Neutral Citation Number: [2024] EWFC 70 (B)

Case No: KH23C50113

IN THE FAMILY COURT
AT KINGSTON UPON HULL

Date: 21 March 2024

Before:

HHJ Stephen Brown

- -

Between:

The Local Authority	**Applicants**
- and -	
M **F** **V, W, X and Y** **(The Children through their Children's Guardian)**	**Respondents**

- -

Helal Ahmed (instructed by **the LA**) for the Applicants
Gavin Button (instructed by **Brooke Williams Solicitors**) for M
Sharon Tappin (instructed by **Simpson Millar LLP**) for F
Gaynor Hall (instructed by **Sandersons Solicitors**) for the Children's Guardian

Hearing dates: 18-21 March 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 12.10 pm on 21.3.2024 by circulation to the parties or their representatives by e-mail and, thereafter, by release to the National Archives.

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

HHJ Stephen Brown:

1. I am concerned with the welfare of four children V, W, X and Y.

2. The children's mother is M. She is represented by Gavin Button. I may refer to her on occasion as 'the mother' in this Judgment.

3. Their father is F. He is represented by Sharon Tappin. I may refer to him on occasion as 'the father' in this Judgment. He is currently remanded in custody awaiting trial on a number of serious charges. Those allegations do not relate to the mother. He has been produced at court on each day of this final hearing ('FH'), which has taken place in the magistrates' court so as to utilise the secure dock facilities. On the 3rd day of the FH, when I was to hear submissions, he elected to return to prison prior to hearing submissions although did confirm that he still wished to be represented. He has attended today, the 21 March 2024, to hear my Judgment.

4. The children's guardian is CG. She is represented by Gaynor Hall.

5. The local authority which brings these proceedings is represented by Helal Ahmed. He takes his instructions from the allocated social worker, SW. I may refer to the local authority as 'the LA' in this Judgment.

The background

6. M is 31 years old. She did not have a happy childhood and did not enjoy a positive relationship with her mother. She has two older children, Q and R. They live with their father and the mother does not have any contact with them. According to the papers before me, the reason they live with their father is that they had a number of unexplained injuries whilst in the care of M.

7. F is 33 years old. He was in a relationship with the mother for around 12 years, between 2011 and 2023. It perhaps says something about the nature of that relationship that at the outset of proceedings he questioned whether he was the father of W, X and Y and requested DNA testing of all 4 children. DNA testing confirmed that he is the father of all of these children.

8. Shortly after the oldest of the subject children, V, was born there were proceedings with respect to him. The triggering event was unexplained injuries to his forehead and back. He was eventually rehabilitated to his parents having spent a number of months in foster care.

9. The chronology that is before the court with respect to these current proceedings sets out multiple occasions on which X's nursery informed the local authority that she had bruises or other minor injuries and otherwise presented as dirty, smelly or unkempt. Separately, V and W's school report numerous occasions on which the boys have told school staff that their dad or mum has hurt them, with the school observing marks and bruises. On 29.9.22 V Facetimed his maternal aunt and told her that his dad had hurt his mum; the aunt informed the local authority that she had witnessed this in part and heard shouting. The children were placed on child in need plans in December 2022.

10. On 2.3.2023 V and W's school informed the LA that both boys had a number of injuries. W in particular had a very significant injury to his back, a photograph of which is before the court. When a student social worker spoke to W about this, he said that his father had done it, pulling him when he was angry. W was subject to a child protection medical on 3.3.23 which confirmed that he had 15 individual marks/injuries including a number of bruises and a scab on his back.

11. It was immediately following this that F left the family home and M agreed a safety plan for him to remain away. The mother was provided with intensive family support and home conditions, which had been of concern, were seen to improve somewhat. However, the children continued to present with bruises noted by nursery and also seen during a home visit.

12. F was remanded in custody on 18.3.2023 with respect to the offences that have already been outlined.

13. On 9.5.2023 X attended nursery with a large number of bruises to her body; within the papers before me it is set out that nursery noted 68 separate bruises on this occasion. The police exercised their protective powers, and the children were placed in foster care on 9.5.2023.

14. Child protection medicals were conducted for V and X on 10.5.2023.

    a. V was documented as having a total of 25 injuries including bruises and abrasions. These included 4 separate abrasions to his ear which he told the treating paediatrician, Dr P, had been caused by his mother. Similarly, he said that a large healing scabbed abrasion to his left knee had been caused by his mother pushing him over. With respect to the very many other injuries, neither V nor his mother were able to offer any explanation.

    b. Although X's nursery had documented 68 injuries Dr P was unable to confirm this because X became very distressed during the examination. Dr P was able to confirm, however, 37 injuries many of which were unexplained by her mother.

15. Proceedings were issued on 11.5.23 and are therefore over 10 months old. Following an initial hearing before HHJ Richardson the children have been in foster care under ICOs throughout. After some initial, short-term arrangements, the boys have been placed together but separately from the girls who are also placed together. The boys' placement has been settled and they have remained with the same carer, 'S'. The girls have had 3 moves in total, including a relatively recent move. The case has been managed by HHJ McGinty.

16. Within proceedings, the court permitted a report from an expert consultant paediatrician, Dr Rahman. That report is dated 18.10.23. He considered the child protection medicals conducted on W on 3.3.23 and on V and X on 10.5.23. His conclusions can be summarised thus:

a. With respect to V he opined that the 25 injuries identified in the child protection medical were minor and could relate to lack of parental supervision rather than infliction.
b. With respect to W he confirmed that he had 15 separate injuries at child protection medical. He opined that several of these were quite small and non-specific. However, he concluded that the injuries to W's back were more likely to be '*non-accidental inflicted injuries*.'
c. With respect to X, he confirmed that she had 37 individual marks on her body at the child protection medical on 10.5.23. His opinion was that many of these were minor and non-specific and likely to be due to lack of supervision. However, clusters of bruises on her right upper thigh and right forearm were consistent with forceful grabbing and were more likely than not to be non-accidental.

17. While Dr Rahman set out within his report the fact that at his CPM V had alleged that injuries to his ear and to his knee had been caused by his mother, he does not offer any commentary on that fact nor any opinion as to whether those injuries were consistent with the allegations that V made. What is remarkable to me is that no one, including the local authority and those representing the children, appears to have picked up on that fact prior to Mr Ahmed preparing the written opening for this FH, or therefore sought to ask Dr Rahman any questions with respect to it. What is further remarkable and unfortunate, given Dr Rahman's opinion in October 2023 that the injuries to W's back were likely to be inflicted, is that the local authority failed to plead that fact until less than 2 weeks before the final hearing (a point which is further discussed below).

18. The case came before HHJ McGinty for issues resolution hearing ('IRH') on 12.12.23. At that hearing, the LA's permanence plan for X and Y was confirmed as one of adoption and for W and V, long term foster care under care orders.

19. Those plans were and are opposed by the mother who says the children should be rehabilitated to her care. Her primary position, as developed in closing submissions, is that I should extend the interim care orders for all 4 children whilst she undertakes further work, which she accepts is necessary, with a view to having her children returned. Her secondary position is that I should not grant placement orders for the girls and that if they can't be returned to her care, they should be subject to long-term foster care.

20. The father's position as at the IRH was (i) he accepted he is not in a position to care for the children; (ii) he did not support the children returning to the mother's care; and (iii) he did not, in the circumstances, oppose the LA's plans for any of the children. That position changed during the FH, in ways that are discussed below, but his final position was to support the making of care orders for all 4 children and oppose the making of placement orders for the girls.

21. The children's guardian supports the LA's applications and plans for permanence. However, as part of her case as presented at court both in evidence and submissions, she invites me to make contact orders pursuant to s26(4) of the Adoption and Children Act 2002 ('ACA2002') for there to be ongoing direct contact between the siblings

post any placement of the girls. That position is supported by the parents (in the event that I make placement orders) but opposed by the LA.

22. HHJ McGinty listed the case before me for FH due to my earlier availability. The FH has taken place between 18 and 21 March 2024.

F's application

23. At the IRH the LA sought and were granted permission to re-plead their threshold document. They were directed to do this by the 5.1.24 with parental responses by the 19.1.24. Having been granted that permission and despite being aware that F did not contest the LA's plans, the LA added a series of findings against F to its new Threshold document which had not previously been sought against him. Those new findings fall into the following categories:

    a. Findings that injuries to W's back identified on 3.3.2023 were inflicted by F. Those findings were based on the expert report by Dr Rahman already summarised, and which the LA had had since mid-October.
    b. Findings relating to F's drug use. F has not been subject to drug-testing in proceedings, nor made any admissions in that regard; this finding was sought solely on the mother's account that her own positive drug test results might be attributable to passive exposure to F's alleged drug use.
    c. Findings relating to alleged breaches of safety plans that had been put in place by the LA.

24. Despite the direction that any amended threshold should be filed by 5.1.2024, the document filed by the LA is dated 29.2.24 and was not actually filed until a week thereafter. I was, and am, highly critical of the LA for this delay which, I was told, occurred due to 'oversight' by the solicitor with conduct.

25. F had not, given the stance he then took, identified any witness requirements at the IRH. The LA's very late filing of its amended threshold document left him without any fair chance to respond to those findings that were newly sought against him nor muster arms with respect to challenging them at the final hearing.

26. On 15.3.24, and therefore the business day before this FH commenced, F's solicitor issued an application to adjourn the FH. The basis for this application as set out in the C2 filed with court was:

> *"The father is not in a position to proceed to a final hearing given an issue which arose in respect of his representation on 11th March 2024. He was attended upon in prison by his then legal team. During the meeting* a *professional issue arose which now precludes them from continuing to act on his behalf. Their instructed Counsel has also had to withdraw. Those solicitors immediately put in place alternative representation, but it has not been possible to meet with the father to take his instructions and response* [sic] *to final threshold as no prison visit appointments have been available, either in person or via video-link. The local authority were considerably late in providing the proposed final threshold document (on the information available to the current solicitors it would appear it was*

> *over a month late). The issue which arose during the client solicitor meeting would have been identified much earlier had final threshold been filed in accordance with the case management order. It would be unfair for the final hearing to proceed in circumstances where the LA pursues threshold findings against the father."*

27. Entirely properly I am not aware of the legal issue that caused F's previous legal team to withdraw. However, the upshot of their withdrawal was that, as of the first morning of this final hearing, F had not met his Counsel, Ms Tappin, nor had an opportunity to provide instructions to his new solicitor.

28. On the first morning of this hearing, the advocates asked to address me; at this point F had still not been produced. The advocates' position was that it may be possible for them, if I were to give the remainder of the day over to discussions, to re-consider the position with respect to threshold and also that Ms Tappin may have a proper opportunity to take instructions.

29. As part of this discussion with advocates I made the point that that at the IRH F had made it clear that (i) he was not in a position to care for the children, given his ongoing remand status; (ii) he did not support an of the children returning to their mother's care; and (iii) he did not oppose the LA's plans for the children. As far as F's case was concerned, the court could have made final orders at IRH; the only reason that there had been delay was due do the mother's case. In light of this, I queried whether it was either necessary or proportionate for the LA to seek non-admitted findings against F. By the end of this discussion, F had been produced at court, and I stood the case down for Ms Tappin to meet her client, take instructions and for further discussions between the parties as to threshold.

30. Over the course of the morning, it was then confirmed that threshold had been agreed on a basis accepted by F but with some outstanding areas of dispute by M. The case was called back on to consider the proposed threshold document.

31. It was while I was going through that document that I was told that F now pursued his application for an adjournment in any event. As Ms Tappin outlined her reasons for that application, it became clear that F, who was in a secure dock and not, therefore, in a position to give instructions to his Counsel easily, had more he wished to say about this issue. At the same time, Mr Button pressed on me the fact that the LA had filed around 155 pages of new evidence – much of it, school records – on the preceding Friday and that he had not had a proper opportunity to go through that material with his client. I therefore stood the case down once again over an elongated luncheon adjournment.

32. When the case resumed Ms Tappin renewed her application for an adjournment. F's case at this point, and contrary to his position at IRH, was that he sought to have the children returned to his care. Whilst his criminal trial is still some 2 months hence, it is his expectation that he will be acquitted at which point, he says, he will be in a position to resume care (notwithstanding the negative parenting assessment of him, filed in these proceedings). That application was opposed by the LA and CG, with M being neutral. I dealt with it on an extempore basis and refused it. That extempore

Judgment would need to be considered alongside this for completeness, but I will summarise the reasons for my refusal here:

a. Both the Children Act 1989 ('CA89') and the ACA2002 set out the statutory principle that delay is harmful to children.
b. These children had a statutory right to have their permanence plans settled within 26 weeks of issue; we are already well outside of that limit. Indeed, by the time of F's criminal trial, it will be a year since issue.
c. Even if I were to await the outcome of F's trial, there is no guarantee that he will be acquitted. Given the serious charges that he faces it seems very likely to me that if he is convicted he will remain in custody.
d. F has not seen the children since his remand in custody a year ago; the proposition that, given their ages, they could simply be placed in his care in May is fanciful.
e. Further, and in any event, there is a negative parenting assessment of F in this case (one which he indicated at IRH he did not challenge) and the court was in a position to consider the merits of that assessment at this hearing, without delay.

33. Having refused F's application, and having confirmed that there were now significantly fewer witnesses given that threshold had been nearly entirely resolved, I stood the case down to the 19th March so that the parents' advocates could have the balance of the afternoon to take instructions on welfare issues (in F's case) and the newly filed evidence (in M's case).

The issues

34. I have been required to determine the following issues:

a. M disputes one aspect of Threshold relied on by the LA. She disputes that she misused alcohol whilst caring for the children or that she has misused drugs either whilst caring for the children or since.
b. M says that I should not finalise these proceedings but should extend the ICOs for an indefinite period to enable her to improve her situation with a view to resuming care of her children.
c. Both parents oppose the making of placement orders and do not consent to the same.
d. The guardian invites me to exercise my discretion under s26(4) of the ACA2002 to make orders for sibling contact. In the event that I am to make placement orders, the parents support that application. The LA opposes it.

The law

(i) Threshold

35. Both parents in this case concede that threshold is crossed for the purposes of making final care orders, as set out in s31(2) of the CA1989. However, M disputes one factual element relied on by the LA. In that regard, the following legal principles – which are well known and uncontroversial – are drawn from paragraphs 46-53 in the case of Re L and M (children) [2013] EWHC 1569 (Fam), a decision of Baker J as he then was:

a. First, the burden of proof lies at all times with the local authority.
b. Secondly, the standard of proof is the balance of probabilities.
c. Third, findings of fact in these cases must be based on evidence, including inferences that can properly be drawn from the evidence and not on suspicion or speculation.
d. Fourthly, when considering cases of suspected child abuse the court must take into account all the evidence and furthermore consider each piece of evidence in the context of all the other evidence. The court invariably surveys a wide canvas. A judge in these difficult cases must have regard to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward by the local authority has been made out to the appropriate standard of proof.
e. Fifthly … [w]hilst appropriate attention must be paid to the opinion of … experts, those opinions need to be considered in the context of all the other evidence. It is important to remember that the roles of the court and the expert are distinct and it is the court that is in the position to weigh up the expert evidence against its findings on the other evidence. It is the judge who makes the final decision.
f. Sixth, the evidence of the parents and any other carers is of the utmost importance. It is essential that the court forms a clear assessment of their credibility and reliability.
g. Seventh, it is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720).

36. My numbering differs slightly from Baker J's, by reason of the fact that I have left out points that relate solely to non-accidental injury.

37. I have had firmly in mind at all times the fact that with respect to the contested threshold matter M does not assume any burden of proof; even if she raises alternative explanations for her positive drug and alcohol tests, a failure to prove them does not mean that the local authority succeeds on its case.

(ii) Welfare

38. If I am satisfied that Threshold is crossed, I must go on to consider which orders, if any, I should make, conducting a welfare analysis of the competing permanence options for each child.

39. The children's welfare is my paramount consideration: the CA 1989 s1(1).

40. Since the local authority applies for a placement order for X and Y, it is their welfare throughout their lives that is paramount: the ACA 2002 s1(2).

41. I must have regard to the general principle that any delay in determining the issues is likely to be prejudicial to the children's welfare: CA 1989, s1(2); ACA 2002, s1(3).

42. I must have regard in particular to the relevant welfare checklist issues: CA 1989 s1(3); ACA 2002 s1(4).

43. I must have regard to what is often termed the 'least interventionist' principle: CA 1989 s1(5); ACA 2002 s1(6).

44. The principles I must apply to the local authority's applications for care and placement orders for X and Y are definitively stated in two cases: Re B (Care Proceedings: Appeal) [2013] UKSC 13 and Re B-S [2013] EWCA Civ 1146.

45. In Re B-S the then President of the Family Division said that a court must always have in mind at every stage of the process the following matters:

    a. Article 8 applies. The overarching principle remains that explained by Hale LJ, as she then was, in Re C and B [2001] 1 FLR 611, at paragraph 34, namely 'Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child'.
    b. The test to be applied is both stringent and demanding. As Lady Hale said in Re B, at paragraph 198 'the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by the overriding requirements pertaining to the child's welfare, in short, where nothing else will do.'
    c. The court must consider all the 'realistic' options before coming to a decision.
    d. The court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities could offer.
    e. There must be an adequately reasoned Judgment, approving the observations of McFarlane LJ, as he then was, in Re G (A Child) [2013] EWCA Civ 965, at paragraph 49 'The judicial task is to undertake a global, holistic evaluation of each for the options available for the child's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child's welfare'.

46. I may not make a placement order in the absence of the parents' consent, unless I am satisfied that in the case of each of the girls, their welfare throughout their life requires me to dispense with the parents' consent: ACA 2002 s52.

47. I have considered the law with respect to making contact orders consequential upon making placement orders separately below.

Witnesses

48. Once threshold had been largely resolved, I was only required to hear from 3 witnesses; the social worker, SW; the mother, M; and the guardian, CG.

49. I found SW to be a balanced and fair witness; she acknowledged the positives in the mother's position and reflected on the questions, giving thoughtful answers. That was in line with my assessment of her written evidence, in particular the Together and Apart assessment, which I found to be a considered, nuanced and helpful document. When Mr Button put to SW that the mother is a '*very easy person to work with'*, her response was '*yes, she is a likeable character'*. She gave this answer with a smile and with warmth. It struck me as genuine.

50. The social worker's view of the mother accorded with the impression that I was able to gain of M when she gave her evidence. She was in no sense argumentative or hostile and gave her answers politely. She made a number of concessions in evidence including that she did not consider herself ready to have the children returned to her care yet. She agreed with the social worker's evidence that it was likely to be at least 12 months before she would be in a position to put herself forward for reassessment. Even then, her view was that the children would need to return in stages with the boys coming home first. She made a very moving concession, in my view, that contact between the children should take priority over her own contact with them.

51. On the contested issue of her alcohol and drug use, I did not find M to be truthful witness, a point which I deal with separately below. Nor was I left with any sense that she fully acknowledges or has insight into the scale of harm that her children suffered in her care.

52. I found CG, like the social worker, to be a fair and balanced witness. She had clearly given proper, independent and detailed consideration to the children's positions. Insofar as there is disagreement between the social worker and guardian, I found this to be a proper, professional disagreement on the finely balanced issue of whether there should be orders for post-placement contact between the siblings.

Threshold

53. The contested area of Threshold is the mother's reported drug and alcohol misuse. She denies that she drank alcohol (at all) whilst caring for the children, although accepts drinking to excess after they were removed from her care. She denies ever using drugs and believes that any positive hair strand test results must be from passive exposure, she says, to F's drug use. As noted above, F was remanded in prison from mid-March of last year.

54. There is a Lextox report, dated 21.7.2023. This concludes that:

    a. *M has tested positive for a constituent of cannabis, delta-9-THC, in the four oldest hair sections analysed, covering the approximate time period from the end of December 2022 to the end of April 2023. However, no metabolites of cannabis have been detected; in the absence of a cannabis metabolite, cannabis use cannot be confirmed. Possible explanations for a cannabis*

constituent being detected without a cannabis metabolite in this case could be:

- *Use of cannabis*
- *Passive exposure from frequently being in the presence of people smoking cannabis*

However, cannabis metabolites are generally detected at lower levels than the parent compound (delta-9-THC) and may not be detected despite an individual using the drug. Therefore, when considering this information and the levels of delta-9-THC detected these findings are, in my opinion and on a balance of probabilities, more likely than not, due to the use of cannabis.

b. *M has tested positive for the cocaine metabolite benzoylecgonine in the three oldest hair sections analysed, which cover approximately from the end of December 2022 to the end of March 2023. Benzoylecgonine can be detected as a result of cocaine use; however, as cocaine has not been detected the use of cocaine cannot be confirmed. However, in this case, in my opinion and on a balance of probabilities, the results obtained are more likely than not, due to the use of cocaine.* (That conclusion refers back to an earlier section of the report where the author explains why, in a case of passive exposure, '*it would not be expected for a cocaine metabolite to be detected without cocaine*').

c. *The findings suggest that M has consumed chronic excessive levels of alcohol in the approximate time period from the end of December 2022 to the end of June 2023.*

55. In her written statement, dated 24.11.2023, M says '*I can only explain the results as being due to passive exposure to drugs when F was at the house with me as I have not taken drugs. Mindful of the results as to alcohol use, I have addressed this and greatly reduced usage, I am available for any further testing to prove I have addressed this'*.

56. In her oral evidence M told me that she had not drunk at all whilst caring for the children and that her excessive alcohol consumption only started after their removal in May 2023. She continued to deny any use of drugs.

57. There is a second Lextox report dated 17.1.2024, which was directed at the IRH given M's case that she had never used drugs and had reduced her alcohol consumption. This report does not identify chronic excessive alcohol misuse and did not detect cannabis use. However, the report did conclude that:

a. *M has tested positive for a cocaine metabolite, benzoylecgonine, in all six hair sections analysed, which cover approximately from the end of June 2023 to the end of December 2023. In addition, cocaine has been detected in the five oldest hair sections analysed. The detection of benzoylecgonine with cocaine indicates the use of cocaine. Therefore, these findings are, in my opinion and on a balance of probabilities, more likely than not, due to the use of cocaine.*

58. In light of that report, and given M's continued denial of ever using drugs, her solicitor put further questions to Lextox with an addendum report dated 20.2.2024. The question, in essence, was whether M's positive results for cocaine between June

and December 2023 could be as a result of passive exposure to what she alleges is F's cocaine use, albeit acknowledging that she could not have been exposed to that following his removal from the family home in March 2023. The addendum report author does not accept that this explanation is consistent with the results produced and stands by the earlier conclusion that *'these findings are in my opinion and on a balance of probabilities more likely than not due to the use of cocaine in the time period covered by the hair analysed'*.

59. Given M's oral evidence that she did not use alcohol at all whilst caring for the children, I took her to the statement of Dr P, the treating paediatrician who conducted the CPMs on V and X in May 2023. She confirmed that information set out in that statement, that Dr P says she took from her with respect to having had a hole in her heart was accurate. Dr P's statement goes on to say:

> *"Mum told me she does not smoke cannabis or use drugs … She told [me] she has occasional alcohol at the weekend such as a bottle of WKD. Father is F … M told me … he does not smoke cannabis or use drugs*."

60. This was at odds with her oral evidence in two regards; first, it was a concession that she did drink alcohol whilst still caring for the children (albeit on an occasional basis) and second it is a denial that F used drugs, whereas she now claims that her own positive tests are a result of passive exposure to his drug use. M's explanation for this, when asked, was that she thought that the Doctor was asking her about previous history rather than the current situation. I don't accept that answer. It would not make sense that the Doctor, considering current injuries to children, would only be interested in what used to happen, rather than what was currently happening in the children's lives.

61. As set out, this is not simply a case of one scientific report confirming denied drug use. There are two reports conducted on different hair samples and covering different periods. I find, on balance of probabilities, that M has consumed alcohol to excess whilst caring for the children and has misused drugs as set out in the Lextox reports. This, of course, is consistent with the sub-standard parenting that the children were receiving up until their removal. It is relevant to my welfare determinations that the mother has continued to use drugs at least until December of last year and continues to be in denial about that fact.

62. The balance of threshold is agreed by the parents. For the avoidance of doubt then, my threshold findings are:

    At the point when the local authority issued proceedings the children were suffering and were likely to suffer significant emotional and physical harm and neglect and that harm and likelihood of harm was attributable to the care given to them, and likely to be given to them if no order were made, not being what it would be reasonable to expect a parent to give them.

    In support of the above contention, I find the following facts:

(1) Child Protection medicals were undertaken in respect of V and X on 10 May 2023, following the Police exercising their powers of protection and removing the children from their mother's care.
(2) The Children had the following injuries:
  2.1 X had multiple injuries on her body, 37 in total.
  2.2 X had 5 bruises on her right arm.
  2.3 X had 1 bruise on her left forearm.
  2.4 X had 5 bruises on her outer left thigh.
  2.5 X had 5 bruises on her upper right thigh.
  2.6 V had multiple injuries, including bruises and abrasions, 25 in total.
  2.7 V had four separate small abrasions (areas of broken skin) behind his right ear.
  2.8 V had a healing scab over his left knee.
(3) V and X, were in the care of M at the time they sustained the injuries listed above. The injuries listed in paragraph 2.2-2.5 and 2.7 to 2.8 were caused recklessly by M. The other injuries listed above were sustained by V and X as a result of lack of supervision by M.
(4) A child protection medical was undertaken in respect of W on 3 March 2023. W had 15 injuries noted. Save the injuries to W's back, labelled as 9, 10, 11 at E55 in the report of Dr Rahman, dated 18.10.23, which the father says occurred accidentally and have not been litigated in these proceedings, the remaining injuries sustained by W were as a result of lack of supervision by F and M.
(5) Throughout the current period of involvement of Children's Social Care (commencing 30 September 2022) there have been repeated concerns raised regarding the number of bruises and injuries sustained by the children. There has been failure to adequately supervise the children on the part of the Respondent Parents.
(6) The children have been exposed to neglectful parenting and harm as follows:
  6.1 The parents' relationship has featured significant domestic abuse and the children have been exposed to this.
  6.2 The home conditions have been poor and observed to be unclean and unhygienic and the parents have not been able to manage home conditions despite intensive support.
  6.3 The children have presented as smelly, unkempt, and unclean.
(7) M used drugs and consumed excessive alcohol whilst caring for the children. This has placed the children at risk of harm.

63. For the avoidance of doubt, the reason that the injuries to W's back have not been litigated is the late inclusion of them on the local authority's threshold document and the difficulty, in those circumstances, in ensuring that F had a fair opportunity to respond to them. Given his position which evolved within this FH from seeking return of the children to actively supporting the making of care orders with plans of long-term foster care, it was neither necessary nor proportionate to litigate those findings. In the event that F were to seek to resume care of any of these children or apply for contact orders over and above contact that is approved by the local authority it would be open to the local authority to revisit whether or not it should seek findings that those injuries were deliberately inflicted.

64. For the further avoidance of doubt, I have not been asked to make any finding with respect to physical violence between the parents and have accepted their concession

that the children have suffered significant emotional harm as a result of being exposed to domestic abuse by way of loud verbal arguments. What is clear from the papers before me is that the children – especially the boys – have evinced real fear directed at F in particular. That is recorded in the unchallenged statement of the assistant principal and designated safeguarding lead of their school, amongst other places. I have no doubt that that fear is real and is a result of their lived experiences at home.

Welfare

65. Having found that threshold is crossed I turn to my welfare decisions.

66. The realistic options for these children are limited.

67. First, there are no wider family members or friends who have been positively assessed to care for the children.

    a. M put forward three people she wished to be assessed. Two of these confirmed to the social worker that they were not in a position to care for the children and did not want to be assessed. The third, M's brother, B, was ruled out following concerns that were raised during basic checks. In October 2023, M confirmed that in fact her brother had '*gone off the rails*' a long time ago and she did not have a current relationship with him.

    b. F put forward two people for assessment. Again, one of these confirmed that she did not wish to be assessed. The other, the paternal grandmother, PGM, is subject to a viability assessment dated 11.7.23. That viability assessment is negative for a number of reasons including unsuitable accommodation, the fact that she has another son with an extensive criminal record residing with her and social care involvement when she had her own children.

68. Second, neither parent says that the children could safely live with them now.

    a. With respect to F this is an obvious concession flowing from the fact that he is in prison. I have summarised earlier in this Judgment the reasons why I refused his preliminary application to adjourn the final hearing to await the outcome of his criminal trial. As set out there, even if he were acquitted and released, in the face of a negative parenting assessment, a lack of current relationship with the children, lack of accommodation and other factors it would be far-fetched to believe that the children could be placed with him without a significant period of further delay. In any event, F's position, which had crystalised by the end of the final hearing is actively to support the making of care orders for all of his children.

    b. With respect to M, her case, as developed in submissions, is that I should extend the interim care orders for all four children, on the basis that she hopes, in maybe 12 months' time, to be in a position to undergo successful reassessment with a view to a phased return of the children to her care. As set out in my summary of the reasons for dismissing F's application, these children were in fact entitled to have permanence plans settled within 26 weeks and we are now closer to 45 weeks into these proceedings; delay is

harmful to children. If there is delay it must be purposeful. Whilst M was able to acknowledge a number of things that she needed or wanted to change, including undergoing therapy, there was no clarity as to the timescales within which she might achieve many of these things. The guardian's evidence on this issue was, '*I think it is hard to know at what point she would be ready for a phased return; she has identified work to me back in November that she wanted to do; there were recommendations in October for work that she has identified today and that has not started; my concern is how long do you wait for a phased plan to begin*'. It is telling, in my view, that 4 months on from talking to the guardian about things she wished to change, she has still not begun that process with respect to some matters, including notably the therapy that she wishes to undertake. It is said within the written evidence that M was overwhelmed by the task of caring for 4 young children; I formed the view that she remains overwhelmed by what it would take to have the children returned to her care. I cannot conclude that an open-ended extension of the interim care orders in the hope that, maybe, in around 12 months M could undergo a successful re-assessment prior to beginning a phased return of the children, is consistent with their welfare.

69. With respect to V and W, given their ages, and given the lack of alternative realistic options for them, I have concluded that their welfare requires I make them subject to care orders and approve plans that they remain in long-term foster care. I can confirm that as I write this part of my Judgment, I have s1(3) of the CA89 open in front of me and have considered, in each boy's case, the welfare checklist factors. I do not find it necessary to rehearse each of them individually. I have given particular weight, in the circumstances of this case, to the fact that both boys have suffered significant physical and emotional harm in the care of their parents – paragraph 1(3)(e). Although the parents have very belatedly conceded that, in the mother's case, some of V's injuries were caused through 'recklessness' and in both parent's cases, that other injuries were caused through 'lack of supervision', I am left with no reassurance that either parent has developed any real insight into *why* it is that their children suffered such an extraordinary number of minor injuries whilst living at home, nor what would be different in future. That is directly relevant to my assessment of the capability of these parents in meeting their children's needs – para 1(3)(f).

70. The local authority has indicated changes it will make to amended care plans for all of the children with respect to parental contact. Those amendments will include a commitment to explore adopters (in the case of the girls) who will consider and potentially promote direct contact with the parents; and in the case of F to set out work it will undertake, in particular with the boys, with a view to re-establishing contact, taking into account F's circumstances as they become clearer. Neither parent challenges the local authority's care plans, thus amended, with respect to their own contact. As I acknowledged during submissions, I found M's concession that she would much rather prioritise sibling contact over her own contact to be child-focussed and moving. I therefore approve V and W's care plans with respect to permanence and parental contact. I will deal with the issue of sibling contact separately below.

71. My final word with respect to V and W's care plans is that it is acknowledged by the social worker that they have settled very well in the care of their foster carer 'S'. I have read a great deal about her excellent work with, and care of, these boys in the

Together and Apart assessment that is filed in proceedings. SW confirmed in her evidence that S, who is an agency foster carer, has expressed a commitment to care for V and W in the long-term; she further confirmed that the LA have a policy of looking for 'in house' foster carers and she has been informed that such a search will be conducted for around 6 months before the LA will consider approving S as a long-term match for V and W. SW, of course, was simply giving evidence about LA policies over which she exercises no control. She confirmed her own view, which was that it would not be in V and W's interests to be moved from S's care. In this regard the LA have now given a commitment that in the event they propose to remove the boys from S's care they will fund a one-off session of legal advice for her, so that she can be advised with respect to any private law applications she might be able to make. I note in this regard that the boys will soon have been in her care for 12 months. Beyond that the LA have confirmed that they have a contractual obligation to give S 28 days' notice if they seek to terminate the placement and that obligation should be recited in the order that I make today.

72. I have no power to order the LA to place V and W with a particular foster carer. No party says otherwise. I therefore limit myself to these observations. It is clear that V and W have settled and thrived in the care of S and have a real attachment to her. She is a safe and nurturing environment for them. Having been removed from their mother's care they have, I am satisfied, invested in her. The orders I am making give the LA overriding parental responsibility for V and for W. It would, in my view, be a travesty for those boys – and a dereliction of the LA's parental responsibility towards them – if the LA removed V and W from a placement in which they are settled, safe and happy solely because of an internal policy requiring that an in-house foster carer be preferred and/or because an alternative placement costs less.

73. I direct that this Judgment is released to the IRO. I will invite submissions at the conclusion of this Judgment as to whether I should also direct that it is released to S (with the usual confidentiality warnings) so that they, and any legal adviser that they consult, are aware of the observations I have made above. I will also reserve future applications in this case to myself.

74. I turn then to X and Y. The LA's plan for them is one of adoption together. The parents oppose that plan and neither consents to the making of placement orders. My task is to undertake a global, holistic evaluation of each for the options available for X and Y's future upbringing before deciding which of those options best meets the duty to afford paramount consideration to their welfare throughout their lives. I have already dealt with the parents as options. I remind myself that I should not undertake a linear analysis whereby I discount each option in turn until the only option left is one of adoption. However, in this case neither parent says that they *are* a realistic option at this juncture in the children's lives; F actively supports care orders for the girls and M accepts that it is likely to be at least 12 months before she could begin a phased return which would, in any event on her case, begin with the boys. For those reasons, the realistic options for X and Y are adoption and long-term foster care.

75. The benefits of adoption are that it will give the children a sense of permanence and 'family' in a way that long-term foster care does not. It involves a carefully managed matching process to identify the right carer or carers for these children in a placement where they will feel chosen, wanted and loved. Although adoptions can and do break

down, they are usually more stable placements than long-term foster care. I note, in this regard, that X and Y have already had 3 moves during their time in care.

76. The benefits of long-term foster care are that it is more likely than adoption, in my view, to allow the children to maintain an ongoing relationship both with their brothers and with their parents. With respect to their sibling relationship, that needs to be considered in light of my separate analysis, below, of the guardian's invitation to make contact orders pursuant to s26(4) of the ACA2002. However, in my view it is more likely that the girls will see their family members and, likely that they will do so more often, if they are subject to long-term foster care. I weigh in the balance that M has shown a remarkable commitment to attending contact and that the contact has generally been reported to be of a positive nature.

77. The major downside of adoption is that it will sever, at least to a very considerable extent, the girls' relationship with their birth family. I note that the LA is committed to finding carers who will promote direct sibling contact with V and W, although on any view that is likely to be at a considerably lower level than is currently enjoyed. This is a real downside in this particular case and I remind myself of the quite moving evidence about a recent sibling contact that had been cancelled, which caused X to be so upset that the respective carers arranged for an additional contact that weekend. Many children who are adopted suffer emotional harm in later childhood when they come to question why their life has followed that particular path. I weigh in the balance that whilst ongoing sibling contact, which the LA is committed to promoting, might mitigate that, equally it might exacerbate it as the girls question why they have been adopted whilst their brothers remain part of their birth family.

78. The downsides of foster care include that it lacks the stability that adoption usually achieves. As already noted, X and Y have had three moves in 10 months. Many children come to resent the ongoing need for State involvement in their day to day lives particularly when it comes to issues such as advance approval for sleepovers. There can be a stigma to the status of being a foster child. In Y's case, if she were to be placed in long-term foster care, it would entail that she spent all but the first few weeks of her life as a foster child.

79. As with the boys, as I write this part of my Judgment I have the relevant welfare checklist, in this case s1(4) of the ACA2002, open in front of me. I have considered each aspect of that welfare checklist. X has suffered significant emotional and physical harm in the care of her parents; Y was at risk of suffering such harm if she wasn't removed when she was. For reasons I have already detailed in my consideration of V and W's cases, I am of the view that both girls would be at ongoing risk of harm if they were returned to the care of either parent. I accept that there is likely to be emotional harm to both girls, X in particular given her age, of ceasing to be a member of their birth family. I weigh heavily in the balance that both girls, but X in particular, have good relationships with their brothers. Both also have a good relationship with their mother. I am reassured to an extent by the local authority's commitment to considering the promotion of those relationships post-adoption.

80. Having weighed up all of the pros and cons for X and Y of plans of long-term foster care and adoption, I have concluded that a plan of adoption best meets the

requirement to promote their welfare throughout their lives. In particular, the opportunity to find a forever family where they can grow up free from ongoing State parenting outweighs the benefits that might be achieved by maintaining them in foster care. I have therefore also concluded that their welfare requires me to dispense with the consent of their parents to the making of placement orders.

81. Therefore, in the case of X and Y I place them in the care of the LA. I make placement orders and I dispense with the consent of their parents to the making of those placement orders.

Contact under s26(4)

82. Although it doesn't form part of her final analysis, the children's guardian invites me to exercise my discretion under s26(4) of the ACA2002 to make orders pursuant to s26(2)(b) for X and Y to have contact with V and W whilst they are subject to placement orders. The parents, whilst opposing the making of placement orders, each support the guardian's position in the event that I do make placement orders. The local authority opposes the guardian on this issue and says that I should trust them to promote such contact and prioritise adopters who will facilitate it, without going so far as to make an order. The LA correctly draws my attention to s1(6) of the ACA2002 and the principle that I must not make an order unless I consider that doing so would be better than not making it.

83. This aspect of the case is one with which I have wrestled; I have not found it a straightforward decision. However, by the conclusion of the thoughtful and helpful submissions that I received on this point I had reached a clear view.

84. The first point to set out is this. All parties accept and acknowledge the real bond between these siblings but in particular the bond that X has with her brothers. That is set out in a Together and Apart assessment prepared by SW which I have read with care. As I have already recorded it is a well-written and thoughtful document which gave me a real sense of the individual children and their relationships. It sets out that '*It will be a recommendation that should a care plan of long term foster care for V and W, and adoption for X and Y be ratified, ongoing contact should be promoted. There are obvious complexities in direct contact between the siblings which would be discussed with any potential adopter*'. In her oral evidence under cross-examination by Ms Tappin, SW said that, for her, the right placement for the girls would be one that promoted contact with their brothers. In cross-examination by the guardian, she readily accepted that losing direct contact would be emotionally harmful for these children. Indeed, she agreed with the proposition that the sibling relationship was of fundamental importance and that she wouldn't be in support of a placement that didn't promote a level of direct ongoing contact between the children.

85. The second point, following on from the above, is that no one casts any doubt on SW's clear commitment to promoting sibling contact. The guardian's concern is rather that SW. for a variety of reasons, may not remain involved in decision making for the children and, moreover, even if she does, may not have the final say in

decisions for the children within the local authority. I have already set out how impressed I was by SW's evidence, and I also have no doubt about her genuine commitment to these children and to ensuring that they continue to see each other.

86. In submissions, Mr Ahmed for the LA pressed on me that an order wasn't necessary in light of the social worker's obvious commitment to promoting contact. The LA's concern is that making an order which requires any prospective adopter to allow direct contact post-placement might restrict the pool of potential adopters. I accept that submission. If an order for contact is going to have any effect it can only be to narrow the potential pool of adopters. That said, I also take into consideration that prospective adopters are now routinely trained and educated on the potential value of ongoing direct contact between adopted children and birth family members. Indeed, the agency with which the LA engages, One Adoption, have this as an expectation of approving potential adopters.

87. The guardian, as part of her submissions drew my attention to applicable case law. In particular my attention was drawn to the case of Re P [2008] EWCA Civ 535.

88. In Re P the court at first instance and the CoA were concerned with 2 children, D and S, where the plan was for them to be placed for adoption, separately from each other. The question was whether, given the acknowledged relationship between them, the court should make an order under s26 for ongoing contact. Wall LJ said this at paragraph 151:

> *"On the facts of this case, there is a universal recognition that the relationship between D and S needs to be preserved. It is on this basis that the local authority / adoption agency is seeking the placement of the children. In our judgment, this means that the question of contact between the two children is not a matter for agreement between the local authority / adoption agency and the adopters: it is a matter which, ultimately, is for the court. It is the court which will have to make adoption orders or orders revoking the placement orders, and in our judgment it is the court which has the responsibility to make orders for contact if they are required in the interests of the two children."*

89. I have already acknowledged the fact that in my view making an order for contact is likely to diminish, and certainly not to expand, the pool of potential adopters for X and Y. I have weighed in the balance that that might lead to further delay for these children and might, in line with the local authority's care plans, lead to a situation where in 12 months' time it has to consider whether a plan of adoption for both girls together, remains the right plan. That will inevitably bring into focus whether the girls should be separated. In that regard, I also weigh in the balance the social worker's written evidence with respect to the closeness of X and Y's relationship and her oral evidence that this is only likely to increase over the course of the next year; to that extent it may be less likely that the LA will conclude that they should be separated even if a plan of adoption for both of them together cannot be achieved. However, I accept, as do all the parties that those decision may be beyond the reach of the court.

90. Having considered all of the evidence and submissions on this point, I have concluded that, in line with the decision of the Court in Re P this is a case where given the

universal recognition that the relationship between these children should be preserved, I should not leave the question of sibling contact to be answered, if at all, by agreement between the LA and any prospective adopters. Rather, it is an issue on which the welfare of these children requires the court to make an order.

91. The LA's care plan – supported in this regard by the guardian – is for sibling contact to remain at a level of once per month upon the conclusion of proceedings and reduce to no less than twice a year following any placement. The guardian, of course, says that this should be subject to an order, and I have concluded that she is right in that regard. The guardian says that the reduction to the eventual level of post-placement contact should be done gradually. The LA agree with that however they say that, if I make orders for sibling contact, rather than the court prescribing now how any reduction should be effected, it should be left to the discretion of the LA social care team in light of the circumstances as they exist at the time. Indeed, in that regard, I note that the LA's own proposal is that direct contact should be 'at least twice a year' and so it would be difficult to prescribe a reduction plan in circumstances where the endpoint remains uncertain.

92. I will therefore make an order pursuant to s26(4) of the ACA2002. The order I make is that following the making of the placement order the sibling contact will reduce to a level of once monthly, in line with the existing care plans for the children which set out a phased reduction to that level. Following X and Y being placed for adoption with a matched potential adopter or adopters, that direct contact will reduce to a level of at least twice a year but the actual level (so long as it is at least twice per year) and the manner in which the reduction is to be achieved are subject to further planning and agreement between the local authority/adoption agency and prospective adopters.

My orders

93. I place V, W, X and Y in the care of the LA.

94. I make X and Y subject to placement orders.

95. I dispense with the consent of M and F to the making of placement orders.

96. I make an order for sibling contact pursuant to s26(4) of the ACA2002 as outlined above.

97. I direct that a copy of this Judgment be placed on the children's files and be released to the IRO with their attention being drawn to paragraphs 71-73 above, in particular.

98. I will make an order, having heard submissions in due course, with respect to whether this Judgment should also be released to W and V's foster carer, with their attention also being drawn to the same paragraphs.

99. I reserve any future application for discharge of the care orders, for contact with children in care or for private law orders with respect to W and V to myself. I reserve any future application for discharge of the care and/or placement orders or for adoption orders with respect to X and Y to myself. Those directions are made subject to my availability to hear the case when any such applications are made.

100. I permit the LA to file and serve amended care plans as outlined in their submissions although they should be further amended to acknowledge that the LA's proposals with respect to sibling contact are now subject to court orders.

101. I make the usual costs directions.

102. That is my Judgment.

Post-script

103. Just prior to the handing down of Judgment, Ms Tappin withdrew. Accordingly, F acted in person from this point on.

104. Having heard submissions from all parties, including from F who addressed me directly, all parties actively endorsed the proposal that I should direct that a copy of this Judgment be served on the boys' foster carer, with their attention drawn in particular to paragraphs 71 to 73 above. I therefore also make that direction.