old and I will name him Andrew. The younger boy is 9 and a half years old and I will refer to him as Barry. They are both children of the respondent to whom I will refer as RN or the respondent. RN has had four children in total, her first child (GN) was never in her care and has long since been adopted. Andrew and Barry are the middle children and have different fathers, neither of whom has been involved in these proceedings. Barry's father, to whom I will refer as Mr BF or Barry's father, was involved in his son's life for a period, in circumstances that were the subject of disputed evidence. The respondent's youngest child, another boy, I will call Christopher, again to protect his identity. That child, albeit accommodated for a period, has been in his mother's sole care since about December 2014 when he was 7 months old.

[2] The two boys who are the subject of these applications have been accommodated by the local authority continuously now for more than five and a half years, with both having been subject to differing levels of child protection measures before that. During the course of these proceedings and prior to proof I allowed Barry to enter the process as a Minuter and be represented by counsel. This was a relatively unusual course, but I was persuaded that, as agents and counsel were satisfied that he had the capacity to instruct them and advised that he was firmly of the view that he wished to have his voice heard in the proceedings through them, it was appropriate. Ultimately I heard proof over a period of some 14 days including submissions. Affidavits were lodged from all of the witnesses led in the petitioner's case and the respondent also swore an affidavit, gave evidence and led witnesses. Barry's foster carers were called to give evidence in his case. The history of Andrew and Barry's lives is detailed in voluminous social work records which were available as productions. The particularly

contentious period scrutinised during the proof was 2012-2013, although recent events were also explored as being relevant to consider the impact on either or both boys of being returned to the respondent's care at this stage.

[3] It may be helpful to outline briefly the scheme of this opinion. First I set out some of the relevant undisputed facts in chronological order and list what I regard as the main factual issues in dispute. Then I summarise the evidence led in the petitioner's case but only insofar as relevant to the issues in dispute. That is followed by a summary of the evidence in the respondent's and Minuter's cases. After that there is a summary of the applicable law. Then I undertake an analysis of the evidence on the issues in contention dealing first with credibility and reliability of the various witnesses and then with my consideration and conclusions on each of the significantly disputed matters.

Undisputed facts

[4] The parties lodged a detailed joint minute of admissions (number 40 of process) running to some 217 paragraphs. The present summary of undisputed facts is largely taken from that. While much of it relates only to Andrew or only to Barry, the complete chronological account of the respondent's care of her children and interaction with the local authority is relevant to both petitions.

[5] The respondent is now 39 years old. She was brought up by her parents to whom I will refer as the children's maternal grandfather and grandmother respectively. RN and her older brother were accommodated by Glasgow City Council for a period of about a year when she was 11 and 12 years old. Her parents subsequently moved to England and RN later became homeless at the age of 16 in 1995. When she was 25 years old she was admitted to a psychiatric facility in the North of England on a voluntary basis. She was 7 months

pregnant at that time. She gave birth to her first child, GN, in July 2004 in England. GN was removed from the respondent's care at birth and was subsequently adopted following contested proceedings. Thereafter the respondent moved within England. In June 2007 she attended hospital when heavily pregnant with Andrew. When she left the area of the hospital into which she had booked to have the birth induced, social services issued a nationwide missing persons alert. A few days later RN presented at a hospital in Glasgow and Andrew was born there. The relevant social services in England requested Glasgow City Council to seek a Child Protection Order in respect of the baby and that order was made in respect of Andrew by the Sheriff at Glasgow on 28 June 2007.

[6] On 2 July 2007 a further Child Protection Order was made specifying that Andrew should live with foster parents, contact between him and the respondent being at the discretion of the local authority. Shortly thereafter an initial Child Protection Conference was held and it was agreed that an assessment of the respondent's parenting capacity would be undertaken, to which RN agreed. On 21 August 2007, Andrew was moved from a foster placement to the care of his maternal grandparents with whom the respondent was also living, with a referral to Parent And Child Together ("PACT") being made to undertake a planned parenting assessment of the respondent. Grounds for referral in respect of Andrew were subsequently established in October 2007 and he was made the subject of a supervision requirement on 8 November 2007 with a direction that he live with his maternal grandparents.

[7] Andrew was diagnosed as having suffered a neonatal stroke causing a weakness down the left side of his body which compromised his gait and use of his left arm. That diagnosis was made in February 2008 when he was 8 months old. At that time his maternal grandmother was providing most of his care. In March 2008 the respondent took up a

tenancy in Castlemilk, Glasgow. At that time she told a social worker that she would only cooperate with Yorkhill hospital if a different consultant to the one who had diagnosed the neonatal stroke could be assigned. She also stated that she would not engage with the health visitor. Andrew continued to reside with his grandparents and to have contact with his mother, the respondent, until late April 2009 when he began to stay with his mother following his grandmother's admission to hospital with meningitis. At that time he was diagnosed with cerebral palsy and fitted with hand and leg splints.

[8] Barry was born in May 2009, a pre-birth case conference having taken place given the background of his brother's situation. However, a subsequent conference resolved that Barry's name should not be entered on the Child Protection Register and that he should be placed in the care of the respondent who was by then also caring full-time for Andrew. In August 2009 RN and both children moved homes within Glasgow. Around that time a Children's Hearing varied Andrew's supervision requirement to provide that he reside with the respondent on condition that he attend a) nursery 5 days each week and b) all health and medical checks. The condition relating to medical appointments was subsequently deleted.

[9] On 24 June 2010 a Child Protection Investigation was begun in respect of both children following a referral by Dr O, a paediatrician who was concerned that RN was persistently failing to attend medical appointments relating to Andrew's cerebral palsy. Two months later Andrew was diagnosed as having persistent iron deficiency anaemia and on 22 February 2011 he was discharged from a paediatric clinic charged with his care because of non-attendance at appointments. By May 2011 an educational psychologist, CM, was involved at the instigation of Glasgow City Council. She advised RN that Andrew should attend a mainstream school but RN did not accept that advice. In June 2011 the respondent and the children moved to Rutherglen which was outside the catchment area of the allocated

social work team. The new property had a garden and was more suitable for the family. In August 2011 Andrew started attending a local nursery in a church hall designed for mothers and toddlers but the respondent removed him from it after about a month. She was subsequently told that a place was available for Andrew at a pre-school assessment service (St R's) beginning on 14 November. Andrew began a 12 week assessment at St R's during which nursery staff observed him to be without his splints. By 20 December 2011 RN had stopped sending Andrew to St R's and so less than half of the planned 12 week assessment took place. Andrew was subsequently enrolled in a local nursery in Rutherglen for a period of about 4 months after which the respondent withdrew him having been informed by staff that they had used physical restraint on him to administer prescribed medication.

[10] A major decision was taken by a Child Protection Case Conference in South Lanarkshire on 27 March 2012. The conference concluded that both Andrew and Barry's names should be placed on the Child Protection Register and both should be subject to planned accommodation by the local authority. The respondent was made aware of that decision. Meantime, Barry's father had pursued the issue of contact with his son in the sheriff court. An order had been made for a Child Welfare Report and that had been prepared by SG, the social worker responsible for both children at that time. On 7 June 2012 the respondent informed SG that she would not obtemper a contact order made in the sheriff court requiring her to provide Barry for contact with his father. She had deliberately not attended the court hearing. On 10 August 2012 South Lanarkshire social work services became aware that the respondent had moved to a town in North Ayrshire, claiming to be fleeing domestic violence. A plan that Andrew would start in a learning support unit at a primary school in Rutherglen did not come to fruition because of the respondent's house move.

[11] Andrew's blood test results showed no improvement in his anaemia when reviewed at hospital on 17 August 2012. Later that month RN advised her social worker that she intended to enrol Andrew in a local primary school and Barry in a nursery. Between September and December 2012 the children continued to live with RN although a Children's Hearing was told in October 2012 that the social work recommendation remained that both boys should be accommodated.

[12] RN made complaints about her social worker SG during 2012 and in September of that year nursery staff claimed to have seen a bruise on Barry and had reported this to the social work team leader which resulted in Barry attending at hospital for an examination. A new social worker (VO) was appointed for the children in November 2012 in consequence of the respondent's stated refusal to engage with SG. On 14 November 2012 a Child Protection Case Conference decided that both children's names should be maintained on the Child Protection Register and that planned accommodation would continue to be sought. There was also a plan at that time that Barry's father be assessed as a potential carer for him. A psychiatric assessment of the respondent on 21 November 2012 concluded that she did not have a circumscribed mental disorder and had the capacity to follow any directions that the social work department might make. By 21 December 2012 the children, who continued to live with the respondent, had been seen on a weekly basis by social workers for a period of some months.

[13] The dramatic circumstances that altered the position began on 27 December 2012 when the respondent removed both Andrew and Barry from the United Kingdom to Cyprus without any prior notification to any of the agencies charged with protecting the boys' welfare. The children remained in Cyprus until 27 March 2013. They were initially in the care of the respondent there but were looked after latterly by their grandfather when the

respondent returned to the United Kingdom. The children were treated as missing persons and urgent attempts were made to locate them and secure their return to the United Kingdom between January and March 2013. During that period the respondent liaised with the police from time to time. She told the police officer involved, DA, that she would not return to the United Kingdom until her grievance with Glasgow City Council was resolved. On 16 March 2013 she was arrested whilst attempting to leave the United Kingdom in execution of a warrant issued for failure to appear in court to answer a charge of alleged assault of Andrew.

[14] The children's maternal grandfather returned them to Scotland on 27 March 2013. On arrival at Edinburgh Airport they were seen to be dirty and unkempt. They were made the subject of Child Protection Orders, removed from their grandfather's care and placed with foster parents. Their grandfather was verbally abusive to the social workers who collected the children. The respondent meantime had been remanded in custody since 16 March 2013. On 27 March she refused to accept service of sheriff court papers including Child Protection Orders when a social worker attended HMP Cornton Vale for that purpose.

[15] Since March 2013 Andrew and Barry have remained with foster carers. With the exception of a very short period after they were returned from Cyprus, they have never been accommodated together. Andrew has resided with his current foster carer KK since 30 March 2013. Barry began residing with his current foster carers, a female couple, JH and YM, in March 2015 following a breakdown in his previous foster care placement after he had made an allegation about being struck by the male foster carer. The respondent was able to exercise only limited contact with the children following their return from Cyprus. She saw them once at HMP Cornton Vale on 4 June 2013. On 28 August 2013 she requested contact to each child separately because she was unable to manage them together. At that time she was

to have supervised contact with each fortnightly for 1 hour. Direct contact had ceased by January 2014 but remained a contentious issue until at least 2015. Thereafter, although there was significant involvement from the Children's Hearing, direct contact was never reinstigated.

[16] In May 2014 the respondent's youngest child Christopher was placed with foster parents immediately following his birth. At that time, permanence decisions were being made in relation to Andrew and Barry, who remained under the supervision of Glasgow City Council. Christopher was accommodated by North Ayrshire Council, but in December 2014 he was placed in the respondent's care following a sheriff's refusal to find the grounds of referral in respect of him established. Christopher has remained since then in the respondent's care and has not been the subject of any child protection measures from the beginning of 2015 onwards. In December 2015 Glasgow City Council agreed to carry out a further parenting assessment of the respondent, having been told to do so by the Children's Hearing charged with decision making for Andrew and Barry. There were a number of delays in that being initiated with the respondent refusing to participate with one of the workers. Ultimately it was agreed that the assessment would be carried out by a Ms DS assisted by Ms SM and on 19 April 2016 the respondent signed a working agreement to that effect. The first session of the parenting assessment took place but thereafter the respondent sought to have an external agent present during the work and subsequently did not engage with attempts by the social workers to meet with her either both on a planned and unplanned home visit basis to progress the work. The planned parenting assessment was never completed.

[17] Also during 2016 the Children's Hearing required psychological reports to be prepared in respect of both children. The respondent declined to cooperate with the

appointed experts. There were tensions at Children's Hearings between the respondent and her father on the one hand and social workers and foster carers on the other, particularly with Barry's principal carer. During 2017 concerns arose following subject access requests made by the respondent that the local authority had disclosed confidential information about the children to her. At that time the respondent made contact with Andrew's school seeking an appointment with the head teacher. The Children's Hearing had imposed requirements for non-disclosure of the children's addresses to the respondent.

Factual matters disputed at proof

[18] I have already indicated that I intend to summarise only the evidence that was contentious at the diet of proof. The broad areas of dispute included the following:

1. The nature, extent and time of diagnosis of Andrew's mental health vulnerability.
2. The level of the respondent's lack of engagement with medical professionals and the social work department and her approach towards a nursery education for her children.
3. The quality of care being provided to Andrew and Barry in 2012 prior to their removal from the jurisdiction by the respondent.
4. The circumstances in which the respondent lived with the boys in Cyprus and their presentation on their return to Scotland.
5. The actings of the petitioner's social work department including in relation to that department's approach to contact between the boys and the respondent from March 2013 onwards.

6. The nature, extent and classification of Barry's behavioural problems and the suitability of his current placement.
7. Incidents during or after Children's Hearings.
8. The respondent's approach to parenting Christopher insofar as relevant to the issues to be determined in these petitions.

Evidence in the petitioner's case

[19] The petitioner first called Dr O, a consultant in paediatric neuro disability who spoke to her affidavit (number 23 of process) which she adopted as her evidence. She was involved in Andrew's care following his diagnosis as having cerebral palsy due to an antenatal stroke. At that time she worked at a community based paediatric clinic delivering outpatient care and therapeutic services to children. She had a record of Andrew having missed a large number of medical appointments. In particular, the respondent did not bring him to a review appointment fixed for 6 October 2010. He had missed three physiotherapy appointments up to that time and the physiotherapist had raised concerns about non-engagement by the respondent. Dr O devised a plan of involvement by professionals including the physiotherapist, an occupational therapist, a social worker and herself so that they could all coordinate with the respondent about best meeting Andrew's needs. Despite that, two visits to the vision clinic for appointments in January and February 2011 were missed. Andrew was discharged from physiotherapy and occupational therapy due to his failure to attend a further four appointments since the three missed in 2010. An orthotics appointment for review of Andrew's splints was missed in April 2011 and three earlier appointments for that department had already been missed. The respondent did not bring Andrew to a further paediatric medical review with Dr O on 11 May 2011. At that time Dr O

decided to write in formal terms to the social worker involved at that time due to concerns about the child's physical neglect. Dr O did have a further consultation with the respondent and Andrew on 7 September 2011 after which she re-referred the child once more to orthotics, physiotherapy and occupational therapy as well as to clinical psychology. In the October of that year Andrew suffered a seizure and attended at the children's hospital. At that time it was noticed that he had evidence of persisting iron deficiency anaemia. He had been prescribed a liquid iron supplement in October 2010 but by November 2011 his levels had worsened. On 1 February 2012 Dr O contacted Andrew's GP practice and was informed that the practice had not issued any prescriptions for the liquid iron supplement (sytron) since he was registered there in August 2011. Dr O was concerned that his iron deficiency had persisted because of a poor intake of dietary iron and because his mother had failed to give him the recommended medication. He became severely anaemic going into 2012. While Dr O was aware that it was difficult sometimes to give children iron supplements the deficiency had been operating for such a prolonged period that she was concerned because children who are severely anaemic can have vastly reduced energy levels which can in turn affect their learning development.

[20] Following a consultation at the end of March 2012, Dr O re-prescribed the sytron syrup for a three month period but there were further failures to attend appointments, in particular the respondent did not attend the dietitian in relation to Andrew's iron deficiency anaemia on 13 or 16 July 2012. She failed to attend for blood tests to be taken on 28 June and 10 July and did not attend a further general paediatric appointment at the clinic on 6 August 2012. In August 2012 Dr O was informed that the family had moved to Ayrshire by which time Andrew had not had any physiotherapy or occupational therapy for 18 months. Those therapies are standard components of care for a child with cerebral palsy which could not be

achieved for Andrew due to the respondent's non-engagement. Dr O was clear that the anaemia diagnosed in 2010 had persisted because it had not been properly addressed by the respondent. She wrote to Glasgow City Council's social work team leader JS on 17 August 2012 advising of her significant concerns. The pattern seemed to be that the respondent would attend medical review appointments but not the treatment appointments that were for the actual delivery of therapy for Andrew.

[21] It was difficult for Dr O and her colleagues to monitor whether Andrew was wearing his ankle foot orthoses (splints) for the periods required because of the failure to meet appointments. Dr O had also received information about the respondent having removed Andrew from various nurseries. She considered that attendance at nursery would have enabled Andrew to receive consistent care standing the concerns about the level of parenting he was receiving at home. The child was not toilet trained when she last observed him in consultation in August 2012 when he was 5 years old. Dr O confirmed that there was nothing inherent in Andrew's condition or development that should have prevented him from being able to be toilet trained. The respondent was advised many times by Dr O how important it was to attend appointments and she would appear to be in agreement with the plans for future meetings but would then not follow through on those. Dr O has not seen Andrew since August 2012.

[22] Under cross-examination Dr O confirmed that after an initial prescription of sytron parents would be expected to request repeat prescriptions, something which was explained to them in a letter. The original prescription for Andrew had come from the hospital but that was a year prior to the discovery that his levels were worsening. It had taken two years for Andrew's haemoglobin to rise to acceptable levels. Dr O confirmed that although the cause of Andrew's cerebral palsy was probably a neonatal stroke the problems would not be

apparent at birth and he had been diagnosed at about aged 1 which was typical in that situation. Dr O was unable to comment on the respondent's contention that she was not informed about various medical appointments, all she could say was that letters had been sent.

[23] When asked if Andrew was a cooperative boy Dr O responded that she had noticed that he was not always compliant and this sometimes affected the ability to examine him. The respondent had raised the issue of his challenging behaviour and a mild delay in his language development had been noted. As a result of reported behavioural problems such as Andrew lashing out at his brother a referral to the Child and Adolescent Mental Health Service (CAMHS) had been made. Dr O considered that possible lack of attachment and other social issues might explain Andrew's behaviour but she had wanted to receive a clinical psychologist's assessment. It was pointed out that she had made a reference to autism in her notes and Dr O confirmed that she had considered the possibility of that as a cause of some of the behavioural issues. It was not her role to investigate that matter further other than to suggest a clinical psychology referral. Dr O's records also revealed that Andrew was significantly delayed in self-care skills such as dressing, feeding and toileting and although he did seem able to speak he was not cooperative. So far as anaemia was concerned she accepted that it was not uncommon with children of Andrew's age but so far as she was concerned poor diet was the key factor here. Because there was a Supervision Order in place in respect of Andrew Dr O's communication tended to be with the social work department. She had relayed her view that Andrew's health needs were not being met to the relevant worker. Dr O accepted that her tentative view had been that Andrew's behavioural issues were the result of poor parenting on the part of the respondent and that although she considered the possibility of his being autistic that was not something that she ever formally

recorded. She would not have discussed it with the respondent without a full psychological assessment being undertaken.

[24] In re-examination Dr O confirmed that she would have made clear to the respondent that the iron supplements were to continue for a few months in addition to meeting with the dietitian, something which had not taken place. The severity of Andrew's anaemia was relatively rare in Dr O's clinical experience. The reason physiotherapy appointments were important was because the respondent clearly found it difficult to carry out physiotherapy at home. Dr O's overriding concern had been that Andrew had not been permitted to benefit from a full-time nursery placement or with therapy appointments that would have mitigated the effects of the respondent's parenting.

[25] Dr AE, a consultant paediatrician in Dumfries and Galloway gave evidence and adopted his affidavit number 26 of process. He first met Andrew and his foster carer in July 2013 having received a large number of documents from the local authority in Glasgow informing him of a background of missed appointments and a failure by Andrew's mother to engage with medical professionals. Andrew's condition was more severe than Dr AE would have expected had the child received appropriate multi-therapist treatment including physiotherapy, occupational therapy, speech and language therapy and so on. Regular physiotherapy at home for a child with cerebral palsy is essential because the muscle group becomes very tight. Stretching out with physiotherapy decreases disability and helps in the long term. It is routine for daily physiotherapy to be practised at home by parents. Andrew had suffered a gradual worsening of his condition including marked spasticity in his left arm and leg. In Dr AE's opinion his presentation was worse than it would have been had he attended his appointments. So far as Andrew's behaviour was concerned Dr AE had noted that at the first consultation he had been almost completely uncontrollable, climbing over

things and trying to escape. In subsequent consultations his behaviour was much improved and over time came to the point where he had no such difficulties. Dr AE had contacted the respondent by telephone when trying to secure consent to surgery that Andrew required. He recalled that she was extremely confrontational and wanted to disagree with his advice and that of his colleagues. She felt there were other options to surgery and told him she would research the matter.

[26] Under cross-examination Dr AE confirmed that Andrew eventually underwent surgery in 2016. Between 2013 and 2016 he had no contact with the respondent prior to the issue of consent to Andrew's operation. He recalled that there had been a query about whether the child was suffering from epilepsy but as multiple convulsions are required for a diagnosis the picture was still unclear when he first saw Andrew. He had requested an EEG and subsequently went on to make the diagnosis of epilepsy himself. His view was that the epilepsy was related to the antenatal incident that led to his cerebral palsy. Dr AE is aware that Andrew has Attention Deficit Hyper Activity Disorder (ADHD) which was diagnosed by CAMHS to whom Dr AE had made a referral after meeting Andrew in July 2013. His recollection was that the referral was in relation to both ADHD and a possible autistic spectrum disorder. He thought that no conclusion had yet been reached on autism as this would require input from a number of personnel including the foster carer. He regards Andrew as having a range of complex difficulties, the etiology of each being difficult. He confirmed that it was his understanding that there had been no referral to psychological services in relation to possible ADHD and autism when Andrew had been in Glasgow. When it was put to him that the respondent had eventually consented to the necessary surgery for Andrew, Dr AE stated that she had not done so in his telephone call with her when she had been adamant that she would not consent. This had prompted Dr AE to

contact the social work team leader to explain that the operation really was necessary and he subsequently heard that the consent had been given. In relation to whether Andrew's spasticity might have worsened anyway even if the mother performed physiotherapy and put on his splints, Dr AE said that while it was impossible to answer with certainty, it was a reasonable presumption that it would have been less severe had those therapies been carried out consistently. He agreed that it would be reasonable for a parent to expect help with that.

[27] Dr AE's assessment of Andrew is that he will struggle to live independently in future although he could not say that with certainty. Returning to the issue of consent to the operation he recalled discussing with the respondent the impact on Andrew's ability to walk, which would be lost if surgery did not take place. The phone call with the respondent took place in about the September of 2016 and surgery was ultimately performed in the November. He accepted that the time scale between the conversation and the surgery proceeding was a reasonable one. On the diagnosis of epilepsy, Dr AE's investigations indicated that there seemed to be some relationship between birth family contact and epileptic incidents. However Andrew also had separate episodes that had nothing to do with contact with his birth family. The current situation is that while he is not seizure free his condition has been improved by medication. In January 2015 he received information from the foster carer that Andrew was becoming quite aggressive physically and so a change to the medication was made which resulted in an improvement in that behaviour. Dr AE would not be surprised if Andrew required further surgery in due course. He continues to see him at the clinic every 6 months and sometimes more frequently. He agreed that it would have been reasonable to make a referral prior to 2013 in relation to ADHD and possible autism if behavioural difficulties had been evident.

[28] SG, social worker gave evidence and spoke to his affidavit number 28 of process which he adopted as his evidence. He qualified as a social worker in 2001 and was allocated responsibility for Andrew and Barry in 2011. Andrew had remained on a compulsory supervision order throughout SG's involvement. He observed that the respondent was uncomfortable with nurseries being involved with her children. An element of Andrew's care planning was that he ought to attend nursery in order to support his daily routine, his stimulation and his development. On 9 September 2011 SG spoke with Andrew's health visitor who reported that the respondent had missed Barry's two year assessment despite being offered several appointments and that the child was not up to date with his immunisations. The health visitor also thought that Andrew was not being provided with the necessary physiotherapy by the respondent who seemed to want someone other than herself to carry that out.

[29] In November 2011 SG had attended the respondent's home with the educational psychologist in order to discuss the options for Andrew's nursery and schooling. When they attended at her front door Barry appeared to have wandered there and opened it for himself. SG raised this with the respondent who replied that it was fine for Barry to open the door and she did not think that he would go outside. This incident and others led to SG forming the view that the respondent had limited understanding of child development. A number of his other observations were contained in his detailed affidavit which ran to some 102 paragraphs. One example was that on 12 June 2012 (paragraph 63) SG had observed Andrew looking very uncomfortable and protesting loudly at having a hand splint on during a visit. He was pulling at it and making clear through non-verbal communication that he was uncomfortable. SG formed the view that the child was unused to wearing the splint. So far as Barry was concerned, SG had formed the view when instructed by the court to prepare a

report in relation to contact between Barry and his father that it would be in the best interests of the child to see him. He recalled that the respondent did not want Barry's father to be involved with him at all, despite having allowed some contact in the past. He recalled her telling him that she would not comply with any contact order.

[30] Under cross-examination SG agreed that the respondent's position on Barry's father, Mr BF, was that she did not trust him because he had been dishonest and chosen his wife and children over Barry. His relationship with the respondent had been an affair and although his wife had left him they had subsequently reconciled. SG recollected that at some point in about May 2012 Mr BF was charged with being abusive to the respondent and bail conditions were put in place. So far as the decision to accommodate the boys on a planned basis was concerned, that had not been SG's original recommendation as he thought the matter might have been capable of management by retaining both boys on the child protection register. SG had ceased being the social worker to the children by November 2012, having been the subject of a number of complaints by the respondent prior to that. About a year after he ceased involvement the respondent complained that he had acted inappropriately to her on one occasion. His overall view was that the respondent was economical with the truth as he had recorded at paragraph 71 of his affidavit. For example she would claim that the police had failed to deal with the allegation against Mr BF yet she was the one who had not cooperated by avoiding contact when the police were trying to interview her. SG confirmed that he had started parenting assessment work with the respondent because it was clear that she did not accept that there were any difficulties with her parenting and thought that Andrew's problems were all related to his cerebral palsy. He had discussed matters with Dr O who considered that Andrew's condition could be associated with autistic traits. This was by no means certain and he had recorded in a note (6/5/324) that Dr O had considered

that the impact of the respondent's parenting must first be assessed before any conclusion could be reached. RN was not particularly forthcoming with SG about the issue although she did say that Andrew was aggressive to Barry and physically aggressive to her. There was a recognition that Andrew needed additional support and the plan was that he would move to a supported unit in a mainstream school. The educational psychologist, CM, was involved in those plans. The witness agreed that the respondent had asked for respite and support in managing Andrew once or twice although she would then indicate that her father was going to take over Andrew's care. He accepted that the possibility of respite might have "got lost" although there was always so much going on with the respondent, which might explain why it was overlooked. A decision was made at a core group meeting in 2012 to have the respondent assessed by a psychiatrist to confirm whether or not she had a personality disorder. The outcome was a conclusion that she did not have such a disorder although SG continued to consider that her personality was so unusual that it could be described in that way. He was aware that a diagnosis of personality disorder appeared to have been made in England in 2005 and his understanding of that disorder was that it was pervasive and that someone with it may not show symptoms of mental health disorder. He accepted that he had described the respondent as having a personality disorder in grounds for referral to the Children's Hearing. In fact SG had never seen the report of the psychiatrist (Dr H) in November 2012 (number 6/6/80 of process). He knew that the conclusion had been that the respondent had no mental disorder that would interfere with her ability to look after her children. However he did not regard the issue as one of capacity to care for the children but about the way the respondent looked at the world. The psychiatrist had also recorded that elements of the respondent's account of her life were implausibly sparse or unlikely. SG

continued to consider that the respondent had a disorder that explained some of her very challenging behaviour.

[31] SG had been involved in the urgent referral of Barry to hospital in Ayrshire on 11 October 2012 after the staff at the nursery he was attending had seen bruises on his left arm 2 weeks previously. The head teacher had reported that the respondent had been seen grabbing Barry's arm forcibly. There had been some confusion about when exactly bruising had been seen on the child. SG decided to tell the respondent what had happened when she arrived to collect Barry. RN had consented to Barry being examined and denied causing any injury. The report of the doctor who examined Barry at that time (number 6/6/55 of process) noted a few small bruises including one on his left forearm but formed the opinion that the bruises on Barry's arm were likely to have been caused accidentally during play. SG agreed that he was an extremely active boy with no sense of danger. Any concern about possible non-accidental injury had accordingly been settled by the doctor's report although SG disputed that his department had overreacted to the situation. In relation to the respondent's move to North Ayrshire, SG confirmed that his department had no prior information about that although RN did advise him afterwards that she had moved. The planned weekly visits from the social work department continued although after the move SG sometimes asked the local social work team to fulfil that function. SG was shown a letter written by the respondent and sent to the local authority on 15 October 2012 complaining that she had been refused support over a three year period and requesting a "family support worker". SG regarded that as an old fashioned term and was not sure exactly what it was. There had been a children and families team involved with the respondent before he took over. He had not seen the letter in question previously. SG confirmed that the respondent had made three complaints about him in total while he was involved and these had been investigated by

another member of the social work department. The serious complaint, that he had "made a pass" at the respondent, was about a year after he ceased involvement. He categorically denied the allegation made.

[32] SG was cross-examined at some length about the issue of his preparation of the report on the matter of contact between Mr BF and Barry. He had some recollection of there being an interim interdict preventing the removal of Barry from the jurisdiction being made by the court against the respondent. He recalled that the respondent had refused to accept papers when sheriff officers arrived to serve the interim interdict. He had never observed Barry having contact with his father. His recommendation that contact be re-instigated was on the basis that Mr BF had enjoyed previous contact with Barry and he considered that all things being equal such contact should take place. He had carried out certain checks on Mr BF and found no criminal convictions. He was aware that his conclusion ran counter to the respondent's view and reiterated that she had told him in terms that she would not adhere to the contact order because of her negative feelings towards Mr BF. SG's view was that the parents' conflict should not impact on the child. He was aware that there had been an incident in a shop involving the respondent and Mr BF in which the police had become involved but this was after he had prepared his report. He rejected the idea that he was somehow "on Mr BF's side" in the dispute he simply had Barry's best interests at heart. He acknowledged that the respondent might have felt that the episode affected their working relationship. He accepted that he had not informed Mr BF's solicitor, who had corresponded with the social work department, that the respondent had moved to North Ayrshire. He knew there had been an interim interdict but did not know whether it was still in force. In relation to an issue following a report by a passenger on a train in October 2012 about the respondent's conduct towards her children narrated at paragraph 101 of his affidavit, SG

accepted that the truth or otherwise of the passenger's allegation had never been determined. His recollection was that when CCTV was viewed it did not support an allegation that she had harmed her children in any way. He accepted also that if his affidavit gave the impression that he thought there was truth in the allegation that would be misleading and he took responsibility for it.

[33] By August 2012 SG's recommendation was that both Andrew and Barry should be accommodated, albeit that in the spring of that year he had thought differently. He had become aware that Barry's immunisations were not up to date although that was eventually remedied, that he had seen the respondent's inappropriate punishment of Barry and her ongoing unwillingness to engage with professionals between March and August. Her sudden disappearance from Glasgow had increased the level of risk arising from that lack of engagement. Neither boy was toilet trained by the end of August 2012 by which time Andrew was 5 years and 2 months old. While SG accepted that there were never any incidents of non-accidental injury in relation to either child, there were incidents where the respondent continued to fail to protect them. For example, Barry wandered onto the street in June 2012 and SG had to remove him and take him back to the house. The respondent seemed unconcerned by that incident. Barry was functioning at a younger age than he should have been and the nursery he was attending in North Ayrshire could not control his behaviour. There were concerns common to both boys including the lack of toilet training and behavioural problems. By November 2012 SG's colleague VO had taken over but he had visited the respondent together with her as far back as August because it had been felt that a new worker might help the situation and he wanted to ease the transition.

[34] Under cross-examination by Mr Aitken SG confirmed that the decision taken on 27 March 2012 that both boys faced significant risk in the care of their mother and should be

accommodated was a multi-agency determination. Dr O, a representative of the nursery and the police had all been there together with the health visitor and social work personnel. The significant risks in relation to Andrew were the failure to provide regular physiotherapy such that surgery became inevitable, a failure to see that he wore his splints and a history of the respondent withdrawing him from nursery without prior consultations. In addition there was the long term iron deficiency, the numerous missed medical appointments and the respondent's failure to re-engage with medical professionals despite promising she would do so. As far as Barry was concerned the risks involved the respondent's attitude to contact with Mr BF. She specifically said she would punish Barry by not allowing him to have contact with his dad. There was also a fear that she might withdraw Barry from nursery as she had done with Andrew, the incident where she had allowed him to wander into the street and a general feeling that she might not intervene when Andrew was aggressive to Barry. When asked why, given the decision in March 2012 that both boys should be accommodated there had been no Children's Hearing in relation to Barry that year, SG's recollection was that the report had been submitted to the Children's Reporter in August 2012 but that the situation had not been one justifying immediate removal of the children from the respondent. There was no concern about physical assault but the decision had been taken to plan for accommodation but explain to the respondent that she now had a period to turn things around and avoid that actually happening.

[35] From working with the respondent, SG's view was that she did not understand the importance of Andrew undergoing therapies and completing assessments such as the 12 week assessment in Rutherglen he had been enrolled to undertake. She could not link attendance there with identification of appropriate resources that could help her care for the child. The respondent appeared to have no social contacts other than her own father and

projected that onto the children as a normal way to live. She did not like them forming relationships with other children or with anyone other than her and her father. Barry was a year behind where he should have been developmentally and was not responsive to adult interaction. The respondent disputed facts even when she was faced with them, not just the conclusions on those facts reached by the social work department. On one occasion the health visitor reported to SG that when a continence nurse visited to assist with the toilet training issue RN was aggressive towards Barry in her presence and threw a dry nappy at him when she appeared stressed. In SG's view the respondent did not address the various risks identified that had led to the recommendation of planned accommodation for both boys when given the opportunity to do so in 2012.

[36] SG was shown a copy of a letter from Mr BF's solicitors dated 26 July 2012 (number 6/6/2 of process) enclosing a copy of the interlocutor in relation to contact between Mr BF and Barry and pointing out that it was not being obtempered. In that letter the solicitors (Cartys) stated in terms that they wanted to advise the social work department that they feared that the respondent intended to flee from the area of Glasgow to avoid contact. They requested assistance in enforcing the court order. SG was unclear as to whether he had seen that letter although agreed that the chronology was that within a fortnight of its date the respondent did leave the Glasgow area without informing his department in advance. In relation to whether ADHD and autism could have been the underlying cause of Andrew's behaviour, SG pointed out that Barry had exhibited similar behaviour and the common theme was the identity of the parent with care of them. In re-examination SG confirmed that it was not his impression that by October 2012 the respondent was working with social services to try to turn things around to avoid her children being accommodated. Over the period of his involvement, SG had observed that Barry and Andrew fought regularly. Andrew would hit

out at Barry and the respondent seemed unable to control that behaviour. SG had seen only isolated incidents but the description given to him by nursery staff was of Barry running around and being hyperactive and destructive.

[37] The educational psychologist with Glasgow City Council who had been involved in decisions about Andrew's education since April 2011 was called as a witness. CM is 60 years old and had sworn an affidavit number 30 of process which she adopted as her evidence. Over the period of her involvement she had formed the view that the biggest barrier for Andrew was not his physical disability but his social, emotional and behavioural needs. From her first contact with him at the respondent's home on 13 May 2011 she had observed aggressive and chaotic behaviour. CM regarded the lack of consistency in nursery provision for Andrew as creating a problem for him because he was not able to settle appropriately. Each new nursery will have seemed strange to him and he was given no opportunity to link and bond either with staff or his peers and so develop play skills and language. When she first met him he was almost 4 years old and had not been toilet trained. Even allowing for boys being a little later in this respect and his physical disability she would still have expected this to be progressed by that stage. She had visited in 2011 with the intention of conducting a play based assessment but it was difficult to engage with Andrew, who was throwing a shape sorter around the room which hit her assistant at some point. CM simply could not continue with the assessment that day. The respondent disputed that Andrew could manage mainstream nursery but CM felt that due to his ability to overcome and compensate for his physical difficulty he could do so. The first nursery CM arranged for him to attend was in Glasgow and that was in September 2011. He was there only briefly and it was unsuccessful. CM's affidavit details the various options that had been discussed for

Andrew's education and what had happened. CM has also had involvement with Barry's education but only after he was placed with his current carers.

[38] Under cross-examination CM accepted that on reflection the respondent had been correct in her view that the nursery to which Andrew was sent in September 2011 was not suitable for him. She did not accept, however, that Andrew has complex needs. She considered that he had specific difficulties with which he required support. There was a detailed passage of cross-examination about the respondent's view that a private school specialising in conductive education was suitable for Andrew, something with which CM had disagreed. She had set out in paragraph 6 of her affidavit the reasons why she considered that the school in question would not meet Andrew's emotional and social needs. CM had made the referral to the pre-school assessment centre in Glasgow (St R's) and had been disappointed that the respondent withdrew him from that before the assessment had been carried out. CM accepted that the respondent usually expressed her disagreement on educational matters in a calm and measured manner. She had not expressed any disagreement with the plan for the 12 week assessment in the pre-school assessment centre at the time although CM had later learned from reading a file that the respondent claimed that she felt pressure to agree to that. Andrew had been taken to the centre by taxi with an escort and the respondent could have gone with him if she wanted although that was never raised. CM's preferred option throughout had been for mainstream education for Andrew but she had wanted input and advice from the pre-school assessment centre before finalising that decision. There had been an alternative of a school in west Glasgow for children with a physical impairment but Andrew's was relatively mild compared with some of the disabilities suffered by the children there. CM had been aware of there being certain disputes between the respondent and the head of the nursery in the pre-school assessment centre.

However, she pointed out that Andrew was the subject of a supervision order which had a condition that he attended nursery and by removing him the respondent had thwarted that.

[39] After the respondent moved to North Ayrshire CM visited her at home there. At that point Andrew had started at a local school but was attending for only 1 hour per day and with a high level of support. The head teacher of the school telephoned CM for advice. In January 2013 CM attended an emergency meeting with police and other professionals in Ayrshire after the discovery that the respondent had absconded to Cyprus with the children. Following the children's return to this country she took on responsibility as educational psychologist for Andrew again as he continued to be under the supervision of Glasgow City Council. By April 2013 he was attending a primary school with a general learning support unit attached. He was in a mainstream classroom with access to the unit. In 2015 she became involved with Barry because he was a looked after child and was moving primary school because his carers had been given notice that they were no longer to be looking after him. CM then prepared a report for the Children's Hearing in which she was asked to comment on the issue of contact. Her report was dated 7 March 2016 and recommended that contact between the two boys should stop completely. At that time all contact with the respondent and the boys had ceased but there were still issues about whether the maternal grandmother should continue to have letterbox contact. CM had not spoken to the respondent in the preparation of that report. She knew that Barry's carers were not in support of any letterbox contact between the respondent and Barry because they thought he had been upset by correspondence that had been sent. CM was aware that a safeguarder was preparing a report at the same time but she did not have any involvement in that. Her view had been that Barry could be told that he would have choices about contact with his grandmother when he was a bit older. She had been informed that Barry's carers found his behaviour more difficult to

manage after indirect contact took place. She had not considered it necessary to seek input from Barry himself as he had involvement with a sufficient number of other professionals including a clinical psychologist and a safeguarder and felt it would be unhelpful to introduce him to another stranger.

[40] Under cross-examination by Mr Aitken CM was shown her report of March 2016 (number 6/5/389 of process) and confirmed that she had known that the report would be put before the Children's Hearing who were making decisions about Barry's care. The concerns expressed about Barry's behaviour at that time were that he would hit out at children in school, kick them or run about in an uncontrolled fashion. CM's view was that the underlying cause was related to the period when Barry had been in the care of the respondent and to some extent his maternal grandparents. When Barry lived together with Andrew the observed behaviour was Andrew stealing food from Barry and being aggressive to him. That will have had an impact on Barry's future behaviour. The school had put in a lot of support and would allow Barry to go home at lunchtime with a member of staff and have a play and then return to school. He was engaged in a nurture group which tried to address social and behavioural issues in a small calm setting. CM was aware that there was a very successful link between home and school for Barry as his primary foster carer, JH, was fully involved. CM had experience of seeing Barry at school being calm and happy and felt she could rely on the descriptions given by staff about the changes that took place when any sort of contact was ongoing. So far as her recommendation in 2016 that direct contact between Barry and Andrew cease, CM's belief was that when they got together Andrew and Barry reverted to the behaviour they had exhibited when they were living together. Andrew was dominant and would physically hurt Barry and they would steal food from each other. It was not in Barry's best interest to be exposed to that. It was well known that different

people respond to trauma in different ways, for Barry his way of coping might be to shout and run about with clenched fists, growling and baring his teeth. CM had been aware of limited letterbox contact between the respondent and Barry in which, as she understood it, Barry was not interested and had thrown the letters away. The carer, JH, had advised her that he began to recall memories with anger when the letters arrived. The conundrum was that at home with his foster carers Barry seemed very settled and happy but at school he found it difficult to build up relationships with adults and to interact with other children. As Barry was a clever boy academically the foster carers had striven to keep him where he is at a school where he benefits from a huge amount of support. It will be difficult for him to move to secondary school and a consistent and high level of cooperation between his carers and the school will continue to be required. The level of support he was receiving, at 30 hours of one to one per week was extraordinary and technically more than the time he was in school which is 27 and a half hours per week. In CM's view anyone looking after Barry required to be loving, kind, accepting and understanding of his behaviour. She was aware that his current primary carer goes for training with Care Vision. She has good core communication skills and without somebody of that capacity Barry would struggle to feel nurtured and his behaviour, education and social development would be adversely affected throughout his childhood.

[41] VD a 59 year old social worker with many years of experience as a carer before qualifying in 2008 became involved with the respondent and the children in about October 2012. She had sworn an affidavit (number 27 of process) which she adopted as true and accurate. Her first visit to the respondent's home was on 9 November 2012, when the respondent's father was also present. At that time the maternal grandfather was registered as Andrew's carer for 35 hours per week. He told VD that he took Barry for some nights during

the week and took him to nursery and that Andrew stayed at his home from a Friday night to a Sunday morning. At that first meeting the respondent advised VD that there was no contact for either child with their fathers. However, the social worker knew that was not strictly true as she was aware that the court had ordered contact between Barry and his father but that the respondent had refused to facilitate that. The idea of a support worker being allocated to assist the respondent with the children, especially in relation to their behaviour was discussed. VD had some understanding that the respondent had sought this previously but at the meeting the respondent stated that this was no longer required given her father's involvement. When the social worker visited the following week, 16 November 2012, Andrew and his maternal grandfather were not present. On that occasion she noticed that Barry was not able to settle or take guidance from his mother. He would not sit down, he was helping himself to biscuits or sweets from the cupboard. There was some discussion about Mr BF as an alternative carer for Barry. VD's assessment was that Barry appeared to look forward to contact with his father and was not fearful of him, despite the respondent's protestations. After further visits, including to Andrew's school during November and December, VD telephoned the respondent in mid-December and advised her that she had a period of annual leave between 14 December and 2 January and that duty social workers would continue to visit in terms of the weekly child protection measure. At that time she thought that she and the respondent had built up a reasonably positive relationship. She had no reason to suspect that the respondent was planning to leave the jurisdiction. Although VD was aware of the plans to accommodate both children, at that time she was working towards a possible outcome where that could be avoided and the children could remain with their mother. She felt very motivated to support the respondent to work through the various issues she had.

[42] When VD returned to work in January 2013 after her annual leave she was shocked to hear that the respondent had absconded. On reflection she wondered whether RN had been compliant with her the previous month in order to avoid suspicions about her plans. VD's team leader, JS, had reported the children as missing persons and there was considerable involvement with the police who were investigating RN's disappearance. Following the respondent's arrest on 16 March 2013, her father, who was looking after the boys on his own in Cyprus was persuaded to return to Scotland. VD was one of the workers who attended Edinburgh airport to meet the boys and their maternal grandfather from the flight. In paragraph 26 of her affidavit she described what she said in evidence was an almost unbelievable scene. The children were absolutely wild, running around, punching each other, spitting at people and visibly unwashed and smelling. Barry's wet nappy was soaking through to his trousers. She described the children as feral on that occasion. She tried to speak to their grandfather who was shouting and swearing. Ever since that time the relationship between the social work department and both the respondent and her father has been extremely difficult, with the pair being aggressive verbally towards VD at Children's Hearings and any other meetings that have taken place.

[43] Following the boys' return to Scotland the social work department concentrated on securing an emergency foster placement for them. However, that placement broke down within a matter of hours because of the boys' behaviour. They had been fighting each other and punching the foster carers. They were then moved to very experienced foster carers who also advised the social work department that they could not manage both boys together and the placement broke down. It was then realised that the issue lay in the boys being accommodated together and so another placement had to be found. A carer for Andrew alone was identified [KK] and she has looked after him since 30 March 2013. While the social

work department still has very limited information as to what happened to the boys during the 3 months that they were in Cyprus, VD deduced that something had gone very wrong given the height and degree of the distress and dysfunctional behaviour exhibited by both of them on their return to Scotland. Whilst in the care of one of the initial short term carers, Barry told the male foster carer about his granddad hitting him. The boys' grandfather had given contradictory accounts of whether the boys had behavioural difficulties while in Cyprus. He told the team leader JS that he had been struggling to manage the children there but on 4 April 2013 when attending the social work office he denied that there had been any such problems. When contact between the boys and their mother was reintroduced at Cornton Vale prison they were badly behaved, running about and spitting, rather like they had been at the airport. It appeared that the threat of contact led to such behaviour. VD was concerned that they would be re-traumatised by seeing their mother in prison. After her release, there were issues with contact which are narrated in VD's affidavit (paragraphs 46-49 and 55-62). The ultimate decision of the Children's Hearing on 21 November 2013 was to terminate all contact between Andrew and his mother, grandfather and grandmother and there has been no direct contact with the respondent and Andrew since then. Direct contact with Barry continued until about January 2014 when the Children's Hearing decided that direct contact should cease. While the social work department's focus would normally be on rehabilitation of a child or children back to the care of family, this had not been possible with Andrew and Barry due to the high level of trauma they experienced through attempted contact. VD described contact as a very important vehicle to assist the social work department in rehabilitation. The boys were not positive towards contact and Andrew's carer, KK, described significant changes in his behaviour around the time it was taking place. VD also received reports from Barry's carers about the effect of contact on him.

[44] In the latter half of 2013 and early 2014, the social work department were still considering a rehabilitation plan for Barry to live with his father. However, Mr BF gradually withdrew from seeking care of Barry. He recognised that Barry had quite significant needs in terms of his behaviour and he realised he was unable to meet those. Contact between Barry and his grandmother continued at that time. In her affidavit and her evidence VD narrates in considerable detail the steps taken to assess the respondent's parenting capacity in 2014 at a time when permanent arrangements were being considered for Andrew and Barry. On 21 May 2014 a significant event occurred after VD attended a meeting at North Ayrshire council offices in relation to RN's fourth child Christopher and possible care planning for him. The respondent and her father were unpleasant, insulting and intimidating to VD and had to be cautioned by the chairperson of the meeting. After it was over they followed VD by driving their car behind hers. She was anxious and telephoned first her husband and then JS to report what was happening. This was all described at paragraph 78 of her affidavit. Since then and throughout the period of VD's involvement she had experienced difficulties with the respondent and her father. After a children's hearing on 4 May 2016 Barry's carers, JH and YM, reported threatening behaviour towards them. VD did not hear exactly what had been said but it was reported to her that RN had referred to Barry's carers "not liking men but wanting to take my son". The carers were visibly distressed and indicated they would be reporting the matter to the police. The respondent was spiteful and abusive to VD also. When pressed, VD confirmed that the respondent had likened her to a dead hamster. She also spoke to a number of issues that had arisen because of the respondent's behaviour towards Barry's carers. Ultimately they moved house, such was the level of concern they had about the respondent and her family knowing where they lived. Issues with letterbox contact after the cessation of direct contact were narrated in paragraphs 101-102 of her affidavit.

[45] Under cross-examination by Mr Aitken VD agreed that her assessment was that Barry continued to have complex emotional and behavioural problems that resulted from attachment issues. When there was contact with his maternal grandmother in 2015 Barry would say that his granny reminded him of his mum. Then he revealed that his mum locked him in a basement and did not give him food. He would ask his carers why they did not take Christopher because he was worried about his brother given what had happened to him. Barry was a very angry boy who did not understand why things happened the way they did. When the subject of his birth family is introduced he breaks down and is struggling to make other relationships work, particularly at school. His current carers are consistently committed to him and do all they can to make him feel settled and normalise his situation. At one point his current carers had indicated that the placement could break down if they did not have more support but they were very committed to his care and had carried on. Barry was happy with them and they had built a family relationship. VD's view was that Barry needed reassurance that he would not now be moved.

[46] Under cross-examination by Ms Guinnane VD was asked at length about proceedings in Glasgow Sheriff Court in 2013 when a possible contempt of court by her and JS arose because of their failure to organise contact between the respondent and the boys during May 2013. On 10 May 2013 a warrant for the respondent's detention had been renewed with a requirement of contact between her and the boys once a week and supervised by the social work department. When asked why it had taken from 10 May to 4 June for the first contact to take place in terms of the condition VD explained that the management of contact was not easy and that they had to link in with the prison to see what facilities they had. She accepted there was a period of 3 weeks during which the respondent had no contact with the children. She and her team leader, JS, had prepared a chronology of what happened and what work

she had done to prepare for contact for the sheriff court. She accepted that no other visits had been arranged for the children to see their mother in prison other than the 4 June 2013 visit. Taken to the various social work records, VD accepted that the social work department's decision in May 2013 had been that there should not be any contact between the boys and their mother and grandparents, something that she acknowledged flew in the face of the court order. However, after being ordered again by the court to organise contact she had taken more active steps to arrange that.

[47] A number of issues were raised about the pre-January 2013 period. VD accepted that when she went on annual leave in December 2012 steps were not being actively taken by the social work department to accommodate these children. It was the respondent's removal of the children to Cyprus when there were child protection measures in place with weekly visits by the social work department that changed that plan. She was asked about contact to the children in 2013 when they were placed quite far from Glasgow and the difficulties with the respondent taking public transport to contact. She said that the preference of the social work department was for the parents to travel to where the children lived rather than the other way round. There had been particular issues with Andrew and Barry being difficult to control in vehicles and so the respondent travelling remained the best option. VD accepted that when she first met the respondent, RN had asked her to arrange parenting classes through her local social work office and that while she had not done so, she had arranged them with the local school so that any classes could be specifically tailored to meet the needs of the child. She had told the school to contact the respondent direct. Although in November 2012 VD thought that she could work successfully with the respondent, it was noteworthy that RN had failed to attend a Child Protection Case Conference in November 2012 which took place within a week of her saying she would engage with the

department. VD had been planning to undertake an assessment of the shared care arrangement between the respondent and her father early in 2013. At the end of 2012 VD had an open mind as to the various alternative carers for the children including the possibility of the maternal grandmother and an arrangement that involved the maternal grandfather. She did not accept that there were no particular problems with the respondent's care of the children by the end of 2012. The respondent had told her that she was up to date with all health appointments for Andrew but when VD checked she found that was not the case. She accepted that Dr H, the psychiatrist, had concluded that the respondent had no identifiable mental health issues and she was taken to that report (6/6/80 of process). VD had telephoned the psychiatrist herself who had confirmed that there was no formal diagnosis of a personality disorder. However in a note of that telephone conversation VD had recorded that the psychiatrist had told her that RN was not able to care adequately for her children. The telephone conversation went beyond the report and the psychiatrist indicated that the respondent had an exaggerated and inaccurate sense of her abilities. Her notes were contemporaneous with the telephone conversation. In December 2012 Andrew's school had reported that he had not been wearing his arm splint for some time. There were also toilet training problems in relation to both boys and this was unresolved by the time of VD's departure on leave. There remained a concern also about attendance at school and nursery which had been a longstanding issue. In essence, VD's position was, in December 2012, that if the respondent had embarked on a course of showing more engagement with the school and nursery about the boys' behaviour, ensured that Andrew was wearing his splints and attending all medical appointments and embarking on a proper course of toilet training she might have been able to avoid the children being accommodated. At the time she really felt quite positive that this could be achieved and that the respondent would do what the social

work department expected. The removal of the children from the country instead was a pivotal moment.

[48] VD was asked in detail about the arrival of the boys at the airport on 27 March 2013. She agreed that their being dirty and unkempt had to be down to their grandfather as the mother had left them in Cyprus with him at some point prior to 16 March. She was asked a number of questions about the Child Protection Order that was granted on 27 March 2013 by the sheriff at Glasgow. She confirmed that she had drafted the application and had shown the draft to her team leader JS. It was put to her that the application for the order was wrong because it referred to not just the recent efforts of the respondent to evade social services but also her personality disorder in suggesting to the court that there was an imminent risk of significant harm to the children. VD said that it was not whether something was classified as a disorder that mattered. The way that the respondent behaved was reflected in the application. She had spoken with Dr H who said that there was no longer a diagnosis of personality disorder (as there had been many years previously in England) but the characteristics of that were present. Her own view was that the respondent still had a personality disorder. In any event, the significant change was RN's actions in departing with the children to Cyprus. When challenged about why she had told the children that they were going to visit their mother in prison on 4 June she said she felt it was necessary because that was where they were to be taken. The children had not asked about their mother and did not know where she was. So far as the boys' placements were concerned she confirmed that they had never been placed together since March 2013 because of their behaviour and different needs. A single placement was simply not suitable for both of them. She agreed that on 4 June 2013 the respondent was having to deal with children she had not seen for 3 months and any comments about contact had to be understood against that background. However,

VD pointed out that it was the respondent herself who had caused the separation because she had returned from Cyprus without the children. When it was put to her that the social work department simply did not want the respondent to have any contact with the children, VD said that she did feel it was better for them to try to settle given the reports from their placements. For example, Andrew had been seen banging his head against a radiator in the second short term placement to which he had been sent. VD described both boys as eating as if they were worried they would not get more. They would eat under their beds and hide and eat with their hands. It was such reports that made VD realise just how traumatised the children were not by being accommodated but by either living with the respondent or being taken to Cyprus. She was puzzled about what had happened to the children in Cyprus but could deduce that they had obviously not been properly cared for. Significantly, both boys had managed to become toilet trained once they were settled in their placements. VD had never seen any evidence of the respondent trying to toilet train them before the move to Cyprus.

[49] In answer to questions about when the children had been medically assessed following their return from Cyprus under reference to the records (6/5/455 of process) VD accepted that it appeared that the first full medical planned for Andrew had been on 8 August 2013. She reiterated that while her department regarded Andrew's complex needs as having been exacerbated by the experience in Cyprus, the deficiencies in the respondent's care of her children dated back to a long time prior to their removal.

[50] During the period when the children were continuing to have contact with the respondent and also the maternal grandparents during 2013, VD felt that it was all too much for the children to cope with but she had managed to arrange separate contact sessions with the various family members. VD supervised that contact and saw no evidence of any clear

benefit to Barry of continuing with it. By November 2013 VD's view was that the respondent was of no significance in his life. She monitored Barry's reaction after each contact session in order to assess whether it was in his interest. Barry was generally of a sociable nature and would enjoy playing with most people but after contact took place the foster carers would report a deterioration in his behaviour. VD disputed that she had not focussed on trying to preserve the respondent's contact with her children. The only member of his family that she thought Barry might benefit from contact with was his father. She had tried a number of options including seeking to remove contact between the boys and their mother but not with their grandparents. When challenged about whether she had spoken to the children about not seeing their mum she confirmed that she had and that she had tailored what she said to the children's level of understanding by explaining it was to help them settle. She accepted that after January 2014 she had never recommended that contact be re-established between the respondent and either child. She acknowledged also that when the respondent had succeeded in an appeal against the termination of contact in October 2014 she had sent an email to a worker at Care Vision talking of their joint aim to illustrate the stunning all round progress Andrew had made since contact ceased. This was because she had assessed that it was not in Andrew's best interests to have any contact. Both boys had taken about 2 months to settle and become toilet trained after March 2013. When contact with their mother was reintroduced they both reverted to being back in nappies.

[51] VD accepted that there had been one occasion recorded in the notes (6/5/463) where there was a comment that Barry had not slept well after contact with his mother on 10 June 2013 and that he was distressed and told his carers that he was missing his mum. She confirmed that this was the only occasion he had ever been distressed in the context of missing the respondent. For Andrew, there had been reports from, for example, his learning

support teacher indicating that he was finding contact unsettling. While there were reports that were mixed in the sense of indicating that he was sometimes coping with such contact, matters were by no means settled. There had been referrals to CAMHS in relation to Andrew prior to VD's involvement and there was a subsequent referral in November 2013. At that time it was noted that there was a chance that Andrew was on the autistic spectrum. In December 2013 VD had produced a note for a Looked After Children (LAC) Review confirming that following contact with his mother in October 2013 Andrew had been wetting himself and showing aggressive behaviour. She felt he was regressing to the level he was at when he was at the airport in March. It was that month that the Children's Hearing decided to terminate contact between Andrew and his mother. Although Andrew and Barry still had sibling contact for quite some time after that the social work department had moved to the form of this being through video or Skype because of the way they fought when they were physically present together. VD disputed that on one view Andrew's behaviour had not improved at all since contact with his mother stopped. She said that there had been some improvement although a referral to CAMHS had still been necessary to explore his mental health situation. So far as Barry was concerned, what VD had observed was that the child could interact with anybody including on occasions his mother, he had never shown any particular attachment or desire to see her over and above anyone else. The witness was challenged in relation to a tendency to cut and paste previous excerpts from her records and bring them forward into ongoing reports for the Children's Hearing and LAC reviews. VD accepted that even if repeated references to the respondent having a personality disorder were accurate in the sense that there continued to be problems with the way in which her personality manifested itself these had not been balanced by any reference to the more recent view of Dr H. She accepted that this was an omission.

[52] There was reference to various attempts at a parenting assessment with a possible view to re-instigating contact between the respondent and the children. However the respondent had chosen not to be involved or cooperate with that. In relation to why Barry's foster placement had broken down in 2015 it was put to the witness that this involved an allegation by Barry that he had been struck by the male foster carer, but VD recalled that the breakdown was primarily because Barry's behaviour had become more difficult for the carers to manage. She did not accept that she could have been mistaken that the respondent and the children's maternal grandfather had followed her after a Children's Hearing in May 2014.

[53] In re-examination VD spoke to the chronology of the work she had undertaken to prepare for contact between the respondent and the children in May 2013 – 6/5/466 of process. She had prepared this for the court hearing at which the spectre of a possible contempt of court by her department had been raised. No finding of contempt had ever been made and matters had moved on following observation of the respondent's interaction with the children when contact did take place on 6 June 2013. VD's recollection was that the respondent had been unable to focus on both children and had left Barry to his own devices. In subsequent contact sessions when VD had recorded her observations. She had noted that the respondent was unable to maintain any activity with the children, starting one and then moving to another one without finishing it. The most serious issue, however, was the carers' recording of the dramatic deterioration in Barry's behaviour after contact when he would spit or threaten to kill or hurt them. In significant contrast there was no deterioration in Barry's behaviour after he had seen his father which he enjoyed.

[54] VD's team leader JS gave evidence. He has been a qualified social worker for about 17 years. He had been involved with the respondent's family from August 2010 and had supervised three social workers involved in the case. He ceased to have involvement late in

2016. He had sworn an affidavit number 36 of process which he adopted as his evidence. He recalled that after SG's involvement as social worker the respondent had wanted her case transferred to South Lanarkshire. However Glasgow City Council was not in a position to do that as its social work department had to investigate child protection concerns and the respondent moving to another local authority region did not relinquish them of that responsibility. JS described his experience with the respondent overall as being that she would appear to engage with the department on a superficial level but then not engage in any detailed work or be consistent. He was aware of the concerns about the children's almost feral behaviour on the flight from Cyprus and on their return to this country. He received reports of the boys striking out at each other and at other people and exhibiting a high level of emotional distress. He knew that Barry would sleep under his bed and take food out of bins and that he was violent in his speech and behaviour talking of stabbing and wanting to kill people. The high level of emotional turmoil and distress which both children exhibited was the foundation for the social work department's concern about any suitable arrangements being made for contact in May 2013 despite this being ordered as a condition of the warrant. He felt that transporting them to Cornton Vale was the main issue. He recalled attending Glasgow Sheriff Court after the sheriff had ordered them to go to court with details of the steps they had taken to organise contact. Ultimately the condition in the warrant was altered so that contact would only take place when the respondent was at liberty from prison. In his affidavit JS narrated the difficulties he had experienced with RN and the various reports that his social workers had given him about the difficulties of making progress with the case. The respondent had made a number of complaints to him about his workers. She tended to be of a belligerent, angry and challenging nature. In general terms he found there was no validity to the complaints she made and did not regard her as someone genuinely

looking for some improvement in the service being provided. The case was so challenging that he had tended to be present at all Children's Hearings, something he had never required to do in any previous case. The atmosphere at Children's Hearings was intimidating and hostile as a result of the behaviour of the respondent and her father. This involved verbal aggression and constant claims of bias against him and VD. The hearings would last for a number of hours and he found them very uncomfortable and difficult. The problems had continued well into 2016.

[55] Under cross-examination by Mr Aitken JS agreed that it was only after the boys were returned from Cyprus that he and his team had fully understood the impact of the respondent's parenting on them. There was some evidence before Cyprus that they had been neglected and emotionally abused but it was only after they had returned that the social work department had more opportunity to assess the boys and the respondent's situation and concluded that the respondent was unable to care for them. With hindsight, had he and his department known the extent of the deficiencies in her parenting earlier in 2012 they would probably have sought Child Protection Orders sooner.

[56] Under cross-examination by Ms Guinnane JS agreed that there had been some positives in the period that VD had worked with the respondent prior to their removal to Cyprus. She had found the respondent more open to a working relationship during that period and had kept JS appraised of that. However, it should not be overlooked that the boys' names were already on the Child Protection Register towards the end of 2012 and Andrew was subject to a Compulsory Supervision Order, albeit that the condition was one of residence with the respondent. As part of his duties in that capacity JS reported the children as missing persons in January 2013. He accepted that some information was ultimately given by the respondent about various addresses she said they had lived in while in Cyprus and

about a school or nursery attended there, although he did not know whether that was true. He had personally gone to the respondent's house in January when he became aware that the children were missing. He knew that there was a court order in place prohibiting the respondent removing Barry from the jurisdiction and he considered that both boys had been removed to evade further social work involvement. He had been concerned when summoned to explain to the court why contact was not being attempted in May 2013 but he remained of the view that it was the distance between where the boys were being cared for and the prison and the safety issues with bringing them there that had been the most important factor. The respondent's incarceration was the major impediment to contact at that time together with the distance the boys had to travel. JS accepted that the respondent was very keen to see her children at that time and that she had contacted VD about that.

[57] It was suggested to JS that Barry was in a different position to Andrew in that there was no Compulsory Supervision Order in place in respect of him. JS accepted that there was a legal difference but that the social work department's view at the time was that both children required compulsory measures of care and needed to be accommodated. Even before they had been removed to Cyprus grounds for referral were being drafted for Barry. JS' view on the respondent's mental health situation was also that he was aware that Dr H had said that she was not presenting as suffering from any mental health disorder but he distinguished that from a personality disorder the signs of which she appeared to exhibit. JS agreed that he had discussed matters with the police while the respondent was in Cyprus and he understood from that that the police had discussed matters with the procurator fiscal who indicated that criminal charges were not a priority but the safety of the children and securing their return to the jurisdiction was the primary consideration. Whatever the legal position, removal from Scotland flew in the face of Andrew's compulsory supervision order

and the court order in place for Barry, coupled with ongoing issues in relation to his care. He did not know whether the interim interdict had been properly served or not but he understood simply that there was a court order that was breached by the respondent taking the children to Cyprus. More importantly from his department's perspective they had a statutory requirement to see Andrew on a monthly basis under the Compulsory Supervision Order he emphasised that the respondent's care of the children was not good enough even prior to the children being taken to Cyprus and while there had been some positive reports other agencies contradicted any general view that the respondent's parenting of the boys was improving. He did not accept that the respondent was doing everything she could by December 2012 and, but for the removal, a general assessment would have been undertaken when a review of the boys' names being on the Child Protection Register would have been held. On being shown a note of the duty social worker's visit on 21 December 2012 (6/4/89 of process) he agreed that this recorded positive notes about the children being clean and tidy and there being a Christmas tree and presents. That was the last time a successful visit had been made, the respondent's own affidavit evidence confirming that she left the country on 27 December 2012.

[58] JS disputed a contention put to him that there was no evidence of Barry being emotionally abused until 2013. The picture of neglect was being built up prior to the removal of the boys from the country while he would not rule out other explanations for the boys' presentation in the spring of 2013, he considered that the most likely cause was the respondent's parenting. His department had instructed a psychologist (Dr Jill Cossar) in 2016 whose conclusions confirmed that the social work department's view was a correct one. When it was suggested that Andrew's presentation could have been down to a combination of separation from his mum and autism, JS stated that while elements of autism would make

Andrew more difficult to care for, that was not the basis of the social work department's concerns. Further, Andrew had never been distressed at being separated from his mother and of course it was she who had separated herself from the children by leaving them in Cyprus. What surprised him about this case was the absence of any signs of attachment between the boys and their mother. In his experience, unlike children who are emotionally conflicted through being abused but at the same time loved by a parent and want to see them, these boys could not tolerate any contact with their mother. While there may have been isolated incidents when one or both of the children was observed as enjoying contact, there was always distress before and after contact.

[59] JS confirmed that he had observed Christopher with the respondent when he was a toddler of 2 or 3 years old. He had been brought to a Children's Hearing by the respondent. By that time the relationship with the social work department had broken down almost completely. As soon as the children had returned from Cyprus and were accommodated the respondent had never engaged with him and his team properly again. If she had not been so hostile, his department might have been able to assess earlier what role she might have with the children. This may have explained the delay in involving the permanence team. He rejected the contention that it would have been better for a different social work team to come in to the case after the events of the spring of 2013. He pointed out that after VD ceased involvement and another social worker, ER, became involved the respondent had also refused to work with him. From what JS had seen she unilaterally refused to work with anyone. The conflict was accordingly one sided and the respondent was classified as a vexatious complainer. JS disagreed with the proposition that the cessation of contact between the respondent and Barry had happened far too quickly. By early 2014 it was clear

that contact had a harmful impact on Barry as illustrated by assessment of how he was before and after it took place.

[60] Returning to late 2012, JS was taken to a Child Protection Review Case Conference Minute (6/5/367 of process) from 14 November 2012. The respondent had not attended but her father had been present. What was recorded was that the health visitor had reported that there were no health concerns with the children but issues with Andrew's toilet training remained. The respondent had missed one health visitor appointment and Andrew had displayed behavioural problems such as aggression. He was observed as not wearing his splints regularly enough and the school nurse had sent out health information to the respondent but heard nothing back. There was also an issue about the respondent's inappropriate language. There was talk of referral to a child development centre to assist with toilet training and the head teacher of Andrew's school had reported that he had never used the toilet in the school. There remained issues with Andrew's social interaction and the possibility of his being autistic was recorded. So far as Barry was concerned the report in November 2012 was that he had good attendance at nursery as reported by the worker there but there were concerns also about his toilet training. There was a reference to the allegation about whether the respondent had been observed treating the boys roughly on a train and there was a report that the respondent had said at nursery that she was sick of getting into trouble because of Barry. Against the background of all of these reports the recommendation of JS and his department in November 2012 was that the children should remain on the Child Protection Register because of the significant risks to them coupled with a proposal to draft grounds for referral to the Children's Hearing in respect of Barry. Notwithstanding that there were some positives noted, the meeting approved attempts to identify a foster carer at least for Andrew. All of the notes of relevant meetings thereafter took place in a context of

the respondent being missing and subsequently of the boys being in foster care. JS accepted that the Children's Hearing had not followed the recommendation of planned accommodation for the boys in October 2012 but wanted information from a safeguarder. That was something that often happened if there was a disagreement between the social work department and the family about the plans for the children. The grounds for accommodating Barry were not as clear at that time as they were for Andrew. The respondent's failure to take Andrew for essential medical appointments and engage with health services generally had been the primary focus. However, there were always issues of a lack of parental care in respect of Barry and the reporter had ultimately drafted grounds for referral.

[61] JS was taken to the records of a Child Protection Review in February 2013 (number 6/5/389 of process) where DA, the police officer involved in trying to secure a return of the children to Scotland was present. DA had reported that if there was a court date fixed it might be used to help get the children returned to the UK. It was very difficult to try to access social services in Cyprus and his department had no success with that. After the children's return there had been two failed foster care placements for Andrew and one for Barry and that by June 2013. A discussion about contact particularly between Barry and his birth family continued into 2015. The Children's Hearing ordered a further safeguarder report which was put to JS, number 7/37 of process. While he had no recollection of seeing it before he agreed that the record of the safeguarder MP at that time was that when she visited Barry he had talked about being a big brother (to Christopher) and gave a thumbs up sign in response to the idea of seeing him and his mother. He accepted that the safeguarder had said at that time that Barry had expressed a desire to see his mum. He accepted that contact had not been reinstituted after that report. The social work department's view remained that

contact had a significant negative impact on Barry that went beyond simply seeing a parent from whom he was separated. All of the information his department received from the carers, the school and the nursery confirmed the social work department's view. JS was aware that there had been referral proceedings in North Ayrshire after Christopher's birth in 2014 and that the sheriff had refused to find the grounds established, although no one from Glasgow had given evidence.

[62] Returning to the issue of the children's removal to Cyprus, JS pointed out that standing all of the previous concerns about attendance at school and nursery the respondent had then deliberately failed to fulfil an expectation that Andrew and Barry would return to school and nursery respectively in January 2013. He disagreed with the suggestion that the children's presentation and behaviour could be attributed to a diagnosis of ADHD and possibly autism for Andrew and there had been no such diagnosis for Barry to date. When asked why he had felt the need to attend Children's Hearings in this case, JS explained that he considered VD needed support because of the hostility towards her. At paragraph 34 of his affidavit he described the type of hostility and antagonism that the respondent and her father displayed at such hearings. On 24 April 2014 the children's maternal grandfather had stared at him throughout a hearing which he considered was an attempt to intimidate him. On the occasion when the respondent had brought Christopher to the Children's Hearing the child was allowed to wander around the room.

[63] Under re-examination JS agreed that the Children's Hearing had the report of the safeguarder MP in 2015 and still decided that contact should not be reintroduced. His own view was that one would have to approach very cautiously asking a 6 year old who had been exposed to trauma whether he would like to see the parent who had caused that situation. He agreed that the respondent had often exhibited "disguised compliance" by superficially

engaging with services which might lead them to miss areas of concern or underestimate the risk to the children. He thought it likely that the respondent was acting with that disguised compliance in late 2012 and had never really wanted to change her behaviour. It was noteworthy that during 2014/15 the respondent had remained intimately involved in the legal proceedings and the Children's Hearing system while at the same time refusing to engage at all with any care plan for the children. This was in his experience absolutely unique. Many families completely withdraw from the process but the respondent was invariably present at Children's Hearings.

[64] DS, a 37 year old qualified social worker but employed by "Action for Children" as an independent professional to carry out a parenting capacity assessment of RN in December 2015 gave evidence. She had sworn an affidavit number 33 of process which she adopted as her evidence. She confirmed that she was due to commence her assessment in early January 2016 but was unable to do so until the following month as the respondent had gone on holiday to Greece. Thereafter the respondent met DS and her colleague and signed a working agreement to enable the assessment to be carried out. She insisted that her youngest child Christopher be present. Towards the end of February the respondent texted DS stating that her colleague was not to be part of the assessment and that she wanted an independent worker to accompany DS. That was organised and on 19 April 2016 DS attended again at the respondent's home to introduce another colleague who was from a different team. The first session of the assessment was carried out on 25 April 2016 and a second session on 3 May 2016. These were preliminary meetings to allow RN to tell her life story and to build up a relationship with her. Thereafter, RN failed to cooperate with any further assessment. She raised issues about whether the assessment related to Andrew or Barry or both and it was explained to her that the assessment was of her own parenting capacity. In her affidavit, DS

records (at paragraphs 8-13 inclusive) the various dates during May 2016 when she attempted to pursue the assessment further. Ultimately she had to conclude that the respondent no longer wished to complete the assessment and contacted both her and her solicitor to that effect.

[65] Under cross-examination by Ms Guinnane DS agreed that on 2 June 2016 RN had told her that she had instructed an outside agency to be present during the assessment. She did not know what this was about and had never really understood why the respondent had failed to engage further. She had anticipated at least six sessions before she could reach her conclusions and only the initial two sessions had taken place. The sessions that she had been unable to undertake would have been those examining how the respondent was parented and how she had parented her own children using recognised parenting assessment models. DS reiterated the steps that she had taken to try to continue with the assessment including sending letters to the respondent, leaving telephone messages for her and even going to her house and putting notes through the door, in addition to contact with her solicitors. When she had eventually written to the respondent's solicitors on 4 July 2016 she heard nothing until she received a letter on 1 August, indicating that the respondent did not accept that she had refused to engage with the assessment and was still willing to do so. However, by then DS had other work and had no further involvement in the case.

[66] A child protection advisor for North Ayrshire NHS, FM, was also led in the petitioner's case. She had sworn an affidavit number 35 of process which she adopted as her evidence. Her involvement was with the issue of registration for medical services of the respondent's youngest child Christopher. She had been aware that Christopher's name had been on the Child Protection Register from prior to birth but that he had been placed in the respondent's care at the end of 2014 and that his name was removed from the register in

May 2015. A post de-registration meeting was held on 12 August 2015 when it was agreed that a nurse practitioner would visit and support the respondent with any parenting issues. Subsequently, however, the respondent was not at home on any of the occasions when home visits were attempted between September 2015 and January 2016. There had been some delay in Christopher being presented for an assessment which was ultimately to take place in September 2016. However, when the health visitor went to the family home to complete the assessment the respondent was not present. Thereafter the respondent contacted her GP to say that she did not welcome the health visitor "hunting her and her son down". By this time Christopher had not been seen by health or GP services since November 2015. Eventually matters were left in the hands of the social work department who undertook to attempt to make contact with the respondent and FM understood that had been done.

[67] In March 2018 a health visitor contacted FM to ask whether she should be concerned that Christopher had not been registered at his local nursery. There was by then a fairly lengthy period when Christopher was not registered with a GP. This appeared to be resolved eventually following a referral to the Children's Reporter Administration on 7 June 2018. After that the respondent registered Christopher at her local GP.

[68] Under cross-examination by Ms Guinnane FM accepted that it was open to the respondent to decline to take up the health visitor service which is a choice for every family. She did not know whether Christopher had been up to date with his immunisations because he was not registered with a GP practice for some time. She was shown a child assessment of Christopher by a social worker SP dated 21 August 2018 which recommended that there was no need for any further social work department involvement with Christopher. FM had not seen that report but had spoken by telephone with its author who had advised her that she could not see any child protection concerns. Notwithstanding that conclusion, FM

considered that there had been a legitimate concern about the respondent's non-engagement standing the history of her previous children being in care. She was entitled not to send the child to nursery but a failure to register a child with a general practitioner and refusal to engage with health services generally was a matter that raised the spectre of child protection issues. Her role was to support and not persecute parents who were found to discourage engagement. The aim was to avoid children who were isolated suffering from attachment issues which can in turn lead to challenging behaviour and aggression.

[69] In re-examination FM confirmed that if the parent has an objection to certain immunisations such as the MMR combined vaccine, a health visitor would normally make a home visit to make sure that the parent or parents have made an informed choice on that. If there is a concern then the child will be recalled for the immunisation. It was relatively rare for families to disengage with health visitor services and so where home visits are declined some work goes into finding out the reason.

[70] The last of the social workers to be called in the petitioner's case was ER who took on the role in August 2016. He is 53 years old and had sworn an affidavit number 24 of process which he adopted as his evidence. The thing that struck him most when he first met both Andrew and Barry was that they were in their different ways unambiguous in not wanting any contact with their birth family. That has been a consistent position throughout his involvement. In his experience this was unique as children are often inconsistent about seeing a parent even where they have suffered neglect or abuse. So far as Barry's carers are concerned he has been very favourably impressed by them. They have a good sense of their responsibilities to Barry and make him know he is protected. His impression was that Barry needs to feel secure and part of that family in order to thrive. Andrew's carer, KK, is a quieter, less assertive person than Barry's primary carer, JH, but nonetheless displays an utter

commitment to Andrew which Andrew understands. He sees himself as KK's child and senses the unqualified and long term commitment that she gives him.

[71] In August 2016 ER wrote to the respondent about her giving consent for Andrew's surgery. He had been alerted by the medical profession to the problem that arose where there was a window of opportunity to do the operation but it was closing. By 25 October 2016 the respondent had made no contact with the medical team and the situation was becoming more urgent. The respondent's solicitor in an email exchange advised that the respondent was not withholding consent for the operation but that she wanted to make sure that her consent was informed and so wanted to meet the doctors. Eventually consent was given through her solicitor although no formal document was signed. Between 2016-2018 ER tried many times to meet with the respondent and discuss the children but had no success with that. All of his attempts to meet her were fruitless and she did not want a relationship with him. He encountered her at Children's Hearings where he described her behaviour as very difficult and challenging. There had been numerous hearings, perhaps 40 in all where the decision of the Children's Hearing had consistently been that it would be better for the boys to remain accommodated and have no contact with their mother. These decisions were taken after long sessions during which the respondent and her father would make unfounded allegations against the social work department and would exhibit threatening behaviour, albeit that ER himself did not seem to be the focus of that. ER had seen Christopher at some hearings and thought it was unfair of the respondent to bring him along given the atmosphere of animosity. RN seemed more engaged with the argument that she came to advance than with her child. She would pick Christopher up and walk behind the people giving information to the panel using him, ER felt, almost like a shield and also to intimidate the people who were speaking. His impression is that she did not act in a child

centred way at all. When ER heard that there was to be no further child protection action taken in respect of Christopher, he was worried because he considered that safeguarding visits to the home were the bedrock of good social work practice and he thought there should have been visits to see if the child was safe. ER's affidavit records a number of instances of the respondent's lack of engagement with his department. She had requested that correspondence be sent to her solicitor and not to her home address. By November 2016 the clinical psychologist, Dr JC, appointed by the Children's Hearing, had produced a report and supported the social work department's plan to pursue permanence for Barry and for him to have no contact with his birth family. A similar permanence plan was approved in respect of Andrew following a report prepared by ER in respect of both children.

[72] During 2017 both the respondent and her father were charged with a criminal offence relating to homophobic abuse of the foster carers JH and YM. While the case was pending it was felt that the foster carers and the respondent and her father should not be in the same room. Eventually the respondent's father was convicted but no further action was taken in respect of the respondent. However, from ER's observations, the respondent and her father operated very much as a pair, with RN never having sustained a long term relationship with anyone other than her father. In March 2017 the reporter organised a police presence at the Children's Hearing because of the aggression exhibited by the respondent and her father. In his support of the need for legal certainty for the children, ER pointed out that the respondent has refused to consent to new passports being obtained for the boys. Barry and his foster carers wanted to go abroad on holiday but attempts made by ER in April 2017 to secure consent for that had resulted in direct refusal by RN. When asked about his assessment of the emotional impact there might be on these children now seeing their mother ER responded first in relation to Andrew. He recalled a dramatic event when Andrew crawled

under the table and soiled himself when the issue of possible contact with his mother was raised. On another occasion he ran upstairs and would not come out of his bedroom. He cannot tolerate mention of his mother and all those involved in his care agree that seeing her would cause him huge distress, fear and alarm. ER felt strongly that no risk should be taken with Andrew being confronted by his mother. The respondent had become aware of the identity of the school Andrew attended and steps had been taken to make sure that the child was never alone in case she decided to try to see him. ER described Barry as being similar in his rejection of what his birth family has provided. He too has a fear of the respondent approaching him. ER's view is that Barry's worst nightmare would be a return to his mother. ER had been involved in the reported concerns of Barry's carers who had seen the respondent and her father driving around their area the day that they were in the process of moving house. They felt that this was a deliberate attempt to be in the area when the chances of Barry being at home were at their highest. JH in particular regarded this as a threat to her duty to protect Barry and keep him safe.

[73] Under cross-examination by Mr Aitken ER was shown an email from the head teacher of Barry's school, YN, to a member of the local authority education department and copied to him (number 7/3 of process). In that email the school was questioning its ability to meet Barry's needs as at 8 February 2018. ER confirmed that around that time Barry had started targeting members of staff who were talking about going to their union about the issue. ER was then involved in a series of meetings at the school and since then Barry's behaviour has been well managed with no repeat of him targeting staff. He receives 30 hours of one to one support each week although does occasionally manage to have activities with other children. ER confirmed that there was nothing in the email that could give rise to a suggestion that it was one of Barry's carers, YM, who was saying that she and JH could not meet his needs.

Attention was drawn to the report of the curator ad litem in this case at paragraph 36 which records that the respondent asserted to the curator that YM had said that she and JH could not provide Barry with the care he needs. ER confirmed that he had never heard that from Barry's carers. The situation was quite the contrary and he had never had any concern about the couple's ability to care for Barry. In ER's view, it is essential for Barry that there is cooperation between home and school. He is visibly biddable and well behaved at home but at school he presents a huge challenge. The school has relied on his carers for years now to keep him in mainstream education and they need to be engaged on a daily basis. If Barry was with a carer who did not display such commitment and engagement there would be serious implications for his education. He needs the unconditional rock of support that his current carers, particularly JH, give him. Barry's current situation involves a long-term programme to repair the damage caused to him, without which ER would fear for his future. The benefit of his current carers having parental responsibilities and rights (shared with the petitioner) involved with bestowing a feeling of long-term security and identity on Barry. While legal permanence was the issue for this case, what mattered was how Barry felt "in his guts". ER has spoken to him about the permanence plans and when he does so Barry lies physically on JH as if he wants to be protected by being cocooned in her. Barry understands what the permanence order would mean for him in ways such as JH and YM being able to sign consent for school trips for him. For some time Barry has wanted to change his surname. Initially he wanted to use his natural father's surname but now wants to have a double-barrelled surname taking the combination of the surnames of JH and YM. That is also a sign of security and permanence for him.

[74] A number of allegations that the respondent appeared to have raised with the curator ad litem and reporting officer in this case were put to ER. First, he confirmed that there had

been a complaint by the respondent to Care Vision in relation to Barry's carers having put material about him on social media. While this was not unlawful Care Vision asked the carers to desist from any further posting. He did not regard this as a matter that impacted on their ability to care for Barry. Secondly, ER was aware that Barry had fractured his collarbone on a trip to England with his carers. The child had been playing on a swing and fell off. JH and YM took him to hospital and he recovered. Again this had no impact on their ability to care for him. Thirdly, there was an incident where Barry had been struck with an iPad. It was an accident that occurred when JH was throwing laundry down the stairs and a bundle hit Barry at a time, unknown to JH, he was holding an iPad. JH had called Care Vision and the matter had been investigated with the conclusion that it had been a simple accident. Fourthly, there was an allegation that Barry had been in a hot tub with YM's mother and apparently tried to touch her breast and took out his penis. YM's mother warned him that this was inappropriate behaviour and told him to get out of the tub. This was an issue that the family had dealt with themselves and appropriately. Again there was no impact on their ability to care for Barry. Fifthly, and perhaps most seriously, Barry had allegedly touched a girl's vagina when playing in a park. JM had reported the matter to Care Vision who had prepared a full record of the incident. Barry had denied the allegation but the girl's family were angry. The carers had acted appropriately and again there was no impact on their ability to care for Barry. ER's conclusion was that it was vital for Barry that his carers are bestowed with parental rights and responsibilities in respect of him and that the permanence order is granted. Barry had said to ER that he might see his father "once I get **my** permanence", the importance being that he sees it as an order for him personally.

[75] Under cross-examination by Ms Guinnane ER disputed that he was straying into child psychology with his views and confirmed that Barry's educational psychologist had

expressed the view that Barry's position in school and problems with his behaviour would improve once the issue of permanence was resolved. He agreed that the one to one support where Barry is never left on his own had been introduced partly for the safety of the staff. In relation to the iPad incident he accepted that the report could have come about by Barry complaining to the school that he had been hit although his view remained that the carers had taken a responsible approach, albeit that they might not have reported matters until Barry had raised it at school. ER agreed also that the alleged sexual touching was in a play park and had occurred before the carers' house move. He did not accept that the position had to be either that the girl who made the allegation was lying or Barry was, as the matter might be more subtle than that. Each might be stating what they think occurred. He recollected that someone had suggested involving the police around this incident and the carers had supported Barry's denial. When asked why this incident was not included in his affidavit, ER confirmed that he was not aware of it or the hot tub incident until very recently. When he heard about these allegations he spoke to the carers because he was concerned that he had not been told. However, the incident had occurred before he was the allocated social worker. The fractured collar bone incident was also before his time and he agreed that the respondent had given the occurrence of that incident as a reason to refuse consent to other trips. The issue with social media postings was also before ER's involvement but he became aware of it later. He had never seen what had been posted and did not know whether it was photos or just references to Barry. He agreed that it was a legitimate question to ask whether a child was being appropriately supervised when a parent heard that his collar bone had been fractured. When asked whether there were other children in the same placement as Barry ER confirmed that there were none but that there had been a teenage girl there for a few months. JH and YM are registered to care for two children but now only look after

Barry. When asked why the carers were not pursuing adoption of Barry ER thought that it was because it was likely that Barry would need various services in adolescence and possibly adulthood and the proposed arrangement will allow them to access social work and Care Vision assistance. Financial support would normally also stop when adoption was granted. He accepted that various services would be available regardless of whether Barry was adopted or not but he felt that the decision on what was sought was one for JH and YM as a family. The issue of adoption has never been discussed with Barry by ER. So far as Mr BF was concerned, possible contact between him and Barry would remain a possible issue for future LAC reviews. Barry's carers are open to that and are also open minded about some informal or indirect contact with the maternal grandmother. ER was aware that there was a proposal for that although he had not been involved in organising anything to date.

[76] ER was aware that prior to his involvement a safeguarder MP, had advised the Children's Hearing that Barry wanted to see his mother but no such contact had been ordered. However, he reiterated that in the time of his involvement Barry had always been clear and categorical that he did not wish to see the respondent. In relation to Barry's request to change his surname, ER had told the child that he felt this was a reasonable request but that he could not promise Barry that it would be possible to change his name on formal documents at the moment. A number of questions were asked about whose idea it had been that Barry should have a lawyer in relation to the Children's Hearings proceedings when he was only 7 and now aged 9 for the purposes of these proceedings. There was an objection to this line of questioning given that at an earlier stage of the proceedings I had taken the decision to allow the Minuter to enter the process. However, on an assurance that there was to be no challenge to the professionalism or ethics of those acting for the Minuter I allowed the line subject to competency and relevancy. In that connection an email was put to ER

(number 7/3 of process), one which he had received from Barry's carers indicating that they had looked at instructing a new solicitor on Barry's behalf and that Barry and JH were meeting with that solicitor the following week. ER agreed that he had probably sent a copy of the petition in these proceedings to the carers and could see no reason why that might be inappropriate. He accepted, however, that it might have been prudent to direct JH to the legal department of the petitioner about this. He agreed that as Barry is a vulnerable child with complex needs he should not be faced with information about the lack of care given to him by his mother and that there was a risk that he might have done so if he had seen the petition.

[77] ER was in no doubt that Barry's primary attachment is to JH who is the stay at home carer of the couple with whom he has lived since 2015. There would be very significant risks to Barry if his placement with the couple broke down. His difficulties are at school rather than at home and although he is coping with one to one supervision at school it is not clear what resources would be available in his area once he is making the transition to secondary school. JH and YM are fully committed to Barry such that even if the permanence order was not granted they would continue to look after him. When asked why it had taken so long for these proceedings to be raised, ER explained that when he took the case over the boys had already been in care for three years and he appreciated that pursuing a permanence order application was a priority. That was what he had achieved. He accepted that it was the social work department in North Ayrshire that would assess how Christopher was being cared for by his mother and he would defer to those colleagues. He accepted that the respondent might have had to bring Christopher to Children's Hearing because she had no child care but his worry was that if she displayed the same highly stressed angry behaviour that she did at Children's Hearing at home then Christopher would be exposed to that. He

was aware that North Ayrshire council had no current concerns about Christopher's care. In preparing the permanence application he had considered whether there were alternatives to a permanence order because although the decision on permanence had been taken in principle before he took over, he understood that the ability of anyone with current parental responsibilities and rights had to be considered. He had never asked Andrew directly about contact with his mother because of his difficulties but Barry was always clear he wanted what he saw as his permanence and felt his mum was going to ruin it for him. He knew what permanence meant and was looking forward to securing a passport and holding a permanence party.

[78] In relation to the allegations that Barry had made about being locked in the basement and being deprived of food ER was clear that Barry was saying it was his mum that did that and he had described her as evil. ER accepted that he could not comment on the truth or otherwise of Barry's allegations. So far as Andrew was concerned he was aware that Dr P, a child psychologist has raised the issue of Andrew being on the autistic spectrum, although no formal diagnosis has yet been made. Andrew is progressing well and KK is always very positive and optimistic about him and his abilities. ER's assessment of Andrew's views on contact with his mother came from listening to professionals and his carer. It was Dr P who said that Andrew could not tolerate mention of his birth family. There was a reference recently to Barry having said that he wants to see his mother but only to give her a "telling off" in relation to her refusal to consent to his passport. ER was confident that he could rely on KK in relation to Andrew's views.

[79] When it was put to ER that Barry would be aware that his foster carers do not want him to have contact with his mother he agreed that children have well developed antennae in relation to such issues. However, against the background of Barry having had a very difficult

move from his previous carers the most important thing was to preserve the stability of his current placement. Regardless of whether the detail about the allegations he makes against his mother are accurate the feelings of fear Barry has expressed are very real. While ER accepted that Barry had apparently said to one safeguarder that he wanted to see his mother and that had not happened, he had far more consistently expressed a strong negative view of contact with her. There appeared to have been some delay in Barry being referred to CAMHS and that has been left to his current carers. In relation to the issue that had arisen about consent to Andrew's surgery in August 2016 ER did not know whether the respondent had been asked for consent before he took over the case in August 2016. He accepted that after taking advice the respondent had confirmed through her solicitor that she was willing to consent. However, the delay in securing consent was one of the reasons why he felt a permanence order was required. His experience over the last 2 years was that there are regular delays in decision making for the boys due to the respondent's lack of consent. The respondent's lack of willingness to have any form of relationship with the social work department had continued from before his involvement in August 2016 to the present date. ER disputed that he had been dissatisfied that the Reporter to the Children's Panel had not sought to frame grounds for referral in relation to Christopher since his involvement. He had no interest in proceedings being taken in respect of Christopher but had been worried about comments that the child had not been seen by medical health professionals and information about Christopher going on holiday abroad with his grandfather resonated with the history of the removal of the two older boys to Cyprus. He accepted, however, that the last time he saw Christopher was at a LAC review for Andrew earlier in 2018. When the respondent arrived Christopher was sleeping in the pram and when she lifted him out he looked for

comfort from her and ER witnessed a spontaneous affection between them. He described that as a lovely moment.

[80] Dr CP, an experienced clinical forensic and neuropsychologist, also gave evidence. She had prepared a report in respect of Andrew (number 6/15 of process) which she adopted as part of her evidence. In essence she had made a diagnosis of autism in respect of Andrew and had subsequently visited him just prior to the proof to see how his current progress fitted with that diagnosis. She saw Andrew at home recently and spoke to his carer who she described as someone she would "nominate for sainthood". Andrew's carer is uniquely skilled and committed to offering him the specialist care he requires. Dr CP was entirely confident when she visited Andrew recently that the diagnosis she had made earlier was correct. Andrew's fearfulness and almost entire lack of social skills was still evident. She remained of the view she had initially reached that contact with his birth family would not be in Andrew's best interests and there should be no question of rehabilitation with that family. He is resistant to any mention of his birth family. She described him as a "very disrupted child". When asked what the consequences might have been for Andrew when he was moved from various nurseries and then ultimately taken to Cyprus, Dr CP explained that one of the characteristics of autism is great difficulty in coping with change. The various changes he had in early childhood will have been difficult for him to tolerate because his anxiety drives his behaviour. She had noted in her report that Andrew had not been toilet trained when he arrived to live with KK who had then managed to toilet train him within 6 weeks. Dr CP explained that while autistic children are often delayed with this skill, with the right sort of environment Andrew showed that he could easily learn. The inference she drew was that his previous experience in that respect was not good enough.

[81] Under cross-examination by Ms Guinnane Dr CP confirmed that she did not know of any clear evidence linking cerebral palsy which is a neurological disorder with autism which is a neurodevelopmental disorder but that it was not inconceivable that there could be such a connection. She agreed that a carer could learn the type of skills required to provide specialised care to an autistic child. Her view of Andrew's understanding was that he knows that KK is his family but that interaction with him was not easy. The context was that while he was being schooled in primary 6 his chronological age means he should be in primary 7 and his actual performance is at about primary 1 level. He operates at the level of a child starting school in the body of a bigger child. The witness described her own diagnosis of Andrew as being on the autistic spectrum as a "barn door diagnosis". He had all of the classic traits of autism including lack of eye contact, lack of social interaction, some aggression in a classroom setting and delay in speech. When Dr CP saw him at school and tried to speak with him Andrew would only communicate in what he was interested in which at the time was "making cakes" rather than engaging in direct discussions. The other children in his class are friendly to him and kind but they do not play with him as a peer. Dr CP had the impression that no one had really assessed Andrew with a view to making a diagnosis about autism before she had. There are a number of aspects of school life that were difficult for Andrew. He reacts badly to the tannoy system at school and finds being in the proximity of others in the dining hall to be quite difficult. She accepted that children's nurseries can be busy and noisy and understood the respondent's report that he had not liked that environment. She explained also that touch and fabric and even smells can be difficult for autistic children to tolerate and Andrew will not wear denim or any coarse fabric. What surprised the witness when she saw Andrew was the ferocity of the blockage when she tried to ask him questions about his mother. She was aware of the trauma displayed around

previous contact with his mother from the social work records. By 2016 there was no contact between Andrew and his brother Barry. Dr CP tried very hard to contact the respondent through letters and through her solicitor but her attempts were unsuccessful. She thought it would have been extremely helpful to elicit views from the respondent which remained the missing piece of the jigsaw so far as she was concerned. Returning to her meeting with Andrew, Dr CP explained that his refusal to answer questions about his mother or birth family amounted to clear resistance and was not simply a lack of capacity problem. She was aware that the social work department had tried to raise the issue of contact between him and his mother with Andrew but his reaction was so extreme that they became extremely wary of revisiting the issue.

[82] Dr CP confirmed that post-traumatic stress disorder (PTSD) is an anxiety disorder and people with autism might also be anxious and to that extent the two can overlap. Andrew's presentation was consistent with his suffering PTSD standing his severe reaction to particular triggers associated with the past. He can only convey his anxiety through his behaviour. The witness accepted that in reaching her conclusions she had relied to some extent on the interpretation others had given to Andrew's actions. She thought it noteworthy that an attempt to discuss contact with his mother in 2016 provoked such a strong reaction even though he had not seen her for quite some time. She agreed that it was possible that he would still have some sort of attachment to a parent with whom he had lived for the first three years of his life but what struck her most was the level of disorganisation and distress at the mention of his birth family. That was the unusual feature of the case. Autistic children generally have very similar attachment patterns to those who are not autistic. Most children can create new attachments to any reliable carer without altering settled previous attachments. She did consider that indirect contact through correspondence was still worth

considering so that Andrew would have letters he could look at when ready even if he rejected them on receipt. She hoped this would not be too distressing for him.

[83] In relation to what progress Andrew is likely to make in the future, Dr CP considered that with appropriate care and support both at home and at school he could still make reasonable progress. Physically he copes quite well and requires splints only on one leg. He can use his right hand well but not his left. His mobility is not too badly affected. Having read the various reports of the respondent's lack of cooperation with medical services and social services she was pessimistic that there could be any possibility of rehabilitating a relationship between the mother and child in this case. Andrew's carer KK has three adult children herself who are able to provide any respite she may require although this is not something she has sought in terms of any period away from Andrew. Dr CP felt strongly that Andrew was very fortunate to be in KK's care. KK shows supreme equanimity in the face of his behaviour, explaining that Andrew greets most people with profanities which his carer deals with calmly when seeking to impose limits on him. It is unlikely that Andrew will live independently in the future and will continue to require the support between home and school that KK provides. After Dr CP prepared her report she had attended at the Children's Hearing to speak to it. The respondent was present that day, reacted negatively and threatened to leave, making clear that she disputed Dr CP's recommendation. While at the moment letterbox contact was likely to be rejected by Andrew the witness thought that preparation of a memory box which he may want to access in future might be helpful.

[84] The head teacher of Barry's school, YN, gave evidence and adopted her affidavit number 25 of process. She has attended a number of Children's Hearings for Barry and has come across the respondent in that context. She found the respondent to be either overtly aggressive or passive/aggressive at such meetings. For example she would challenge YN and

say that she was not meeting Barry's needs properly at school when YN was sharing with the hearing details of Barry's violence within the school environment. YN had witnessed the hostility displayed by the respondent to JH and YM, Barry's carers. She had also seen hostility and aggression towards the social work department. YN has the impression that Barry's placement is of a very high quality with both carers being very attuned to his needs. JH and YM have become an integral part of the team looking after Barry educationally and they now work in a "family hub" a group created within the school for parents to receive support and also give support to other parents.

[85] Under cross-examination by Mr Aitken YN agreed that she had composed the email number 7/3 of process in Spring 2018 recording that she was questioning her school's ability to meet Barry's needs. There was no question of her being concerned about Barry's carers' abilities, it was the difficulties in the school environment that led her to address how they could continue to manage Barry's behaviour in school. Following meetings with the educational psychologist, by May 2018 she and her team found themselves better able to manage that behaviour in school and that position had lasted until about October 2018 when some difficulties again arose. The school has daily communication with one or both carers and feels fortunate to be the recipient of a very high level of support from them. She was in no doubt that Barry's placement at her school would be untenable without the support of both carers.

[86] Under cross-examination by Ms Guinnane the witness explained that the type of behaviour Barry exhibited at school was throwing objects at people, biting, scratching, kicking and punching them. On one occasion he threw a chair at another pupil and hurt his back. After the escalation in his violent behaviour including Barry throwing objects at a pupil and at staff he was excluded from school briefly. YN explained that Barry has a "soft

start" so that he comes to school just after 10.00am and is accompanied by at least one adult in the playground allocated specifically to him. When he is managing school better Barry is able to be on his own, for example to deliver a message or collect a badge. Reciprocal play in the playground is almost non-existent. Barry wants the other children to do as he says and he copes better with children younger than him. He is usually accompanied in the dining room but recently has been taking lunch in a quiet room with a couple of other children who also have particular needs. That said, he appears to enjoy school and relates well to the other head teacher in the school with whom he shares a love of music. While the respondent has never turned up at school she has requested information about Barry's education and YN dealt with this through Glasgow City Council. YN often submits a written report to the Children's Hearing which the respondent will see, although when there have been frequent hearings a verbal report is sometimes given. The witness accepted that it was possible that the respondent was distressed at hearings when listening to reports about Barry's behaviour although she noted that RN presents as aggressive even prior to hearing any such report. Barry has a bespoke rota within the school when he works with an inclusion support worker and a class teacher who prepares his work. YN was very committed to Barry remaining at her school and the issue that had arisen in February 2018 arose from a concern about whether his needs were best being met. The complexity of Barry's situation was that while he required support with learning he was academically at least at the level of his peers and beyond that level in mathematics. The issue is not one of intelligence but of social interaction. YN is aware that Barry's disruptive behaviour is exhibited at school but not at home.

[87] As indicated in her affidavit, YN accepted that Barry had made allegations against staff, the truth of which she doubted. He had also claimed to have been scratched on the face

by his carer JH, but when the school telephoned the carer she had explained that an iPad had accidentally caught Barry on the head. The child had also made allegations against other children and members of staff, who are safeguarded by being two in a room with him at any one time. YN recalled that when he was about 7 years old Barry had alleged that his mother had locked him in a basement, information that she had passed to the social work department. He had not said anything about his mother recently, although has mentioned to YN very recently his desire to change his surname. When he was first at her school, YN had noted that Barry would often gorge on any food he could get his hands on. When he was in primary 4 he was referred to CAMHS and around that time his support within school was increased from 15 to 30 hours. There are about 250 children in the school and three other children have one to one support although not for as many hours as Barry. YN was clear that Barry does not have a diagnosis of any particular condition or mental health problem. She was aware that Dr JC, the clinical psychologist appointed by the Children's Hearing to assess Barry had concluded that he was presenting the way he did because of trauma arising from adverse experiences in earlier childhood. The witness was aware that lack of attachment to one significant adult can cause trauma in a child which can lead to elements of attachment disorder the symptoms of which are similar to elements of autism. There had been an incident in Barry's last term in primary 4 when his class had to be evacuated to get them away from him. This distressing incident had coincided with visits to Barry from his lawyer, from the curator in these proceedings and from the social work department. She recalled the incident when Barry and his carers were moving and there had been a sighting of the respondent in the village nearby. YN had liaised with the police about that matter which she understood from the foster carers had unsettled Barry.

[88] YN considered that permanence was important for Barry because the constant eliciting of his views in relation to Children's Hearings increases his anxiety at school. He is distressed by the possibility of not having permanence and he has told YN that he wants to stay where he is and he understands that is why he is participating in the court proceedings. Following the brief exclusion from school in May 2018 there have been changes to Barry's bespoke curriculum to tailor it even more to meet his needs and matters have progressed quite well. So far as the future is concerned while there is a presumption of mainstreaming the transition to secondary school will be challenging for Barry and some preparatory work for this has already been done. There was some uncertainty about whether he would be able to cope behaviourally with that transition. He responds better to male teachers but still displays strange and almost obsessive behaviour. He finds noise difficult to manage. In the autumn term of this school session (2018/19) there were no incident reports involving Barry in August, September or October. After the proof commenced there were three such incidents including one where Barry was throwing chairs. YN was aware of the allegation made by a girl that Barry had touched her inappropriately in the park. She has no concerns that such behaviour might take place at school standing the level of support provided to Barry. She described Barry as an articulate boy who prefers one to one contact with adults.

[89] DA, a police sergeant working from Irvine Police Office gave evidence and adopted his affidavit number 37 of process as true and accurate. His involvement in the case started in January 2013 when the respondent had absconded to Cyprus with the two children. He had spoken with the maternal grandfather who told him that the move had been planned and that he and his daughter had travelled to Cyprus together but he had then returned to Scotland. He advised the police that the respondent had no intention of returning to the United Kingdom. Eventually, at the end of January 2013 DA was able to speak to the

respondent by telephone. She told him in terms that she had left the United Kingdom with the children because she thought that Glasgow City Council social work department was going to remove the children from her care. She also said that she had travelled to Northern Cyprus as she was aware that it was a region that did not recognise the Hague Convention on Child Abduction and so she understood she could not be extradited to the UK. The witness's affidavit narrates the various efforts made to persuade the respondent and later her father to return to this country.

[90] Under cross-examination by Ms Guinnane the witness confirmed that the police had liaised with the Crown in relation to how to treat the respondent's absence and the advice received was to treat it as a "high risk missing person enquiry". There was some later review when the issue of the court order in favour of Barry's father was raised but it had not been DA who had liaised with the Crown Office about that. The witness's role had been to open a missing person enquiry and update it each time he had contact with the respondent or her father. His absolute priority had been to have the children returned safely to this jurisdiction. The respondent had been guarded about her precise location on the telephone. She gave him some information about what the children were doing in Cyprus but initially he did not know where on the island she was. There was liaison with Interpol and DA saw the maternal grandfather on a regular basis while he was still in Scotland. The respondent went to some lengths to avoid her location being traced. On the telephone she would talk about home schooling and about Barry attending a nursery but no details were ever provided. Eventually an address in Cyprus was given by the respondent's solicitor although that was near the time when the respondent was remanded in custody having been stopped at an airport trying to leave the UK. He did not recall the respondent sending any photographic evidence of her circumstances in Cyprus. DA had been aware that there was an outstanding warrant for the

respondent in respect of a court appearance and that she had been apprehended on that. When the respondent appeared from custody at the sheriff court on 18 March 2013, DA was present in order to speak with her and try to secure the address of the children in Cyprus. He confirmed that the instruction to arrest the respondent had come from the CID and not the social work department. The witness had not been involved in attending at Edinburgh Airport when the children were returned to Scotland by their maternal grandfather. He recalled clearly that the respondent had told him on the telephone that she had taken the action of removing the children to Cyprus because of her dissatisfaction with Glasgow City Council. He had no evidence in relation to the way they were being looked after in Cyprus and so could not contradict a proposition that they were cared for properly there.

[91] In re-examination the witness confirmed that he had never seen any form of independent evidence supporting the truth of what the respondent and her father were telling him about the situation in Cyprus. He was clear that the impression he had been given by the respondent on 14 March 2013 when he spoke to her on the telephone was that she was in Cyprus with no intention of returning. It later transpired that she had returned to the UK.

[92] Dr JC, an experienced clinical psychologist, gave evidence in respect of a report (number 6/7 in Barry's case) she had prepared in September 2016 following a request from the Children's Hearing. In preparation for that report she had made multiple attempts to contact the respondent as she felt her input would have been helpful to make an assessment and to try to make sense of the dispute she had with social services. Dr JC had spent a considerable amount of time with JH, Barry's primary caregiver, who had spoken very positively about the child and his place in her own life and in her family life. JH had been very open with Dr JC about the challenges Barry presented which she felt she could meet but

wanted to access professional help. Dr JC confirmed that Barry's ongoing anxiety about the provision of food was a fairly atypical symptom but it was slightly more common in the population of children who were looked after or accommodated. Barry had made repeated statements to professionals about the lack of provision of food in his birth family and also the favouring of Andrew over him on the issue of food. That was a sufficient explanation for his sense of anxiety about the matter. Dr JC's central conclusion was that a link can be established between the care Barry received from his mother in the early years of his life and his current behavioural difficulties. She had reached that conclusion using a wide variety of information from available sources prior to Barry's removal into care including information about the respondent's parenting of her other children. In the present case there was a clear timeline between inappropriate or unsupportive developmental experiences for the child and the resultant behaviour. She drew the analogy of a house plant which is not watered and so might die or not flourish. If children are not afforded what they need developmentally they cannot grow and flourish emotionally and behaviourally. What had happened to Barry was linked to the emotional, social and behavioural difficulties that he now displays.

[93] In her report, Dr JC supports the petitioner's plan for a permanence order on the basis that Barry requires a high level of care by the competent, resourceful, calm and energetic carers he has at present. Securing permanency for Barry is in her view a priority because his recovery has been impeded over the years by the possibility, threat or reality of contact with his birth family. Even the hypothetical possibility of contact kept a very traumatic history alive for the child. She explained that children exposed to prolonged adversity develop a response system such that any triggers can take the child back to his most frightening or neglectful experiences. There is a clearly established pattern of Barry's stress response system being activated by contact including letters from his mother. By analogy with

domestic abuse situations, it is the ongoing threat or possibility of recurrence that is as frightening for the victim as the event itself. Dr JC acknowledged that it is very difficult to consider terminating a birth family relationship but she could see no evidence of benefit of any kind to Barry of ongoing contact with his birth family and ample evidence of harm that would be caused through it. She had no reason to reconsider the conclusions in her report.

[94] Under cross-examination by Ms Guinnane Dr JC confirmed that the last time she had seen Barry was on 22 August 2016 although she had attended a Children's Hearing about him since then. When questioned about her attempts to meet with the respondent, the witness explained that she had agreed to use the respondent's solicitor's office to interview her but did not consider it appropriate that the solicitor be present. She thought that the presence of a solicitor (as opposed to a friend or relative) would not have been conducive to the type of discussion she wanted to have with the respondent. Ultimately there was no possibility of face to face contact with the respondent who had made various excuses such as having too much on and then leaving the country for a holiday. She agreed that the respondent had texted her on 22 September 2016 offering to meet but regarded that as irrelevant because her report had already been submitted 2 days previously. While it would have been preferable to have more family involvement in the preparation of her report that was not ultimately possible within a reasonable time scale against a background of reluctance on the part of the respondent which had to be balanced against the delay in substantive decisions being taken about Barry's care if she had waited any longer. The time when the respondent had said she could not commit to meeting Dr JC was in July 2016 and the report had not been submitted until September. While she agreed that it was important to have a full picture of what had happened in the child's life, she had information from those who had direct contact with the respondent and her father. The child's needs had to be prioritised

over everything else and if people did not engage with the process then the report had to be prepared without them. She had been aware of the long history of non-engagement with services on the part of the respondent and considered that the best indicator of future behaviour was past behaviour. Dr JC had been given the reports of the safeguarder MP in advance of preparing her report. She had not referred to them because she regarded them as of very poor quality and MP herself had concluded that she did not have the expertise to reach conclusions. The reports contained simply a description of what MP heard and saw when she met the child. She agreed that in consequence someone looking at her report on its own would not know that Barry had said in June 2015 that he wanted to see his mum. However, the Children's Hearing had access to those reports at the time. Her own report was already lengthy and she could not include everything she had read or referenced. Had she done so there was a risk that the weight and clarity of her conclusions would be lost. The witness was well aware that Barry had given some signals of desire for contact at a particular time which fitted with children sometimes remaining in an ambivalent position. It would be a mistake to give that one signal the greatest weight because the consistent message from Barry was that he did not want contact with his mother. Dr JC did not accept that the statements MP had recorded were meaningful ones in support of a conclusion that Barry was willing to have direct contact. She had acknowledged in her own report that there were some mixed statements by the child but the overall force of what he said was that he did not want to see his mother. His recollections of his mother were negative following indirect contact.

[95] The witness reiterated that her opinion was that the care he had received from his mother was the reason for Barry's now challenging behaviour. So far as the statements the child had made about being denied food and being locked in a basement by his mother, Dr JC accepted that there was no proof as such to support that what Barry said was true. She

explained, however, that an expert in developmental trauma does not look at things in terms of truth or lies. A child's response to a perceived threat does not always happen at a conscious level. If a small child places their hand over a candle they will instinctively remove it because a subconscious response is discharged by the brain without the involvement of the cortex. When the stress response system is activated the conscious part of the brain (cortex) shuts down so that the person can act quickly. This may be illustrated by the way in which people leap out of the way if a car is going to hit them. That is why people sometimes find it difficult to give a coherent narrative of something that has happened; the cortex was not engaged at the time. Accordingly, it was possible that Barry never lived in a property with a basement but that would not matter, what he was representing in his statements was a dark place where he was frightened and that emotion was more important than factual accuracy about the details. Just as a rape victim might overstate the height of her attacker because of the fear experienced at the time so too might Barry have been inaccurate in some of the details when conveying how he felt. Dr JC was aware of the difficulties that Barry had experienced during a previous foster care placement but she did not consider that there was an important attachment formed in that previous placement that would have merited a discussion of the effect of a removal from that home. She did not consider that it followed from Barry's mother having been his primary caregiver that she was his primary attachment figure. Assessing attachment is a complicated and sophisticated thing to do that was outside her remit. In preparing her report, however, she saw evidence of Barry's attachment to JH, his current primary carer.

[96] It was put to the witness that there were no concerns about the respondent's care of Barry towards the end of 2012 but she did not recollect that from the records. She had been aware of references in the records to Barry being in saturated nappies, of some reports of

possible rough handling by the mother and a report from a member of the public to the British Transport Police about her treatment of the children on public transport. She was unaware that after CCTV footage had been viewed the mother was acquitted of any criminality. While she had relied on the train incident as one of a number of indicators in a picture of a lack of care it made no particular difference to her that there had been an acquittal because of the different standard of proof that applied in a criminal setting. So far as the incident where Barry was taken to the hospital after a suspicion of rough handling by the mother she was aware of that and had recorded in her report that the respondent was very aggrieved by the incident. Again the context was different to her own consideration of events. When challenged about how she could connect Barry's food behaviour to the care he received from his mother, Dr JC explained that taking food from others and hiding food were examples of an abnormal pathology. She had explored that issue to see if it had been a one off incident but found a pattern of atypical pathology on Barry's part towards food. On trying to come up with an explanation for what she found the conclusion she had reached was that the child had been exposed to trauma in early childhood. The approach she took to such an assessment was to start on the basis that most things are possible and then determine what the most possible or most likely cause was. The witness has a particular interest in and experience of developmental trauma and is regularly engaged in assessing children and concluding what has caused the difficulty and so what therapy might effect positive change. She has been involved with CAMHS for many years although has no knowledge of Barry in a therapeutic setting. Dr JC was very clear that for so long as Barry remains in the Children's Hearing system he will have contact with the traumatic memories and experiences his early life involved.

[97] Dr JC explained that there tends to be a clear pattern when children are separated from a secure attachment figure. Such children tend to undergo three phases, namely searching, anger and then mourning. In this case she could find no evidence of a secure attachment between Barry and his mother and there was some evidence of a lack of care. Taking everything into account she regarded it as implausible that Barry had a secure attachment to his mother in 2013. When asked about Barry's brother Andrew and whether she had considered whether Barry's behaviour might be explained by he too being on the autistic spectrum, Dr JC indicated that she considered all possibilities but did not go into any detail in the report about things she had excluded, including autism. She agreed that there can be an overlap between both autism and ADHD and suffering trauma but it was important to distinguish between actual threats or perceived. The main features of ADHD included hyperactivity, inattention and impulsivity, all of which Barry exhibited. Typically diagnosis of autism and/or ADHD is a team effort involving a speech and language therapist, a paediatrician or psychiatrist and a child psychologist. The witness was uncomfortable with the idea of there being overlapping symptoms of autism and children who have suffered trauma. By analogy the presence of a headache does not help with the aetiology of that. Similarly poor eye contact is commonly seen in autistic children but its presence alone is not diagnostic. Dr JC was aware that the respondent's position was that there were no problems with Barry's behaviour before he was accommodated when he was nearly 4. That would not be consistent with autism which is a pervasive developmental disorder where there is either no period of normal development or at least impairment would be noticed before the age of 3. The pattern of Barry's difficulties did not fit with the cluster of symptoms one sees in autism. There had been no concern in the records about Barry's social communication or lack of reciprocity in communication for the first 4 years of his life. It was clear that Barry's

behaviour in his placement deteriorated when family contact was taking place in 2014. Albeit that there was no direct contact with his mother at that point, indirect contact was still in place. Dr JC agreed that the termination of contact with his father would have been surprising and difficult for Barry given that the reports were that he enjoyed seeing him. The source of Barry's difficulty is that when he is in touch with triggers of his traumatic past these put him in a state of arousal that restricts his normal social progress. He may have no conscious thought or knowledge of what the trigger is because the cortex is not engaged.

[98] The witness was referred to a Care Vision form (number 7/8 of process) completed by Barry's carers in June 2015 recording an allegation Barry had made that his previous carers had tied him to the trunk of a tree in their garden using the straps of his dungarees. Dr JC thought it was interesting that this was a one off allegation that Barry did not raise again, in contrast with the allegations of how he was treated at home with his mother which were repeated. On the food issue, Dr JC pointed out that our experience of eating and feeling satiated is established very early on in life when the brain tells us of the need to eat. Research has shown that children from neglectful environments have poor recognition of this and often do not understand (1) when they need to eat or are satiated (2) when they need to go to the bathroom or not and (3) when they need to go to sleep. It was clear to her that the internal physiology of eating and feeling hungry was not in place for Barry. The records recorded that the nursery he attended when in his mother's care commented that he seemed very hungry. These single points of information were less important than the totality of information on which the witness's conclusions were based. It was noteworthy that Barry had never shown visible distress or exhibited signs of searching for his mother standing the situation in which he had been separated from her. It appeared that following March 2013 there had been no questions from Barry about why his mum was in prison. Dr JC had seen

Barry three times at home and once at school and considered that he had made a good effort at trying to explain his position, which was consistent with her own view of a lack of attachment to his mother. If any reports of physical ill treatment of Barry were not correct, it would not affect the witness's overall conclusions. On the basis of her decades of experience Dr JC remained of the view that ADHD and autism could not provide an explanation for Barry's behaviour and that the relevant link was the circumstances of his care by his mother.

Evidence in the Minuter's case

[99] Barry's primary carer JH gave evidence and spoke to her affidavit number 28 of process which she adopted as her evidence. She explained that Barry had been very aware of the date on which the proof in this case was commencing and it was around that time that his behaviour at school had deteriorated again after a stable period between August and October 2018. She had required to go and collect Barry and take him home each day and during the week that she gave evidence Barry did not attend school at all. Barry's primary current concern was that the permanence order would not be granted and he was fearful that he would then require to return to his mother's care. He has described the respondent as "evil" in the last 18 months which had graduated from his referring to her as "nasty" before that. JH confirmed that she had never seen the petition in these proceedings and that it was Barry who had consulted solicitors and counsel. She had asked the social worker ER for a copy but he had never sent one to her.

[100] Under cross-examination by Mr Inglis, JH agreed that the account given in ER's affidavit at paragraph 70 about the house move she and her partner had undertaken was almost entirely accurate. They had been planning to move anyway because their financial circumstances had changed and they were able to buy a new property. However, that had

coincided with the respondent and her father securing details of their address. As a result Barry was no longer able to play with friends or go to the local park unaccompanied and so the impetus for the move increased. She confirmed that her recollection accorded with that of ER at paragraphs 71 and 72 of his affidavit about the respondent and her father being seen in the local area when JH and her partner were moving house.

[101] Under cross-examination by Ms Guinnane, JH confirmed that when Barry has raised concerns about what would happen to him if the permanence order is not granted she has tried to reassure him and to calm his anger. In relation to the issue with the girl in the park who alleged that Barry had touched her inappropriately, this happened after the house move. The girl, who was about 9 years old, had come to the house initially herself and then returned with her parents. They were concerned and a little bit angry but not rude or aggressive. Barry gave his version of events and denied the allegations. The police had never come to the house to speak to her and she had reported the matter through the Care Vision on call service. No restrictions had been imposed on Barry going to the park on his own after the allegation. She explained that before Barry came to stay with them she and YM were registered as able to take one child and none had been placed with them at the time Barry arrived. Then in January 2017 they had an additional child on a placement for 6 months. From time to time they have also carried out respite care for two other children. Although they are registered now for more than one child their current full attention is on Barry. The 14 year old girl they had staying with them for respite care had a very good relationship with Barry who adores her. She still visits the home which he enjoys. Prior to the respondent complaining about her to Care Vision, JH was not aware exactly what the policy was about Facebook. She had put some photographs of Barry on Facebook and agreed that his first name probably did appear above a photograph showing him riding his bicycle. She has not

put any photographs of him on Facebook since the respondent's complaint was upheld. In relation to the incident on holiday in England when Barry fractured his collar bone, JH confirmed that there had been no suggestion from Care Vision that consent from the respondent was required to go to England as opposed to outside of the UK. Glasgow City Council had approved the holiday after emails had been sent to the respondent who had not replied. She agreed that it was likely the respondent would have been upset when she heard about the incident but considered that it was unreasonable for her to conclude that Barry had not been properly supervised. She and YM have been on other holidays with Barry although these can now only take place in Scotland because the respondent has not consented to Barry being outside this jurisdiction and that has been respected pending the outcome of these proceedings.

[102] When Barry was first residing with JH and YM he had no direct contact with his mum but was still seeing his maternal grandmother and JH had been involved in transport arrangements for that. For the following 8 months Barry had indirect contact with his mum but then it had ceased. She thought that Barry currently was looking to have some sort of indirect contact with his maternal grandmother and has also been asking about his dad who he says he misses and would like to see. JH had been involved in some direct contact between Barry and Andrew but this was not enjoyable for the boys who started attacking each other shortly after contact commenced. There is now some indirect contact in cards and correspondence and JH is in communication with Andrew's carer KK. It is her hope that Barry might reach the stage of wanting to see Andrew again. He had never mentioned his other half-brother Christopher until the respondent sent photos of Christopher as part of the indirect contact and that had sparked his interest. JH could not comment on what Barry had said to the safeguarder MP in 2015 as he had seen her alone. She and her partner had not

been adverse to the idea of direct contact with Barry's birth family at first and had been happy to facilitate it. The situation had changed because of Barry's views which would make it difficult for her to support any direct contact now. If indirect contact was ordered she would manage it as she did previously by reading letters with Barry. JH had tried to provide school photographs of Barry to the respondent by taking them to the Children's Hearing but RN had been so aggressive that it had not been possible to hand them over, although JH was still willing to do that. She felt it was important that letters and photographs of his birth family were available for Barry who can access them if he wants to see them. At one point he had become distressed about Christopher, worrying about how the respondent could look after him given that she had not been able to look after him and Andrew and he asked JH whether Christopher could come and live with them. He now seemed to have forgotten about that. JH was clear that she would have no difficulty handing photographs of Christopher to Barry if these were provided. Her position on direct contact was that Barry had been consistent in saying to her that he does not wish to see his birth mother. In contrast he is also clear that he wants to see his maternal grandmother and Andrew when he is a little older and wants to see his father. When asked whether she and her partner had considered adopting Barry JH confirmed that she had discussed the matter with the social worker VD and explained that while they would be willing to adopt, she and her partner felt this was not the best option for Barry given the access to services and support that he requires. She was keen that Barry stay with her and YM for as long as he wants and certainly not just until the age of 19. She anticipated that he could remain with them while adult and she and her partner are committed to looking after him regardless of whether a permanence order is in place and had made that clear to him.

[103] JH explained that Barry was not violent at school initially although she was aware that he had encountered considerable difficulties with aggression at his previous school. He had shown no emotion at all at leaving his previous carers, although he had never told JH that he had been unhappy living with them. His behaviour at home had been fine and he had settled quickly but at school he never settled for long and a careful build-up of his time there had been required. He does not really have friends at school although he has a few around his home area. He finds it difficult to attend groups or clubs although recent progress has been made with his attendance at a youth club which he is managing really well. It is difficult to see him struggle so much at school because he loves going there and she and YM do not know why he cannot manage the classroom environment. She is always available at home during school hours and is called in on an almost daily basis. When asked what she and YM have said to Barry about his mother, JH confirmed that they do reassure him that his mother still loves him and tell him that people can love in different ways. In her affidavit she described an occasion when, on receipt of a letter from his mother about Christopher playing with a train, Barry had become upset as it had clearly evoked some kind of trigger. Generally speaking Barry was a very different child at home and she and YM had seen only snippets of how he is at school. She accepted that there had been times when it has been very difficult to cope with Barry's ongoing behavioural problems at school but she has never struggled with her commitment to Barry and has worked closely with the head teacher YN and her colleagues to keep him in mainstream education. She felt strongly that removing him from school would have an impact on his ability to socialise with the inevitable adverse long term consequences of that. Various allegations made by Barry in relation to his previous carers and the incident with the iPad were put to JH, together with an allegation he had made against a teacher. He had said that a member of staff had dragged him across the playground

and while JH did not believe or disbelieve him she felt that the matter needed followed up. Her sense was that when an incident happens at school what Barry says is not always entirely accurate but it is usually a sign that something has happened that needs discussed. The outcome of the allegation he made against the teacher was that YN had spoken to the staff member and JH was satisfied with that. She had been content to reassure Barry that she believed him in relation to the incident with the girl in the play park and she had no particular concerns about the hot tub incident involving her mother which had been dealt with before she heard it had happened.

[104] When Barry told her that his mum had locked him a basement JH believed him because he had been so consistent about it. She thought it possible that it was not a basement that was being described, it could have been a cupboard or something else but she felt that his feeling about this could not be ignored. There had been no issues with Barry's food intake at home where he eats very healthily and drinks water. The school had reported that he was not using cutlery at school which was in contrast to what he did at home where he eats normally using utensils. Some therapy had been attempted with Barry when he was 7 or 8 but it was focussed on play and not discussion.

[105] When asked about CAMHS JH confirmed that there had been some confusion about the initial appointment time when the referral was first made. CAMHS had cancelled several appointments and JH had also been unable to make one or two. JH considered that Barry would probably benefit from work with CAMHS because the level of his aggression and violence and inability to maintain friends is not normal. He is very protective of his belongings although that was not so unusual. She did not think that autism or ADHD were the cause of Barry's problems because none of the issues of concern were exhibited in the home environment. Sometimes she finds it difficult to believe that Barry behaves the way he

does at school because it is so different from his behaviour at home, although she thought this might be because home was a safer environment for the child. She accepted that the respondent had a legal right to refuse to consent to Barry having a passport and be taken abroad and she was aware that RN had consented to some play therapy although had objected to it being recorded. She was unaware of how many letters had been sent during the period of indirect contact and she agreed that any letters the respondent had sent were in appropriate terms. The one that had referred to Christopher playing with his train set had arrived by email and was the one that had upset Barry. Barry was clear that he would like to have a passport and this was something that she and YM had first raised 2 and a half years ago when they had planned a holiday abroad and had been told that the respondent had consented to it. Subsequently the respondent had withdrawn her consent and Barry had been very let down. It was not until her signature was required at a Children's Hearing that she had withdrawn the consent already given. JH agreed that it would have been better not to deal with that matter at the Children's Hearing. The plan had been for the consent to be provided through the respondent's solicitor but she had chosen in the Children's Hearing setting to advise that she would no longer consent.

[106] JH was asked a number of questions about the circumstances in which Barry came to instruct solicitors and counsel. She had accompanied him to the solicitor's office but he had gone into see the solicitor on his own, although she had joined in later when Barry had to sign a form. I heard this aspect of the evidence subject to competency and relevancy. When JH was asked whether she had considered entering the court process herself she indicated that she was not sure that she could have and that it was sufficient for her that both Glasgow City Council and Barry were represented.

[107] Further questions were asked about the incident involving the girl who alleged that Barry had touched her inappropriately in the play park. JH explained that it had not crossed her mind to tell the curator ad litem in these proceedings about the incident because she had believed Barry and no complaint had been made to the police. Barry had said that he may have inadvertently touched the girl's tummy while on a climbing frame. Similarly, the hot tub incident involving JH's mother had not been mentioned to the curator because it was several years ago and it had not occurred to her to mention it. JH is unaware of the medium through which the respondent had obtained her address. She explained that when Barry first came to live with her and JM it was not intended to be a long term placement and it was only when he settled down with them that they applied to be registered as long-term carers. JH confirmed that Barry would like to change his surname to hers or hers and her partner's combined and that he is starting to refuse to call himself by his mother's surname at school. She disputed being motivated by any financial circumstances in not pursuing adoption of Barry. When asked about whether Barry had experienced a change of heart about contact with his mother, JH explained that both before and after seeing the safeguarder MP he had been entirely consistent that he did not want to see his mother. The Children's Hearing had appointed a different safeguarder after MP and contact had never taken place. She found it difficult to accept that the respondent still wanted to be involved in Barry's life given that she had attended Children's Hearings for a 4 year period and neither the respondent nor her father had ever asked her about Barry's welfare and how he was getting on.

[108] YM, JH's partner gave evidence. She is employed as a store manager in the retail business and works full-time. She had sworn an affidavit number 28 of process which she adopted as her evidence. In response to the allegation the respondent had made to the

curator ad litem that she had said that she and JH may not be able to meet Barry's needs in the future, YM confirmed that she had never said anything of that nature.

[109] Under cross-examination by Ms Guinnane, YM confirmed that as she works full-time and is not in the house caring for Barry on a day to day basis, she did find any aspect of his care difficult and so would never have said she was struggling with Barry either to the social work department or anyone else. It was JH that dealt with the school although YM is also fully committed to caring for Barry. It was clear from her affidavit that YM regarded the respondent as "holding them to ransom" in relation to the passport issue. Whatever the legal entitlement, this was restrictive for them as a family. In essence, YM made clear that JH tends to deal with all matters to do with the social work department or the school, although YM also attended Children's Hearings. She had been one of the complainers in the criminal proceedings against the respondent and her father and it was during that period that the reporter had organised for a police presence at hearings. That presence continued for about 6 or 7 months. So far as Barry's current schooling is concerned, YM was aware that he had a bespoke and reduced time table given the difficulties he had encountered. He had attended school from August to October 2018 but had not been attending school during the proof.

Evidence in the respondent's case

[110] A social worker, SP, was the first witness in the respondent's case. She had been instructed to prepare a report (number 7/2 of process) in relation to the respondent's youngest child Christopher which she had completed in late August 2018. The background was that health services in the respondent's local authority area had made a referral to the reporter to the Children's Panel and a report had been sought in light of a long period of time when no professionals had seen Christopher and the respondent's lack of engagement with

health services. SP had visited the respondent and Christopher at home and was ultimately satisfied that there was no basis for a referral to the Children's Hearing and the reporter had accepted that. There was no ongoing role for the social work department so far as the respondent's care of Christopher was concerned. The respondent had engaged with the preparation of the report and had agreed that she would make contact with appropriate services if she needed support for nursery education for Christopher or for health checks.

[111] Under cross-examination by Mr Inglis SP agreed that she had no information in relation to Andrew and Barry and could not assist the court with any issues relating to them. She would not have thought it appropriate to examine the available records in relation to the older boys in any detail because what she was concerned with was the respondent's ability to look after Christopher at the current time. She had asked briefly about Barry and Andrew and the respondent had confirmed that they were in foster care but that she was hoping to "get them back again". The respondent had expressed concern that social services were on a mission to prove that she was unfit to care for Christopher. When asked why she had conducted the assessment given that she was not a worker in the respondent's local authority area, SP confirmed that there had been issues between the respondent and her local social work team. While she was not party to any such difficulties, it was thought better that someone independent prepared the report.

[112] The respondent gave evidence having sworn an affidavit number 32 of process. Shortly before she gave her evidence information had come to the petitioner's attention that Christopher was not in the jurisdiction and had been deregistered from his local general practitioner. It was agreed that these were matters within the respondent's knowledge and could be raised in her evidence. The respondent confirmed that she lived in a town in the West of Scotland with her son Christopher but that Christopher was currently in Cyprus with

his maternal grandfather. She explained that during the first week of the proof in this matter she had been dropping Christopher off at her own father's house before court each day and travelling through to Edinburgh, which had involved two train journeys. In late October 2018 during a break in proceedings Christopher had then gone to Cyprus on holiday with his maternal grandfather where he has been since then. RN said she had travelled back and forward to Cyprus during that time. Her position was that Christopher would return to Scotland in early 2019 and was not due to start school here until August 2019. She confirmed that she had registered Christopher with a general practitioner in her local town in August 2018 before which he had been registered with a previous surgery in another town for 3 years. Her evidence was that irrespective of the outcome of these proceedings it was her intention to live with Christopher in Scotland in the longer term.

[113] The respondent confirmed that the social worker SP had emphasised the importance of nursery attendance. However, the respondent's position was that she had looked at a few possible nurseries for Christopher. One was full and another had no places immediately available. She had taken him to a visit a particular nursery but he has never been enrolled. Christopher does mix with other children and is extremely sociable and occasionally he has been taken to a local hall where he can do that. She described him as a child who sometimes wants to go to nursery but sometimes not although he is excited about commencing school in August 2019. Christopher will not go to school in the town in which RN currently resides. She has a plan for a "fresh start" which will involve her and Christopher moving to her father's house and he will attend the primary school in the village there. There is a nursery attached to the school in the respondent's father's village but she had not visited it yet.

[114] In relation to Dr O's evidence about the numerous missed medical appointments for Andrew, the respondent stated that she attended those for which she received letters. She

accepted that one orthotics appointment was missed when there had been an accident involving the transport that was due to collect her and Andrew. Her position was that Glasgow City Council had not made any arrangements for helping transport her and Andrew to Yorkhill for medical appointments despite saying they would. They had organised a taxi once but other than that her own father had taken her and Andrew to appointments. She stated that she had also requested additional support from the local authority in the form of respite care for Andrew but that it had never happened. She was looking after Andrew and Barry on her own and Andrew's behaviour was difficult. She had felt that a couple of hours break from time to time would help her. Reverting to the missed appointments, the respondent's position was that she did not know that appointments had been missed until she had been told about this. She had attended physiotherapy and was given exercises to do at home with which there was no difficulty and she would make a game of it with Andrew. He did wear his foot splint which was helpful but he was told only to wear it during the day. He did not like his hand splint and did not always wear it. It was extremely difficult to get his hand into it as it was not pliable. She had reported that he was struggling with the hand splint and a softer one was obtained with which he was more cooperative. When asked whether she thought that her various house moves had been disruptive for Andrew and Barry, the respondent explained that she had lived in the same house in Shawlands in Glasgow for about 3 years but it was a top floor flat with no outside space. When she had subsequently moved to Castlemilk, that was a better property with a private garden.

[115] On the issue of education for Andrew, the respondent confirmed that it was she who had raised with the educational psychologist CM her desire that he attend a private school specialising in conductive education that she had identified through internet searches. She

had visited that school two or three times and found it to be everything she had hoped for in terms of facilities for Andrew. There was a hydro pool, a 1:1 staff pupil ratio and the school was designed to assist children with cerebral palsy and other neurological disorders. After her visits Andrew was offered a placement there. The respondent stated that she had not been aware it was a private school and when she discovered that as she could not fund it herself she sought the assistance of the social work department. Thereafter the educational psychologist CM and another representative of Glasgow City Council visited her and expressed a view that the school in question did not have a good reputation and that the local authority would not fund it. The respondent described herself as "devastated" by that news. It was at that time that the assessment at the centre in Castlemilk was discussed. The respondent claimed that she was told she could not go with Andrew in a taxi when he was being transported to that centre and that she was just informed that he would be assessed there. The placement came to an end because she and the boys had then moved to an area outwith the Castlemilk area. She thought her new home would be permanent and enrolled Andrew in a nursery there. The reason for the house move was to do with a neighbour in Castlemilk who had a drug addiction and was attending the respondent's property at unsociable hours which was not good for the children. She had not advised the assessment centre in Castlemilk that Andrew would not be returning because she had no direct dealings with them as the child was taken there by taxi. Barry was not at nursery at that point because he was still quite young and the focus of the social work intervention in 2012 was with Andrew. In relation to who was actually caring for Andrew while the respondent was in Glasgow during the early part of his life, the respondent confirmed that Andrew had lived with her mother but so too had the respondent. She had returned to work very quickly after Andrew was born and her mother was actively involved with the child. Subsequently, the

respondent's mother became unwell and chose not to be involved in the children's lives thereafter. Her father did not feel he could look after Andrew alone and the social work department were unhelpful. During the period when Andrew was at the assessment centre, the social worker SG had told her that the purpose of the assessment was to see whether Andrew and Barry should both be accommodated. She did not find SG to be helpful and supportive at all.

[116] Turning to the respondent's move away from Glasgow, the respondent said that she had done so because Barry's father was becoming bullying towards her. There was a difficult background to her relationship with Mr BF who, she said, had concealed from her that he was married. She did not find that out until she was pregnant with Barry and Mr BF had tried to encourage her to terminate the pregnancy. It was then that she found out that he was married and had children of that marriage. She had contacted him and he had advised that if she did not disclose that he was Barry's father to the child support agency he would give her £20.00 per week as informal aliment. She had not wanted Mr BF to be part of Barry's life but when the child was about a year old she had met up with him and had suggested that he might want contact with his son. Against that background she was asked why she had resisted Mr BF's subsequent court application for contact. She said it was because there had been an incident where he was angry and abusive after he had received contact from the child support agency. On a subsequent occasion she had met him when he had pushed her against a wall and demanded more access to Barry at which point she had ceased all contact. She had also been concerned that he had taken Barry to see his extended family which he knew she considered inappropriate and had on another occasion taken Barry for a haircut, the respondent alleging that this had left Barry "literally bald" and his curly hair had never grown back. The respondent alleged that when Mr BF initiated court proceedings for contact

Barry did not want to see him, saying his dad was a "bad man". While she did remember the court documents being served on her, the respondent said she had not read them and thought the issue would go away. She claimed not to have known about the interim interdict prohibiting her from removing Barry from the jurisdiction of Glasgow Sheriff Court. At some point, she had attended court in relation to contact and claimed that the presiding sheriff was forceful and believed Mr BF when he said he was not guilty of threatening action towards her and ordered unsupervised contact. She pointed out that the court order for contact had been made about 2 weeks prior to Mr BF pleading guilty to threatening conduct relating to her. At that point she determined that he would never have contact again. She did not know of the interim interdict that was contained within the contact order until after she had left for Cyprus at the end of 2012, although could not recall how exactly she then came to know about it.

[117] On the issue of Andrew's behavioural difficulties, the respondent recollected that there may have been a discussion with Dr O but claimed that the doctor did not seem that interested in her concerns at that time. The social work department had been of the view that Andrew's behaviour was a result of her poor parenting rather than any condition such as autism. So far as Andrew's iron levels were concerned, the respondent said that it had been very difficult to force him to take medicine. Andrew would lash out during the process. She had been given a prescription but the particular substance included in the prescription was ultimately out of production and Dr O sent a prescription for a different type of medicine which she diluted with orange juice and managed to get Andrew to drink it. On toilet training the respondent claimed that Barry would often go to the toilet prior to the move to Cyprus and she denied that he would go to nursery in wet nappies. She said that the first time she had seen a reference to sodden nappies was in the social work records. It was more

difficult to toilet train Andrew because he could not hold on with his left side and so he was still in nappies although she may have tried "pull ups" which he was wearing to school in the latter part of 2012. The respondent had considered that she had been developing a good relationship with the social worker VD at that time although claimed that VD's time keeping was poor and that there were "weeks and weeks" when no one would show up. On the issue of the examination of Barry following an allegation by the nursery that he had bruising, the respondent claimed that VD had alleged that she had admitted to assaulting Barry which was not true. She said she had been in tears at the hospital when photographs were taken of Barry and all that the incident had thrown up was one tiny bruise that could have been caused by any form of play. She claimed that the social worker SG had phoned his team leader and said "we never got it". She was angry about the incident.

[118] When asked why she had moved from Glasgow to the West Coast, the respondent's position was that it had been the first time she and the boys had secured a decent house with a view of hills and a large garden in a nice quiet village. Although she had not informed Glasgow City Council of her new address, she had told them that she was leaving. It was only Andrew that was subject to social work involvement at that time and she claimed that she had nothing to hide. She had moved in September 2012 and later that month Mr BF had pled guilty to the charge of threatening behaviour. Glasgow City Council insisted on still being involved and so VD continued to visit although sometimes the local social work department would do so. Towards the end of 2012 there was some issue with letters from the bank in connection with the property she had rented. Apparently the owners were in arrears and the bank wanted to repossess the property. She believed that Barry's father had chosen to walk away from contact. She felt that it did not matter how hard she tried and what she did, Glasgow City Council would still look for planned accommodation for both boys. She

claimed to have attended numerous appointments and worked constructively with the social work department only to discover at a child protection meeting in October 2012 that the social work department were going to pursue planned accommodation for both boys in January 2013. In her desire not to lose the children she booked the flights and went to Cyprus. When she and her father arrived in Cyprus they had apparently stayed in a hotel for a couple of nights and then sourced a two bedroomed apartment in Pathos. She claimed to have found a nursery that Barry attended and enjoyed. She said that she had looked for schools but those would not start until August 2013. She had to contend with Andrew's disability and had taken his splints and iron supplements with her. She said she had performed physiotherapy daily while in Cyprus. Additionally, the respondent claimed to have attended a centre for children with neurological issues whilst there. When her father returned to the UK in early January 2013, she had remained in Cyprus alone with the boys. She claimed that Andrew had started taking himself to the toilet just before she returned to this country in March 2013 and that Barry was also toilet trained. She had not registered with any health facility in Cyprus because they both seemed healthy and happy in Cyprus. She had returned to Scotland, she said, in March 2013 to sort out some of her father's belongings which were being held by a friend in a van after her father had given up his tenancy. She claimed that her father had refused to return to do this and so she did it for him. She described herself as being bullied by her father into coming back to this country on that occasion. She left the children in Cyprus and flew back on 14 March 2013. Initially she was going to take Barry with her but said that she had a bad feeling and told her father she would leave both boys there. Once back she had met up with her then partner (Christopher's father) who had agreed to store her father's belongings. She stayed with him for two nights and then was arrested just before boarding a flight to return to Cyprus. She did not plead guilty

to abduction at the earliest opportunity on her return because she did not feel that it was an abduction and continued to maintain that she was not aware of any court order prohibiting her departure with the boys. Eventually she changed her plea to guilty because, she claimed, she was told that if she did not do so she might serve 5 years in prison. Eventually she was sentenced to 10 months imprisonment which was reduced to 7 to reflect the time she had been on remand. She claimed that she was never told that she could have appealed her sentence.

[119] The respondent felt aggrieved about the lack of regular contact with Andrew and Barry while she was in Cornton Vale and said that she had asked at the time why she was not seeing the boys once per week. She disputed that the boys would have been "feral" on their return from Cyprus although she had not been present. She maintained that they had been happy and outgoing prior to her departure a couple of weeks earlier. After she was released from prison contact was difficult because she had to travel 200 miles to get there. It was reduced to fortnightly after the social work department had informed the Children's Hearing that the children needed to settle and so contact was reduced. Initially she and her father had some contact with both boys and then, as they were in separate placements and Andrew would get jealous if she was playing with Barry, separate contact was requested. The social work department asked the Children's Hearing to terminate contact as early as November 2013 at least with Andrew and the Children's Hearing had agreed. At that time the respondent was pregnant with Christopher. Her last direct contact with Barry was around Christmas 2013. She claimed that he had said negative things to her about the foster carers he was with at that time and that she had reported this to her solicitor. Barry's foster carers handed in their notice shortly after that and the social work department said that all direct contact with Barry should be terminated.

[120] So far as the current position is concerned, the respondent accepted that she could not contradict evidence about Andrew's relationship with KK who she does not know. She would like to reintroduce herself to Andrew and was concerned that he had not been told why contact had not been terminated with his birth family. So far as Barry is concerned, the respondent described him in 2013 as "cheeky and outgoing". She had promised to return to him but never had. She does not understand what has caused the behavioural problems at school she had heard evidence about. She explained that during the course of the proof and after hearing evidence about this, she attended a police station and asked that the police speak to Barry about assaults he was alleging had happened at school. She had been told that the police could not investigate because of these ongoing proceedings. The respondent explained that she had submitted a number of subject access requests (SARs) through which she had discovered the alleged touching of a girl in the park by Barry and the other incidents about which JH had been asked in evidence. She stated that she was concerned about how Barry was in his placement. Indirect contact had ceased after a letter sent by her to Barry telling him that Christopher liked to play with the Thomas the Tank Engine as he had. She understood that Barry believed that Christopher had taken his toys and was angry. She had asked JH to confirm that reassurance had been given to Barry that the train described was not his toy but received a negative response. From the reports she had read she thought that Barry was confused and that he would benefit from sitting down and asking her the questions that were worrying him. She said that she missed both boys very much and wanted to see them. She could not dispute that both boys wanted to stay with their current carers but questioned what they (and particularly Barry) have been told to reach that conclusion. She considered it relevant that much of what Barry is saying had happened while in her care had only been spoken about since he went to live with JH. When she had

seen the report of the safeguarder MP in 2015 it had given her hope that she and Barry could move forward to a relationship again. She questioned how since then Barry could have come to a point where he states that he hates his mother but loves JH. She accepted that with both boys she could have perhaps done things differently. She had been younger then and found it difficult to cope with them. She was now able to parent Christopher and would love to have a relationship with Andrew and Barry and for them to have a relationship with Christopher. She thought indirect contact with Andrew would not work because of his limitations but for Barry both indirect contact and a meeting would work. Her position was that the social work department has always been against her maintaining contact with the boys and she claimed that recently she had been asked to do "life story work" for both boys.

[121] Under cross-examination by Mr Inglis the respondent was asked when she had been intending to tell the court that Christopher was in Cyprus given that the discovery was made only after her own witness SP had given evidence. The respondent stated that she did not think the fact that Christopher was in Cyprus was important and she was not aware of any reason why the court would have to be informed of that. Christopher is not subject to these or any other proceedings and she had left him in Cyprus and flown to Scotland to give evidence. Her intention was to return to Cyprus for a period at the conclusion of the case. She confirmed that her father and Christopher were currently in North Cyprus and that she had de-registered Christopher from the GP practice because of rules she said stated that if someone was to be away for more than 2 months this was a requirement. She did not tell the GP surgery that she and Christopher would be returning from Cyprus because they did not ask. She saw the situation as very different from the events of 2013 for which she had "held her hands up" and served a prison sentence. She was trying to do her best for Christopher who would return to Scotland once the proceedings were over. She felt it was better for

Christopher to be in Cyprus currently given the difficulties in her conducting the litigation while caring for him.

[122] The respondent confirmed that her ultimate desire would be to have Barry and Andrew living with her again although she acknowledged that it would be unfair and unrealistic to think that they could return to live with her immediately. She accepted that it had been a huge mistake to abscond to Cyprus with the boys at the end of 2012 but she had believed that the social work department would not listen to her. She said that she realised that even if she succeeded in her opposition to the permanence order she knew that any return to her care for the boys would require to be over a long period. Passages from Dr JC's report confirming Barry's negative remarks about her were put to the respondent. She retorted by referring to statements made by Barry to the safeguarder MP at a similar time to those negative comments having apparently been made. She stated "I can't answer what Barry has been told to come to that conclusion", referring to the negative statements. She said that Barry's attitude had changed once he came to be in the care of JH. She claimed that Barry had never said anything negative about her until he went to live with JH and YM. She disputed that there were a number of sources to indicate that Barry was hostile to contact and said that the information she had received after her SARs was that his aggression had become worse in his current placement. So far as Andrew was concerned, she reiterated that she thought he had never been told why she never returned to see him after the termination of contact which might explain a negative view on his part. She thought it debateable that standing the evidence about the children's negative views of her they could not return to live with her and thought that the position was complex and that her relationship with both boys could be built up over time. She drew an analogy with Christopher, who was accommodated for the first 7 ½ months of his life and she said that it had subsequently taken time and trust

in order for that relationship to build but that now they were very close. She could not comment on ER's evidence that Andrew could not tolerate any mention of her because she was not present. Her recollection of direct contact with Andrew and Barry was that it was positive.

[123] The respondent disputed that she had missed about two dozen medical appointments in relation to Andrew and claimed that she had attended as many as 36 appointments during 2012. She denied that Andrew had not been making progress as a result of those missed appointments and lack of physiotherapy and she claimed that the child had been making "fantastic progress" when living with her. While Andrew had struggled with taking his iron deficiency medication for a period this had resolved. She accepted that he was still struggling with toilet training in 2012 (when he was 5 years old but said that was related to his disability. He could have been in a nappy when returned from Cyprus by her father but it was a late flight which arrived at 10.00pm. Her father had reported to her that the boys were clean and tidy on their return. Overall she considered that she was caring well for both boys during 2012 and that Andrew was attending school regularly. She accepted that there had been a number of nursery placements, particularly for Andrew, prior to that but stated that there was a reason for each move. She disputed that Barry had been unsupervised when the social worker SG visited in 2012 and that he had ran out onto the street on one occasion, claiming that SG's evidence about this was wrong. She disagreed that SG could have observed Barry's behaviour as out of control. When social work records were put to her recording Barry presenting as hyperactive, difficult to manage and disruptive on a visit by VD on 16 November 2012 the respondent claimed that VD had failed to turn up on that date. She disputed much of VD's evidence. When SG's affidavit (paragraph 22) was put to her with a record that the health visitor had confirmed Barry had missed his 2 year health

assessment and that immunisations were not up to date, the respondent said that she did not recall him missing such an appointment and that she had agreed to all immunisations other than the combined MMR which, as a matter of parental choice, she had refused.

[124] When questioned about Barry's relationship with his father, the respondent said that she could not confirm or dispute that Barry liked his dad because she had not seen them together. She disputed the affidavit evidence of SG (number 28 of process at paragraph 26) that she had told the social worker that she withheld Barry's contact with his father as a punishment. Barry had told her that Mr BF was a "bad man" and she had to listen to her child. She could not say whether Barry was a truthful boy as she has not seen him for 5 years. She disputed also that she had told SG that she was not going to comply with the sheriff court order for contact between Barry and his father and said that she had never spoken to SG about the matter at all. She vehemently denied locking Barry in an enclosed, dark space or depriving him of food and reiterated that he had only started making those allegations when living with JH. The only problem with the boys when in her care was that Andrew would lash out sometimes at Barry. She disputed that Barry and Andrew were not living together in 2012 when VD first visited and that her father had been the registered carer of Andrew, stating that the boys lived with her but that her father took Andrew once a week from Friday afternoon until Sunday morning. In 2013, once she was having contact after serving her prison sentence, the respondent had asked for the boys to be separated during contact because the small room in which she was forced to see them was not suitable for both. Her account differed markedly from that of VD who stated (at paragraph 36 of her affidavit) that it was as a result of the difficulties the respondent encountered with contact that she asked for the boys to be separated. The respondent said this was wrong and that it was nothing to do with her ability to look after the children.

[125] When pressed again on the abduction in December 2012 the respondent said that the purpose was partly to try to get the social work department to listen to her. She felt that although it had been a mistake, everyone had paid the price for her actions. She could not recall when she found out about the Hague Convention and North Cyprus not recognising it. She disputed that she had said to the police officer DA that this was the reason for going to North Cyprus. She thought there was confusion as she had been in North Cyprus for a couple of days before Pathos. If DA thought otherwise, he must have got it wrong. When paragraph 12 of DA's affidavit was put to her which recorded a telephone conversation on 14 March 2013 when she told him that she had no immediate plans to return to the UK which, on her evidence, was the very day she left Cyprus, the respondent said that she did not recall sending an email to DA on that date, although she did accept that she had not told him that she was returning briefly to the UK.

[126] The respondent disputed that she had regularly failed to attend LAC reviews and case conferences during the period 2011-2018, saying that she had at least attended some. She said that witnesses who said that she had not attended were giving an untruthful account. She pointed out that from 2013 the LAC reviews took place 200 miles away from her home. On the issue of her failure to cooperate with DS who was instructed to carry out a parenting assessment in 2016, the respondent said that she had met DS for some of the assessment but then had a difficult issue with her neighbour which resulted in a court appearance after which she could not return to her home. Her mobile phone was broken so she could not receive any telephone messages. She understood her solicitor had written about this. On her working relationship with the social work department, she claimed that SG had made a pass at her and that she had reported this to the social work department and so the break down was his fault, albeit that he was cleared after an internal investigation. So

far as VD was concerned she thought they had a good working relationship until she was present in court in early June 2013 and heard that VD had not complied with the requirement to allow the respondent and her children contact weekly. She thought that she should not be taken together with her father as if they were a single unit and VD's evidence about intimidation was not something that she had been involved in. She disputed that she and her father had deliberately followed VD in a car following a Children's Hearing on 21 May 2014. She stated that VD was being dishonest about this. She could not say whether her father had made racially abusive remarks on 4 May 2016. When it was put to her that the social work team leader JS had said she was aggressive and intimidating, she retorted that she felt intimidated by him. She disputed being aggressive and insulting to the social worker ER. She questioned the veracity of a social work record of a LAC review on 12 December 2016 which she had not attended but was noted as having been aggressive and insulting by telephone. She denied having failed to cooperate with both Dr CP and Dr JC who had been instructed to consider the issue of a relationship including contact with Andrew respectively. She disputed that she had ever been angry or abusive at Children's Hearings although said that sometimes her father was asked to leave the room because he had raised his voice and she would try to calm him down. She claimed that her solicitor was with her at all times and could dispute VD's evidence on this. She accepted that she had made a number of complaints against the social work department but disputed the evidence of the team leader JS that she had been palpably antagonistic to him and others at Children's Hearings.

[127] On the issue of Andrew's operation in 2016, the respondent disputed that she had never signed a consent form. She had signed a form after speaking to the consultant who said that Andrew had been struggling for six months. At the time she wanted a second opinion but had consented. She accepted that she had consistently refused consent for the

boys to have passports so that they could go on holiday outside the United Kingdom. Only Barry's carers had pushed for this and she felt that she had to make an "informed decision" after the episode where he had fractured his collar bone on holiday. She stated that "a passport is not a compulsory factor for a child in foster care".

[128] Under cross-examination by Mr Aitken, the respondent confirmed that she continued to have a close relationship with her father who was currently caring for Christopher in Cyprus. If Barry was returned to her care she would obey any direction that her father was not to have contact with him although disputed that her father was an angry man who she could not control. There had been a time when Christopher was accommodated and her father had complied with a condition that he was not to have contact. She disputed that her father would be "part of the package" if she had care of Barry. She was stronger now than when she was younger and would not be able to be pushed around. When it was put to her that she would have to build a cooperative relationship with Barry's carers if she was to have contact with him with a view to building their relationship up, again, the respondent said that cooperation worked both ways and that Barry's carers would have to stop using Facebook for her to do so. She claimed that she had no knowledge whatsoever of Barry's behaviour at school until after she made the first SAR. She was not in a position to dispute the head teacher's evidence about Barry's behaviour as she had not witnessed it. She thought that the cause of Barry's current behaviour might be that he had been hurt in the placement he was in before he went to live with his current carers. However, she also felt that he was not happy in his current placement and that could explain his deteriorating behaviour. She was anxious to know what was going on and was concerned about the information she had received through SAR's about the iPad incident, the episode in the hot tub and so on. She felt she had been stopped from being involved in both Barry and Andrew's education. She

disputed that her actions were the opposite of what was required in order to build trust with her children's current carers. She agreed that she had referred the social worker VD to the Scottish Social Services Commission during the course of these proceedings, stating that if someone had "done wrong" then they had to be investigated and punished. The respondent disputed that her attendance at the police station during the course of the proof was a complaint about JH and YM, her aim was to ask that Barry be spoken to to find out what was bothering him. She disputed that her intention in that respect was to start a process that might lead to JH being charged and Barry taken away from her. She thought that the allegations she had heard Barry had made in respect of certain school teachers were extremely serious and should have been reported to the police. She disputed that her actions were inconsistent with building up trust. She had no reason to dispute that Barry had said the things attributed to him, but felt that unless she knew what questions were put to him she could not understand what his answers meant. She was particularly critical of JH who she blamed for not wanting her in Barry's life. She considered that Barry should be able to give his views at Children's Hearings in future, so she did not agree that it would necessarily be in Barry's interests to be free of the Children's Hearing system. The respondent accepted that she had told the curator ad litem in this case that in information recovered by SAR she had seen information that YM had said that she and JH were questioning their ability to care for Barry. She now accepted that it appears that the "Y" in the paperwork referred to the head teacher YN and not one of Barry's carers YM. She disputed, however, that in raising this matter she had been trying to undermine Barry's placements, indicating that she was simply being honest and wanted to convey her concerns.

[129] In re-examination the respondent clarified that she accepted that Barry wants to live with JH and YM but she still thought that his placement there was unsuitable and it was for

that reason that she had raised various issues with the curator ad litem. In relation to whether she had told DA in March 2013 that she was coming back to the UK she said that she could not remember although accepted she could have sent an email. When asked whether VD would have been wrong in recording that she observed Barry being out of control on a home visit, the respondent commented that children will play up if there is a stranger in the house. She reiterated that VD had often not turned up and was sometimes there for only 15 or 20 minutes. On the issue of toilet training the respondent stated that when she left the children in Cyprus in March they were being toilet trained. In answer to a question from the bench about how she undertook the task of toilet training the respondent said that if her father was going to the toilet the boys would see it and would pick it up, at least Barry would but that it was more difficult with Andrew. When asked whether Christopher, aged 4 ½, was now toilet trained the respondent said that he was "nearly there" and was doing well. She accepted that she had made a complaint about VD to the Commission during the course of the proof in these proceedings after her evidence about the wording on the Child Protection Order sought in 2013.

[130] The final witness in the case was Dr R, a 69 year old child care professional with vast experience in the field of social work. Dr R had prepared a report (number 6/36 of process) which had been commissioned by the respondent's agents. She had visited the respondent and Christopher for some 16 hours over two weekend dates. The time scale had been quite tight but the respondent was entirely cooperative although understandably apprehensive of the process at first. Dr R's remit was to observe and reach conclusions on the quality of the respondent's care of Christopher and her relationship with him. She had no particular concerns about Christopher not attending nursery as he appeared to do things that provided him with a similar benefit, such as attending a play centre where he clearly knew several

children and appeared able to socialise. It was important to acknowledge that Christopher was 7 months old when returned to his mother and so had missed the first two important attachment phases. Since then mother and child have managed to establish a secure relationship observed by Dr R over a short but intense period which had given her enough time to form her conclusions. She had reached the view that the respondent had demonstrated a number of strengths, and had persevered in building up her relationship with Christopher with very little external help. There was good evidence of her maintaining a routine with the child. Dr R found Christopher to be very chatty and settled in his mother's care. She had spoken with the respondent about past events and found that she acknowledged difficulties she had encountered in parenting her older boys. The current situation so far as Christopher was concerned was that the respondent appeared to have managed to get over her difficult past and there was nothing to suggest that her current "good enough" care of Christopher would not continue. The child has a good relationship with his mother and grandfather and plays with other children. He knows his shapes and letters and was able to illustrate that to Dr R. On one view not sending him to nursery had enabled the relationship between mother and child to be prioritised. Dr R considered that it was perfectly normal if Christopher had become angry at his mother's absence at court as this would indicate that he felt safe enough to express his views.

[131] Looking to the future, Dr R did not foresee any difficulty in the respondent being able to "let go" of Christopher to the extent required so that he could attend mainstream school in August 2019. He was not a particularly clingy child and she could see him coping successfully with that transition. She had observed that when she and the respondent went to the play centre with Christopher the respondent did not call him back from playing with other children at all. She did not discuss Andrew and Barry with the respondent as she

thought that would have been intrusive. If she had concluded that there were concerns about the respondent's care of Christopher she would have recorded that in her report. She had engaged in a detailed discussion with the respondent about boundaries and good parenting. On the relationship between a parent and a social work team, where there are difficulties, Dr R considered that it would be a matter for the social work management team whether there should be a change of social worker.

[132] Under cross-examination by Mr Inglis, Dr R accepted that there could be no question of her being able to assist the court with decisions in relation to Andrew and Barry, her role was only to comment on the relationship between the respondent and Christopher. She was aware from the records of some of the difficulties the respondent had faced with caring for the older boys and the respondent had been willing to reflect on past events including her failure to attend medical appointments for Andrew. She could not comment on the significance or otherwise of Christopher being de-registered from the GP practice when taken to Cyprus recently. It had been mentioned at a recent meeting that Christopher was in Cyprus but she did not enquire as to whether it was only for a holiday or more permanent. She had not conducted any assessment of the respondent's father although she did see Christopher in his presence and the child seemed fond of him. The respondent had conveyed to Dr R that she had been angry and upset at Children's Hearings and that the social work department had been concerned about that. The respondent told Dr R that she understood that attendance at such Children's Hearings was not the best situation for Christopher.

The applicable law

[133] In these petitions the local authority seeks Permanence Orders for two boys but there is no application for authority to have either of the children adopted. There was no dispute

between counsel as to the applicable law. The provisions on Permanence Orders are contained in sections 80—84 of the Adoption and Children (Scotland) Act 2007. The provisions have recently been the subject of judicial discussion at the highest level. In the case of *EV (a child) (Scotland)* [2017] UKSC 15 ("*EV*") Lord Reed clarified the correct approach to the tests set out in the statutory provisions.

[134] I will first briefly summarise the relevant sections of the legislation. Section 80(2) defines Permanence Orders as consisting of a) the mandatory provision and b) such ancillary provisions as the court thinks fit. Section 81(1) defines the mandatory provision as a provision vesting in the local authority both the parental responsibility in relation to guidance appropriate to the child's stage of development until the child attains the age of 18 and the parental right to regulate the child's residence until the child attains the age of 16. There are a number of ancillary provisions defined in section 82, which is in the following terms:

> "**82. Permanence orders: ancillary provisions**
>
> (1) The ancillary provisions are provisions—
>
> (a) vesting in the local authority for the appropriate period—
>
> (i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i) and (d) of the 1995 Act, and
>
> (ii)such of the parental rights mentioned in section 2(1)(b) and (d) of that Act, in relation to the child as the court considers appropriate,
>
> (b) vesting in a person other than the local authority for the appropriate period—
>
> (i) such of the parental responsibilities mentioned in section 1(1) of that Act, and
>
> (ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act,
>
> in relation to the child as the court considers appropriate,

(c) extinguishing any parental responsibilities which, immediately before the making of the order, vested in a parent or guardian of the child, and which—

(i) by virtue of section 81(1)(a) or paragraph (a)(i), vest in the local authority, or

(ii) by virtue of paragraph (b)(i), vest in a person other than the authority,

(d) extinguishing any parental rights in relation to the child which, immediately before the making of the order, vested in a parent or guardian of the child, and which—

(i) by virtue of paragraph (a)(ii), vest in the local authority, or

(ii) by virtue of paragraph (b)(ii), vest in a person other than the authority,

(e) specifying such arrangements for contact between the child and any other person as the court considers appropriate and to be in the best interests of the child, and

(f) determining any question which has arisen in connection with—

(i) any parental responsibilities or parental rights in relation to the child, or

(ii) any other aspect of the welfare of the child.

(2) In subsection (1), 'the appropriate period' means—

(a) in the case of the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 18,

(b) in any other case, the period beginning with the making of the permanence order and ending with the day on which the child reaches the age of 16."

[135] Section 87 confirms that the making of a Permanence Order automatically terminates the parental responsibility and right of a natural parent to regulate and decide their residence. As a consequence of making a Permanence Order the court must make an order providing that any compulsory supervision order enforced in respect of the relevant child will cease to have effect – section 89.

[136] It is section 84 of the 2007 Act that sets out the tests and considerations that the court requires to apply and have in mind before determining whether a Permanence Order should be made. That section is undoubtedly unduly complex in its form and the order in which the court should approach its task is not particularly clear. It is worth setting out the whole of section 84 in full. It provides:

> "(1) Except where subsection (2) applies, a permanence order may not be made in respect of a child who is aged 12 or over unless the child consents.
>
> (2) This subsection applies where the court is satisfied that the child is incapable of consenting to the order.
>
> (3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.
>
> (4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child throughout childhood as the paramount consideration.
>
> (5) Before making a permanence order, the court must—
>
> (a) after taking account of the child's age and maturity, so far as is reasonably practicable—
>
> (i) give the child the opportunity to indicate whether the child wishes to express any views, and
>
> (ii) if the child does so wish, give the child the opportunity to express them,
>
> (b) have regard to—
>
> (i) any such views the child may express,
>
> (ii) the child's religious persuasion, racial origin and cultural and linguistic background, and
>
> (iii) the likely effect on the child of the making of the order, and
>
> (c) be satisfied that—
>
> (i) there is no person who has the right mentioned in subsection (1)(a) of section 2 of the 1995 Act to have the child living with the person or otherwise to regulate the child's residence, or

> (ii) where there is such a person, the child's residence with the person is, or is likely to be, seriously detrimental to the welfare of the child.
>
> (6) A child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a)."

[137] Neither Andrew nor Barry is aged 12 or over and so no issue of their consent arises. Their views are of course an important matter and I deal with that later. The effect of these provisions as interpreted to date is that there is a separation of the primary factual test, which is not concerned with the best interests of the child and the second stage of welfare considerations. In the present case, the factual test which requires to be satisfied is that contained in section 84(5)(c)(ii), namely that the child's residence with the respondent is or is likely to be seriously detrimental to the welfare of that child. The test requires to be satisfied in respect of each child separately. In the case of *R* v *Stirling Council* [2016] CSIH 36 the test was described as a "threshold test" as it was by the Supreme Court in *EV*. That means that if this first test is not satisfied, it must lead to refusal of the order sought without further consideration. Only if the court is satisfied on the evidence led that this primary hurdle has been overcome do the broader welfare considerations come into play.

[138] If the evidence has satisfied the essential requirements of section 84(5)(c)(ii) then consideration must be given to other important matters such as the welfare test in section 84(4) and the minimum intervention principle encapsulated by section 84(3). In the case of *EV* referred to above, the UK Supreme Court clarified and summarised the above approach as the correct one and in particular at paragraphs 13-15, 22, 27 and 28. It is also important that the requirement to meet the serious detriment test as a primary requirement is one that has to be satisfied as at the date of proof and not at any earlier point in time – *City of Edinburgh Council* v *GD* [2018] CSIH 52 at paragraphs 30 and 31. In that case, the First

Division of the Inner House clarified that the question is whether there is a "real possibility" of it being seriously detrimental to the child to reside with the respondent. While the primary facts leading to such an assessment must be established on the balance of probabilities, the court does not require to find whether it is more likely than not that the serious detriment will occur. Further, it is permissible to take into account the likely effect on the child of being removed from a secure or established residence as a factor when considering whether residing with the respondent would be seriously detrimental to his welfare – *Fife Council* v *M* [2015] CSIH 74 at paragraphs 18 and 26. Accordingly, if the court finds that the primary test of serious detriment has been made out it should express clearly the nature of the detriment which is likely if the child resides with the parent, the reasons the court considers that detriment to be likely and whether the court is satisfied that it is serious (per Lord Reed in *EV* at paragraph 29).

[139] If the threshold is crossed and the court is moving to a welfare assessment, it is necessary to consider all relevant options for future care of the child and conduct what the Inner House has described as a "global, holistic evaluation" of the benefits and disadvantages of each option – *North Lanarkshire Council* v *KR* [2018] CSIH 59. There the court emphasised that once the merits and demerits of the various options have been carefully considered, the court is in a position to conclude whether a permanence order is the option which best safeguards and promotes the welfare of the child throughout his childhood. In the North Lanarkshire case authority to adopt was also sought, but the approach commended is equally applicable to a case such as the present where a permanence order but no authority to adopt is sought. Once all alternative options have been considered against a backdrop of the welfare of the child being the paramount consideration, the final decision is not one of the exercise of discretion; the court must do what the welfare of the child demands. If the

exercise is carried out in this way, the requirement of proportionality will be met and the approach will be compatible with the Convention rights (ECHR) of the relevant party – *North Lanarkshire Council* v *KR* at paragraph 69.

Analysis of the disputed issues

(i) Credibility and reliability

[140] In submissions after evidence was led, counsel for each party addressed issues of credibility and reliability of the witnesses. Counsel for the petitioner submitted that the respondent was not a reliable witness. In contrast, counsel for the respondent had a number of criticisms of the petitioner's witnesses, particularly Dr JC and the social worker VD. She commended the evidence of the respondent as measured, insightful, responsible and mature and suggested that the respondent's other witnesses were impressive and credible. All sides acknowledged that issues of credibility and reliability are for the court. In light of the significance of the disputed issues in the evidence the credibility and reliability of the various key witnesses provides an appropriate starting point for an analysis of the evidence.

[141] I found all of the professional witnesses led in the petitioner's case to be generally credible and reliable. Dealing first with the social workers, SG presented as measured and considerate. Notwithstanding the serious allegation that had been made against him by the respondent he appeared to bear no malice towards her and was entirely professional in his approach. So far as VD is concerned, I reject the contention made on behalf of the respondent that she was a "lamentable witness". There were one or two aspects of her evidence that were expressed in slightly unusual language or where there were occasional errors in detail. As the events on which she was cross-examined at length took place between March and June 2013 that is hardly surprising. I do not find her evidence to lack professionalism or

integrity. Her considered view that Andrew and Barry's presentation and behavioural difficulties arose from whatever they had experienced in the care of their mother was ultimately fully supported by the independent expert Dr JC. There is little doubt that VD felt badly let down in January 2013 when she discovered that the respondent, to whom she had provided support and encouragement, had left the jurisdiction in an attempt to evade further social work intervention. Despite that, I formed the impression that she did her best to answer very detailed questions in relation to that period as honestly and accurately as she could. ER, the last social worker involved with the family and the one who took over the case and realised that permanence decisions had to be taken, was a calm and effective witness. He was very balanced in his comments about the respondent. Again, notwithstanding the antagonism and hostility that he had seen for himself on many occasions at Children's Hearings, he had no difficulty in emphasising an incident where he had seen real affection between the respondent and her youngest child Christopher. The evidence he gave in relation to how Andrew and Barry now regard their mother was important and on which considerable reliance can be placed. The social work team leader JS gave evidence of the oversight of the case he had taken over the years. His account seemed accurate and well-articulated. Where there were points of difficulty, for example in relation to the particular terms used in the Child Protection Order Application in March 2013, to which I will return, he did not shirk from acknowledging the position. Turning to the medical professionals, Dr O and Dr AE, were both helpful and impressive witnesses. Dr O, in particular, gave clear and important evidence in relation to the effects on a child such as Andrew of a parent failing to attend medical appointments and engage with necessary therapies.

[142] Dr JC, the child psychologist who had assessed Barry, was a strong expert witness. I reject the criticisms made of her by counsel for the respondent. She was firm in her opinion, based on her extensive experience of dealing with children subjected to early years trauma. She was neither dogmatic nor inflexible. Her answers to questions were very carefully considered and she was able to explain quite difficult psychological concepts in a manner that was comprehensible and so of great assistance. I have placed considerable reliance on her report and her evidence. Dr CP, another very experienced child psychologist who gave evidence about Andrew also impressed as a capable and knowledgeable witness. She was very clear in her diagnosis of Andrew's difficulties and of the particular importance of his relationship with his carer. I accept the evidence of the two child psychologists without hesitation as both credible and reliable. Other professional witnesses included Dr H who operated on Andrew, FM who spoke of the respondent's lack of engagement with health services in respect of Christopher, SP, the social worker who had no concerns about Christopher's care by his mother, DS who was instructed to carry out a parenting assessment with which the respondent did not engage and CM, the educational psychologist who had input into the education of both boys at different times. I accept the evidence of these witnesses as wholly credible and reliable.

[143] Turning to the three main "lay witnesses", a considerable attack was made on Barry's primary carer JH on behalf of the respondent. I consider that attack to be wholly misconceived. JH presented as tireless in her efforts to care for Barry in the face of increasingly difficult challenges with his behaviour at school. She stood up well to cross-examination but was not aggressive or opinionated. She came across as appropriately protective of the child in her care. YM, who is equally committed to Barry, has far less responsibility for his day to day care and so her evidence was not the subject of significant

challenge. I have no hesitation in accepting as credible and reliable the evidence of these two witnesses. Regrettably, I found the evidence of the respondent to be generally unsatisfactory and unreliable. On some issues she prevaricated, for example on whether or not she had told SG that she would not comply with the contact order in favour of Mr BF and on whether or not she told the police officer DA that she had gone to North Cyprus because of its absence from the list of Hague Convention countries. On some other matters, her evidence was frankly incredible. Examples include her account of leaving North Cyprus on or about 14 March 2013 to return to Scotland for what would have been a brief trip had she not been apprehended. In her affidavit, sworn less than a month before the first day of proof in this case the respondent stated (at paragraph 49) "I returned to Scotland alone in March 2013 where I stayed with [Christopher's] father…" It was not until her evidence that she gave an account of being bullied by her father into returning to Scotland to move his belongings which she said were being held by a friend in a van following her father giving up his tenancy. This was one of the examples of the respondent giving an account that she appeared to think could not be contradicted to add colour to an area of difficulty in her evidence. It resonated with the evidence about the psychiatrist, Dr H, having stated that "elements of [the respondent's] account of her life were implausibly sparse or unlikely." There were a number of further examples, such as the respondent continuing to claim in the face of Dr O's evidence that she had not really missed any medical appointments for Andrew other than where letters may have gone missing or when she had moved. Her ability to dissemble was nowhere better evident than through the juxtaposition of an email she sent to DA on 14 March 2013 indicating that she would not be returning to the UK, and her evidence that 14 March 2013 was the very day that she had left Cyprus. For all of these reasons, I have

not been able to rely on the evidence of the respondent other than where it is supported by the evidence of other credible witnesses.

(ii) Engagement with mental health professionals and diagnosis of Andrew's mental health vulnerability

[144] This section comprises the first two of the factual matters disputed at proof. I have narrated the evidence of Dr O, the consultant in paediatric neuro-disability who was involved in Andrew's care for about 2 years prior to his removal to Cyprus. I accept her evidence about the number and importance of missed appointments. In particular, I rely on her evidence that she had been informed in August 2012 that by the time the respondent moved to Ayrshire, Andrew had not had any physiotherapy or occupational therapy for 18 months. I find that the respondent failed to administer consistently the liquid iron supplement which Dr O prescribed for Andrew's iron deficiency anaemia and that his levels worsened as a result. I am satisfied also that the respondent failed to ensure that Andrew wore his ankle splint consistently. In 2016 she delayed, albeit for a relatively short period, in consenting to necessary surgery for Andrew. There was no extraneous evidence to support the respondent's contention that she had attended some 36 medical or similar appointments in 2012. I conclude that she failed, over a significant period, to discharge the important responsibility of attending to Andrew's physical needs. In relation to his mental health vulnerability, there is little doubt that the ultimate diagnosis of autism was long overdue by the time it was made. In 2012 Dr O had at least formulated the question, but such a diagnosis was not within her area of expertise and her intention was that there should be a clinical psychologist's assessment. Of course, the respondent's actions in removing the boys to Cyprus within months of Dr O raising this as a possibility contributed significantly to the

delay in diagnosis. The dramatic circumstances of the boys' return to Scotland meant that the social work department were "firefighting" thereafter for a considerable period. There were issues about whether the boys could be placed together and uncertainty about the cause of Andrew's lack of social development. The reason for the diagnosis rather later than would be expected is accordingly not a straightforward matter, but the blame cannot simply be attributed to a failure to listen to the concerns of the respondent, as was submitted on her behalf. On this issue, I accept that some of the difficulties encountered by the respondent in caring for Andrew are entirely understandable. She was a single parent with two young boys, one of whom was known to have cerebral palsy and who also displayed behavioural issues the cause of which she did not know or understand. On the other hand, the level of her lack of engagement with both medical professionals and the social work department during the relevant period not only contributed to the delay in Andrew's diagnosis of autism but also deprived both children of support from necessary services. The request made for respite care that may have been overlooked, according to SG's evidence, has to be understood in the context of the respondent's sometimes erratic and often non-existent co-operation with those services.

[145] I accept that the result of the missing of essential appointments was a lack of progress in terms of therapy for Andrew's cerebral palsy and that he would have presented as better physically when Dr AE first saw him had the respondent not failed to ensure his attendance. She also harmed Andrew by failing to administer and renew the medication for his iron deficiency consistently. There was a considerable amount of evidence in relation to nursery education for both boys. So far as Andrew is concerned, his nursery provision was altered on several occasions by the respondent. The most significant event in relation to that was his removal from St R's, where a 12 week plan had been developed with a view to providing the

child psychologist, CM, with advice in relation to whether he could enter mainstream education. The respondent had focussed on a private school specialising in conductive education that had impressed her and she refused to accept the advice of the educational psychologist that the school in question did not have a good reputation. I formed the view that it was as a result of that disagreement that the respondent was not committed to the 12 week planned assessment for Andrew which came to an end after about 4 weeks when she moved to a new area. This represented a lost opportunity for Andrew, one that would have greatly assisted with educational planning for him. I conclude that the respondent was more concerned with the dispute about local authority funding for the private school of her choice than with Andrew's educational needs and that Andrew suffered as a result.

[146] I find also that the respondent's lack of engagement over the years with the social work department and with professionals engaged in assessing what might be best for Andrew and Barry has been to the detriment of both boys. The respondent has had either a poor or non-existent relationship with the three main social workers assigned from 2012 onwards. As already indicated, she made a serious allegation against SG which was never substantiated. She then engaged on a superficial level with VD towards the end of 2012 and persuaded that worker that she was attempting to do her best to care for the children so that they would not be removed from her care while at the same time planning to remove them from the jurisdiction to avoid that outcome. By the time ER became involved as social worker she refused to engage in any form of working relationship with his department. It is clear that as late as 2016 investigations into the respondent's ability to parent were still taking place. Dr JC, the psychologist prepared her report in September 2016. In the summer of that year, she made repeated attempts to secure the participation of the respondent in that work, but excuses ranging from holiday arrangements to the imposition of a condition that her

solicitor be present resulted in a report having to be prepared without the respondent's involvement. A further example, also from 2016, was given in the short but important evidence of DS, the social worker instructed to carry out a parenting capacity assessment of RN on an independent basis. She was due to commence her assessment in early January 2016 only to find that the respondent had gone on holiday to Greece. Thereafter the respondent did meet and participate in the first two sessions of the work but then failed to cooperate with any further meetings. DS gave clear evidence of the numerous steps she had taken to try to secure the further engagement of the respondent including sending letters, leaving telephone messages, putting notes through the door of the respondent's home and contacting her solicitors. I find the respondent's failure to engage in that particular process inexplicable and unreasonable. It represented the last occasion on which she could have worked meaningfully with an independent professional to explore whether, even at that late stage, she was capable of offering something as a parent to Andrew and Barry. Her refusal to work with any social work or child care professionals at any meaningful level between 2012 and the raising of these proceedings resulted in there being no positive information about any parenting ability she may have other than in relation to Christopher being before the court. I find that in this respect also, she failed to concentrate on her children's needs, making her own interests the priority.

(iii) The respondent's care of Andrew and Barry in 2012

[147] This aspect of the case was the subject of a very stark dispute. It is an important period because it marks the end of the time that the respondent had sole care of the boys in this jurisdiction. Many of the background facts were not in dispute and I have narrated those. From March 2012 the petitioner's social work department considered that planned

accommodation of both Andrew and Barry was likely to be required because of the respondent's inability to care for them adequately. The best summary of the position as of November 2012 was a Minute of a Child Protection Review Case Conference to which the social work team leader JS spoke (see paragraph 60 above). In summary, that minute recorded information from the health visitor of a missed appointment, observed behavioural problems exhibited by Andrew such as aggression, knowledge that he was not wearing his splints regularly enough, a failure by the respondent to respond to the school nurse and a continued delay with toilet training. The lack of appropriate social interaction was by that time being discussed in the context of a possibility of autism. So far as Barry was concerned at that time, he too was delayed in toilet training and there was a report that the respondent had stated to his nursery that she was "sick of getting into trouble" because of him. Against that background, the respondent's position that the boys were making "fantastic progress" in her care during that period can be regarded as unrealistic and misleading. The pattern of the respondent removing Andrew from various nurseries and moving house contributed to the insecure nature of the care being provided to both boys, with Andrew finding it particularly difficult to tolerate change (Dr P, at paragraph 80 above). With the exception of one nursery attended briefly by Andrew which the educational psychologist CM later agreed was unsuitable for him, I find that the respondent prioritised her own desire to move over the children's stability generally.

[148] Observations by the social work department of Barry whilst in the care of the respondent also support a conclusion that he was not receiving consistent parenting. The social worker SG observed Barry to be dangerously unsupervised by his mother on two occasions, one in September 2011 and the other on 19 June 2012. The nursery he attended in August 2012 had described Barry as "wild", a state that SG saw for himself when visiting the

respondent's home in connection with discussing Andrew's potential educational placement. On 16 November 2012 VD herself saw Barry being "hyper" and difficult to manage. She observed that the respondent was struggling to cope with Barry's constant attention seeking behaviour. I accept also the evidence of SG that Barry's 2 year assessment was missed and his immunisations were not up to date. The respondent's attitude towards Barry's relationship with his father during 2012 also exemplified poor parenting on her part. That relationship had been observed to be of good quality, yet the respondent told SG (and I accept his evidence) that she told him that she used the withdrawal of contact to punish Barry. While the respondent's evidence in relation to what she knew about the terms of the interim interdict was unclear, she did not seriously dispute that she had determined to refuse to comply with the court order for contact. Her flouting of authority in that regard can be seen as a precursor to her more serious actions in removing the children from the country. In conclusion, I find that the respondent's care of Andrew and Barry in 2011 and 2012 was inadequate and to their detriment. The physical consequences for Andrew were more serious. The emotional impact on Barry was best illustrated by the early signs of his disruptive behaviour both in and outside the home during 2012.

(iv) The removal of the children to Cyprus and its aftermath

[149] The circumstances in which the respondent planned and executed the removal of Andrew and Barry from Scotland and took them to live either in Cyprus or in North Cyprus were largely undisputed. However, no supporting evidence confirming the respondent's position that they were well cared for in Cyprus or even that they lived, as she claimed, in Pathos, was tendered. In particular, the respondent's father, who spent a considerable period of time with the children in Cyprus, did not give evidence in her case. The presentation of

the boys on their return to Scotland on 27 March 2013 appeared to have had a significant impact on the social worker VD. Her description of them as "feral" evoked images of two boys who were unable to behave appropriately to each other or to cooperate with anyone attempting to look after them. They were beyond control. It seems that the respondent continues to feel aggrieved in relation to what she saw as the boys' peremptory reception into care as soon as returned to Scotland. She appeared on the one hand to acknowledge that she had made a grave error in absconding to Cyprus while on the other hand she continued to blame the social work department for depriving her of the opportunity to resume care of the children thereafter. She failed to acknowledge that her actions in taking the boys to Cyprus and then leaving them there for a personal trip to the United Kingdom was disruptive and likely to be extremely detrimental to their wellbeing. Andrew was by this time a school age boy with physical and behavioural difficulties. He completed only one term of mainstream schooling before his removal to Cyprus. He was and is a vulnerable child who needed stability and security both inside and outside the home to a greater extent than a child without any special needs. Barry was already exhibiting some challenging behaviour prior to his removal to Cyprus and depriving him of the social interaction he previously had exposure to at nursery, coupled with subsequently observed lack of progress with toilet training and other necessary routines, was the antithesis of what his welfare required. I am satisfied that the respondent's inadequate care of the children prior to the removal to Cyprus was exacerbated by her actions in early 2013. The impact on Barry of the respondent's care of him was best articulated by Dr JC who concluded that there was a clear link between that care and his current behavioural difficulties. The analogy of a house plant which is not watered and so might die or not flourish was a compelling one and I conclude that the respondent's inability to nurture Barry's social and emotional development when he

was in her care can be pinpointed as the primary source of his subsequent behavioural difficulties.

[150] A significant attack was made on the actings of the petitioner's social work department in securing child protection orders in relation to the children in March 2013. Counsel for the respondent was able to point to a reference in the application for that order to the respondent having a personality disorder, something which the psychiatrist, Dr H, had not, strictly speaking, supported as a diagnosis in a report. However, in her evidence VD had been referred to a contemporaneous note of a telephone conversation she had had with the psychiatrist when Dr H had spoken of the respondent's exaggerated and inaccurate sense of her abilities. I consider that the criticism of the social work department in this respect was justified to the extent that great care should be taken before characterising something as a formal diagnosis in an application to the court if the matter is more nuanced than that. However, the combined evidence of the social work witnesses was to the effect that the respondent consistently displayed disordered or abnormal behaviour in the way that she dealt with authority. While it was not for the social work department to label that behaviour in a way that a medical professional could, there was sufficient in the respondent's behaviour in 2012 for them to raise it as an issue supportive of the Child Protection Order being granted. The respondent's actions in more recent years, including her aggressive and intimidating behaviour at Children's Hearings (the evidence about which from ER, I accept without hesitation) her repeated quest for information through SAR's and her attempt to involve the police on matters raised in evidence during the proof were all illustrative that the challenging behaviour described by the social work department in 2013 continues to the present day.

(v) Contact and the children's views

[151] After the boys were returned to Scotland in March 2013 the respondent was being held in Cornton Vale prison and arranging contact was not a straightforward matter given that they were both being accommodated quite far from that location. However, on this aspect of the evidence, I do consider that the social work department's position was less than satisfactory. There was a clear requirement that the respondent initially have contact once per week with both boys and the social work department did not act promptly or with any real intention to try to meet that requirement. VD accepted that she did not consider that contact between the boys and their mother was in their best interests. At that time, however, the sheriff at Glasgow was seized of the matter because contact was a condition of the continuation of the warrant for the respondent's detention. In those circumstances, it is regrettable that matters reached the extent that VD and her team leader JS required to attend at Glasgow Sheriff Court with a detailed chronology of the steps they had taken to try to arrange contact. Ultimately only one contact session took place while the respondent was in prison and it was not particularly successful. That said, there were subsequent attempts by the social work department to re-instigate contact between the respondent and both boys. VD's evidence was that it was the respondent who found it difficult to manage the boys and requested that contact take place with each separately. This was a fact agreed in a Joint Minute, yet one that the respondent appeared to dispute in her evidence. There was considerable support for VD's view that the children did not benefit from contact when it took place in the second half of 2013. She was able to contrast Barry's approach to contact with his father, something to which he looked forward and his lack of enquiry in relation to his mother. I accept and rely on the evidence of Dr JC that, following careful consideration of all of the available information, she could find no evidence of a secure attachment between

Barry and his mother and that there was a noticeable absence of the three phases of separation from a secure attachment figure, namely searching, anger and then mourning. The reports of Barry's interaction with his mother in 2013 led Dr JC to conclude that she was not a secure attachment figure for him at all. Dr CP explained that, because Andrew was autistic, the various changes he had had in early childhood will have been difficult for him to tolerate. His noticeable anxiety in relation to contact was a clear indicator of this. All of the professionals who observed contact between the respondent and her children after the return from Cyprus considered that it was not beneficial to either Andrew or Barry. The respondent sought to focus on a single report by a safeguarder, MP, in 2015 which recorded that Barry had expressed a desire to see his mother. Dr JC had sight of the report of that safeguarder and the paperwork she had examined as part of her work in this case. There were in fact two reports of that safeguarder, neither of which Dr JC had referred to in her own report because she regarded them as of very poor quality and noted that the safeguarder herself had concluded that she did not have the expertise to reach conclusions. I accept the evidence of Dr JC that one should treat an isolated stated desire on the part of a child to see his mother with some caution. In fact the occasional statement of a desire for contact did not in any way affect her overall conclusion about Barry's views.

[152] I conclude that the issue of ongoing contact between the respondent and her children was one that was examined sufficiently and with care by the Children's Hearing between 2013-2016, and it was that body that had responsibility for decision making throughout that period. Ultimately, the social work department's consistent view that contact was not in the children's best interests prevailed and was supported by the reports and subsequent evidence of the two independent psychologists. The evidence of the social worker ER in relation to the issue of the children's views on contact was of some importance. He visited

both Andrew and Barry in their placements in August 2016 and was struck by the clarity in their antipathy towards contact with their birth family (see paragraph 73 above). Barry of course is able to articulate matters in a way that Andrew finds more difficult. ER's evidence was that Barry has consistently been clear and unambiguous that he wants nothing to do with his mother, with the possible exception of seeking a one-off meeting to berate her for her past treatment of him. It is self-evident that such a meeting would be antithetical to the advancement of Barry's interests and would not represent a precursor to future meaningful contact Andrew had a particularly extreme reaction to even being asked about his birth family and his carer KK had reported him as being unsettled after such an attempt was made. Barry's views on contact at the current time were before the court in the form of his instructions to solicitors and counsel. It is noteworthy, also, that the evidence of Dr JC, Dr P and of the social worker ER on the lack of any benefit of future contact between the boys and their mother went effectively unchallenged. The respondent herself acknowledged that, even on an optimistic scenario, it would take her quite some time to rebuild a relationship with the boys. Regrettably, she seems to continue to be unable to face up to the reality of the children's stated desire to have nothing to do with her. There was simply no acceptable evidence to support a conclusion that the re-instigation of contact between the respondent and either Andrew or Barry or both would benefit them. I conclude that re-opening the issue of contact between either of these boys and their mother at this stage would be both unsettling and counterproductive.

(vi) Barry's behavioural problems and his current home situation

[153] The issue of Barry's challenging behaviour at school, in contrast to his relatively biddable demeanour at home, was the subject of important evidence. The head teacher YN,

an impressive witness, appears to have an almost extraordinary commitment not just to Barry but also to the other children in her school. From her evidence, I conclude that matters are at a fairly critical point for Barry because there is already a real risk that he will struggle to cope with mainstream education. The stability that YN and her team have provided for Barry educationally so far is highly commendable and extremely valuable. To that background, the view of Dr JC that the pattern of Barry's difficulties did not fit with the cluster of symptoms normally seen in autistic children must be added, which, as already indicated, lends support to a conclusion that the root of Barry's difficulties is trauma suffered in his early years. Dr JC explained that Barry's abnormal pathology in relation to the issue of food could also be traced back to that source. I conclude that the source of Barry's current inability to cope with the social environment of school and his aggressive and sometimes violent behaviour at school as described in evidence is his early childhood experiences while being in the sole care of the respondent.

[154] All of the acceptable evidence in relation to Barry is supportive of a conclusion that he is a boy of above average intelligence who requires extensive support in school and for whom a positive, consistent and supportive working relationship between home and school is essential. He has no diagnosis of any mental health condition. There is no support for the suggestion on the part of the respondent that he is unhappy at home with JH and YM or unsettled in that placement. The reports of him being a manageable child at home but extremely disruptive at school leads me to conclude, on the contrary, that the only place of safety, stability and security for Barry currently is in his placement with JH and YM. I am convinced that his continued attendance at school is wholly dependent on the current co-operative and supportive relationship between his carers and the staff there.

[155] I should add that in relation to the evidence heard under reservation (see paragraph 106 above) I am satisfied that what seemed to be a continuing challenge to Barry having minuted into this process was both irrelevant and incompetent. JH appears to have acted entirely appropriately in acceding to the desire of the child in her care to be given a voice in proceedings that will determine his future. He wanted representation and is, on the available evidence, capable of giving very clear instructions to his advisers. His carers were called as witnesses in his case. In light of the nature and number of accusations made about events occurring while Barry has lived with them, it was important to hear their evidence and assess what they had to say about his life with them. I remain of the view that allowing Barry to be represented was the proper course in the particular circumstances of this case.

(vii) Children's Hearings

[156] One of the more unusual features of this case is the extent to which Children's Hearings have become the forum in which the ongoing antagonism on the part of the respondent to the petitioner's social work department and Barry's current carers has been played out. I accept in its entirety the evidence of ER in relation to the intimidating and aggressive behaviour exhibited by the respondent at such hearings, including on occasions when her youngest child Christopher has been present. In her evidence, the respondent sought to distance herself from some of the most serious aspects of that behaviour indicating that she and her father should not be taken as a single entity. Unlike her father, she has no criminal conviction in relation to any of that behaviour. In his evidence and his oral testimony, ER made a number of important observations. His impression from seeing the respondent at Children's Hearings was that she did not act in a child centred way. She

seemed to thrive on the arguments at Children's Hearings in which she would challenge the decision making process and be completely engaged with it. In contrast, he observed that she would refuse to become involved at all in discussions about care plans for the boys. Those observations found support in the evidence of JH who thought it extraordinary that she had attended Children's Hearings in relation to Barry for a 4 year period and during that time neither the respondent nor her father had ever asked her about Barry's welfare and progress. The taking of the unusual step, at the Reporter's instigation, of having a police presence at Children's Hearings for some months speaks volumes in relation to the respondent's inability and/or refusal to use a forum designed to focus on the welfare of children for that purpose. Instead she has sought to use it as a vehicle for her ongoing challenges to social work department intervention. I conclude that the respondent has exhibited a persistent and ongoing inability to engage positively with the body that has taken decisions about her children's welfare for almost six years in respect of Barry and for almost all of Andrew's life. Her behaviour at Children's Hearings has at times been so inappropriate that it has presented real difficulties for those trying to collaborate in that child centred process. I have no expectation based on the evidence led that the respondent's behaviour at Hearings will improve if the legal *status quo* is maintained.

(viii) The respondent's care of Christopher

[157] There was clear and satisfactory evidence from the social worker SP and from the expert called in the respondent's case, Dr R, that the respondent is providing good enough parenting for Christopher at the present time. Her youngest child appears to be meeting his developmental milestones and he has enjoyed a little more social interaction outside the home than Andrew and Barry were able to benefit from. I express no view on the

appropriateness or otherwise of the social work intervention with Christopher at the time of his birth and up until he was 7 months old. He was put in the care of the respondent after contested proceedings. When Christopher was born in May 2014 the respondent had not parented any child successfully and was no longer having direct contact with either Andrew or Barry. Against a background of her inadequate parenting of those boys, social work department intervention was considered necessary. It is very much to the respondent's credit that she has managed to care for Christopher since he was 7 months old as a single parent, albeit with very regular assistance from her father. It is to be hoped that she continues to look after Christopher without difficulty. Nothing stated in this opinion should be taken as an expression of concern about her ability to care for her youngest child. There are, however, a number of observations that I will make insofar as the evidence on this issue is a factor in my later consideration of the legislative tests.

[158] First, the respondent continues to give insufficient emphasis to the consistency, stability and security that children require. As Christopher is still a pre-school child and not subject to any form of state supervision, the respondent was, as she pointed out, entitled to take him to Cyprus where he remained at the end of 2018. The respondent's explanation for removing Christopher to Cyprus during the course of the proceedings was the difficulty she encountered in looking after him on a daily basis while attending court for proof. The problem with that explanation is the undisputed evidence that she removed Christopher from the register at her General Practitioner. Had she advised the GP that she was taking Christopher for a two month "holiday" where he would stay with her father in Cyprus while she flew back to attend court, the situation would be less remarkable. However, standing the history of the removal of Andrew and Barry from this jurisdiction in order to evade social services intervention, coupled with the evidence of the respondent's understanding of the

difficulties that state authorities would encounter in seeking to have a child returned from North Cyprus, lead me to doubt that the timing and choice of location in relation to Christopher's absence are coincidental. It was not until she was cross-examined that the respondent disclosed that Christopher was in North Cyprus, her earlier evidence simply having referred to Cyprus. It is also a little troubling that the respondent disclosed for the first time in evidence that when Christopher returns to this jurisdiction it will not be to the home that he and the respondent have shared for some years but to the respondent's father's home in a different part of Ayrshire where the respondent now intends to settle. It is to be hoped that there are no adverse consequences for Christopher in these changes of location and routine. In light of the positive evidence about the attachment formed between the respondent and Christopher, I have no reason to conclude that there will be any detrimental effect on him. However, it is an aspect of the evidence that cannot be ignored in considering and comparing the current stable placements enjoyed by Andrew and Barry with the more fluid home situation of the respondent.

[159] It seems also that the respondent continues to pay less attention to some of the routines that are generally thought best for young children. When asked by me in relation to what techniques she employed for toilet training for Christopher, she was unable to respond in a way that suggested she had any understanding of the need to be proactive and consistent in implementing and reinforcing such a regime. Christopher has not attended nursery to date and he will attain the age of 5 in May 2019. While I accept Dr R's evidence that informal attendance at a play centre where there are other children can perform the same function, particularly as Christopher appears to be a child without any vulnerabilities or special needs, it does seem that the respondent remains adamant that her method of parenting should

prevail. I am unconvinced that she has really learnt lessons from her poor parenting of Andrew and Barry in the past.

Application of the law to the facts

(i) The primary test of serious detriment

[160] This test requires to be applied on the hypothesis of what might arise in the event that the children (or either of them) were returned to live with the respondent at the current time. It is the respondent's position that the petitioner had failed to establish in evidence that the test is satisfied. It is suggested that the petitioner's social work department have, since March 2013, determined that the respondent would not have contact with her children, that they failed to carry out any proper parenting assessments or failed to explore alternative childcare arrangements and that they had been predisposed to planned accommodation of both boys for some time prior to the removal to Cyprus at the end of 2012. Further, there was considerable focus on the gaining of maturity on the part of the respondent and the positive changes in her life which have allowed her to care appropriately for Christopher without social work concerns. The petitioner, supported by counsel for Barry, submitted that the test was met.

[161] The starting point for the application of the test is the proven past behaviour of the respondent. In my view, there was ample evidence to support a conclusion that the removal of both Andrew and Barry from the respondent's care in 2013 was justified and appropriate. Dealing first with Andrew, I have referred to and made findings on the numerous missed medical appointments and important therapy appointments all as outlined by Dr O in her affidavit and oral evidence. The consequences of that included both that his behavioural difficulties were not addressed within a reasonable period and also that the complications of

the spasticity of his left arm and leg were not appropriately addressed when they should have been. The respondent's failure to ensure that Andrew attended for therapy, took prescribed medication for his anaemia and attended an important assessment placement, all support a conclusion that her care of Andrew was not good enough when he was with her in 2010-2012. It is significant that he was already under the supervision of the local authority for some years prior to 2012, as narrated in the undisputed facts of this case. Turning to Barry, while he had not been the subject of a formal supervision requirement, his name had been entered on the Child Protection Register and he too was subject to weekly visits by the social work department. I have narrated my findings in relation to the inadequacy of the respondent's care of Barry in 2011-2012 at paragraph [149] above. I conclude that the respondent failed to provide adequate levels of care to both Andrew and to Barry over a period of several years leading up to 2012 and so behaved in a manner likely to cause each of them unnecessary suffering. The respondent's flouting of authority by removing the boys to Cyprus and cutting them off from an essential support system available through the social work department in this jurisdiction exacerbated the consequences for them of her poor parenting. Further, the respondent's deliberate thwarting of Barry's developing relationship with his father provides a further illustration of her inability to consider her child's needs before her own. I have not made any findings in relation to the truth or otherwise of Barry's statements about his mother locking him in a basement and depriving him of food. There is no direct evidence of what happened to the children in Cyprus or what precise interpretation can be put on Barry's fearfulness about time he spent with her. However, I have accepted the evidence of Dr JC (narrated at paragraph [96] above) that what Barry was representing in his statements by referring to a basement was a dark place where he was frightened and that the emotion he expressed is what is important, not the factual accuracy on the details. This is a

child who perceives that being with his mother would present a threat to his well-being. Andrew, who is less able to articulate his concerns, was more directly physically neglected. Taken together, the evidence of the psychologists (Dr JC, CM and Dr CP) amply supports a conclusion that both boys have been severely adversely affected by being in the care of the respondent prior to their reception into care. The consequences of that adverse impact, or detriment, continue for both boys.

[162] Turning to the current position, there was clear and undisputed evidence that Andrew has benefited enormously from living with KK who is unwavering in her commitment to him. The description from ER of how Andrew feels that he is "of KK" and belongs to her so completely, is illustrative of how this vulnerable child has latched onto the consistent and secure care with which he has been provided now for almost six years. So far as Barry is concerned, he too has a secure and loving placement with JH and YM. He has been in their care since 2015. The excellent standard of care and level of emotional security and stability being provided to both boys in their current separate placements is a relevant factor in assessing the nature of any detriment, serious or otherwise, that each might suffer if returned to live with the respondent. It is significant that neither boy has had any direct contact with the respondent for several years and that the indirect contact implemented between the respondent and Barry was unsuccessful. Quite apart from Andrew and Barry's opposition to contact, let alone residence with, the respondent, I require to take into account the loss they would suffer of the physical and emotional benefits of their current placements. There was ample evidence that removal of Andrew from his home with KK would be close to catastrophic. So far as Barry is concerned his home appears to be safe refuge where he flourishes and behaves normally notwithstanding his very challenging behaviour at school. It would be a dramatically negative step for either boy to be taken from his home and

returned to the respondent. Notwithstanding the respondent's now proven ability to care for Christopher, there was no evidence to support any suggestion that she could somehow care for all three boys together. While her slightly erratic engagement with child services in relation to Christopher is not a particular problem for such a healthy child of normal development, the consequences for Andrew, were he to be returned to a regime where medical appointments are not kept, would be unacceptable. For Barry, it is the necessary close connection between home and school that would render removal from his current placement to be particularly damaging and unworkable. Further, the respondent's ongoing antagonism towards Barry's primary carer JH militates against any hope that a smooth transition of care could somehow be built up and effected even if that were in the child's interests. Finally, I consider that placing the boys together at this stage in their lives would be unworkable. They have had no direct contact with each other during the last two to three years and their behaviour to each other when together was observed to be aggressive, destructive and impossible for carers to manage. The respondent is providing good enough care to Christopher. It is highly unlikely that she would succeed in providing satisfactory care to even one additional child with needs and vulnerabilities who now came to live with her. I cannot envisage any circumstances in which she could cope with the addition of two such children, even if they were not opposed to a return to her care.

[163] For the reasons given above, I am satisfied both that the test of serious detriment is amply satisfied at the current time and that it would be likely, in future, that serious detriment would occur if either Andrew or Barry or both of them resided with the respondent. That the identified detriment is serious needs little explanation; removal of either boy from his current home would be a very dangerous step in terms of his development. So far as the future is concerned, the respondent's lack of acknowledgement of

the central role she has played in creating the current situation lends support to the conclusion that she is unlikely to reach a point where she could resume care of either Andrew or Barry. It is surprising that it was suggested that the petitioner had failed to carry out any proper parenting assessments against a background of the very clear evidence of the respondent failing to comply with the professionals such as DS, who were instructed exclusively for that purpose. Her lack of co-operation with Dr JC is also illustrative of her tendency to remove herself from any situation where she feels she is likely to be exposed. The evidence in relation to her behaviour at Children's Hearings in recent years, her continuing current refusal to engage with any social worker from the Petitioner's social work department and her regular and continuing complaints whenever she secures access to information about Barry's care or education also all support a conclusion that there is no real prospect of the type of positive changes that would be necessary to allow her to parent Andrew or Barry effectively at any future point.

(ii) Welfare test and the children's views

[164] I turn now to consider the need to safeguard and promote the welfare of each of the two children throughout childhood. Andrew was first made the subject of a supervision requirement in 8 November 2007 with a direction at that time that he live with his maternal grandparents. He has remained under the supervision of the local authority since then, notwithstanding conditions of residence with his mother until 2012/13. That is far too long a period for a child to wait for decisions of permanence. Regardless of the causes of that delay, I am in no doubt that termination of Andrew's supervision order so that he no longer is subject to a system where his carer requires to attend Children's Hearings regularly would be to his benefit. So far as Barry is concerned the overwhelming tenor of the evidence from

those witnesses whose evidence I have accepted, is that his welfare demands that he remain in the care of JH and YM. The evidence of Barry's head teacher YN was that she had noticed a big difference in the child's behaviour when Children's Hearings were to take place. Barry's behaviour deteriorates at times when someone requires to seek his views for a Children's Hearing or if he requires to meet with a safeguarder or similar professional. YN stated in terms that particularly violent episodes would be experienced during such times. Dr C was clear that for so long as Barry remains in the Children's Hearing system he will have contact with the traumatic memories and experiences that his early life involved. A removal of Barry and his brother from the Children's Hearing system would have the benefit for both of departure from the forum in which the respondent's antagonism to the boys' carers (or at least Barry's carers) has been vented. It does not matter whether or not Barry would in future be required or choose to attend Children's Hearings. In my view it would be liberating for him to be removed from that system altogether and to be permanently and securely in the care of JH and YM, without further oversight by any decision making body.

[165] One of the consequences of the delay in permanence orders being sought in this case is that for some years the local authority has required to secure the consent of the respondent for any important medical procedures and for travel. The respondent has refused to consent to the issue of passports to enable Barry to travel abroad with his carers. While no direct request for this has been made by KK for Andrew, it is unacceptable that either child should be prevented from any travel that his carer considers is in his best interests and would be enjoyable. The respondent's stated reason for refusing to consent to Barry having a passport was unimpressive. Her desire to keep open the possibility of a relationship with the boys is unrealistic against the background of their opposition and the risk of disruption should

further contact be attempted. In all the circumstances I am entirely satisfied that the principal orders sought by the local authority in this case will best promote both Andrew and Barry's interests throughout their childhood. I have referred to the children's opposition to any form of contact with the respondent already. Granting a permanence order is consistent with Barry's views and instructions given by him to his solicitors and counsel. So far as Andrew is concerned, it can be inferred that any order that secures his permanent placement with KK coincides with his wishes. Standing his vulnerabilities and refusal to engage with efforts to elicit his views, it is entirely appropriate that those views have been obtained by the social work department through the conduit of his carer KK.

(iii) The minimum intervention rule

[166] While I am satisfied that the primary test of serious detriment is met in relation to both Andrew and Barry in this case and that a permanence order for each will best safeguard and promote their welfare throughout childhood, I must consider specifically whether it would be better for each of the children that the orders sought should be made than not. This is an important part of the exercise standing the need for state intervention in the lives of children to be of the least invasive form possible. If no permanence orders are made in this case, both children will continue to be subject to the Children's Hearing system. I have already expressed the view that it would be in both Andrew and Barry's interests to be liberated from that. I have concluded that the numerous hearings that have taken place have been an unpleasant forum in which the respondent and her father have behaved in an aggressive and hostile manner to the extent that a police presence has been required. I do regard the petitioner's delay in instigating these proceedings for some years after it was clear that there could be no plan to rehabilitate them into the care of their mother as highly

unsatisfactory, but that cannot be remedied in this action. Andrew and Barry have been subject to the supervision of the Children's Hearing for many more years than would have been appropriate. This will only be resolved by the making of a permanence order. The only realistic alternative to granting the orders sought is that both boys would continue to be placed by the local authority and the *status quo* of there being no contact between them and their mother would subsist. That would not promote their interests as it would result in a continuation of the present unsatisfactory situation where the respondent's consent to medical treatment and travel would be required. From the perspective of Andrew and Barry's best interests, it would clearly be far better if the people responsible for their care on a day to day basis could make all decisions relating to their education, medical treatment and welfare without the need for such consent. The passage of time during which the respondent has had no direct involvement in the boys' lives reinforces the need for the transfer of responsibility for decision making. It has not served to promote either Andrew or Barry's best interests for there to have been such a delay in final decisions being taken about who will parent them in law. If the orders sought are now made, that will at least provide the certainty for the future that both boys deserve. Dr JC's clear view was that for so long as Barry remains in the Children's Hearing system he will have contact with the traumatic memories and experiences his early life involved. Finally, I would add that the various complaints made by the respondent about the care of Barry by JH and YM, following receipt of information through the Subject Access Request System illustrates that she would be likely to continue to interfere with the arrangements for Barry's care if no permanence order was made and the status quo continued. A considerable amount of additional evidence at proof was required in this case because the respondent raised a number of allegations with the *curator ad litem* following receipt of that court appointed officer's reports. The matters ranged

from an accident with an iPad involving JH and Barry to a relatively serious matter involving an allegation by a girl that Barry had touched her inappropriately. These are all matters that Barry's carers have dealt with in an exemplary fashion and so the truth or otherwise of the allegations, particularly those made by third parties, need not be determined. It would clearly be better for Barry that he can be parented by those who have a sophisticated understanding of his needs without further interference from the respondent. This is not a case in which there are a number of available outcomes or where something short of permanence orders is realistic. Having determined that it would be to the serious detriment of both boys that there be any attempt at a re-instigation of a relationship between either of them and their mother and that their current placements are both nourishing and secure, the choice is between making the order and not making the order. In all the circumstances and for the reasons given, I am satisfied that it would be better both for Andrew and for Barry that permanence orders in respect of them be made than that no orders be made at all.

Ancillary provisions

[167] The petitioner seeks ancillary orders including that parental responsibilities and rights be shared between the local authority and KK in respect of Andrew and between the local authority and JH and YM in respect of Barry. For all of the reasons given I am entirely satisfied that parental responsibilities and rights should be shared in this way. These are both boys who will require ongoing professional support and the decision making about that should be shared with their current carers. Turning to the issue of contact, I am satisfied that the evidence does not support a conclusion that contact of any kind between the respondent and Andrew or the respondent and Barry would safeguard and promote the welfare of either child. I have relied upon the severely negative reaction of Andrew when the subject of his

birth family is raised and on Barry's clear and unequivocal views in relation to contact. I was impressed by the evidence of JH who understood the importance of allowing Barry to access letters and other material she holds for him in relation to his birth family and I am satisfied that she will continue to help Barry gain an understanding of his origins and his early years. I was particularly struck that she felt able to emphasise to Barry when he asked questions about his situation that his mother did love him, but perhaps in a different way (paragraph 103 above) JH showed considerable sensitivity and maturity towards the issue of such information as Barry should have about his birth family. I am satisfied that, while JH was willing to pass on photographs of Christopher and any other material provided via the petitioner's social work department in an appropriate way, the discretion whether or not to do so must lie with JH and YM and not be the subject of a court order. The respondent's actings illustrate that she cannot be trusted to implement any form of indirect contact order in a way that did not interfere with Andrew and Barry's carers taking on formal legal responsibility for them. I conclude that it would be inappropriate to make any specific provision for indirect contact or for the respondent to retain her parental responsibility and right of contact in respect of either child.

Revocation of Compulsory Supervision Order

[168] For all of the reasons given above it is in both Andrew and Barry's interests now to revoke the Compulsory Supervision Order in respect of each, something that flows from the decisions I have made in relation to the permanence orders. I will make the appropriate order for that in terms of section 89 of the 2007 Act.

Disposal

[169] I will make permanence orders in respect of Andrew and Barry separately, together with the ancillary provisions sought by the petitioner. I will reserve meantime all questions of expenses.