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Case no.: OX16C00033

IN THE FAMILY COURT AT OXFORD IN THE MATTER OF THE CHILDREN ACT 1989 AND IN THE MATTER OF A (A CHILD)

Date:7th March 2017

Before : HHJ Vincent

Between :

OCC

Applicant –

and

(1) KK (mother)

(2) LL (father)

(3) A (by his guardian KC)

(4) MM (paternal grandmother)

Respondents

Aidan Vine QC (instructed by Oxfordshire County Council) for the Applicant
Anne Davies of Royds Withy King for the First Respondent mother
Martha Gray (instructed by Reeds solicitors) for the Second Respondent father
Jason Green (instructed by Oxford Law Group) for the guardian
Louise Potter (instructed by Turpin & Miller solicitors) for the Fourth Respondent grandmother

Hearing dates: 28th February, 1st, 3rd, 7th March 2017

JUDGMENT

[Introduction and background](#)

1. This is my second judgment in this case and comes at the end of proceedings which will have concluded a year after they were issued.
2. I am concerned with A who is two and a half. He has been in foster care since 11th March 2016.
3. My first judgment was delivered on 30th September 2016 at the final hearing of the local authority's applications for care and placement orders in respect of A, and for a special guardianship order in respect of his older brother Z, who will be four next month. At the conclusion of that hearing I made a special guardianship order in respect of Z, placing him with his paternal grandmother, MM. However, in respect of A, I decided that there should be an adjournment to allow for full assessment of MM and her sister RR as potential long-term carers for him.
4. I set out the background to the local authority's applications in my first judgment, and have cut and pasted those paragraphs into this judgment as follows:
5. *KK and LL are the parents of Z (three and a half) and A (two).*
6. *KK has two older sons, G and H. G has lived with his father from a very young age and has no contact with his mother. H is five and a half. Since August 2015 he has lived with his maternal grandmother, first in [REDACTED], more recently in [REDACTED], although he is not having any contact with his paternal family or brothers.*
7. *MM is Z and A's paternal grandmother. Since the start of their relationship in about 2011, she has provided extensive support to LL, KK and to H, Z and A.*
8. *Z spent regular time with MM from birth, and moved to live with her all the time in June 2013, when he was eight weeks old. The local authority's involvement with LL, KK and their children started around autumn of 2013. Following the initial child protection conference in October 2013, H also came to stay with MM. Over the next year or so the parents spent a lot of time at MM's house, sometimes staying in a caravan in her garden, sometimes staying in the house, sometimes they stayed elsewhere. Even when not staying overnight, they were attending at her house during the daytime to provide care to the children.*
9. *This arrangement continued in September 2014 when A was born. At that stage all three boys and their mother were living with MM. However, in September 2015 H went to live with his maternal grandmother in [REDACTED], and A moved with his parents to a flat in [REDACTED], leaving Z in the sole care of his paternal grandmother.*
10. *A child arrangements order was made to maternal grandmother in respect of H in March 2016.*
11. *The local authority issued its care applications in respect of Z and A on 8th March 2016.*
12. *The local authority's concerns at that time were about the parents' care of A. There were allegations that he had been exposed to serious domestic violence allegedly perpetrated by the father against the mother, of drug (in particular ketamine) and alcohol misuse, and that A's basic needs had been neglected*

in their care. The local authority was worried that A was developmentally delayed and was displaying concerning behaviour, and the local authority was concerned this may be attributable to the care given him by his parents.'

13. A was removed into foster care at the outset of these proceedings, and Z continued to live with his grandmother.
14. In my first judgment I then set out the chronology of the proceedings, describing how the case was first listed for final hearing on 30th August 2016 but no judge was available, and it was adjourned. I first met the parties in September 2016, by which time the 26-week statutory deadline for completing cases had expired. I heard the final hearing for four days commencing 27th September 2017.
15. I have set out within that judgment the reasons that I considered I could not make final orders in respect of A. I asked that there be further assessment of MM as prospective special guardian of A in light of updated information to be obtained about his needs and her parenting capacity. (There had been a special guardianship report but it essentially replicated the contents of the earlier parenting assessment). I ordered a special guardianship report of MM's sister RR. (There had been a viability assessment of RR by LP (social worker) in August, but the outcome was negative.) By this stage the parents had ruled themselves out as carers for their children. I suggested that contact between the boys and the parents be significantly reduced and that arrangements should be made for RR to have contact with A and Z. I asked that more support be provided to MM in respect of parenting Z.
16. Following my judgment, JD, an independent social worker, was jointly instructed by the parties to carry out Special Guardianship reports on MM and RR. The contact regime was changed so that the parents' contact was substantially reduced and the boys were to have more contact with MM and her sister RR.
17. Since October 2016 there have been 44 contacts between the boys and either or both MM and RR. It is to the local authority's credit that they have facilitated this contact, and to MM and RR that they have attended all these contact, whatever else was going on for them, and made each one fun and enjoyable for the boys. A's foster carers and others should also be given credit for transporting him to and from these contacts. Contact with the boys' parents has also taken place. There was disruption to that regime when the parents were arrested and placed on remand for aggravated burglary offences in November 2016.
18. The adjourned hearing was listed before me the week commencing 16th January 2017. Unfortunately JD had misunderstood her instructions and had prepared a parenting assessment, and not a special guardianship report. I could not proceed to make special guardianship orders without a compliant report, nor make care and placement orders without the option of special guardianship orders having been given proper consideration. In the circumstances, notwithstanding this further delay to an already well overdue case, I adjourned the matter once again.
19. The final hearing was re-listed for three days commencing 28th February 2017, JD and LP having worked under some pressure of time to produce the special guardianship reports.
20. There have been some changes to legal representation. At final hearing the parties have been represented as follows:

Local Authority:	Aidan Vine QC
Mother:	Anne Davies
Father:	Martha Gray
Grandmother:	Louise Potter
Children's Guardian, Kate Coxon:	Jason Green

21. I am grateful to all the legal representatives for their assistance in this case.

Positions at final hearing

22. The local authority's plan for A continues to be for care and placement orders. While it does not question the commitment shown, and the love that MM has for A, the local authority considers that the particular needs of these boys are such that they should not be placed together. The local authority has consistently held this view. In the initial parenting assessment of MM, CS said that placing them together would make for '*extremely challenging dynamics which are way above MM's capabilities to manage. They would in fact be demanding for any sole carer.*'
23. So far as the alternative plan for RR to be A's carer, the local authority's view is that his particular needs are such that it would be too challenging for her to meet them as a single parent, when she has commitments to her own grandchild, and has some ongoing health issues.
24. The guardian supports the local authority.
25. A's mother has not provided instructions to her solicitor since the last hearing, but her clear wishes at that time were that A should not be adopted and should remain within his birth family. She did not attend the final hearing.
26. A's father continues to hope that A can be placed within his birth family. If A were not placed with MM, he supports her sister RR as an alternative. He did not attend the final hearing save on the final day to listen to judgment.
27. MM and RR have attended every day of the final hearing. MM would like A to join Z in her care, pursuant to a special guardianship order. If A is not placed with her, she would like her sister RR to care for him. RR supports her sister and A; she would help her sister if A were placed with him, but if that is not possible offers herself as his primary carer.

The law

28. I directed myself as to the law in my earlier judgment as follows:
29. *In order to decide whether or not to approve the local authority's plan, I must ask myself two questions. Firstly, have the children suffered or is at risk of harm caused by the care given by his or her parents? Secondly, what order should the Court make?*
30. *The first question is answered by consideration of whether the threshold for making orders is passed.*

31. *The second question by consideration of the children's welfare, with reference to the factors set out in the welfare checklist at section 1(3) of the Children Act 1989.*
32. *Whenever a court is coming to a decision relating to the adoption of a child, the Court must also have regard to section 1 of the Adoption and Children Act 2002, in particular the factors set out at the checklist at section 1(4) of that Act.*
33. *With respect to the application for a placement order, section 21 of the Adoption and Children Act 2002 states that the Court can only make a placement order against parental consent where it is satisfied that consent should be dispensed with.*
34. *In reaching my decision the welfare of Z and A (throughout his life) is paramount and their welfare has been at the forefront of my mind throughout this hearing. I also have full regard to proportionality. A court should not make any orders unless it is satisfied that it is both necessary and proportionate, and that no other less radical form of order will achieve the essential end of promoting the child's welfare. I also have regard to the principle that any delay is likely to be harmful to the child*
35. *Further I remind myself that the European Convention on Human Rights applies in every case of this nature. Article 8 provides that '1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of his right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'*
36. *In Re B [2013] UKSC 33 the justices of the Supreme Court considered the approach the Court should take where the local authority's application is for adoption. Lord Neuberger said at paragraph 82 of his judgment:*

'What the Strasbourg jurisprudence requires (and, I would have thought, what the rule of law in a modern, democratic society would require) is that no child should be adopted, particularly when it is against her parents' wishes, without a judge deciding after a proper hearing, with the interests of the parents (where appropriate) and of the child being appropriately advanced, that it is necessary in the interests of the child that she be adopted.'

At paragraph 104 he said:

'... adoption of a child against her parents' wishes should only be contemplated as a last resort – when all else fails. Although the child's interests in an adoption case are 'paramount' (in the UK legislation and under article 21 of UNCRC) a court must never lose sight of the fact that those interests include being brought up by her natural family, ideally her natural parents, or at least one of them.'

37. *Baroness Hale said at paragraph 198 of Re B:*

'Nevertheless, it is quite clear that the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to

the child's welfare, in short, where nothing else will do. In many cases, and particularly where the feared harm has not yet materialised and may never do so, it will be necessary to explore and attempt alternative solutions. As was said in Re C and B (Care Order: Future Harm) [2001] 1 FLR 611, at para 34,

'Intervention in the family must be proportionate, but the aim should be to reunite the family where the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and ending the relationship between the child and their family is only justified by the overriding necessity of the interests of the child.'

38. I remind myself of the case of Re R (a child) [2014] EWCA in which the President of the Family Division said:

'Where adoption is in the child's best interests, local authorities must not shy away from seeking, nor courts from making, care orders with a plan for adoption, placement orders and adoption orders. The fact is that there are occasions when nothing but adoption will do, and it is essential in such cases that a child's welfare should not be compromised by keeping them within their family at all costs.'

39. At the final hearing Miss Gray also referred me to Re W [2016] Civ 793 which I have re-read and reminded myself, in particular at paragraph 68 where McFarlane LJ discusses the use of the phrase 'nothing else will do', by Baroness Hale at paragraph 198 (above) and again at paragraph 215 of Re B:

'We all agree that an order compulsorily severing the ties between a child and her parents can only be made if 'justified by an overriding requirement pertaining to the child's best interests'. In other words, the test is one of necessity. Nothing else will do.'

40. At paragraph 68 of his judgment in Re W, McFarlane LJ writes:

'The phrase is meaningless, and potentially dangerous, if it is applied as some freestanding, shortcut test divorced from, or even in place of, an overall evaluation of the child's welfare. Used properly, as Baroness Hale explained, the phrase 'nothing else will do' is no more, nor no less, than a useful distillation of the proportionality and necessity test as embodied in the ECHR and reflected in the need to afford paramount consideration to the welfare of the child throughout her lifetime (ACA 2002 s1). The phrase 'nothing else will do' is not some sort of hyperlink providing a direct route to the outcome of a case so as to bypass the need to undertake a full, comprehensive welfare evaluation of all of the relevant pros and cons (see Re B-S [2013] EWCA Civ 1146, Re R [2014] EWCA Civ 715 and other cases).

41. I have these authorities firmly in mind in my approach to this case.

Evidence

42. I have read and considered all the evidence within the Court bundle, the checklist bundle and the placement bundle. During the course of these proceedings these bundles have expanded to fill three lever arch files. I have heard evidence from JD, LP (A's social worker), MM, RR and from the children's guardian KC. I have reminded myself of the evidence at the previous final hearing by reading through my notes.

JD, independent social worker

43. JD was rather on the back foot after the misunderstanding with the special guardianship report, and I wasn't entirely clear that ultimately she appreciated the difference between that report and a parenting assessment, in particular the requirement that the author of an SGO must consider *'the relative merits of special guardianship and other orders which may be made under the Act or the Adoption and Children Act 2002 with an assessment of whether the child's long term interests would be best met by a special guardianship order.'* [\[1\]](#) In her oral evidence she said she was conscious that she should not take on the role of a Cafcass officer and weigh in with an opinion, but I think as the author of an SGO rather than a parenting assessment, she could perhaps have permitted herself to go so far.
44. I appreciate that because it had been agreed that the SGO report would be a combined effort as there were sections the local authority could not delegate, and because JD could not approach this exercise with the same level of knowledge of the case as the social worker who had been involved from the outset, this would perhaps have been difficult for her to weigh up the relative merits of the realistic options for A against one another. It is perhaps for this reason that it is rare to see a local authority delegating responsibility for preparation of a SGO report to an independent social worker.
45. Nonetheless, JD is a very experienced social worker who has now had the opportunity to meet with MM and RR on a number of occasions and to observe contact. She certainly has a useful contribution to make to this case.
46. As with the other professionals in the case, she identified a number of significant positives in respect of both MM and RR.
47. In her first parenting assessment she concluded that the needs of the two boys together were such that she could not recommend placement together and therefore did not support MM's application for a special guardianship order in respect of A as well as Z.
48. She did not at that time think that RR was a viable option, because she had concerns about her health and concerns about her commitment to her grandson F.
49. In her special guardianship reports her view remains the same in respect of MM, but with respect to RR she does not rule her out so firmly, but says:
- 'I am not able to make an unequivocal recommendation that RR should have an SGO for A. I am concerned about RR's possibly unrealistic view of A's behaviour, the long-term effect on RR's health and the effect on her grandson F. Despite these concerns RR has much to offer and the matter is finely balanced.'*
50. Her oral evidence was consistent with those views.

LP, social worker

51. LP has been the children's social worker since March 2016 having been allocated after the first hearing in these proceedings. She has prepared a number of statements and reports including a parenting assessment

of the parents, a together and apart assessment of Z and A, and together with CS, the special guardianship reports and special guardianship support plans. She is the author of the final care plans.

52. LP's reports are thorough, she has considered things carefully and I am satisfied in this case is exercising her professional judgment in a thoughtful way having considered a large quantity of evidence and bringing her own experience of this family to bear. She told me that she is the professional who knows A the best – she has been his social worker for nearly a year now, and she has built up a good relationship with his foster carers, of whom she speaks very highly.
53. I thought LP defended herself well in cross-examination. She presented to me as a diligent, fair, and highly empathetic social worker.
54. She said she did not regard this as a 'finely balanced' case in respect of potential placement with either sister, neither of which she regards as realistic. She was clear that the 'best option' for A was that he be placed for adoption.
55. In her most recent updated statement she does fairly acknowledge there have been significant improvements in MM's ability to manage Z's behaviour, and that contact has been very positive between MM, RR, Z and A.
56. She remains of the view that caring for two boys would be too much for MM and she is worried about the impact on Z who has benefited from the one-to-one attention he gets from his grandmother, of having to share her, to share his bedroom, and his toys and his space. Like the guardian, she regards a placement of these two boys together as carrying a very high risk of breakdown and in the event of such a breakdown, not just A's but potentially Z's placement with his grandmother could be at risk. If A's placement with his grandmother did not work then new plans for him would have to be made and he may be separated from his family once more. It would be very much harder for him to settle and to form secure attachments with a new set of carers at that stage.
57. A's needs when he entered foster care aged 18 months were very high, LP describes them as follows:

'A presented as withdrawn and not wanting physical contact from the carer when he was initially placed. He communicated non-verbally due to the delay in his speech development and he was not weaned. A would have numerous 'outbursts' every day and this would result in his head-butting the floor. He appeared to be having some seizure type activity which has required further investigation. He also had disrupted sleep patterns.'

58. LP acknowledges the very great progress he has made since that time, and rightly gives credit to the foster carers for the care and attention they have given to him. Her assessment of his current needs is as follows:

'From the significant harm A has suffered he continues to show developmental delay, although due to the level of care he has received from his foster carers he has progressed well. He has a good level of understanding but struggles to verbalise this, using single words, but will often use screams as a communication method. He has become even more settled within his placement, having now been there for 9 months, but he continues to require extremely firm, robust and consistent parenting. A struggles to

accept boundaries set for him appropriate for his age, he is unable to effectively regulate his emotions and can become possessive of his main carer.'

59. She continues to be concerned that A will find any change in carer extremely difficult, having now developed a bond with the foster carer, and she considers his behaviour is likely to regress when he moves away from his current placement. For that reason she has already made a referral to the ATTACH team, as she foresees that A will need support wherever his permanent placement will be.
60. LP does acknowledge a number of positives about RR as a potential carer for A. However, Miss Gray suggested she has not truly opened her mind to the particular qualities that RR could bring. For example, in her final checklist analysis of RR, LP says '*RR has demonstrated a commitment to caring for A and has attended contact with him regularly; therefore, A has more of a bond with her now.*' The bond has arisen not just because RR has attended contact; the records show that she has worked to build up a relationship with A. JD described her as '*diligent about the safety of the boys*', that she was '*physically close and loving*' but '*did not swamp them with affection arising out of any need of hers but was guided by their needs, responding to them sensitively.*' Miss Gray put to LP that A had been seen to run to RR, squealing with excitement at seeing her, but LP said in effect he behaved like that '*to anyone he was familiar with*' and appeared reluctant to give credit for a closer bond.
61. Similarly, in her checklist, LP notes that RR '*has parenting experience of her own two children and is actively involved with her grandson*', but did not expand this to note that both of RR's children presented with behavioural challenges as they were growing up, nor that she cared for her grandson when his mother died aged three, and therefore has significant experience of dealing with a child coping with loss of his significant attachment figure at around the same age as A. Although I recognise that a checklist should not rehearse large chunks of evidence but summarise the main points, I do consider that there is justification in the criticism levelled by Ms Gray that LP could have drawn attention to these specific positives about RR and weighed them in the balance.
62. LP accepted that in the short term that RR could manage A's physical and emotional needs, but she does not think she would be able to do it without significant, daily support, from a co-carer, and she does not think it is realistic to assume that RR would be able to manage his needs throughout his childhood. She is worried about RR's health. She considers that the pressures of caring for such a demanding child would build up and eventually put the placement itself at risk.
63. Having weighed up the factors on her checklists, LP said she did not regard the case as finely balanced with regard to either MM or RR. However, on the basis of the evidence I have read and heard, I would accord different weight to some of the factors she has identified.
64. For reasons given above I consider she could have accorded more weight to RR's particular parenting experience, and her evident parenting skills and affectionate care for A demonstrated again and again in the contact sessions.
65. I would agree with LP that there is good reason to be risk averse in this case, because for A, and potentially Z, the consequences of a placement breaking down will be little short of disastrous.
66. Further, I would accept that in an adoptive placement A's needs are likely to be met and the placement is

likely to bring with it security. In LP's checklist analysis of the positives and negatives of adoption for A I would accept the positives.

67. However, in my judgment she has minimised the potential negatives of adoption in her checklist. So far as the negatives are concerned, she writes, '*A will not grow up within his birth family and will not have any direct contact with any of his birth family members, which could raise potential issues associated with identity in the future; A will be placed separately from any siblings; A will experience a sense of loss when moved from his current placement and contact with his birth family ceases.*'
68. In my judgment, for a child of A's age and at his stage of development the consequences of adoption are likely to be more than 'a sense' of loss. If placed for adoption, he is very likely to actually suffer, throughout his life, from the loss of his brothers, parents, grandmother and wider family. For him there is more than just the 'potential' for him to have issues around his identity in the future, in circumstances where he would be the only child out of four brothers placed for adoption. The other three all remain within their birth families.
69. LP explained why she thought in the circumstances of this case that in the event the Court placed A with either his grandmother or great aunt that a supervision order would not be appropriate. She said that a supervision order for six months or a year was unlikely to offer more in the way of support than the current child in need plan and had the disadvantage of coming to an end on a fixed date whereas child in need plans can persist for as long as necessary. She did not think if there was a risk of placement breakdown, that the existence of a supervision order would be effective as a protective factor so as to reduce that risk, as the possibility of breakdown was unpredictable and would in her view be unlikely to come within the first twelve months of placement but in years to come as a consequence of the build up of the pressures of caring for these children and/or because of health issues.

MM

70. I was impressed by MM as a witness, and as a grandmother.
71. As when she gave evidence in the first final hearing, she seemed to me to have a good recall of details of events that had taken place in contact. As before, she did not try to suggest that if she had both A and Z everything would be perfect or there would be no challenges, but she said that she was their grandmother, she loved them, she would do anything for them, and she was prepared to do whatever it took to keep them safe and in the family.
72. She has already done an enormous amount for her son, for KK, and KK's children H, Z and A. Since the outset of local authority involvement in October 2013, she has found it difficult to manage a situation where the boys were living in her house but the local authority was urging the parents to act as parents; they were either staying with her or else coming in to undertake all the care for the boys while she was out at work during the day. As advised she accepted this regime, but she was concerned about the boys and she often felt she knew better than the boys' parents how to look after them. If she stepped in, she would be criticised for taking over and being in danger of interrupting the attachment between the children and their parents. On the other hand, if she didn't step in, she was fearful of being criticised by social workers for not acting protectively.

73. Despite those difficulties she managed to keep the boys in the house all that time she had the parents there, she prioritised KK's needs over her own son, but in turn has clearly and consistently shown an ability to prioritise the needs of the children before both their parents. She had been concerned about the impact of contact between the boys and their parents and suggested it should be reduced for a long time before it actually was.
74. Z only came to be under her sole care in September 2015 when his parents moved out of her house with A. The special guardianship order was made in September 2016 in circumstances where Z still presented huge challenges to any carer. In September there were many recent instances of Z's behaviour being really difficult to manage both in her care and in contact. In June 2016 within the parenting assessment his behaviour with his grandmother was described as 'atrocious'. MM has however made very significant improvements in her care of Z, who has also settled over the past few months with the benefit of the security of the special guardianship order, the reduction of contact with his parents which was clearly very unsettling for him, and his regular attendance at nursery where he is doing very well.
75. In February 2016 HW, a family support practitioner at [REDACTED] children's centre, prepared a statement to the Court in which she noted that MM had been attending the children's centre weekly with Z to prepare him for nursery, which he started in September 2015. She says that Z's behaviour had 'improved dramatically whilst in the care of MM', that MM had engaged positively with all professionals and that since Z had been attending nursery five mornings a week his individual development had 'flourished'. She did recommend a refresher parenting course to help MM.
76. MM gave evidence that she has derived huge benefit from the parenting support she has received. I had been concerned at the last hearing that when talking of 'boundaries' she understood that to mean 'punishments' in the sense of taking away toys or not allowing Z to do something, but it is clear from the recent contacts that she has significantly developed her understanding, and she is seen to set clear boundaries in terms of expectations of behaviour and that she is consistent and firm, and good at praising good behaviour.
77. In a statement to the Court dated 25th January 2017 LW describes MM's enthusiastic engagement with the Family Links sessions attended. It is clear that focused work has been done on various techniques including setting boundaries, giving choices and consequences and praising good behaviour. It is evident from the recent contact notes that MM has been implementing what she has learned to good effect.
78. In addition MM has more recently started the 'KEEP' course and says in her most recent witness statement that she is getting lots out of the sessions she has attended so far. She has met other grandparents and foster carers and feels she has established a network of new friends and carers in similar situations to her.
79. MM accepts that the accounts given by the foster carers of what it is like to care for A are accurate and can be relied upon. She told me she recognised some of those behaviours from when he was much younger and spending time in his parents' care. However, she also does make the point that his behaviour now is much less concerning than it was when he first entered care, that there is evidence in the foster carers' logs of times when he was very settled, for example over the Christmas period, and the logs of the respite carers suggest that A managed the transition to be cared for by strangers very nicely. It is accepted that he has not demonstrated the extreme behaviours described in contact. The contact sessions

are short, but as JD said, usually after a period of time if there were cracks, they normally begin to show.

80. Nonetheless, MM recognises that A is a very demanding child to care for and that having both A and Z would be a significant challenge, but she says that for her grandsons she would devote herself totally to the task and she would do whatever it took to give them both a home and to enable them to grow up knowing one another.
81. She showed a great deal of insight in her evidence to the Court at the first final hearing, and again at this further final hearing, I thought she continued to demonstrate this characteristic. She said there was a lot of focus on A and the consequences of the neglect he had suffered, but that Z has suffered as well because of the care he had also received from his parents until September 2015, and the confusion he felt now about his parents, in particular about his dad and whether he was going to see him. She said he is a child who has had a lot to deal with, and his behaviour can be very challenging, but equally she rightly objects to him being characterised as just a naughty or difficult boy. She sees beyond the naughtiness to the child himself, and how his experiences may impact his behaviour.
82. In my judgment Z is a very lucky boy to have had the love and support of his grandmother throughout his life, and I am pleased that her parenting is going from strength to strength with the benefit of the security of the order made, and support from local authority services.

RR

83. I was also impressed by RR's evidence, and by her as a person. She and her sister are obviously very close and a source of constant support to one another. At the hearing in September she was asked quite a lot about her grandson, F. She was I thought at the time slightly reluctant to take too much credit for her successes in life as a parent and a grandmother, but it is clear that she has over the years done the very best she could as a single parent of two boys, and she provided much needed support to her son E and to F, particularly around the time of the death of E's partner, F's mother a few years ago. At the moment she lives with her other son G and sees F on a Tuesday afternoon and he comes to stay with her on a Friday night.
84. Her relationship with A is less well established than MM's but she has attended all the contacts since September and it is clear from the contact notes that they are building up a good relationship. She said that if he did move to her care she thought there should be a period of transition so that he came to her during the day first for visits and then built up to overnight stays before moving finally.
85. Like her sister she accepted the descriptions of A's behaviours with his foster family and accepted that although there has been real improvement of late, he is likely to regress somewhat when he moves away from his foster carers to whom he has formed a strong emotional attachment. At one point when asked to consider the foster carers' descriptions of A's behaviour she said '*that's their interpretation*' by which she said she meant that was how they described the behaviours which she said she did recognise from the time that A was living in MM's home before he was taken into foster care. She did repeat that she and her sister had not seen him like that in the contact sessions save that once A had screamed and she told him not to and she says he stopped. I think she was a bit sceptical at the notion that A would always present with the extreme behaviours described by the foster carers, or that if he did, she would not be able

to manage them given that she has so far been able to cope with him in contact, but in my judgment she was in general accepting of the evidence of the foster carers about just how exhausting they have found caring for A.

86. Like her sister, I think RR is a person who meets whatever challenge is coming her way by just getting on with it, no questions asked. I think she remains a bit bewildered as to why she is regarded as unable to care for A when she has successfully cared for her own children and more recently her grandson, and when she has demonstrated in contact sessions that she can look after him well.

87. She told me her health issues are under control and there is a letter from her general practitioner to confirm it. She is a very young grandmother at forty-nine.

88. JD sets out the health issues in her report:

(i) Rheumatoid arthritis, diagnosed in 2002. RR has prescribed injections to manage this condition which she self-administers once a week. She told JD that at first this affected her badly and sometimes she felt she couldn't get out of bed, but she had to for her sons. She is now living an active life, walks her dog daily and goes swimming regularly. She sees her consultant annually. It was not evident to JD that RR was physically restricted in any way by this condition;

(ii) High blood pressure and tinnitus, both conditions are controlled by medication;

(iii) In August 2014 she was diagnosed with diverticulitis. In 2015 this caused her to be hospitalised. She is not currently affected by this but is careful about her diet.

89. RR does not drink alcohol. Since September 2016 she has given up smoking.

90. JD, LP and the guardian have speculated that one or all of these conditions may deteriorate or flare up over time thereby compromising RR's abilities to care for A in the future. However, there is no medical evidence before the Court to support that view. I must be disciplined about proceeding on the basis of the evidence before me, not speculation. There is no evidence that her current health conditions would impact on her abilities to care for A now - or in the future. I do not accord much weight at all to the letter from a paediatrician who was asked in some haste on 16th January 2017 to comment on RR's records, but even he doesn't suggest with any force that she would not be able to care for A, only that there should be a 'functional assessment' of her abilities. To the extent that such an assessment was done RR appears to have passed with flying colours.

91. RR was a bit confused as to why it was said that because she wanted Z and A to be brought up in the same household as a first option this somehow meant that she was not as committed to A as she should be. I note JD felt that she had moved on somewhat in this respect, and was less concerned about this than formerly. It doesn't surprise me that RR would have supported A being placed with his brother and grandmother as the preferred option if that were possible. In her witness statements she sets out the practical arrangements she would put in place to enable A to move into her home and she has already discussed it with her grandson F and started to prepare him for the possibility. In my judgment her commitment to A cannot be in doubt from the way she has participated in these proceedings, co-operated with all assessments, and turned up to every single contact to which she has been invited.

92. The guardian fairly acknowledged a number of positives about MM as a potential carer for both Z and A, indeed she said in her report there were ‘countless’ positives, but she is very clear in her written evidence and the evidence she gave to the Court that she would regard a placement of both boys together with their grandmother to be extremely high risk.
93. KC is a very experienced children’s guardian, she has read and absorbed a very significant amount of written material, observed contact, met with A’s foster carers and discussed with social work professionals. As I said in my first judgment, I regard KC as wise, diligent and fair, and her ability to analyse risk is based on long-standing professional experience. She has direct and significant experience of the consequences for children of placements breaking down. She has met A where I have not, and speaks on his behalf. Her views are consistent with those of other experienced social work professionals. I pay close attention to her views, which she presented to the Court with authority and typical clarity of reasoning.
94. She described this case as ‘finely balanced’ and said it had become more so as the case had gone on. She clarified in her oral evidence that she did not regard the decision about whether A should be placed with his grandmother as finely balanced at all, but was very clear she thought it would be high risk and a disaster potentially for both boys. So far as RR was concerned she said it was more finely balanced. Not so much because RR’s prospects as a carer had improved, but because as time had gone on and the boys had spent even more time with each other and MM and RR, it created an additional troubling factor for the Court; the consequence of a care and placement order would be to separate the boys from each other and their grandmother and aunt, when those relationships had been strengthening.
95. The larger part of KC’s January 2017 report deals with MM’s application to have both of the boys. KC sets out clearly the different factors that she has weighed in the balance and while she acknowledges the very significant strengths of MM, ultimately her conclusion is that caring for these two boys together would present too much of a challenge for any carer and would put their placement at risk. Her views are consistent with those she put forward in the report dated 26th August 2016 submitted to the Court for the first planned final hearing.
96. So far as RR is concerned, in her January report KC says at paragraph 5 that while many positives were noted, ‘*the ISW has ruled her out*’. This is repeated at paragraph 18, and it is noted that LP, CS and the IRO have all reached the same conclusion. At paragraph 25 the option of RR is considered again and once again, KC states this option is ‘*ruled out by the ISW on the grounds of RR’s motivation and her existing commitments to F*’. KC then states that based on the evidence she has read and her own observations she considers that both MM and RR underestimate the level of A’s needs. She says she shares the professional view that RR’s health issues are of concern ‘*in the context of this very young and energetic child with significant emotional needs. They also, in my view, increase the likelihood of the risk of A ‘drifting back’, something which would be more damaging for A, who has already experienced moves, than for another child of his age without his early experiences.*’
97. It was agreed that KC could provide her updated views in a position statement, filed on 24th February

2017. She confirms that her views have not changed. She writes as follows:

7. RR put herself forward to be assessed much later than her sister and even during the further period of proceedings January-February is still suggesting to JD her preference is for both boys to be with MM but she was then according to JD "beginning to contemplate herself caring for A". If cared for by MM arrangements had clearly been suggested between the sisters involving RR sometimes sleeping over with MM to assist and clearly RR is willing and able to offer practical hands on as well as emotional support, not so readily available the other way round in circumstances where MM has the full time care of Z on any scenario. RR is also feared to be under estimating the effect on her grandson F (and indeed her single parent son) were she to take on the full time care of A thereby inevitably rendering her less able to be as exclusively focused on F as she is currently during times he spends with her. RR's health remains at the least a source of anxiety as to her ability to be sufficiently robust to care for such a young child for the rest of his childhood. Like her sister however her love for A and her performance in contact as well as her willingness to undergo the intrusive assessment process is needing of recognition and A is lucky to have the family members that he does who wish to care for him.'

98. I have considered these points carefully but after reviewing all the evidence in the case and listening to the witnesses, I do not draw the same conclusions as she does.

99. I am not persuaded that the fact of RR putting herself forward as a carer after her sister is evidence of her lack of commitment, and it was not part of the local authority's case before me that she was not fully committed to A. JD now accepts that RR can see herself as A's full time carer.

100. I would agree that if the boys are separated then RR would not be able to provide the same level of assistance she has done to MM because she would have to put A's needs first, and similarly MM's commitment to Z would mean that she would not always be able to help out RR. However, the two of them work very well as a team and the contact records show that together they are well able to manage Z and A together. In her contacts alone with the boys, MM has coped extremely well with the competing needs of Z and A. At a contact when MM was ill, RR also managed to look after both boys' needs very well. One could anticipate therefore that they could continue to support each other by spending time together with both the boys, and one of them can look after the boys for periods of time if the other has a particular commitment.

101. RR has had the opportunity to answer the concern raised about her commitment to her grandson F. She told me in evidence that at the moment she sees him on Tuesdays and he stays with her on Fridays. She says that she has discussed with him and prepared him for the possibility that A may come and live with her, and that F is looking forward to the prospect. A is said to have enjoyed the company of the oldest child of his foster family who is of similar age to F and whom he sees at the beginning and end of the school day and at weekends. If once she had A in her care, RR resumed seeing F most days as it seems she used to before she prioritised the need to see A twice a week in contact, there would appear to be good evidence that this would be to A's benefit, and he would enjoy being around an older child.

102. I have dealt above with RR's health issues, which I do not accept are reason to discount her as A's carer on the evidence before me.

103. In her position statement the guardian continues:

8. *The Court does now have direct evidence via the recently received statement of the foster carer and the short report of the nursery as to how demanding caring for A is day in day out even to experienced parents who are young and fit and work as a team of 2 parents where their own children are old enough not to be as jealous as it is feared F and certainly Z are likely to be in having to share their main care giver. Although having calmed down beyond recognition compared to when he was first placed and having benefitted from the high quality reparative parenting provided by his foster carers (he is fortunate not to have had to move placement at any point during the Court proceedings) the reality of life with A in the household becomes apparent from Mr Y's statement. The nursery also confirm how much A "craves attention" and his behavioural issues and difficulty he has playing with or sharing with other children. A continues to have issues around food as reported by the nursery and his carers, food having replaced his over dependence on milk when he was first removed from his parents care.*

104. I have considered carefully the evidence that has come either directly or indirectly from the foster carers and nursery and I don't doubt their reports of life with A being extremely challenging. In his statement Mr Y describes that A now sleeps through the night and if he wakes is able to settle himself back to sleep. He is making huge progress with his language. His obsession with milk has passed although he still acts in an obsessive way around food. Behaviourally, on a one to one level he is described as an affectionate, funny and rewarding child who likes to please. However, Mr Y says, *'when he has to share toys or attention or he is given boundaries, he will quickly turn and become violent, throw tantrums and scream loudly'*. He has shown jealousy to the foster carers' three other children and been violent to them.

105. I do not doubt these descriptions at all, but I do note firstly that it is not completely remarkable to hear of a two and a half year old boy who throws tantrums when he is told off or told 'no'. Secondly, there is evidence that with firm and consistent parenting his behaviour has improved and therefore could be expected to continue to do so if such parenting style continued. Thirdly, these behaviours are exacerbated when A is competing for attention with other children, but he does very well when given one to one attention. Fourthly, Z had a similar parenting experience to A for the first years of his life and has demonstrated many similar behaviours, but again professionals are hopeful that he will continue to progress as he is now with the benefit of firm, consistent and loving parenting and support of nursery and other agencies. In the circumstances, in my judgment while I do not minimise the lifelong consequences of neglectful care as a child, there are some indicators in this case that A will continue to progress throughout his childhood.

106. In her position statement the guardian continues:

9. *It is felt by AM, A's Family Finder, that he would benefit by being in a household where he is the only child with carers who are a couple able to support each other and who will in her assessment need to be "particularly robust, confident and resilient" having "the time and energy to focus on A and his needs". The experienced Family Finder is optimistic of identifying prospective adopters locally within County or within the consortium but without a Placement Order her role is of necessity constrained. Very fortunately A can remain with his foster carers who will assist to transition him to prospective adopters or one of MM or RR as the Court decides, minimising the number of moves for A.*

107. The family finder is concerned with finding the best possible match for A in the event that he were

to be placed for adoption. In those circumstances I can see why a couple of carers might be identified as preferable to a single parent family in the first instance. However, this evidence should not be taken to mean that A's needs require him to be cared for by a couple not a single parent. The evidence is that he needs a great deal of one-to-one attention and that any carer looking after him will need to be well-supported by other adults. To this extent, I approach this section of the guardian's position statement with some caution.

108. While MM and RR have not sought to challenge the foster carers' description of A's behaviour, they did seem mystified that the evidence about his behaviour in their care during contact is regarded as artificial and not a realistic representation of how A would be 'in real life' with them at home. In my judgment they are justified in questioning this. In September, incidents in contact were relied upon as evidence of MM's inability to manage the boys' behaviour, but since then she has demonstrated again and again that she can look after both A and Z, she can enforce boundaries with both of them, and help them to share toys and not to compete for her attention. But all these examples of her good parenting, and similar examples of RR's good parenting, were dismissed by professionals who said this evidence should not be given as much weight as that of the foster family. The professionals said the contact was artificial because it is time-limited, the children were focused on eating or playing and having fun, and therefore the contact records could not be relied upon as evidence of how MM or RR might manage the children at home.

109. I have read all the contact notes. Since the last hearing there have been the following sessions of contact:

- two with A and MM [5th and 19th October];
- sixteen between A, Z, MM and RR [6th, 13th, 21st, 28th October, 3rd, 10th November (observed by JD), 17th, 24th November, 15th and 19th December (plus Uncle L), 12th January (observed by the guardian), 19th January (plus LL), 2nd and 9th February (observed by JD), 15th and 23rd February (plus KK);
- twelve between A, Z and MM [14th, 26th October, 9th and 16th November (observed by JD), 23rd November, 7th, 14th December, 4th January, 1st and 8th February (observed by JD), 16th February (plus LL), 22nd February];
- eleven between A and RR [31st October, 14th, 21st, 28th November, 9th, 23rd, 30th January, 6th, 13th, 20th, 27th February];
- one between A, Z and RR (when MM was ill) [1st December];
- one with just A and his parents [3rd October], two between A, Z and both their parents [10th, 24th October];
- two between A, Z, MM and KK [16th December (prison visit), 25th January].

110. I appreciate that a child in a contact setting may behave differently than when at home, but in my judgment LP and the guardian are ungenerous to MM and RR when they suggest these hours and hours of time spent together with the children does not give any helpful insight into how they would manage them at home.

111. I would respectfully disagree and make the following observations about the contact records:

- Over the many hours that these contact records represent, MM and RR are noted to do everything that any loving and caring parent should. They bring appropriate and fun activities for the boys, they bring healthy snacks and manage the time the boys eat, and make sure they sit and eat nicely at the table, and to say please and thank you. They get down to floor level with the boys and play fun games with them, they read them stories, cuddle them, laugh, are affectionate, play counting and language games. They anticipate tension rising or if the boys are getting bored and distracted. They find things to do when the boys' attention wanders, they look at things out of the window, they take them to the park;
- Both of them are seen to impose boundaries and while, particularly in the case of Z, it sometimes takes some time for the message to get through, they are clear about the rules and make sure the boys behave (sometimes things are let go, but it is a question of judgment, parents of toddlers have to choose their battles). I have not found within these records instances of A having a tantrum or screaming, or hurting himself when a boundary is imposed;
- In each of the twelve contacts with MM alone with the two boys, she manages extremely well to get them to share, to take turns and she devotes her attention to each boy fairly and while making sure the other one is occupied;
- Similarly, RR managed the one contact she had with both boys very well;
- There are times when contact is raucous and boisterous and Z in particular is consistently difficult to manage. There are a number of incidents of Z lashing out or pushing or otherwise being rough with A, but no incidents that I have noted which suggest A showed those behaviours towards Z. It is unfortunate that the contact observed by KC appears to have been particularly tricky and seems out of step with the vast majority of records;
- The boys' behaviours are managed in a whole range of different settings:
 - The contact centre itself is pretty restricting, they have moved to a number of different settings but the boys have not been unsettled;
 - At the soft play centre in [REDACTED] RR is noted to be clambering over the equipment with the boys, not apparently physically restricted in any way. It is in my view a huge achievement for any parent to spend an hour at a soft play centre and not witness their child descend into a tantrum. It is a far greater achievement that neither of these children came unstuck in such a place;
 - MM managed the boys' behaviour and their emotions beautifully when she took them to visit their mother in prison; they did not behave well just because there was a snack on offer and toys to be had, they behaved well because she was there to reassure them, to direct their play and to

support them in a difficult situation;

- During February half-term they planned to go back to the soft play centre but it was too full so they had to have a change of plan and meet with the boys' father in Costa coffee in town. A sudden change of plan away from a fun place to a more grown up environment might be expected to cause difficulties, added to potential difficulties with seeing their dad after quite a break, yet again, MM managed this extremely well, and the contact was a success.

- The boys are seen to be affectionate with one another and with MM and RR. It is clear they enjoy and derive huge benefit from the contact sessions.

112. It is also of note that the respite carers did not report that it was particularly challenging to care for A on any of the three occasions that he spent time with them, in August, November and December. On one occasion he was with them for a whole week. The evidence of the foster carers is compelling and important, but in my judgment the other pieces of evidence about A's behaviours also carry significant weight.

113. For the reasons set out above, and with the greatest of respect to the guardian, I have come to different conclusions as to the weight to be given to some of the matters that will form part of my welfare assessment in due course.

Threshold

114. There is no dispute that the threshold for making public law orders is crossed in that at the time protective measures were taken, A had suffered and was at continuing risk of suffering significant harm attributable to the care given to him by his parents within the meaning of section 31 of the Children Act 1989.

115. I therefore proceed to the second question and consider what, if any, orders are required to secure A's welfare.

Welfare checklists

116. In my conclusions I must have regard to the welfare checklists set out at section 1(3) of the Children Act 1989 and section 1(4) of the Adoption and Children Act 2002. I deal first with those items which are common to both lists.

The ascertainable wishes and feelings of the child (s1(3)(a)/s1(4)(a))

117. A is too young to express a view, however he has known Z and his grandmother for all his life and is now building a relationship with RR. His relationship with his parents is more complicated but he has continued to have contact with them while he has been in care and knows that they are his parents. It could perhaps be assumed that he would wish to grow up within his family if that were possible.

118. Since September the boys have seen less of their parents and much more of their grandmother and great-aunt and the contact notes show that these have been positive for everyone. The boys have played together or alongside each other as one would expect of children of that age. They have at times

struggled to share toys, and competed for attention and affection of the adults present. Nonetheless A lived with Z for the first year of his life, and continued to see him regularly thereafter. The boys have a bond with one another and it can be assumed that they would be sad not to have the opportunity of knowing one another or of spending time together as children.

The physical emotional and educational needs of the child (s1(3)(b)/the child's particular needs (s1(4)(b))

119. When he first went into foster care A was assessed as being nine months behind his peers developmentally. He was non-verbal, communicated largely by screaming, was neither potty-trained nor properly weaned, with an over dependency on milk which was the only thing that would settle him at night. At that time he was waking very frequently in the night and could not be consoled. With what is acknowledged to be an exceptional effort on the part of his foster carers he has made very significant progress and six months later at review was assessed at only three months behind his peers. Although he has made good progress, he will still need extra help throughout his childhood to ensure that this is sustained.

120. A relies upon adults to meet all his daily needs; to keep him safe, to feed him, wash him, and to provide him with all clothes and toys. Because he was neglected in the first eighteen months of his life, his physical and emotional needs are greater than those of other children his age and those enhanced needs are likely to persist long-term. LP described him as a child who needs stable, robust and consistent parenting. He needs consistency of routine and clear expectations around behaviour. Dealing with his tantrums and night-waking require a great deal of patience and understanding from his carer. He demands a very great deal of one to one attention. While affectionate and fun, he can be an exhausting child to be with and to care for. He often competes for the affection and attention of adults and has lashed out at other children. He needs not just to be safe, but to feel safe, cared for and loved.

Age, sex, background and other relevant circumstances, child's characteristics which are relevant (s1(3)(c)/s1(4)(d))

121. There is nothing to add to the previous paragraph in this respect.

(d) Harm or risk of harm (s1(3)(d)/s1(4)(e))

122. A would be at risk of harm if placed into his parents' care, and therefore if no order were made.

123. What are the risks of harm if he were to be placed into his grandmother's care?

124. I have had regard to the evidence and I conclude that there is a risk of harm to both boys. In my judgment it is likely that despite her very best intentions, MM would struggle to cope with both their needs and would find herself overwhelmed with the task. With support she now has a far wider range of parenting strategies to implement, but on any view it is still quite early days and Z can still be extremely demanding of her attention. I note that in contact even when she was ill or had a bad foot or felt overwhelmed after her son was remanded in custody she still managed to attend contact and not let the boys see her difficulties. However, if she is tired and under pressure from the boys' competing needs, day after day, she may not be able to give each of the boys the attention they demand, and their behaviour is likely to deteriorate. A may well start copying some of Z's behaviours. Their bond with

each other may be jeopardised if they are competing for her attention and start to resent each other. Z has lived with MM for all his life and although he likes A, he is likely to find it extremely difficult to adjust to having him living with him all the time and having to share his room, his toys and his nanna.

125. If the placement breaks down because MM cannot cope with the demands of the boys together, then A's (and possibly Z's) placement will be at risk. At that point, the prospect of A being able to be settled into an alternative secure and 'forever' home may be slim.

126. I do not consider that there is any significant risk of harm so far as MM's ability to protect the boys from contact with their parents. She has consistently shown herself able to prioritise the boys or KK before her own son. Although many of the contacts with her, the boys and their parents were extremely difficult because she felt undermined by her son, she tended to be the person to manage the situation for Z and A and would comfort them if upset. She now has the benefit of a special guardianship order with respect to Z which gives her the authority to make the decisions about contact. She has followed the advice of the local authority and there is no evidence that she has ever sought to promote contact against advice.

127. What are the risks of harm to A if he were to be placed in RR's care?

128. The assessment within the special guardianship report of her practical abilities and experience is glowing. There is no risk of harm. There is no suggestion that she would not be able to manage his difficult behaviours. Over the time they have spent together in contact it can be seen that she cares for him very well and they have a lovely time together. What is said is that she underestimates how exhausting she might find it, and that the uncertainty around her future health puts the placement at risk. It is not set out specifically in what way recurrent health problems would mean that RR's care for A would be compromised; the guardian suggested in evidence that she may at some point in the future be hospitalised for a period of days and this would cause problems for managing A's care. However, for the reasons given above, I consider this to be speculative thinking and not supported by the evidence before me.

129. If the placement with RR is not sustainable, then the risks to A are as above; he is likely to find himself back in the care system, perhaps moved to another foster placement, and the prospects of finding him the stable, robust and consistent loving carers that he needs, and his being able to attach to those carers and settle, are much reduced.

Likely effect of any change in circumstances s1(3)(e)

130. A has suffered a huge amount of disruption in his life and whatever decision the Court makes, he will have to adjust to significant further changes. Although he appears to have built up a good attachment after nine or ten weeks with the foster carers, there are still concerns that because of the neglectful care he received in the first eighteen months of his life, he will struggle to attach securely to new care givers. He has however formed a strong attachment to his foster carers and is likely to suffer when separated from them. LP has anticipated this and made a referral to the ATTACH team to help him.

131. Whatever order is made, his current foster carers who have been described as exceptional, and

have clearly shown great generosity in their care for him, and great patience and understanding to A, have indicated that they would continue to care for him and to support him to make the transition.

132. If that transition were to his grandmother it could be effected relatively swiftly as he has an existing bond with her. It would take perhaps slightly longer to effect a transition to RR, but the transition could still be made relatively soon.

133. If he were placed for adoption, the transition period will be very much longer, and his future would remain uncertain for a far greater length of time. In her family finding statement AM indicates there are currently three couples within Oxfordshire who *'may be open to a child of A's age and profile'*. She does not say how long the process would take for A to be matched to one of these couples and thereafter how long it would take for him to be moved to their care. Thereafter, they would not be able to apply for an adoption order for at least three months and the order might be made about three months thereafter. A's placement would not be secured for many months, perhaps it might even be a year.

134. Were A to move to live with his grandmother it could be anticipated that the difficulties of separation may be lessened because she is somebody that he already knows and loves and recognises as part of his own family.

135. This applies, perhaps to a slightly lesser extent, were he to move to live with his great aunt RR, who he knows less well but is beginning to form a bond with, and he would of course be able to continue to see his grandmother and brother on a very regular basis which again would help to lessen the trauma of separation from his foster carer. RR has experience of helping her grandson F when he was just a bit older than A, when he came to live with her for eight months following the death of his mother. That experience is likely to help her in supporting a child suffering from the loss of a primary care-giver as A undoubtedly will be.

136. If placed with either his grandmother or his aunt, he will have the benefit of getting to know the wider family network and growing up with a clear understanding of his identity and where he came from. He will continue to see Z regularly, and his grandmother, uncles and aunties and cousins. There is the prospect of his also having a continuing relationship with his parents and wider maternal family.

137. Because MM and RR do not live close to each other and are both dependent on public transport, if A were living with RR, he may see less of MM and Z than he does now, particularly once A is at nursery and Z at primary school. So he would still be separated from his sibling and some of the support that RR has given to MM will necessarily fall away; she won't be able to just up and leave to come and mind Z if there is a doctor's appointment or if MM can't do school pick up. Similarly MM will not be able to support RR because her priority has to be Z. Nonetheless, they have both made it clear that they intend to continue to spend a great deal of time together and the contact records show that the two sisters together cope very well with the two boys. A would have opportunities to share experiences such as family events and holidays with Z and to grow up as a member of the same family.

138. If A were placed for adoption, once a placement is secured, because the adoptive parents would have been selected specifically for their abilities to meet A's particular needs, the prospects of that placement remaining secure are good. Nonetheless, by that stage he would have had an even longer period of time in foster care, and may find it even harder at that stage to separate from his foster carer,

and from his birth family.

139. There is in my judgment no question that even if placed in a loving and stable placement, the making of a care order with a plan for adoption will have a devastating effect on A throughout his childhood and adulthood. The adoption process can be lengthy and difficult. Even though adoptive parents go through a very thorough selection process there is no absolute guarantee that they will be able to meet all a child's needs throughout their life or that the adoption will work out, particularly where a child has reached the age of nearly three years old and has a clear sense of his identity within a family unit with parents, grandmother and brothers but ongoing attachment issues.

140. In my view the effect of an adoption order would be all the more severe for A when he learned that of his three other brothers, he was the only one that was placed away from his family. As he grows up, he is bound to question whether there was something about him that meant he could not grow up within the same family unit or feel rejected and hurt.

Capability of the parents and relevant others (s1(3)(f))

141. MM has not been a perfect parent in the past and she is not a perfect parent now, but there are an awful lot of very good aspects to her parenting of Z and, as is acknowledged, she does have a great deal to offer to A.

142. I identify the following good qualities:

- She adores her grandchildren and is utterly committed to their well-being;
- She is well able to provide them with all the material things they need, her house is well-kept and welcoming;
- In her care Z has 'come on leaps and bounds'. His behaviour has improved, there is objective evidence of his improvement at nursery, he is making good progress;
- She has proven ability to look after A well in contact, to give him loving and affectionate care while maintaining firm boundaries;
- She has the ability to learn and put new parenting strategies in place. She has good insight. She is able to reflect and to analyse. She doesn't see just Z and A's behaviour as 'good' or 'bad' but has demonstrated that she can be sensitive and understanding to the underlying reasons for behaviour and this has enabled her to manage it calmly, firmly, but sympathetically;
- She is co-operative with professionals, asks for help when needed, acts protectively and committed herself fully to parenting programmes offered;
- She is reliable. She turns up to contact and has attended all meetings as required. She gets Z to and from nursery on time;
- She has a good support network of responsible adults. Her relationship with her sister is hugely supportive and close. Her son L is doing well in life and he continues to help and support her;
- She has managed the relationship with her son and KK with incredible insight, generosity and understanding. She has given them every possible chance, but always acted protectively towards her grandchildren. She does not favour her son. She speaks the truth about him;
- Although A spent more exclusive time with his parents, Z also experienced much of the same sort of parenting from them and many of the behaviours he has shown as a consequence are seen in A.

MM has both direct experience of seeing what it was like for the boys in their parents' care, and of successfully parenting Z afterwards. It could reasonably be anticipated that many of the strategies she has developed and understanding she has gained over time could be implemented to A's benefit;

- She knows she has a lot of work to do but she is willing to give it a go.

143. The difficulties I anticipate she might have are as a result of the following:

- While her current level of commitment and improvement in parenting are not in doubt, she has struggled in the past as a parent herself, in particular with issues in terms of boundaries and behaviour. In the past she appears to have prioritised her own relationships with violent and risky individuals before the needs of her own children who spent periods of time in care;
- Z's behaviour is coming on well but at times it has been really atrocious in her care. Some of the language he uses is not just what a four year old should not know but no child should be using. He can be very oppositional. Z continues to need a great deal of attention and support from his grandmother and she continues to need professional support to manage him;
- There is a significant body of professional evidence to suggest that both Z and A's particular needs require that they are not parented together;
- Given the success she has made with Z it could be unfair to her and to him if she were now overburdened by having to care for two exceptionally demanding children;
- A's needs are greater than Z's, particularly because his temper tantrums continue, his sleep remains unsettled, developmentally he remains behind his peers, and his ability to make secure attachments is fragile;
- while I have found that she would be able to act protectively so far as her son and KK are concerned, there is evidence from earlier contacts that she has at times struggled to prioritise the children's needs and allowed herself to be dictated to by her son, creating an atmosphere of confusion, chaos and conflict.

144. I identify the strengths and weaknesses of RR as a carer for A as follows. Strengths:

- She has direct relevant experience of parenting, having cared for her two boys as a single parent. One child had a diagnosis of ADHD and the other had anger management issues. Her experiences of managing her sons would help her managing A who also presents challenges to any carer;
- She has direct relevant experience of managing a child with severe attachment issues having cared for her grandson for eight months after his mother died and she continues to play an important role in his life;
- She has a strong family network of support, her son G lives with her, her other son E (father of F) is two minutes down the road, she has a niece, she is close to her sister. She has a good network of friends;
- She has no current health issues that would prevent her from caring for a child;
- She can co-operate with professionals and listens to and heeds advice;
- Her house is clean, tidy and she has room to accommodate A;
- She is absolutely committed to A and to keeping him in the family if possible. She has demonstrated her commitment through this process, which has been relatively demanding for her in terms of travelling on public transport from her home to contact twice a week;

- She has shown her commitment to the family in the way she has supported her sister in caring for Z;
- She has thought seriously and realistically about how A could come and live with her, in terms of practical arrangements and she has had sensitive but sensible discussions with her sons and grandson to lay the groundwork;
- she knows A from when he was a baby and has re-established her relationship with him in contact since October, showing herself to be child-focused, affectionate, kind and skilled at managing his behaviour.

145. Weaknesses:

- She does not have the same bond with A as MM, she is his great-aunt not grandmother, and she has only recently properly got to know him;
- She has had a significant number of health issues in the past and is currently still taking medication for different conditions. However, as stated above, there is no evidence before the Court about when that risk might arise and what the consequences might be for A. It is in my judgment a theoretical risk only;
- If she were to have A in her full-time care, her ability to provide support to her sister would be reduced because she will not be able to go over to Didcot quite as easily as she can now as a person with full-time caring responsibilities;
- Any respite she will provide, or her sister will provide to her, will be compromised because the person doing the helping is likely to have to cope with the competing needs of two boys which all professionals agree would be difficult for any length of time.

146. The Court's assessment of the parents' or relevant persons' ability to discharge their responsibilities toward their child must take into account the assistance and support which the local authority would offer. The President of the Family Division said in Re B-S [2013] EWCA Civ 1146:

'It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking.'

147. I have had regard to the Special Guardianship support plans. The local authority has helpfully indicated that in the event that A is placed with either MM or her sister, the support measures identified would be offered to A's carer, whether pursuant to a special guardianship order, supervision order or child in need plan.

148. Nobody has suggested that these measures of support would not be of benefit and it is accepted that if A were placed with either MM or RR they would be able to work co-operatively with the local authority so as to ensure that A derived benefit from the help and support offered.

149. I now turn to the additional factors that appear at section 1(4) of the Adoption and Children Act 2002.

The likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person (s1(4)(c))

150. Even in the event that a child is placed in a loving, secure and stable adoptive placement, the effect on any child of having been adopted is lifelong and can be devastating. The potential for emotional harm is increased where the adoption was against the consent of birth parents and where the child as in this case has an existing bond with his birth family. The potential for damage is increased even further where the siblings of the child remain within the original family unit, having regular contact with each other and the wider family. Further, if adoption does not take place until after the child has reached the age of two, and as in this case, the child has grown up with insecure attachments to his carers, it is not always easy for that child to settle and forge new secure life-long attachments to his adoptive parents.

151. For these reasons, in my judgment there is potential that significant harm that may be caused to A as a result of an adoption order being made at his age and stage of development.

The relationship the child has with relatives including (i) the likelihood of any such relationship continuing and the value to the child of its doing so, (ii) the ability and willingness of the child's relatives to provide the child with a secure environment in which the child can develop otherwise to meet the child's needs and (iii) the wishes and feelings of the child's relatives regarding the child (s1(4)(f)).

152. A has an existing relationship with Z, with his grandmother, his parents and with his great aunt RR. Through them he has the potential to get to know and to become a part of a much wider family of uncles, aunts, cousins as well as half-siblings, and other members of the paternal and maternal family.

153. Both MM and RR are absolutely willing to provide A with a secure environment and wish to be allowed to look after him and meet his needs throughout his childhood if at all possible. I have set out above my assessment of their respective capacities to do so.

154. A is a much loved child and his relatives would wish for him to be brought up within the family to which he was born.

155. I now turn to consider the range of orders available to the Court.

The range of orders available to the Court (CA1989 s1(3)(g)/ACA2002 s1(6))

156. In coming to a decision relating to the adoption of a child a court must always consider the whole range of powers available to it in the child's case and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

157. I have considered carefully the evidence of all the witnesses, the care plans of the local authority and all the documents within the bundle. I have had regard to the relevant welfare checklists.

158. I am mindful that any order which interferes with the relationship between a child and their family is only justified by the overriding necessity of the interests of the child.

Analysis of the options

159. The realistic options now before the Court are:

- (i) Placement with MM;
- (ii) Placement with RR;
- (iii) Care and placement orders.

Placement with MM

160. Advantages:

- (i) A would be able to live within his birth family and enjoy continued relationships with his brother, grandmother and great aunt, and have the benefit of establishing relationships with a much wider family network;
- (ii) A could make the transition relatively swiftly to his grandmother's care and his future be settled;
- (iii) The loss he will suffer as a consequence of being separated from his foster carers will in some ways be ameliorated by placement with his grandmother who he knows and loves;
- (iv) His grandmother knows him and his behaviours well and has direct experience of dealing with Z who has had similar experiences and demonstrated some similar behavioural challenges. Her parenting strategies are improving all the time and she has shown that she is receptive to advice and is able to put what she learns into practice. Given her successes in contact and her increasing confidence, there is some prospect that she would be able to manage both Z and A together in placement;
- (v) MM could benefit from the continued support of her sister RR who would be able to come and help her when she needed;
- (vi) she loves him and is committed to him and will do everything she can to make his placement work.

161. Disadvantages:

- (i) MM has needed a lot of help and support to improve her parenting and while she has made

very good progress with Z, his placement is not without its challenges;

- (ii) The placement of Z and A together is untested;
- (iii) There is a large and consistent body of professional evidence to suggest that Z and A together would present a very significant challenge to any carer, but particularly to MM as a single parent and with new improved parenting skills not yet thoroughly bedded in;
- (iv) Z is likely to find it extremely difficult to adjust to living with his brother and sharing his grandmother's attention and affection and his behaviour may well deteriorate as a result;
- (v) As a consequence of the above, both A's and Z's placement would be put at risk. The professional evidence is that this risk is very significant and placement breakdown would be likely;
- (vi) The consequences of placement breakdown for A, and potentially Z, would be devastating and his prospects of finding and then settling into an alternative placement would be dramatically reduced.

Placement with RR

162. The advantages of the placement would be as follows:

- (i) A would be able to live within his birth family and enjoy continued relationships with his brother, great aunt and grandmother, and have the benefit of establishing relationships with a much wider family network;
- (ii) Although he would not be living with Z, he would see him on a regular basis. He would also be able to build a relationship with his cousin F who spends a lot of time with RR;
- (iii) There would have to be a transition plan to increase A's familiarity with his aunt and prepare him for a permanent move, but the transition would be made far sooner than in the case of adoption, and A's future could be settled relatively quickly;
- (iv) The loss he will suffer as a consequence of being separated from his foster carers will in some ways be ameliorated by placement with his great aunt who he knows and with whom he has started to form an affectionate bond;
- (v) RR's parenting skills have been positively assessed by JD. She has relevant experience of managing children who present with behavioural challenges, she has relevant experience of helping a child make the transition away from a very significant care giver to her and helping him manage his emotions arising from that loss. She has demonstrated to JD in discussions and in contact that she can put in place strategies to manage A's behaviour and sensitively cater for his needs;
- (vi) She can give him one-to-one attention for the vast majority of the time;
- (vii) She can work co-operatively with the local authority;
- (viii) She has the support of her sister, sons, niece and a wider network of family and friends;

- (ix) Although thought that both children are a handful for one parent she and her sister seem able to co-parent both boys together and can continue to work together to do that when appropriate;
- (x) she loves him and is committed to him and will do everything she can to make his placement work.

163. The disadvantages of the placement with RR are as follows:

- (i) She is a single parent and on any view it will be hard work for her to look after a toddler, especially one as demanding as A;
- (ii) She may have under-estimated how exhausting caring for a child such as A, and while she may be able to meet his needs in the short term, she may not be able to consistently provide for all his physical and emotional needs throughout his childhood;
- (iii) The placement is untested;
- (iv) If the placement breaks down because she is unwell or unable to continue to provide for all of A's needs, the consequences for A would be extremely hard, and his prospects of being able to settle into an alternative permanent placement significantly reduced.

164. I have not included any potential difficulties in respect of managing contact with A's birth parents as I am not satisfied there was evidence before the Court that this would give rise to any particular issue so far as RR is concerned. She lives much further away from them, she is not so vulnerable to pressure from LL as her sister might be, and there is no evidence to suggest this has been or might in the future be a problem.

165. I have not included as a negative that F may find it difficult to accept, or she may find it difficult to balance the competing needs of two very different children, of different ages and stages who both rely heavily upon her practically and emotionally. Firstly because I am satisfied having listened to her evidence that she has thought about this carefully and prepared F for the prospect of having to share her attention with A. Secondly, because while untested so far as A and F are concerned, A has spent the last year in placement with three older children and while he has competed with them for adult attention there is also evidence that being around other children has been to his benefit. I do not accept the guardian's proposition that the foster carers' children are not of an age to be jealous of a child of A's age but that F, who is in the same age group, and is his cousin, would be jealous and resentful.

166. I have not put as a negative on the list that RR has got ongoing health issues. They are under control at the moment and will not prevent her from caring for A in the short term. While it is a theoretical risk that at some point in the future they may flare up, and in that event, may adversely affect her ability to care for A, I am not satisfied that there is evidence to justify me including this concern as an active negative on the list.

Adoption

167. The potential advantages to adoption are that A is likely to be placed with a family that can provide him with consistently good care, meeting all his physical, emotional and educational needs as he progresses through life, and giving him the opportunity to be a part of a new family unit with all the potential advantages and stability that is likely to bring to him. He will be protected from the risks that his parents present.
168. On the other hand, A is a happy, healthy toddler who is aware that he is part of a family and has a brother, a grandmother and other relatives. The potential harm to him of removing him from that family and placing him in a new family of complete strangers, and preventing him from seeing his parents, brother and wider family while he remains a child should not be under-estimated. There is likely to be further significant delay of many months before his permanent family is found and then his future secured with them. He is likely to suffer feelings of abandonment and grief in the short term, and throughout his whole life, at being separated from his birth family. That may further be exacerbated by the later knowledge that three of his brothers were able to remain in the family, but not him. The grief to the family of losing him would be devastating, and made worse because they do not agree to the adoption and do not accept the reasons that the local authority is seeking adoption.
169. An order placing a child for adoption should only be made if the overriding necessity of the interests of the child demand it.
170. This is a case where the need to compare the options in a ‘global and holistic’ rather than ‘linear’ way is put into stark relief. I have examined the advantages and disadvantages of each of the options on their own, and considered the risks and benefits of each option up against each other.
171. Any intervention must be proportionate and necessary to secure A’s welfare.
172. I consider there is very much to recommend MM as a grandmother, but having regard to all the evidence and the factors on the welfare checklist, in my judgment there are significant risks to the security of a placement with both A and Z in it.
173. While there may be advantages to adoption in terms of long-term security and likelihood of stability, consistency and robust parenting, it is not my role to identify the least risky option, nor the ‘best option’, but to compare all the disadvantages and advantages of each option in isolation and then compared to the other options. It is only in circumstances where I am satisfied that the only way that A’s welfare could be secured is by the making of care and placement orders could I do so, i.e. that ‘nothing else will do’.

174. I acknowledge that there are some uncertainties about the placement of A with his aunt RR. However, in my judgment the positives significantly outweigh the negatives. She has proven ability to provide for A's physical and emotional needs. In my judgment the risks that the placement may not be sustained long-term are not sufficient to justify selecting instead a placement which carries its own risks of emotional harm both in the short-term and long-term, because it would sever ties between A and his birth family for the rest of his life.

175. After careful and anxious deliberation, I therefore conclude that A should be placed with his aunt RR. I do not approve with the local authority's plan and refuse the application for a care order.

176. I have come to this conclusion after consideration of all the evidence in the case and the factors on the welfare checklist. I am of course acutely aware that I have come to a different conclusion than that of the social workers, JD (although she has recently shifted position and described herself as recommending RR but not 'unequivocally'), and a very experienced Cafcass guardian. However, it is my job to reach my conclusions independently and because I have differed with them about the weight they have afforded to some of the key evidence which informs the checklist evaluation, I have come to a different conclusion. In particular, my reasons for departing from the local authority's position and the guardian's recommendation are as follows:

- (i) I accept the evidence from the foster carers and through the logs that A's behaviour can be challenging to manage and that he is an exhausting child to care for. However, in my view not enough emphasis has been given by each of the professionals to the following factors:
- A's behaviour has improved throughout the time he has been in foster care and provided he is given consistent boundaries it is behaviour that demonstrably can be managed;
 - While regression in his behaviour could be expected, he is unlikely to regress so far as nine months' backwards and to present as he did when he first went into care;
 - His aunt has demonstrated that she is able to manage his behaviour very well;
 - He has coped well when in respite care;
 - As with Z, the protective factors of nursery and thereafter school are likely to provide further respite and support to his carer;
 - In hours and hours of contact records, his behaviour is seen to be very much within the range of a normal toddler. While he is a child who has sustained significant physical and emotional harm and the effects of this will be life-long, he is not an unmanageable child;
 - RR does have a good network of support around her;
 - She has directly relevant experience to manage A;
 - She has an established relationship with him.

- (ii) I consider the professionals are wrong to infer from RR's current managed medical conditions that (a) she is very likely to suffer a deterioration and (b) such deterioration will not be able to be managed such that (c) A's care will be neglected to the extent that his placement with her will break down. This is in my judgment speculation and is not supported by the medical evidence. RR has demonstrated that she is active and well able to cope with A's physical demands;
- (iii) I acknowledge that there is some risk that A will find it hard to separate from his foster carer and to settle with RR, and that this placement is untested. I acknowledge that she may find it a struggle to care for a demanding young toddler as a single parent, however these risks can be managed by her utilising the techniques she has already demonstrated in her sessions with A alone to keep him engaged and interested and the centre of her attention. She has the benefit of an existing network of family and friends. She will have the benefit of continued local authority support and parenting courses and the establishment of further support networks if required;
- (iv) my assessment of the potential harm caused by adopting him away from his family at his age and stage of development, where he has established family networks, and is proposed that he would one of four siblings adopted away from the family is that there is far greater risk to his long term emotional welfare than I consider LP has indicated on her balance sheet;
- (v) I have had the benefit of seeing RR and her sister give evidence and I remain impressed by them, their commitment and their capacity and willingness to provide a home for A. In all the circumstances of this case and having regard to the legal tests set out in Re B and other cases to which I have referred to above, where RR is able to provide a loving home to her great-nephew, I cannot say that A's welfare requires that he is placed for adoption. This is not a case where I can say that 'nothing else [but adoption] will do'. The intervention proposed of removal from the birth family and placement for adoption is in my judgment wholly disproportionate to the risks of his remaining in his birth family. There are significant benefits to A of his being brought up by and surrounded by his own family.

What order should the Court make?

177. The application for a placement order falls away with the refusal of the application for a care order.
178. The potential options for A's placement with RR are:
- (i) Special guardianship order;
 - (ii) Child arrangements order;
 - (iii) Child arrangements order with supervision order.
179. The local authority says that the measures of support set out in the special guardianship support package would be available to RR whether the Court made a special guardianship order, a supervision order or no order, the measures in the latter case being provided pursuant to a child in need plan.

180. The benefits of a special guardianship order are that it provides long-term security and establishes RR as A's 'primary' parent. However, A's parents are supportive of the placement and there is no evidence at the moment that an order is required to give RR that level of authority over his parents. It is very unusual, and not recommended, for an order as permanent and significant as a special guardianship order to be made to a placement in which the child has not even lived, even where there is an existing family connection.
181. In all the circumstances, although I anticipate that RR may wish to apply for a special guardianship order in the future, at the moment I am not persuaded that such an order is required. I have considered whether these proceedings should be adjourned for a further period of time in order to allow some further assessment or bedding in of the arrangement and for a special guardianship order to be made within these proceedings. However, there is in my view a pressing need for the proceedings to be concluded, and I am not satisfied that the placement can only be safeguarded by the making of a special guardianship order.
182. In all the circumstances I consider the appropriate order is a child arrangements order to RR and that the order should be made now so as to bring these proceedings to an end.
183. The local authority says that no supervision order is needed because the package of support is in place and will continue to be available pursuant to a child in need plan. Why make an order requiring the local authority to do something that it has offered to do willingly? RR will co-operate with the local authority in effecting a transition to her care at A's pace and is very willing to attend any courses or groups to help her. She will take A to any sessions with ATTACH or other organisation and there is no need for an order to ensure her compliance. I have also had regard to LP's evidence about this.
184. KC would prefer a supervision order to be in place because she says with a supervision order there is a guarantee of an assigned social worker and a set period of time when the local authority is obliged to provide support. A child in need plan can end at any time.
185. I have had regard to the evidence and the submissions on this point and I am persuaded that a supervision order is appropriate. Given the difficulties anticipated with the transition away from foster care to RR I anticipate help and advice from an allocated social worker would be of benefit at this time. Although not currently anticipated, if there are any difficulties around A's contact with the parents, the same social worker can advise and assist and help to facilitate or supervise some contact, or help to explain to the parents any decisions made about contact by RR. Through a supervision order, referrals to parenting courses of the ATTACH team can be ensured.
186. While I fully accept the local authority's genuine intention to provide for all A's needs under the more flexible child in need regime, I am persuaded by the guardian's submission that in the circumstances of this case, more certainty is required. In my judgment a twelve month supervision order is appropriate in this case.

Contact

187. Contact will be worked out as part of the supervision order, the local authority consulting with RR

and MM to ensure that contact remains for the benefit of A and Z. Given that contact with their parents has caused some difficulties for the boys, noted particularly in the case of Z by his nursery, and that A will need time to settle into his new permanent home, I would imagine that a further reduction in contact with him and his parents would be appropriate, to say four to six times a year, but that is really a matter to be worked out in the light of their current circumstances, once a transition plan has been devised and in consultation with RR, MM and all relevant professionals.

Joanna Vincent

Her Honour Judge Vincent

7th March 2017

[\[1\]](#) Special Guardianship Regulations 2005