

THE FAMILY COURT SITTING AT OXFORD

OX18C00009 and OX19P00239

**IN THE MATTER OF s31 CHILDREN ACT 1989 AND IN THE MATTER OF A, B, C
& D**

Date: 14th June 2019

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

M

1st Respondent

and

F1

2nd Respondent

and

A, B, C and D

(Acting through their Children's Guardian)

3rd, 4th, 5th & 6th Respondents

and

F2

7th Respondent

and

MR AND MRS Y

Applicants in OX19P00239

JUDGMENT

Helen Little, instructed by Oxfordshire County Council

Fiona McCreath instructed by Selby Dixon solicitors for the mother

Luke Eaton, instructed by Brethertons for the Second Respondent father of the three older children

Michael Trueman, of Trueman's solicitors for the children

Kate Ferguson, instructed by Johnson & Gaunt, solicitors for the seventh Respondent father of D

James Holmes, instructed by TV Edwards, solicitors for the Applicants for a special guardianship order in respect of D

Hearing dates: 12th, 13th and 14th June 2019

Key:

<i>Children:</i>	<i>A, B, C and D;</i>
<i>Mother:</i>	<i>M</i>
<i>Father of A, B and C:</i>	<i>F1</i>
<i>Father of D:</i>	<i>F2</i>
<i>D's paternal aunt and uncle:</i>	<i>Mr and Mrs X</i>
<i>D's foster carers:</i>	<i>Mr and Mrs Y</i>
<i>A, B and C's foster carers:</i>	<i>Mr and Mrs Z</i>
<i>Social worker:</i>	<i>SW</i>
<i>Children's guardian:</i>	<i>CG</i>

Parties and positions

1. I am concerned with four children; A who is seven, B, who has just turned six, C who is five, and D who is two and a half.
2. The first respondent (M) is the mother of all four children.
3. The second respondent (F1) is the father of the older three children, and the seventh respondent (F2) is D's father. He and the mother had a brief relationship during a period when she was separated from F1 during which time D was conceived. At the start of proceedings D's paternity was unknown but has since been confirmed.
4. A, B and C are currently in foster care, living with Mr and Mrs Z, their nine year old son and a seven year old boy who they have fostered for the past four years. In these proceedings the local authority seeks care and placement orders in respect of A, B and C. In the event that an adoptive placement is not identified within six months, the local authority's plan B is for the children to remain with Mr and Mrs Z in the long-term.
5. The local authority's plan for D is that she move from her current foster carers to live with her paternal uncle and aunt, Mr and Mrs X. Initially that placement would be under a care order, but Mr and Mrs X have been positively assessed as kinship carers, and so it is envisaged that they would in due course apply to the Court for special guardianship orders.
6. D's current foster parents Mr and Mrs Y, have cared for her for the last fifteen months. She lives with them, one of their adult sons, and a child aged thirteen who they foster. They love D dearly and would like her to stay with them permanently. They have made an application to the Court for special guardianship orders in respect of D.
7. The mother, F1 and F2 have all accepted that they are not in a position to care for the children at this time. They do however love them very much and would like to continue to play a significant role in their lives. Their positions in respect of the local authority's applications are as follows:

- in respect of A, B and C, the mother does not oppose care orders being made, but she would wish the children to remain with their current foster carers. She opposes the applications for placement orders;
 - in respect of D, the mother has expressed a preference that Mr and Mrs Y be made her special guardians, but if the Court decided that D should be placed with Mr and Mrs X, she would fully support the placement;
 - F1 did not attend the final hearing. His most recent instructions were that he supported A, B and C remaining with their current carers, and he opposed the plans for adoption. Although he is not D's father, he would like to continue to have contact with her;
 - F2 supports the local authority's proposal that D should be placed with his brother and sister-in-law, Mr and Mrs X.
8. The children's guardian supports the making of care orders in respect of A, B and C , but is opposed to the local authority's application for placement orders.
 9. So far as D is concerned, the guardian has found the choice between Mr and Mrs X and Mr and Mrs Y to be extremely finely balanced, but having weighed all matters, she has come to the conclusion that D should remain with Mr and Mrs Y (D's current carers).
 10. Save that there is an issue around F1's contact, the other parties have agreed what the arrangements would be in the event that the older three children remain in foster care and D lives with either Mr and Mrs Y or Mr and Mrs X.

Chronology of proceedings

11. As this final hearing is taking place in the seventieth week since proceedings have been issued, I have set out the chronology in some detail, so that the reasons for the delays can be seen.
12. There is a significant history of social care involvement with the mother and F1. While it is recognised that the mother and F1 love their children and have strong attachments to them, the local authority has been concerned that the children have both suffered harm and been placed at risk of significant harm as a result of the parent's chaotic lifestyle, parental substance misuse, extremely poor home conditions, long-standing and significant neglect of the children's needs, poor school attendance, the children's exposure to domestic abuse, and the parents associating with risky individuals who are heavily involved with criminal activity, particularly around illegal drugs.
13. On 8th January 2018 a police raid at the property gave rise to concerns that the property in which the mother and F1 were living with all four children was being used for the preparation and supply of class A drugs.

14. The family were evicted from their home at the end of February and were living in two rooms above a pub.
15. Following the recent police raid and with the eviction pending, proceedings were issued on **12th February 2018**.
16. The first hearing was not listed until **8th March 2018**, before Deputy Circuit Judge Corrie. He made interim care orders in respect of all four children, and they were all placed in foster care with Mr and Mrs Z initially as a short-term placement. The children were very distressed by their separation from their parents. Mr and Mrs Z were struggling in the first instance to cope with the competing needs of all four children and on **13th March 2018**, D was moved to her placement with Mr and Mrs Y. All four children have remained in the same placements since then and although they have all struggled emotionally as a result of being separated from their parents, they have all received an exceptionally high standard of loving, consistent, attentive and attuned care from their foster carers. The older children have continued to attend the same primary school which has also provided continuity and support. By all accounts the children are delightful, and are well-settled and now thriving in their respective placements.
17. On **27th March 2018** District Judge Wakem made directions including giving permission for a psychiatrist to assess mother, directions for assessments of family members as alternative carers and listing to a final hearing on 6th August 2018.
18. DNA tests on **13th April 2018** confirmed that F2 was D's father. I do not know why it then took until 7th June 2018 for him to be joined to the proceedings. He was invited to provide a statement setting out whether he wished to be assessed as a carer for D, and whether he put forward any alternative carers for her.
19. On 26th June 2018 the mother and F1 applied for an order permitting them to move with all four children to a specialist residential assessment centre in Sheffield.
20. The application was listed for hearing on **3rd July 2018**, but on that day District Judge Wakem adjourned the application until 16th July 2018. F2 was not aware of the hearing on 3rd July 2018 and did not attend. He was given an extension until 10th July 2018 to file his statement.
21. At the hearing on **16th July 2018**, F2 had filed a statement indicating that he did wish to be assessed as a carer for D. He accepted that he was a cocaine user, but stated his intention to engage with drug treatment services. He did not put forward any alternative carers. The mother had put forward her grandparents [*names redacted*] as potential carers for the children, but they had not yet been assessed. The mother's primary position was that the children could be rehabilitated to her care. The local authority's plan at that stage was to support a rehabilitation to the mother, provided she could keep to expectations set out in a rehabilitation plan between then and final hearing. In those circumstances, the mother no longer pursued her application for residential assessment.

22. At that time it was acknowledged that the mother had made some significant changes in her life. She had accepted that she had an addiction and the impact it had on her parenting. She was engaging with professional support to help address this and had been abstinent from drug and alcohol. She had separated from F1. She had obtained work and was attending contact regularly. The parenting assessment concluded that she had a loving relationship with all her children and when free from substances and abusive or risky relationships, could give good practical and emotional care to her children. However, the concern was that when under the influence of cocaine and alcohol she was not able to meet their needs safely and consistently.
23. The local authority applied for an extension of the proceedings until 20th December 2018, supported by all parties, to give the rehabilitation plan a chance, and, twin-planning, to enable assessments of F2 and of [maternal great-grandparents]. The final hearing was relisted on 17th December 2018.
24. On **13th August 2018** Mr and Mrs Y told the local authority they would like to adopt D. An initial assessment of them began in September 2018.
25. The parenting assessment of F2 dated 11th September 2018 was negative. The concerns identified were his long-standing drug addiction issues, his inability to provide D with any financial stability or suitable accommodation to meet her basic care needs. There were also concerns about his social isolation, mental health difficulties and his own vulnerabilities and history of domestic abuse.
26. By the time of the IRH before District Judge Wakem on **18th October 2018**, [the maternal great-grandparents] had been positively assessed as carers for A, B and C . The local authority no longer supported rehabilitation to mother's care. She had not kept to the agreement in a number of respects and the social worker expressed concerns about hers and F1's inconsistent engagement with contact, and whether or not the mother continued to misuse drugs and alcohol in the light of recent positive test results. The local authority's plan at this point was for the three older children to move to the care of maternal great grandparents [*names redacted*], and for D to be placed for adoption. Neither F1 nor F2 attended this hearing.
27. In November 2018 the mother was living with maternal grandmother. Her three youngest children are currently subject to care proceedings, with concerns about maternal grandmother's substance and alcohol misuse. On 4th November the mother was supposed to be looking after her twelve-year-old sister and her eight-month-old niece. In fact, she went out with the maternal grandmother and did not return all night. The children were taken into police protection. The next day the mother's twelve-year-old sister truanted from school and was found by the police late at night at the home of an ex-boyfriend of the mother's. It transpired that the mother had arranged for her sister to stay with him. This situation again gave rise to concerns that the mother would not be able to act protectively towards any children in her care and could expose them to risky situations.
28. At the IRH on **21st November 2018** the mother and F1 supported the local authority's plan for placement of the three older children with [maternal great-grandparents]. The guardian wanted some further information about their abilities to protect the children

from parental drug misuse before coming to a final conclusion. The local authority intended the children to move to [maternal great-grandparents'] care under interim care orders following the final hearing in December, then for final orders to be made in March 2019. The plan for D remained placement for adoption, which the mother continued to oppose. F2 did not attend the hearing but had given instructions that he would support D's return to her mother's care and if that were not possible, for her to be placed for adoption. The final hearing was listed to consider the plan for the older children to move to live with the [maternal great-grandparents], and for consideration of the local authority's applications in respect of D.

29. On **17th December 2018**, the first day of the final hearing, [the maternal great-grandmother] sent a text message to the social worker saying that she could no longer take A, B and C into her care as planned. [The maternal great-grandparents] confirmed their position in meetings held with the local authority that week.
30. District Judge Wakem adjourned the final hearing. The local authority was given until 15th February 2019 to file revised care plans, and a new final hearing date was listed on 25th March 2019 before His Honour Judge Hughes.
31. On **13th February 2019** the parties attended a directions hearing before District Judge Jenkins. Mr and Mrs X had recently contacted the local authority and asked to be assessed as carers for D. Mr and Mrs Y had been informed of this, and their adoption assessment was put on hold. The local authority was directed to carry out a kinship assessment of Mr and Mrs X by 3rd May 2019, and to file its final evidence on that date.
32. The local authority indicated its intention to apply for placement orders for A, B and C, and was given permission to share limited information about them with websites and agencies that searched for potential adoptive parents. The hearing on 25th March 2019 was to be retained as a hearing in respect of the older children, and a separate final hearing was listed before me on 13th and 14th June 2019 in respect of D.
33. On **14th March 2019** the parties attended before District Judge Wakem for IRH. The local authority's care plan for the three older children continued to be for adoption. The mother accepted that while she still wished for the children to return to her care, she would not be in a position to resume care for them at that time. She opposed the plans for adoption, as did F1. F2 supported a move for D to Mr and Mrs X.
34. The final hearing on **25th March 2019** in respect of A, B and C was listed before His Honour Judge Hughes. He considered that there had been insufficient consideration of A, B and C's current foster carers as a realistic long-term option for the children. He directed the local authority to file and serve final evidence to include analysis of this option and directed that all issues relating to the older children could be dealt with by me at the same time as I considered the local authority's applications in respect of D on 13th and 14th June.
35. At that hearing, the mother and F1 reluctantly but bravely accepted that it would not be realistic to expect that the children could return to the care of their mother then or in the foreseeable future. They indicated that they would not oppose long-term foster

care, but would oppose the plan of adoption. F2 recognised that he could not look after D, but hoped the assessment of his brother and wife would be positive.

36. On 8th April 2019 Mr and Mrs Y, who are D's current carers, applied to be joined as parties to the care proceedings and for special guardianship orders.
37. The application was listed before me on **23rd April 2019**. I referred the parties to *Re T* [2015] EWCA Civ 983 and indicated I was not persuaded that it was appropriate for foster parents to be joined as parties to care proceedings, but adjourned the application to the IRH and invited skeleton arguments. The special guardianship assessment of Mr and Mrs X was due on 3rd May. I directed the special guardianship assessment of Mr and Mrs Y to be filed on 15th May 2019 and that their application should be considered alongside the main proceedings. Although the timetable for filing the special guardianship report of Mr and Mrs Y was tighter than is recommended, a great deal of work had already been done as part of the earlier adoption assessment.
38. I saw the parties again at the IRH on **23rd May 2019**. The kinship assessments of both Mr and Mrs Y, and Mr and Mrs X were positive. I made directions for the filing of final evidence and added another half day to the final hearing. Mr and Mrs Y withdrew their application for party status within the care proceedings, but all parties agreed they should be permitted to attend the final hearing.

The final hearing

39. At the final hearing on **12th, 13th and 14th June 2019**, I heard evidence from the social worker and the guardian, and submissions on behalf of all parties. I am grateful to counsel for their written and oral submissions.
40. F1 did not attend the hearing but was represented.
41. As agreed, Mr Y attended the final hearing. Similarly, all parties agreed that Mr and Mrs X, who are not parties to either proceedings, should be permitted to attend the final hearing and listen to the evidence and legal submissions. I had invited both Mr and Mrs Y and Mr and Mrs X to write a letter to the Court setting out their views.
42. Although the decisions I have had to make have been difficult, I have appreciated the level of co-operation between all parties and the children's respective carers, the respect they have for one another and for the professionals, and their strong desire not to criticise or to point-score, but only to advance as best they can their views.
43. The children's mother has expressed a preference that if they cannot return to her care, the children should remain where they are as she thinks they are well settled and receiving the best care. However, she has made it clear that if the Court decides that D should move to live with Mr and Mrs X she would respect that decision and would do all she could to support that placement and to support Mr and Mrs X.

Issues for the Court to determine

44. All parties accept that the Court should make care orders in respect of A, B and C. The issue for me to determine is whether I should also accede to the local authority's applications for placement orders.
45. D's parents accept that they are not in a position to look after her. I have two kinship assessments for alternative carers, both extremely positive. I have to decide whether D should remain in her current placement with Mr and Mrs Y and grant their application for a special guardianship order, or whether I should approve the local authority's plan that she move to live with Mr and Mrs X. As part of my considerations, I should have regard to the range of orders available to the Court in each of those placements.
46. Section 34(11) of the Children Act 1989 provides that before making any care order the Court shall consider the local authority's proposals for contact and invite the parties to comment on those arrangements.
47. F2 invites the Court to make a declaration of parentage, to grant him parental responsibility for D, and for her surname to be changed.

The law

Threshold

48. The Court cannot make any public law orders unless the threshold as set out at section 31 of the Children Act 1989 is crossed. The parties to the care proceedings have accepted that threshold is crossed and have agreed the threshold document, annexed to this judgment.

Welfare

49. I must then consider what, if any, orders should be made, having regard to all the circumstances of the case, the welfare of the children being the Court's paramount consideration, and with particular reference to the factors set out at section 1(3) of the Children Act 1989.
50. The court must always consider the whole range of powers available to it and the court must not make any order under this Act unless it consider that making the order would be better for the child than not doing so (section 1(6) ACA 2002.)
51. In addition, 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.*'

52. Whenever a Court is coming to a decision relating to the adoption of a child, the paramount consideration of the court must be child's welfare throughout his life (section 1(2) ACA 2002. In considering the child's welfare, the Court must have regard (among others) to each of the matters set out at section 1(4) of the Act.

53. 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.'

54. 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.'

55. Baroness Hale said at paragraph 198 of *Re B* [2013] UKSC 33:

'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. ...

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.'

56. In *Re W (adoption: grandparents' competing claim)* [2016] EWCA Civ 793, McFarlane LJ said at para 68:

*'Since the phrase "nothing else will do" was first coined in the context of public law orders for the protection of children by the Supreme Court in *In re B* [2013] 1 WLR 1911, judges in both the High Court and Court of Appeal have cautioned professionals and courts to ensure that the phrase is applied so that it is tied to the welfare of the child...*

... 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 JSC 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 Convention and reflected in the need to afford paramount consideration to the welfare of the child throughout her

lifetime: ACA 2002, section 1. 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.’

57. At paragraph 70 he continues:

‘... The guardian advised that adoption is not in A’s best interests because the grandparents can provide her with a home. Putting the correct position in lay terms, the existence of a viable home with the grandparents should make that option “a runner” but should not automatically make it “a winner” in the absence of full consideration of any other factor that is relevant to her welfare; the error of the ISW and the guardian appears to have been to hold that if a family placement is a “runner”, then it has to be regarded as a “winner”.

The repeated reference to a 'right' for a child to be brought up by his or her natural family, or the assumption that there is a presumption to that effect, needs to be firmly and clearly laid to rest. No such 'right' or presumption exists. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged.”

58. I have been referred to the case of *Re B-S* [2013] EWCA Civ 1146 at paragraph 74(viii):

*‘The judge must always bear in mind that what is paramount in every adoption case is the welfare of the child “throughout his life”. Given modern expectation of life, this means that, with a young child, one is looking far ahead into a very distant future – upwards of eighty or even ninety years. Against this perspective, judges must be careful not to attach undue weight to the short term consequences for the child if leave to oppose is given. In this as in other contexts, judges should be guided by what Sir Thomas Bingham MR said in *Re O (Contact: Imposition of Conditions)* [1995] 2 FLR 124, 129, that “the court should take a medium-term and long-term view of the child’s development and not accord excessive weight to what appear likely to be short-term or transient problems.” That was said in the context of contact but it has a much wider resonance: *Re G (Education: Religious Upbringing)* [2012] EWCA Civ 1233, [2013] 1 FLR 677, para 26.’*

59. With respect to the decision I have to make in respect of D, Miss Little, Miss Ferguson and Mr Holmes each referred me to the case of *Re A (a Child)* [2018] EWCA Civ 2240 where there were competing positive SGO assessments of foster-carers and extended family, with whom the child had not yet had the opportunity to establish a relationship. Jackson LJ at para 22 states:

“Without deciding the matter, it would seem that D has ‘family life’ with his foster carer, qualified by the fact that she has been a professional carer providing a neutral, holding placement. He also has important family life rights with his parents,

grandmother and siblings. As to the H's, they are the only viable placement within his birth family, but he has never met them, and he might therefore be said to have a right to private life in their regard with the potential for it to develop into family life if he was placed with them. It is therefore important to identify not only what rights are engaged but also their short, medium and long-term significance, before going on to consider the justification for any proposed interference. This exercise is of particular importance when the choice is between a placement with relatives and a placement outside the family, certainly where the decision is finely balanced."

60. The Court emphasises the need for evaluative analysis of the welfare checklist, noting that the lifelong significance of the decision might reasonably prompt the court to have regard also to the child's welfare throughout their life and therefore s1(4) of the Adoption and Children Act 2002 checklist, notwithstanding that the care plan is not for adoption.

61. I have also been referred to *Re V, (Long Term Fostering or Adoption)* [2013] EWCA Civ 913 and by Mr Holmes to *Re M'P-P (Children)* [2015] EWCA Civ 584.

62. In *M'P-P*, the children were aged one and two, and had been cared for by a local authority foster carer almost from birth. The foster carer wished to adopt the children, the Court had to choose between her and a paternal aunt's application for a special guardianship order, in circumstances where the aunt had never met the children. In his judgment at paragraph 49 McFarlane LJ discussed the '*status quo*' argument, citing the earlier case of *D v M (minor: custody appeal)* [1982] 3 All ER 987 per Ormerod LJ:

' ... it is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and that disruption of established bonds is to be avoided whenever it is possible to do so. Where, as in this case, a child of two years of age has been brought up without interruption by the mother (or a mother substitute) it should not be removed from her care unless there are strong countervailing reasons for doing so. This is not only the professional view, it is commonly accepted in all walks of life.'

63. McFarlane LJ continued at paragraph 50:

'In the context of 'attachment theory', the wording of ACA 2002, s 1(4)(f), which places emphasis on the 'value' of a 'relationship' that the child may have with a relevant person, is particularly important. The circumstances that may contribute to what amounts to a child's 'status quo' can include a whole range of factors, many of which will be practically based, but within that range the significant for the child of any particular relationship is likely to be a highly salient factor. The focus within CA 1989, s 1(3)(c) is upon the 'likely effect on' the child of any change. The focus in ACA 2002, s 1(4)(f)(i) is upon 'the value to the child' of any particular relationship continuing. ...

It is not my purpose in this judgment to express a view upon the relative importance of attachment/status quo arguments as against those relating to placement in the family.

Each case must necessarily turn on its own facts and the weight to be attached to any factor in any case will inevitably be determined by the underlying evidence. In any event, for reasons to which I have already adverted, it is not necessary to do so in this case as, unfortunately, the judge does not appear to have engaged in any real way with the effect on the children of moving them from the care of their primary, and only attachment figure or with the value to them of maintaining that relationship.'

64. I have these words firmly in mind and direct myself to consider each of the respective welfare checklist factors fully and with reference to the particular circumstances of this case.

Evidence

65. I have read and considered the contents of each of two bundles relating to the care proceedings, and of a checklist bundle including contact records since March 2018, the placement application bundle and the special guardianship application bundle. The evidence includes:

- Eleven statements from the children's social worker (SW), who has been involved with the family since January 2017;
- SW's final care plans. SW has been responsible for a number of previous care plans which were not in the bundle;
- Parenting assessments of mother, F1 and F2, all by SW;
- Statements from mother, F1 and F2;
- Psychiatric assessments of mother and F1 by Dr Fotiadou, clinical psychiatrist;
- A statement from [name redacted], from the fostering service family finding team, describing the three older children's placement with Mr and Mrs Z;
- Comprehensive special guardianship assessments of Mr and Mrs Y by SW and [name redacted], and of Mr and Mrs X by SW and [name redacted];
- Letter from Mr and Mrs X;
- Statement from Mr and Mrs Y;
- four reports from the guardian;
- minute of Agency Decision Maker (ADM)'s reconsideration of 31st May 2019.

66. I heard evidence from the social worker and the guardian. Neither was cross-examined extensively; all parties acknowledged the quality of the evidence each had presented to the Court. No challenge is made by any party of the contents or conclusions of any of the assessments.

67. As well as a significant body of formal documents SW has included within her evidence a number of detailed file notes, and her contributions to meetings and planning is evident from minutes in the checklist bundle. She has evidently worked extremely hard in sometimes challenging circumstances to devise care plans that she considers are the best for the children. It is to her credit that she has evidently earned the respect of all parties, who have established a good working relationship with her. In all her assessments she is quick to acknowledge the positives that she sees, to explore the reasons for the negatives and worked hard to find ways of supporting the parents to overcome them in the children's interests. She knows the children very well and has become fond of them. It is her hope that whatever orders are made that

she is enabled to continue to work with them, to explain decisions to them, to support them through any transition that may be required and to continue to advocate on their behalf. It is not a decision for me or her, but in my view the children would benefit enormously if continuity of social worker were allowed.

68. SW's evidence demonstrates her thorough grasp of the details of this case, her understanding of the relevant factors to weigh in the balance and she explained clearly both in her written and oral evidence why it was that she has come to the conclusions she has which have informed her care planning.
69. The decisions I have to make are exceptionally difficult but I am very grateful to SW and all those who have carried out the various assessments in this case, as I am confident that I have been given reliable, comprehensive and detailed evidence upon which to base my analysis. There are unknowns in the sense of there being untested situations, but there are no gaps in the evidence. That this is so is clear from seeing all parties' positions. No party sought to challenge a single part of SW's factual evidence or any of the expert assessments which she had carried out or to which she had contributed. Their challenge is to her eventual conclusions in respect of what orders are required to meet the children's welfare.
70. The guardian has similarly prepared reports which show she too has a thorough understanding of all the issues, has absorbed all the evidence in the case, carefully and anxiously weighed relevant factors in the balance, remained open-minded to the end, and explained both in her reports and her oral evidence why it was that ultimately she has come to different conclusions to the social worker in respect of the plans for both sets of children. They both identify the same risks and benefits in respect of some placements, but ultimately, the guardian considers the balance falls against adoption for the older children and so far as D is concerned, against removal from her current carers where she is happy and settled.

Welfare checklists

71. In respect of all the children I 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))

A, B and C

72. In May 2019 A told the guardian that she would like to go home to her mum and dad. If this could not happen, she said she wanted to stay with Mr and Mrs Z, and when asked why, she said it was because she had '*no worries here*'. B and C immediately said they wanted to stay in the foster placement and in the guardian's words, '*did not seem to consider any other option within their thinking about the future.*'

73. D is too little to express a view about where she would like to live, but it is clear that she is happy and settled with Mr and Mrs Y and thinks of them as her ‘other mummy’ and ‘other daddy’.

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

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

74. Before their removal into foster care in March 2018, the children had received mixed parenting from their mother and F1. They are polite, kind and affectionate children, in part this is due to some good parenting they have received from their parents who love them very much. They had also however experienced inconsistent and sometimes chaotic parenting and at times very significant neglect of their needs. The children were traumatised by separation and showed anxiety when separated from one another, C in particular when his older sisters were going to school on a Monday showed distress on a Sunday. D too aged just over one found it very hard to settle into her new placement at first.
75. The proceedings have gone on for a long time, although the children have continued to see their mother very regularly and F1, though less frequently. D has met with F2 a few times and with Mr and Mrs X. The children do not know what the plan is for them and do not know whether they will return to their parents’ care. The delay in the proceedings has caused them to be in a state of prolonged uncertainty.
76. As a result of all these experiences the children have an urgent need to be settled, to have the benefit of a prolonged period of consistent, attentive and attuned parenting, to feel reassured and feel a sense of permanence to their living arrangements.
77. Otherwise, their needs are all broadly consistent with the needs of other children at their age and stages of development. They need all their daily needs met, to be fed clothed and supported emotionally, and to develop friendships and interests. The older children have had the benefit of staying at their same primary school after moving into care, and need to continue to be supported in their education. They need to be kept safe and to feel safe and secure, which means their carers must be predictable, constant and consistent. They need to feel valued and loved. They should be having fun.
78. They need their sibling relationships to be nurtured and their identity as members of a family with parents, half-siblings and other relatives living elsewhere must be respected.

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

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

79. The children would be at risk of significant harm were they to be placed in the care of their parents. The risk of harm to them that is relevant to my decision making are the risks of emotional harm which arise in respect of the different plans under consideration. I therefore consider these factors together.

A, B and C

80. If A, B and C were to be placed for adoption they would certainly suffer emotional harm caused by significant losses; in the immediate short term the loss of their foster parents as their primary carers and to whom they have developed a strong attachment, and the other two children in the placement. Even more significantly, they would be separated from their birth parents and from D, and they would be unlikely to have direct contact with them post-adoption. They are likely to struggle to understand the reasons that they cannot see their parents anymore and why they have been removed from the care of their foster family.
81. Having already had one very traumatic separation from their birth parents, there is a risk that disrupting the attachment between them and their foster carers, as well as permanently severing ties between them and their birth parents, will cause them significant harm and will prevent them forming a secure and lasting attachment to new adoptive parents. In the circumstances, there is a significant risk of placement breakdown which is likely to have a lasting impact upon the children throughout their lives. If the placement breaks down they may not be able to return to the care of Mr and Mrs Z and are likely to have yet another move. They may not find a family that is as well suited to them as their current carers, and they will have suffered huge disruption.
82. None of the children have any idea that adoption is a possible option for them and will need some time to get used to the concept. A in particular is likely to find it difficult that her express wishes have not been heeded - either to go back to her parents or to stay with her current carers.
83. The guardian is very concerned about the narrative that would be given to the children about a plan for them to be placed for adoption. If they are told about it in advance they may struggle to understand it as an abstract concept. If they are not told of the plan then their futures remain in limbo for a further six-month period while the search is carried out. If they do find out there has been a search and it has been unsuccessful, they are highly likely to feel unwanted and rejected.
84. If adopted, A, B and C are likely to struggle to understand why D continues to see their parents and they cannot, and to feel excluded from their own families.
85. If A, B and C remain in their current foster placement they are likely to continue to receive the excellent care they are now receiving. Their current carers are committed to looking after them for the long term. However, there is some risk of slow-burn emotional harm associated with children of this very young age spending their whole childhoods in the care system. In *Re V, (Long Term Fostering or Adoption)* [2013] EWCA Civ 913 in which Black LJ (as she then was) said:

'Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely, therefore, to 'feel' different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.'

86. Mr and Mrs Z are very experienced foster carers, and despite running a very busy household, with five children very close in age, one with special needs, they are managing to meet all the children's respective needs to an extremely high standard. They are fully committed to A, B and C and regard them very much as part of their family unit, and they have every intention of maintain their commitment to them long-term. They are open to the option of applying for special guardianship orders in due course. Foster carers are however only employed to care for children until they have completed their education and the placement may be terminated earlier for a variety of reasons.
87. Even if they have the same carers, the children are likely to have a succession of social workers allocated to them. They will be the subject of regular meetings. They may feel different from their schoolfriends who live with a mum and dad.
88. SW is also concerned that there is a risk of emotional harm to the children from continued contact with their birth family, which she worries will act as a pull on them. She is worried that the mother will find it impossible not to communicate to the children her desire for them to come home to them, even unintentionally. SW worries this may cause them distress and prevent them from ever settling with their foster parents, because, quite naturally, both they and their mother will always hope that they can be reunited.

D

89. D will be loved and well-cared for wherever she is placed. If she remains where she is pursuant to a special guardianship order, she will remain a part of the Ys' family. She already has formed a strong attachment to them, as the guardian wrote in her report:

'D is a part of their direct and extended family who provide her with high levels of emotional warmth and ensure that she is provided with a home where she knows that she belongs and is loved. Mr and Mrs Y are patient with D, provide positive guidance, boundaries and reinforcement, and ensure that she has access to stimulation and interaction that encourages her development. It must be noted that D is settled and thriving in the care of Mr and Mrs Y. To D, her family home is her entire world, she looks to Mr and Mrs Y for security and stability, and the consistency in their responses provides her with a base in which she can explore the world. This attachment relationship is significant in how D learns to regulate her emotions throughout her life and provides a lens from which other relationships will develop.'

90. Mr and Mrs Y will ensure that she will continue to have contact with her mother, her father and extended members of her birth family. However, she would not be growing up within her birth family. The special guardianship order would last throughout her childhood, but it is made to Mr and Mrs Y. When D is eighteen, Mr Y will be seventy-five, Mrs Y sixty-one. Their other children are already grown up and will of course have developed some attachment to D but she will not have grown up with them. The child they foster, who is nearly fourteen, may or may not still be there. Mr and Mrs Y may have applied to adopt her by then but she won't certainly be a part of their extended family in quite the way that she would be if she were to move to live with her uncle, aunt and cousins.

91. If D were placed with Mr and Mrs X, she will undoubtedly suffer distress and trauma as a result of being separated from Mr and Mrs Y. Like her siblings, she has already suffered one traumatic disruption of attachment to her primary carer, and on the guardian's evidence, is more vulnerable as a result. It is often said that if a child has built up a positive attachment to a carer then it is easier for them to transfer that attachment to a new carer; they have learned what it is like to feel loved and cared for, they have learned how to seek comfort and reassurance from a carer, how to place their trust in them. But, the guardian says that each time an attachment is disrupted it makes the next attachment more vulnerable. This is a significant risk, and ultimately, this is the reason that the guardian ultimately felt the balance tipped against removal of D from Mr and Mrs Ys' care. The guardian acknowledged that nurturing, stable and emotionally attuned parenting can compensate for disrupted attachments, but she still expressed her concern about the potential impact on D:

'Evidence suggests that disrupting attachments have significant long-term consequences for the children's functioning and development on a behavioural, cognitive and emotional level.'

92. The placement with Mr and Mrs X is untested, they have met D only a few times and D does not have a strong link to them through her father, who only discovered she was his daughter during these proceedings. If this placement does not work out, D's future would be very uncertain and it is hard to predict how well she would settle into a new family situation, and what sort of permanence could then be achieved for her. She may well have missed out on the chance to live with Mr and Mrs Y who have demonstrated that they can meet all her needs to a high standard and who love her very much.

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

93. The mother, F1 and F2 have each accepted that they are not in a position to care for the children. They have their own struggles, particularly with substance abuse. None of them can safely care for the children.
94. Mr and Mrs Z are terrific foster carers for A, B and C . They are emotionally warm and have a lot of affection for the children. Mrs Z is the main carer and is very organised and child focused. Mr Z is described as sensitive and insightful. Both are thoughtful and kind, providing attentive, attuned parenting, in a nurturing environment, and providing the children with lots of fun activities to do, managing their behaviour well, meeting all their needs. They have built up good relationships with the children's birth parents who support the children remaining in their care. While respecting the children's relationships with their birth family, Mr and Mrs Z have made them feel very included and secure as part of their family unit.
95. The assessment of Mr and Mrs Y as potential special guardians for D is overwhelmingly positive. They are a friendly and welcoming couple, have supported each other in raising Mr Y's two sons and Mrs Y's son, their respective children from previous relationships, and have had the shared experiences of becoming foster parents. The girl who lives with them has special needs and they do everything they can to support and encourage her. D's secure attachment to them has been seen by all professionals who have observed her in placement and is acknowledged by D's own

parents. They have a lovely home and are financially secure, deriving an income including from RAF and other pensions. They do not currently need to work to support their lifestyle, enabling them to have time to devote to D.

96. D is thriving in their care. She attends nursery and toddler groups and has made friends. Mr and Mrs Y will advocate for her as they have for their older child who they care for, they have been described as having an incredible amount of empathy and understanding and for providing an exceptional level of care to her.
97. Mr and Mrs X's kinship assessment is also overwhelmingly positive. They live with their twelve-year-old daughter and eight-year-old son in army quarters, obtained through F2's position in the army. Mrs X started her career as a dance teacher and then moved into primary school and nursery education, obtaining a qualification in child nursing on the way. She is currently studying child psychology and applying to be a child-minder. Mr X and F2 have a third brother, [name redacted], who also has two children. They have a younger half-sister, [name redacted]. As well as D, F2 has two older children, a girl and a boy, both of whom he sees regularly.
98. Mr and Mrs X are also described in their assessment as friendly and welcoming. They are described as vibrant and active parents who enjoy an equal, mutually supportive marriage, shared values and parenting style based on listening, empathy and positive reinforcement. They are committed to promoting the relationship between D and her mother, siblings and extended maternal family.
99. I now consider the additional factors at **section 1(4)(c) and (f) 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))

The relationship the child has with relatives or other relevant persons 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 or other relevant persons 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)).*

A, B and C

100. I have considered above the likely effect on the children of being adopted. I share the guardian's concern that they are at risk of very significant confusion and emotional harm, even if a match which on paper looked perfect were to be found. In the long-term I am concerned that they would find it very difficult to recover from separation from their birth family at this age.
101. Even though it has not always gone smoothly, the children's relationship with their parents is of significant value to them. They feel loved, they treasure the time they spend with their mother in contact and with F1, albeit they have also at times felt let down by them both, recently more so by F1. Because these proceedings have gone

on for so long, a lot has been asked of children, parents and carers in terms of the commitment to contact. The parents have their own struggles and it is not perhaps surprising that there have sometimes been dips, and sometimes when the pressures around the litigation have spilled over into contact. In the balance must also weigh the warmth and affection that has also been seen between the parents and the children, their abilities to reassure them, to show an interest in them, play games with them and to manage their behaviour. The children identify strongly as part of the same family, huge efforts all round have been made to ensure that those connections have been maintained during the care proceedings. On any view, bringing an end to those relationships will have a significant impact upon the children.

102. If A, B and C are adopted they are most likely to be deprived of the opportunity to continue their meaningful relationship with D, with their half-siblings on their father's side and members of the extended family.
103. They have no relatives who are able to provide them with a secure environment in which to develop, or otherwise to meet their needs.
104. Mr and Mrs Z are 'other relevant persons' for these purposes. They have great affection for the children, are providing them with a very high level of care, and are committed to them remaining as members of their family for the remainder of their childhoods.
105. The children's parents are strongly opposed to them being adopted. They do have an established relationship with them, which has the potential to be enriching and valuable to them, in the event that the parents are able to engage with drug and alcohol treatment services. Their parents will always love them.

D

106. The relationship that D has with Mr and Mrs Y and the strong attachment that she has formed to them is hugely significant. It is plainly a relationship that is currently of great value to her. They would be able to provide her with the secure environment she needs to develop. They love her and very much hope to be able to care for her. Since coming into their care she has made enormous progress and she has a secure and loving attachment to them. The guardian explained to me that this attachment underpins everything for D; it enables her to go to sleep at night knowing that her carers will be there when she wakes. She goes to nursery knowing they will be there to collect her, she goes to them when she falls and hurts herself and is reassured. She looks to them for attention and affection, she learns from them her responses to the world and thus builds up her understanding. Leaving them would represent a huge loss to her, and she will suffer if she is removed from her care. If D was living with Mr and Mrs X, they would ensure that she maintained links to Mr and Mrs Y who are such important figures in her life, but she would lose them as her primary attachment figures.
107. Mr and Mrs Y have already demonstrated that they are committed to ensuring that D understands her life story, and would make sure that she continues to spend regular time with birth family members. In this way there is no risk that she would

cease to be a member of her birth family. However, this would be a busy contact schedule, with regular visits to both sides of the family. There is also a risk that she would find herself somewhat in limbo, knowing her birth family but not able to live with them. There is a risk that as she gets older, in five, fifteen, or twenty-five or fifty years, that she struggles to understand how it was that she was placed outside her birth family, when they were able and willing to care for her.

108. The quality of the relationship that D would have with Mr and Mrs X would be essentially different if she visited them a number of times a year compared to if she lived with them as part of their family. The assessment of Mr and Mrs X is that they too could provide her with excellent care, meet all her needs, and mitigate to a certain extent the negative impact of the disruption of her attachment to Mr and Mrs Y. They are able and willing to provide her with a secure environment in which she can develop. With Mr and Mrs X she would be the youngest child in a family of children, there is still a six year age gap between her and the X's youngest son. With Mr and Mrs Y she is likely to be more on her own, the next child up is nearly fourteen, so there is a bigger age gap.

109. In their letter to me Mr and Mrs X have also included a plea from D's paternal grandmother who also would love D to come and live with in the family, to know her cousins, her two older siblings on her father's side.

110. There is no question that both Mr and Mrs Y and Mr and Mrs X have the abilities and a strong desire to provide a loving, nurturing environment for D throughout her childhood.

111. D's mother would wish and will be enabled to continue her relationship with D wherever she is placed. She has no criticism against Mr and Mrs X, but she knows them less well. She has seen D thrive in the loving care of Mr and Mrs Y, she knows that they refer to them as mummy and daddy, and she is naturally concerned that D is not distressed and unnecessarily upset by separation.

112. D's father supports her placement with his brother.

The range of orders available to the Court

A, B and C

113. I have had regard to all the factors on the relevant welfare checklists and I am satisfied that in all the circumstances, these three children's welfare requires that I make care orders to the local authority. They cannot safely return to their parents' care.

114. Considering the applications for placement orders. I have firmly in mind that orders permanently severing the ties of children from their birth families should only be made in circumstances where it is necessary to secure their welfare; where nothing else will do.

115. I understand the reasons that the children's social worker regards adoption as a means of providing security and permanence throughout the children's lives, and her concerns that foster care may fall short in meeting their needs. I understand why she wants to explore the possibility of finding prospective adopters so as to give the children the opportunity of living in a forever family.

116. However, while I see the potential benefits in placement for adoption, it also in my view brings with significant risks and disadvantage. When comparing with the option of long-term foster care, I cannot say that nothing else but adoption is required to secure these children's welfare. In particular, my reasons are as follows:

- I found the guardian's evidence on this issue to be persuasive. I share her concerns about the impact of disrupting the attachments the children have made with Mr and Mrs Z, in circumstances where they have already suffered very significantly from the original separation from their parents;
- The children have an established relationship with their birth parents and with D, and the loss of that relationship would be devastating to them throughout their life;
- While there are prospects that a perfect forever family is found for them, the prospects cannot be regarded as very likely, the search would inevitably cause further delay for children who desperately need certainty and permanence, and there is a significant risk that the children would find the move very traumatic and would not be able to settle. There is a risk then of breakdown of the placement and the impact on the children would be terrible and lifelong;
- It is difficult to frame the narrative that could be given to the children to explain why they were to be adopted and particularly difficult in circumstances where the proposal is only for a six-month time limited search then a reversion to the plan of staying with their foster carers. There is a risk that keeping them in limbo while the search is on would cause them harm, and that if the search is not a success, and they find out, they would suffer further harm feeling rejected and unwanted;
- I accept SW's concerns that in foster care with continued contact with their birth family the children may receive mixed messages from their mother and feel a constant pull back to her, preventing them from settling. However, given the strength of the attachment that already exists, this issue may very well arise within the context of an adoptive placement as the children become teenagers and may wish to seek out their mother;
- It is arguable that this risk would be better managed by the experienced foster parents who already have an established relationship with the children's parents, who can help the children with ongoing life-story work and manage safe relationships with their parents, with the support of the local authority. Adoptive parents are unlikely to have the benefit of knowing the birth family and may find this much harder to manage;
- I accept as the guardian does, the risks and limitations of foster care, the potential stigma to the children of living their whole childhoods in care, the risks from lack

of continuity of social workers, and of the foster placement itself coming to an end, often bringing with it unplanned moves of school and repeated losses of connections to foster family and friends. However, I have to make my assessment on the facts of this particular case and not by making generalisations. While those risks exist, the evidence in this case is that the children are loved and valued by their current experienced carers who are committed to making them a part of their family for the rest of their childhoods.

117. The children are thriving in the care of Mr and Mrs Z. I consider it would be overwhelmingly in their welfare interests to remain in their care in the long-term.

D

118. The realistic options for D are:

- special guardianship order to Mr and Mrs Y;
- transition to Mr and Mrs X under an interim care order;
- transition to Mr and Mrs X under final care order.

119. I have had regard to all the factors on the welfare checklists. I have considered carefully the views of the children's social worker and the experienced guardian. I know that they have both anxiously considered the realistic options with genuine care and concern for D's welfare throughout her whole life.

120. If I made a special guardianship order to Mr and Mrs Y it would be a final order, D's placement would be secured, and local authority involvement in her life could come to an end (save to the extent that the local authority was advising and assisting the family in respect of contact arrangements). D would suffer no disruption and would continue living the happy life she is living with Mr and Mrs Y. She could continue to see members of her birth family on both sides.

121. If I make orders providing for a transition to Mr and Mrs X, the local authority would continue to be involved with D for an indefinite period of time, either under an interim care order or full care order. A final care order cannot be made for a specified period, it lasts until the child is eighteen unless discharged earlier. Realistically that means D would at some point be subject to a further application to the Court for discharge of the care order and potentially an application by Mr and Mrs X for special guardianship or other order to secure D's placement with them.

122. Like the social worker and the guardian I too have found this case to be very finely balanced and difficult to decide. However, having had regard to all the circumstances, to the relevant welfare checklists and with D's welfare needs throughout her whole life as my paramount consideration, I have concluded that I should make a care order to the local authority, and that D should move to live with her paternal uncle and aunt, Mr and Mrs X.

123. I have reached this conclusion not because I consider Mr and Mrs Y have in any way fallen short. They have devoted themselves to providing for D's every need from the minute she arrived with them, and I have no doubt that had she remained in

their care she would have continued to have received just as much love and attention as she always has. I am very sorry to be the cause of the pain and grief that I know they will suffer as a result of D leaving them. I am also conscious that she too is likely to be bewildered, distressed, and bereaved. I know also that there is a significant risk that the impact of this further separation at such a young age upon her will be life-lasting.

124. Notwithstanding these substantial concerns, I have reached my decision for the following reasons.

125. The law is clear that I should only intervene in a child's right to a family life if it is necessary to do so, and if so, that intervention should be proportionate. The family life that D was born into is one in which M is her mother and F2 is her father. By making the order the local authority seeks, her family life is preserved. D grows up knowing her birth family, living amongst them, not just visiting them, but being a part of that family for all her life. If some misfortune befalls her aunt and uncle so that they cannot care for her, she remains within the family network, bonded to the cousins she has grown up with in the same household, her paternal half-siblings, paternal grandmother, uncles and aunts, and their children and wider family.

126. To make a special guardianship order to Mr and Mrs Y fundamentally interferes with her family life; D would become a part of another family. Mr and Mrs Ys' commitment to her is total and I am sure that they would apply to adopt her or do anything else required to enshrine that commitment, and to provide her with as much security as they could give her. They are committed to ensuring that she would understand her life story and would meet regularly with maternal and paternal family. Even with all this, and acknowledging the strength of the attachment between them, it is not the same as growing up within a birth family. Regular visits to her paternal family is not the same as living with them.

127. A special guardianship order to Mr and Mrs Y does not represent the same security for life that an order for placement with Mr and Mrs X does. D would not be growing up with sibling figures her age, the foster child who is fourteen and living with them does not have the same connection to her that her cousins would and may not necessarily be living with the family once she has finished her education. If something happened to Mr and Mrs Y so that they were unable to care for D, she would not have access to the same sort of family networks to provide a safety net that she would have done growing up with Mr and Mrs X.

128. I do not doubt the quality of the attachment and the bond between D and Mr and Mrs Y. They have given her an extraordinary gift of love, security and stability. She has thrived in their care and their bond is strong. I do not doubt the distress and trauma that separation will bring for all. But I am not persuaded that the connection that they have built up over the past fifteen months effectively transforms the nature of the foster placement so that D's family life should now be regarded as with Mr and Mrs Y. I do not consider in all the circumstances that the bond with Mr and Mrs Y, strong as it is, can be regarded as sufficient to justify me making an order that re-writes D's life story in a way that means she loses her right to life with her birth family.

129. Put another way and with reference to the checklists, I am not persuaded that the risks to D of the consequences of disrupting her attachments and changing the status quo are such that it tips the balance against her birth family. I acknowledge that the effects of the disruption may be more than short-term. But the impact of not growing up within her birth family will be life-long. There are cases in which the length of time a child has spent with foster carers, the strength of the attachment and all the other circumstances are such that the Court should hesitate to intervene in the family life that has thereby been created. However, in the particular circumstances of this case, and in the context of D's whole life, although the decision was finely balanced, I have not reached that conclusion about her placement with Mr and Mrs Y.
130. I understand the guardian's concern about the unknown and whether Mr and Mrs X will be able to support D and mitigate the impact of separation, and whether she will bond with them. There is a risk that the placement would not succeed at all in which case the consequences would be terrible for D. We cannot know this - we cannot know for certain whether any risk will materialise. But I have to make decisions based on the evidence and not speculate. The quality of the kinship assessment is very high and its conclusions is incredibly positive. No specific risk has been identified. Mr and Mrs X have demonstrated sensitivity to D when they met her and she was comfortable and relaxed in their care. They have bonded well with her mother at Court as well as with Mr and Mrs Y. D is doing well and does not have any special needs above any other child her age. The local authority will be able to make referrals to services like ATTACH in order to provide maximum support to D to make the transition to a new home.
131. I have not departed from the views of the experienced guardian lightly. However, as is clear from her report and from her oral evidence, she has found the case to be acutely finely balanced. She has throughout the proceedings spent more time with Mr and Mrs Y and although she had observed one session of contact between Mr and Mrs X and D, she has not spent the same amount of time with them. She acknowledged the high quality of the assessments of each of the couples, but for her, the balance ultimately tipped ever so slightly in favour of Mr and Mrs Y. I have had regard to her careful analysis, but having had the benefit of hearing the evidence of the social worker as well and submissions from all parties, and having considered relevant case law, with the greatest respect to the guardian, for me the balance has tipped the other way.
132. I appreciate it may feel unfair; Mr and Mrs Y might not have invested in the relationship with D in the way they have done had their hopes not been raised that they could adopt her. They would not have found themselves in that position had Mr and Mrs X been identified as potential carers far sooner, or the proceedings had concluded within the original timescale and they had never been identified (although far better that they were found within these proceedings). The opportunity to investigate Mr and Mrs X as potential carers existed from the time the DNA test confirmed F2 as D's father back in April 2018. Compared to the mother, F2 has not developed much of a bond or demonstrated a commitment to contact, yet he is in a position where he may end up seeing more of D than her. But had I made the decision the other way, Mr and Mrs X may also feel unfairly treated; that they had been

prevented from caring for D only because they had not been afforded the opportunity to get to know her sooner.

133. D's welfare throughout her life is my paramount concern, not ensuring fairness to the adults. Having had regard to all the evidence, all the checklists and the submissions I have heard, this is my conclusion.
134. I am not persuaded that continuation of these proceedings by means of an interim care order is a good idea. This would merely prolong the proceedings for everyone when the essential decision would have been made. The support that would be given to Mr and Mrs X under a full care order would be the same as with the interim care order.
135. I do consider that to secure her welfare D requires the continued involvement of the local authority in her life in order to effect the transition plan to Mr and Mrs X and to offer all support and assistance to enable her to settle and adapt to her new family life. I therefore approve the local authority's plan for a care order on the basis of a transition plan to Mr and Mrs X and with a view to Mr and Mrs X in due course being supported as an application to discharge the care order is made and alternative orders sought which may secure D's placement with them in the long-term.

Contact

136. F1 and M present as emotionally warm and attuned to the children's emotional needs. Within the contact notes there are very many positive observations of them sitting together, chatting with the children, doing crafts or reading, and sharing meals together. However, there have also been times when contact has been more sporadic, F1's attendance has been irregular, and he has often promised things to the children, such as McDonalds, which he has not delivered and they have felt let down. The mother's attendance has generally been better, but there have been times when she has presented as overwhelmed by her own emotions and anxieties and this can lead her to be distracted and focused on discussion her situation with workers and foster carers, which has meant that contact has not always been consistent. The guardian noted that when she met the children in December 2018 the children did not want to talk about contact and did not describe any positives about it. More recently they have been more positive, with A describing the contact centre as 'amazing'.
137. F1's contact with A, B and C has been reduced to three times a year, the mother's contact with all her children is proposed to be a total of nine times a year (each child seeing her six times but some contacts will have more than one child attending at the same time). F1 would prefer more, but in all the circumstances, and given the need to balance giving the children to settle into their placements as their permanent homes, with all the other appointments they will need to manage, I consider that three times a year is the right balance to strike now.
138. F1 did have a close bond to D when she was a baby and she has his surname. However, he is not related to her and continuing contact with her would in my view be more for his benefit than hers. In all the circumstances of the case I would not suggest that the local authority should be reviewing their plan in this respect.

139. Given the DNA tests, it would seem appropriate for a formal declaration of parentage to be made. There is no opposition to F2 being granted parental responsibility for D.
140. F2 seeks a name change for D. Although I understand the wish for her to maintain a link to her maternal siblings who have the same surname her, it would seem sensible that her name reflects her actual parentage. The mother has suggested that her own name is also included. It was agreed that I should give the parties the opportunity to discuss this further but will give a decision on this if requested.
141. For the reasons I have given I will:
- Make care orders in respect of all four children;
 - Refuse the local authority's applications for placement orders for A, B and C ;
 - Refuse Mr and Mrs Y application for a special guardianship order;
 - Approve a care plan (to be amended) that the three older children remain in the care of their current foster carers;
 - Approve a care plan (to be finalised) providing for a fairly swift transition of D to the care of Mr and Mrs X;
 - Approve the arrangements for contact drawn up by the social worker and the guardian and which the parties have agreed in principle.
142. I would like to thank all the parties and the children's carers for the dignified way in which they have conducted these proceedings. All have presented their own positions to the Court powerfully but generously, never seeking to score points or find negatives in others but to acknowledge the positives. They have listened patiently and attentively, and have been warm, friendly and accepting of one another and respectful of each other's positions.
143. Huge credit is due to [the children's respective foster carers Mr and Mrs Z and Mr and Mrs Y] who have provided the children with loving, consistent, attuned and attentive care, which has enabled them to settle and thrive after experiencing very disrupted and at times neglectful care.
144. Credit is also due to the children's parents who have built up positive relationships with the carers and have recognised the loving attachments that the children have formed. What also shines through the papers is that the children are delightful, kind, affectionate children with a strong sibling bond. It is not usual for two sets of foster parents with whom children were placed on a temporary basis to come to the decision that they would like to care for them permanently.
145. Mr and Mrs X have acknowledged the children's existing relationships and the importance for the children of maintaining them. I have confidence that they, the children's parents, Mr and Mrs Y and Mr and Mrs Z will continue to work together in the future in order to promote the happiness and welfare of these special children. I wish you all well.

Joanna Vincent
14th June 2019

HHJ Vincent
Family Court, Oxford

THE FAMILY COURT SITTING AT OXFORD

OX18C00009

IN THE MATTER OF s31 CHILDREN ACT 1989 AND IN THE MATTER OF A, B, C & D

Date: 14th June 2019

Before: HHJ Vincent

Between:

OXFORDSHIRE COUNTY COUNCIL

Applicant

and

M

1st Respondent

and

F1

2nd Respondent

and

A, B, C and D

(Acting through their Children's Guardian)

3rd, 4th, 5th & 6th Respondents

and

F2

7th Respondent

Final Threshold

The Local Authority contends that the threshold criteria under Section 31 Children Act 1989 is hereby satisfied on the basis that, as at the relevant date, being **Monday 12 February 2018**, **A, B, C and D** were suffering and/or were likely to suffer significant harm, such harm being attributable to the care given or likely to be given to them if the order were not made, not being what it would be reasonable to expect a parent to give them.

In support of the satisfaction of the Section 31 threshold criteria, the Local Authority seeks the findings of facts set out below.

In so far as the Local Authority seeks to rely on facts or matters transpiring subsequent to the date of the initiation of protective arrangements for the children, it will say, following *Re: G*

(Care Proceedings: Threshold Conditions) [2001] 3FLR 1111 that it is entitled so to do as relevant to the situation then pertaining.

The Local Authority asserts that threshold is satisfied by the following:

1. Neglect

The children have suffered significant neglect in the care of their mother and F1. The family has been known to Children's Social Care since 2011. They have been on Child Protection Plans since December 2015 due to the mother and F1's drug abuse and chaotic drug life style, poor home conditions, poor school attendance, domestic violence witnessed by the children and allowing risky individuals in to the home who are heavily involved in criminal activity. In particular:

- a) The eldest three children attend [name redacted] School but their school attendance is only 87% putting them at risk of educational and social deprivation. Prior to being placed in care, A's attendance was 94% C's was 95% and B's was 90%, but had dropped as low as 87% during the 2017-18 school year;
- b) B has hearing and speech difficulties and her parents have neglected taking her to audiology appointments resulting in significant impairment to her hearing as a result of which she is having to lip read. This means that she has suffered physical harm and educational harm as she is falling behind with her school work.
- c) The mother and F1 have on-going rent arrears of about £4,000 and are therefore unable to ensure that the children have a secure home in which to live.

2. Physical Harm

All four children have been exposed to domestic violence incidents between the mother and F1 and between them and the extended family putting the children at risk of physical and emotional harm.

3. Physical and Emotional Harm

On [date redacted], there was a Police raid at the family home following reports of drug dealing in the home. Two teenage males [redacted] were arrested coming out of the property and were found to be carrying Class A substances and a lock knife. Both the youths have a history of violence including stabbings and are believed to be involved in "county lines" drug dealing.

A search of the family home revealed a further knife in the mother and F1's bedroom as well as a package suspected to contain traces of drugs, drug paraphernalia including scales and bong. It therefore appears that the home is used in the preparation and supply of Class A drugs. The children have been at risk of significant harm from the mother and F1 allowing violent drug dealers into their property, posing a physical and emotional risk to the children. In addition, the children may accidentally ingest any

substances found in the property or injure themselves on weapons kept within the family home.

4. There has been a previous drugs raid on the family home on [date redacted] and drug paraphernalia including bongs, scales, deal bags and imitation firearms were found and it was noted that there was a strong smell of cannabis.
5. The mother and F1 have shown that they minimise their own and their partner's drug use and are unable to act protectively of the children to ensure that the family home is a safe drug and weapon free environment and that no risky individuals, including persons known by them to use and/or deal drugs, are visiting the family home.
6. The mother and F1 have failed to consistently work openly and honestly with professionals in order to ensure the safety and wellbeing of the children. Prior to proceedings, they demonstrated a lack of insight into the LA's concerns and a commitment to tackling them.
7. The mother and F1 were evicted from the family home in February 2018 due to significant rent arrears. This failure to prioritise maintaining a stable family home caused the children emotional harm.

Drug Use

8. Both the mother and F1 have used drugs whilst caring for the children, placing them at risk of neglect and emotional and physical harm. In particular:
 - a. Mother tested positive for cocaine for the beginning April to beginning October 2017 Mother's latest hair strand test results are positive for cocaine use between mid-February and mid May 2018
 - b. Mother has been diagnosed with cocaine dependence syndrome
 - c. F1 tested positive for cocaine and cannabis use from the beginning of September to the beginning of October 2017. His latest hair strand test results are positive for cannabis and cocaine between end March and end May 2018.
 - d. F1 has been diagnosed with a dependency on multiple substances
9. D's father, F2 tested positive for cocaine use from May 2018 to August 2018, is socially isolated and has had mental health difficulties, a history of domestic abuse and is unable to provide D with financial stability or suitable accommodation in order to be able to meet her basic care needs.

Oxfordshire County Council
4 July 2018
Amended on 14-06-19