

IN THE FAMILY COURT AT SUSSEX

Case No. SD19C01392

Courtroom No. 1

Thursday, 29th October 2020

Before:
DISTRICT JUDGE ELLIS

B E T W E E N:

WEST SUSSEX COUNTY COUNCIL

and

A and B

MS R WEBBER appeared on behalf of the Applicant
MS J CUDWORTH appeared on behalf of the Respondent Mother, A
MR M CHALONER appeared on behalf of the Respondent Father, B
MS L URSELL (Solicitor) appeared on behalf of the Respondent Child, C
MS J WELLS (Solicitor) appeared on behalf of the Respondent, D via the Children's
Guardian

JUDGMENT
(Approved)

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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, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

DJ ELLIS:

Introduction

1. I am going to deal with this backwards and for your benefit, A and B, I am going to tell you straight away the decision that I am going to make in this case, that I am going to make the orders that the Local Authority is asking me to make.
2. I have prepared a letter to go to the children, explaining why I have done this, and if the people who know the children better think that this would be a helpful thing to do, then I can give you a copy of this letter. However, I thought it might be helpful for you two if I read it out first of all, because it explains the reasons why I have done what I am doing in a much more simplified, unlegal fashion.

“Dear C and D,

I know that the order I have made today is one that you will find very upsetting so I wanted to write this letter to you to explain why I have done this.

I know that you love your mother and father very much and I know that they love you too. The fact that you are such thoughtful, intelligent, and articulate children is a tribute to the way in which your parents have brought you up.

But I am concerned about your health and the way in which your weight impacts on this. We are all much more aware now of the problems that being overweight can cause, problems which can be life-threatening, such as diabetes, heart conditions, and joint problems, or life-inhibiting, restricting the clothes you can wear and the things you can do.

We know too that managing one’s weight is a complicated matter and that it’s not right to blame someone for not trying when there are so many other factors to take into account. No-one is criticising you or your parents for your weight issues but we do want to give you some extra help to encourage you to manage your weight.

I know you will feel that, in making this order, I am taking something away from you, to be able to live with your mother in your own familiar home, but I would like you to think that I’m giving you something, a chance to learn new ways of eating and exercise which will benefit you for the rest of your life.

Everyone understands that if they have a serious illness they may need to spend some time in hospital, and I would like you to consider your move into foster care in the same way, a period away from your home, to help you get better.

C, it was a pleasure to meet you last week, and having met you I know that you will consider seriously what I have to say. I know you do not have to go into foster care if you choose not to do so but I would like you to consider what this might offer you. I want to make it clear to you that I am making this order for your benefit, as it would be wrong for me not to offer you this chance when this is an opportunity being given to your sister.

D, I know we've not met each other but I did have the chance to meet C and gain an insight into your family life. I hope you understand in making this order today I am trying to give you something and not take things away. You will still have the great relationship with your parents and your brother but you'll now also have extra help with the things that might be troubling you.

With best wishes for your future".

3. I do also have my formal judgment in this case, which sets out all the background to what I have heard and my reasons for making the order.
4. I am going to give my decision following this hearing, which has involved two children, C, he is 16 years, 11 months, and three weeks, as of today's hearing; and his sister D, who is 13 years three months. The mother of the two children is the first respondent, A, and the father is the second respondent, B, and in these proceedings Ms Beveridge has been appointed as the Guardian for the children, although, following C having been deemed to have capacity, he has instructed separate legal representation.
5. This hearing has been the final hearing of the Local Authority's application for care orders, with a care plan for the children to go into long-term foster care. It is accepted by everyone that, in view of C's age, he will be 17 next week, in practical terms, he cannot be made to go into foster care if he chooses not to do so, even if this is the court order.
6. The position of the parties is that the Guardian supports the Local Authority's position but both parents oppose it. Everyone agrees that this is a very sad and unusual case, of a loving family, where the parents meet many of the basic needs of the children, but the Local Authority has been concerned that the parents are not meeting the children's health needs, in that both children are severely overweight, and the parents have shown an inability to help the children manage this condition.
7. There are concerns too about the children's self-care, and the impact on their self-confidence and social relationships of these conditions.
8. This hearing has been a hybrid hearing where the father and his representative, Mr Chaloner, have been present in the court, and all the other parties have attended by CVP. Despite this unusual setting, I am confident that this has been an Article 6-compliant hearing, at which all parties have been represented and had the chance to participate.
9. During the three-day hearing I have heard from Ms Webber on behalf of the Local Authority; from Ms Cudworth on behalf of the mother; from Mr Chaloner on behalf of the father; from Ms Ursell, who has represented C; and from Ms Wells on behalf of the Guardian. Also in attendance have been the social worker, Ms Kiely, and the Guardian Ms Beveridge. I would like to thank all the advocates for the constructive manner in which this hearing has been presented.
10. Before the hearing I had read all the documents available to me on the CaseLines electronic system, and this has included an expert report obtained from Dr van Rooyen and supplemental answers to questions which have been put to her. I also had the benefit of meeting with C and a note of the meeting has been circulated to all the parties. I agree with

what everyone has said, that C is a likeable, engaging, and articulate boy, and his parents must be very proud of him.

11. During the hearing we have heard evidence from Ms Kiely on behalf of the Local Authority, from the mother and father, and from Ms Beveridge. C chose not to give evidence but has provided a statement for these proceedings.
12. I should make it clear that, in reaching my decision in this case, I have considered all the evidence, whether oral or written, and it has all been in my mind when reaching my decision, whether I specifically refer to it in this judgment or not. I invite counsel to tell me at the end of my judgment if I have made any significant error of fact or have omitted to deal with something which they consider to be important.
13. In this judgment I will talk briefly about the background to this case. I will then review the evidence that I have heard from the witnesses and the submissions from legal advisors. I will go through the legal framework which applies to decisions of this kind, and then go through the matters set out in the Welfare Checklist before going on to my judgment.

Background

14. The background is set out in the chronology which appears at page A1 to A4 in the bundle, and this shows that the Local Authority have had involvement with this family since 2010, I understand since C was six, and concerns have been raised about the children's weight, about their poor hygiene, and about the home conditions. There have been numerous interventions by the Local Authority, the majority of which have effected short-term improvements but sadly these have not been sustained. Unfortunately, throughout this Local Authority involvement, there has been a gradual weight increase of the children, which has continued even since these proceedings have been issued.
15. The proceedings were issued on 17 December 2019. An application was made for an interim care order on 17 January 2020 but this was refused and interim supervision orders were made. A Case Management Hearing took place on 25 February 2020 and an Issues Resolution Hearing on 16 July 2020. There was a Ways and Means Hearing before me on 22 November 2020, when this hybrid hearing was set up, and this final hearing has now taken place on 27, 28, and 29 October 2020.
16. Throughout this time, the children have remained at home with their mother, the parents having separated shortly after proceedings were issued, although B has returned home from time to time, the relationship between the parents remaining amicable. However, unfortunately, there has been no reduction in the children's weight since the proceedings began.

Evidence

17. Moving on to the evidence and beginning with the evidence from the social worker, Ms Kiely confirmed that she had prepared all the statements in this case, the parenting and risk assessment, the Together or Apart assessment, and the care plans. She had read the position statements of the parties, and had seen the documents produced by the mother on

the morning of the hearing, but nothing in those documents has caused her to change her view that care orders should be made in relation to both children.

18. Ms Keeley confirmed that the Local Authority had been involved with this family since 2010 and her own involvement began in 2018. She said it was a sad and frustrating case because the family would make progress in response to interventions but none of the changes have been sustained. She was at a loss to suggest any other intervention which might work, in view of the considerable efforts made by the Local Authority over the years.
19. The case was such an unusual one because the children had clearly had some very good parenting, as they were polite, bright, and engaging. It was understandable that the family was fed up with social work involvement, in view of the time that it had been going on. She said that, although the children's weight was the primary concern, this was not a one-issue case; the children had suffered neglect through poor home conditions and lack of guidance on their personal care. This had resulted in them being bullied at school and in having low self-esteem. The children's weight had steadily increased even during proceedings. C had shown that he could lose weight, which showed that he did not suffer from any medical condition, but he had been unable to maintain this loss.
20. She accepted that the scales she had used on 14 October 2020 differed from those previously used but said that the weights recorded were consistent with other readings, and she therefore believed they were accurate. She did not accept that the fact that D had shown only minimal weight gain over the last two months was to be commended because, if she had been following the agreed plan, she should have lost weight. She did, however, commend the mother, who appeared to have lost weight and maintained this loss during proceedings.
21. The parents did not seem to understand the seriousness of the Local Authority concerns. They failed to set boundaries for the children, or to promote healthy eating and exercise. Ms Kiely was concerned that the mother had acted very slowly to try to stop the children's school lunches, and concerned too about the unhealthy food which she had seen in the house during her visit on 14 October 2020. She believed that she had seen packets of crisps, tubs of ice-cream, and fizzy drinks which were not marked as sugar-free. Even if they were for the mother's own consumption, the mother was not modelling good behaviour to the children.
22. The children's personal presentation was poor, with dirty nails and, for D, tangled hair. There was concern about body odour in relation to C. Every effort had been made by the Local Authority to encourage regular washing and teeth-brushing but to no avail.
23. The children had failed to engage consistently in exercise despite the Local Authority providing Fitbits and paying for gym membership. The children were supposed to provide recordings from their Fitbits but this had not been done. The mother blamed lockdown for the inability to exercise but exercise could still be taken in the home or by walking outside. The attendance of the family at Weight Watchers had been inconsistent.
24. She considered the home conditions were poor, with piles of washing-up on the side and a very unpleasant smell. There had been improvements over the years but, again, it had not been possible for the parents to sustain these. Other professionals visiting the property had

expressed the same concerns over the years. Ms Keeley said that she had never seen the house looking as it did in the photographs which the mother had produced on the morning of the hearing, and which are at Z9 onwards of the bundle.

25. She accepted that C could not be compelled to stay in foster care but believed that he would benefit if he was willing to try it. She believed that the Local Authority's staying-put funding would be available to him and thought that he would be able to continue his current job even if he moved to foster care. She thought the foster carer who had been identified by the Local Authority would be able to help the children adopt healthy eating patterns, take more exercise, and improve their self-care. This would improve their self-confidence and their belief in themselves. She accepted that the children, in particular D, might find the move into foster care upsetting but she said that D had been a sad, depressed little girl for some time, and that this had not been caused by the prospect of foster care.
26. The discovery of tablets and a note in D's room was concerning, and extra support would be put in place. She believed this was a cry for help from D. There were no prospects of the situation improving if the children remained in their mother's care.
27. Ms Keeley said that she considered the proposals for contact, for it being supervised, for a three-hour contact in the community for a period of time, were appropriate in the circumstances where there were concerns about the parents undermining a placement by bringing in food or by not supporting the foster carer. This would be kept under regular review, and obviously teenage children will have extensive indirect contact.
28. I found Ms Kiely to be a compelling witness in this case, who gave fair and balanced evidence, making concessions where necessary. She clearly has a great fondness for these children and is very sad that the measures taken to help them in their home have not been successful. I accept that there are no other measures which can be taken by the Local Authority to assist this family, and I did not find any evidence of a lack of analysis or gaps in the evidence which would undermine the evidence given by Ms Kiely.
29. Turning now to the evidence from A, A confirmed that she had filed responses to threshold statements and position statements, and had sent other documents to the court, including letters from her counsellor and photos. She accepted that there were serious concerns about the children's weight, presentation, and mood, and that she had been aware of these since at least January 2018. She accepted that the family had had a lot of support from the Local Authority, and thought there had been improvements, for example in relation to home conditions. She did not accept that she had been untruthful in her dealings with the Local Authority but said sometimes she would be confused about what to do, for example in relation to food plans and food diaries. She did not accept that she had failed to act when asked to do so; she had contact with the school immediately about the school dinners and had left an answer machine message. She said that she could not control what the children did in school or when not in her care, but had spoken to them about the need to eat healthily. She accepted that for her to be eating Cheddars and ice-creams as snacks was not good role-modelling for the children.
30. She could not explain why the children were not losing weight, as they were sticking to the healthy eating and exercise plans. She did what she could but she could not control what the children ate when they were not in her care. She had thought that things had improved since

proceedings had started, as the family was eating on a more planned basis. C had lost weight when he was receiving support from the school but, unfortunately, had put this back on when that had stopped. She said that the family were taking exercise by going for a walk every day, and that C now was positive about exercise. She did not accept that they had not regularly attended Weight Watchers, and said they had attended other than on a few occasions, and said that since lockdown started, they had been doing this online. She agreed that the children's presentation was a concern but denied that D's hair was often tangled, saying that she brushed it for her every morning. She had tried to get C to brush his teeth by buying him different kinds of toothpaste, but she could not remember what she had done about C's referral to an obesity clinic.

31. She had not seen C's position statement, and did not know what he wanted to do about going into foster care if the Court made an order. She agreed that his job was very important to him, and that it would be very difficult for him to carry on with his current hours if he moved to foster care. She was very concerned about how D would react to foster care, as she is so quiet and reluctant to talk about her emotions. She said that she had co-operated with the Local Authority throughout the proceedings, and if the Court refused to make the orders the Local Authority were seeking, then she would continue to work with any other help that was offered. She accepted that things could not go on as they were, and that something needed to be done to break this cycle, but could not identify what. She accepted that there was nothing else she could do. She would like the children to lose weight, and accepted that, if it worked, foster care might be good for them. She would support the placement if this was the order the Court made.
32. I consider that A gave evidence in an honest, candid manner, acknowledging problems in a way which must have been very distressing for her. She presented as a loving mother, who clearly has a good relationship with her children. It is accepted by everyone that she has provided good parenting for these children, and I hope that the more negative comments which follow do not detract from the fact that, in many ways, she has been a good mother.
33. However, it is clear both from her evidence and the chronology in this matter that she has failed to instil in the children habits of healthy eating, exercise, and good self-care. I accept what she says about the difficulty of compelling teenagers to act in a certain way but, clearly, had these habits been encouraged and modelled to the children from an early age, no element of compulsion would now arise.
34. I believe that A has tried to comply with the written agreements in this case but that the issues have simply proved too hard for her. I do not make a finding that A has deliberately lied to the Court but I think that she is deluding herself in the same way as every patient under-reports to their doctor what their alcohol intake is. It cannot be the case that she and the children have been adhering to the healthy eating and lifestyle plans discussed because, had they done so, when there is no evidence of any medical condition, it is undoubtedly the case that the children would have lost weight.
35. I also found in A's evidence the tendency to blame others which is referred to in Dr van Rooyen's report. In her statement and her response to threshold, she has blamed her husband for bringing unhealthy food into the house and for not encouraging good habits. However, the fact remains that these issues have continued even after the couple separated. She blamed the school for not coming back to her about school dinners, the social worker

for not asking about meal plans, lockdown for the inability to take exercise, and the children for not being honest with her about what they were eating. I consider that until the mother accepts that it is she who must bring about the changes in this case, and believes that she is able to do it, then nothing will improve.

36. Having heard A's evidence, I am still not convinced that she genuinely accepts the seriousness of the health issues affecting these children. If she did so, I consider that she would have behaved differently, for example by not bringing into the house fatty foods such as Cheddars and ice-cream, and by following up the referral to ensure that C attended the obesity clinic.
37. I am concerned too that the mother's own mental health problems, as identified in Dr van Rooyen's report, prevent her from focusing on the children and their needs. The repeated failures to remain on top of housework and to meet commitments such as Weight Watchers are evidence of a parent who is simply overwhelmed by their responsibilities.
38. Turning now to B's evidence, B confirmed that he had filed a response to threshold and a statement in these proceedings, although it was not clear to what extent he had engaged with these proceedings, as he said he had not seen the papers in this case. B spoke very clearly about his love for his children and the close relationship he had with them but there was no evidence either that he accepted the seriousness of the Local Authority's concerns or that he was taking any steps to deal with them, despite having signed the written agreements. He thought matters had improved since the issue of proceedings in that the house was now tidy and the family were trying to eat better, although he did not identify any steps he had taken to deal with this. He was very concerned about the children entering into foster care, and thought that they would be devastated by this. He was concerned about the impact on C's job, which was very important for him, particularly as C was saving for driving lessons. He thought it would be very hard for D to go into foster care without C and hard for C to decide what to do, as he would feel he was letting someone down no matter what he did. B did say, however, that he would support the children in their placement if this was the court order.
39. B criticised the Local Authority for not engaging with him more fully in this process but accepted that he had taken no steps himself to make contact, and had not provided the social worker with his new telephone number when that had changed.
40. He thought the proposals for contact were too restrictive, and objected in particular to the idea of supervision, as he did not consider he posed any risk to the children. He did accept that he was feeling low and depressed, which was understandable as a result of the losses which he suffered recently. It was very hard to gain any clear picture as to whether B accepted any responsibility for his actions in this matter, as his answers to most of the questions put to him were either, 'I don't know' or 'I can't remember', and this is consistent with the references in Dr van Rooyen's report to B's poor working memory.
41. He accepted that he was inclined to put his head in the sand, and his answers were consistent with this, of someone who did not want to engage in something which was difficult for him. I consider this as a reflection of B's attitude to parenting generally, that he has not engaged with the hard elements of setting boundaries and policing behaviour, but has taken the easy route of not opposing the children's wishes.

42. It is a shame that B has not been able to take a more active role in parenting because he is clearly a good man, who works hard and has provided a good role model for his children in so many ways.
43. Finally, we heard evidence from Ms Beveridge, the Guardian, and she confirmed that she had prepared the final analysis in this case, and a position statement for this hearing. She had read the documents more recently provided by the parties, and had heard all the evidence in the case but nothing had caused her to change her view. She said that this was a very sad and very unusual case, in that the usual features of harm to the children are missing. There is a very strong relationship between the children and their parents, and between each other, and the children are attractive and engaging. However, they are in a dangerous situation in relation to their health and the mother has accepted that she does not know how to improve this. The children must therefore be given a chance to improve their life chances, and foster care is the only option for this.
44. She accepted that she had not seen the parents or been to the house since February 2020, and said this was largely brought about by the Covid restrictions. However, this was also a case where, because of the children's ages, she had been concentrating on discussions with them rather than the parents.
45. She did not think that the Local Authority would have commenced proceedings if the concerns were based solely around the home conditions, and indeed she had not noticed anything concerning when she attended in February, or based on the children's presentation, although both matters supported the Local Authority case that the children had suffered neglect. It was the children's weight and the risk to their physical and emotional health which was the main concern in this case.
46. She commended the mother for the weight she had lost, and accepted that lockdown may have impacted on the support available to this family, but it was very concerning that there had been such significant weight gains for the children during the course of the proceedings, and this of course followed the many years of Local Authority involvement. She did not accept that the Local Authority were at fault in not having arranged parenting classes for these parents, as this was not a case of disrespectful or aggressive children, which was the kind of behaviour which parenting classes are usually designed to address.
47. She accepted that the children's wishes and feelings were of great importance but said it would be unusual if the children did not express a wish to remain with their parents. The Court has to make a decision based on the children's long-term best interests, which may conflict with their wishes and feelings. She accepted that the move to foster care, which was a step into the unknown, would be upsetting for the children, particularly if C and D ended up being separated. There may well be short-term anxiety, particularly for D, but this would be outweighed by the anticipated long-term improvement in her sense of self. There were too, supports which could be put in place to help the children adjust, from the Local Authority, the foster carers, and hopefully, and most importantly, from the parents.
48. She agreed that the transition would be difficult and that it was unfortunate that C has his exam resits next week. It was unfortunate too that the children had not had the chance to visit the placement, as she had recommended. She accepted that C had a difficult choice to make as to what he would do but said that this was unavoidable in view of his age.

49. She agreed that the credit should be given to D and C for there being no actual weight gain over the past few months but it remained disappointing that there had been no loss, especially in view of the significant gains during the course of proceedings, and the long-standing nature of these problems.
50. She was aware of the reference in Dr van Rooyen's report to D seeing any attempt to impose structures on her as a form of rejection but thought that, on balance, the risk to her wellbeing if change was not made would outweigh these risks. She accepted that Dr van Rooyen had recommended therapy which had not taken place, and said that it might have been an oversight on her part not to pursue this further, although she did not consider that this would have significantly altered the situation in this case.
51. She accepted that the foster carer would not be able to monitor the children on a 24/7 basis but believed they would respond by being steered towards healthier choices. There might be a risk that the children would respond to unhappiness by comfort-eating but it appeared that they might have been doing this for some time already. She could not know that the children would benefit from foster care but, in view of their dire outlook if things continued as they were, considered that something had to change.
52. She supported the Local Authority plan in relation to contact, although thought the reference should be to supported rather than supervised. Moving into foster care is a time of high emotion for both parents and children and it is right for there to be additional support for a period. The matter would be kept under constant review and the social worker would liaise with the foster carer to ensure that the right level of contact was provided for the children's welfare needs.

Submissions

53. I then heard submissions from the advocates on behalf of the parties, hearing first from Ms Webber, who said that this was a case where threshold was accepted, and where the Local Authority had given exceptional levels of support for such a significant time but, sadly, there had been no real, sustained progress. The physical risks to the children of being overweight are self-evident, and the report of Dr van Royen sets out the impact on the children's emotional and psychological wellbeing, which will last long into adulthood if there is no change. Unless the children engaged in meaningful lifestyle changes, they will suffer life-threatening health risks, emotional impairment, and poor adjustment throughout their adult life. The only way to break the current cycle of neglect is for the children to go into foster care. The Local Authority accepts that this will cause the children harm but the risks of not taking action are much greater. There has already been significant delay in this case and the children could not wait any longer.
54. On behalf of the mother, Ms Cudworth said that the mother accepted that threshold had been made out at the start of the proceedings but said that things had improved. This case fell within the ambit of those envisaged by Hedley J in [*Re L (Care: Threshold Criteria)*] [2007] EWHC 3527 (Fam)], where he said that the Court should be tolerant of different styles of parenting, and that the court process should not be used to level out inequality in children's upbringings. The Court needed to be satisfied that the orders being sought were necessary and proportionate, and justified on the balance of harm.

55. It is accepted here that these parents are in many ways good parents, and the Guardian also accepted that concerns about home conditions and hygiene would not justify the making of a care order. In this case the mother had been admirably candid in her evidence, accepting that there were problems. She could not understand why the children had not lost weight when she has done so but it is naïve to expect her to be able to monitor the children 24/7, and to control what they eat when they are not with her. In circumstances where no-one can know that the children will lose weight in foster care, the interference with the rights to family life cannot be justified. The children's emotional wellbeing should be at the forefront. The facts that they have not been provided with the therapy recommended by Dr van Rooyen, that they have made their wishes and feelings clear, and Dr van Rooyen's comments on D's attitude to structure, are poor indicators of the success of foster care. It would be better and less intrusive to allow the children to remain with their parents and to promote improvements by providing the parents with parenting training and the children with therapy.
56. If the Court did not accept this and made the order, then the mother would seek more contact, although she understood the reasons behind the Local Authority's proposals.
57. On behalf of the father, Mr Chaloner said that the father also accepted threshold and adopted the arguments put forward on behalf of the mother. However, he considered that the Court needed to balance the risks of a change of placement against the risks of remaining at home. There were signs of optimism in that D had not made a significant weight gain in the last two months and, although C had apparently put on weight since August, he had only returned to the weight that he was in June.
58. The children will suffer huge harm in an order is made; it forces C to make a very difficult decision about what to do and D will find moving to placement very hard. The Local Authority is being naïve in assuming that these children, who have not made changes so far, despite all the support provided, will do so when moved to a completely new environment, when the Guardian says she cannot be confident that the move to foster care will succeed. The balance of harm is against doing something which is contrary to the wishes and feelings of the children.
59. The more proportionate response is to allow the children to remain with their parents, to put in the intensive package of support which has not been possible during lockdown, to provide the recommended therapy, and then bring the matter back to court if this fails. Although no order could then be made in relation to C, he could still be invited to agree to a Section 20, which would access his entitlement to support, and which in practical terms is not much different from his situation now.
60. If the children are to move to foster care, the father does not accept that his contact should be supervised. It is logically inconsistent because if the father was intending to disrupt contact, he could disrupt this just as effectively by indirect means as by direct.
61. On behalf of C, Ms Ursell said it was not necessary or proportionate to remove C now, just before his 17th birthday. To make a care order would put him in an impossible situation from an emotional point of view, being torn between his parents and his sister. There is no guarantee that foster care will work for C, and it might have the reverse outcome. It would

be better for him to remain at home, with a support package based around a one-to-one trainer.

62. If an order was made in relation to C, he would want much more contact, including sibling contact if he chose not to move to foster care. The Court should not make a care order in relation to him, in view of the impact on his Article 8 rights.
63. Finally, on behalf of the Guardian, Ms Wells said that this is a very sad case of a close and loving family, who have been given every chance to make improvements, which sadly has not worked. The Guardian accepted that the move into foster care would be hard but, in view of the mother's acceptance there was nothing else she could do, it was the only option for these children. These were children who had suffered significant harm and who are facing potential life-limiting health issues, and something must be done to protect them against this.

Legal framework

64. I will summarise very briefly the legal position in relation to the decision that I have to make, which is accepted by all the parties. The Local Authority are asking me to make care orders with plans for long-term fostering, and I can only make such orders if I am satisfied that the threshold criteria as set out in Section 31(2) of the Children Act are made out. It is the burden on the Local Authority to prove that this is the case.
65. If I am satisfied that threshold has been met, then in order to decide what order I should make. I need to have regard to the relevant Welfare Checklist as set out in Section 1 of the Children Act. I must make sure that any order I am considering making is a necessary and proportionate one, justified on the balance of harm, and only insofar as it is necessary to protect the children's welfare interests.

Threshold

66. If I look at the first stage of this decision-making process, and the question of threshold, this is a case where it is accepted by both parents that the threshold was met at the time of issue of proceedings. I am also satisfied that the factual background set out in the threshold is established, and that as a result the children have suffered and are continuing to suffer significant harm.

Welfare considerations

67. I am therefore able to consider the making of an order in this case, and in order to do that I want to consider the factors set out in the Welfare Checklist. I will start with the children's wishes and feelings. This is a case where the children have made it clear throughout that they want to remain with their mother. They have always lived with her and have a close, loving relationship, both with their mother and their father. These are children who are of an age where they are not only able to articulate their wishes and feelings but they also have an

understanding of the wider issues involved in moving into foster care, and why the Local Authority is seeking this. It is undisputed, therefore, that significant weight must be attached to these wishes and feelings.

68. However, the fact that this is only one item to consider in the Welfare Checklist is clear evidence that this is not the only issue that I have to consider in this case. I have to make the order which I consider is in the children's overall welfare interest, taking account of all the considerations, and, as the Guardian says, it would be extraordinary, in the circumstances of this case, if the children did not want to remain with their mother or their parents.
69. If I turn to the children's physical, emotional, and educational needs, these are children that have no additional needs save those relating to their weight, but those are significant issues. Both children are in the 99th percentile for their age and indeed that means that they cannot be properly assessed in relation to their weight. D has experienced health issues in relation to a fatty liver and C has been told that he is at the risk of Type 2 diabetes.
70. There have been concerns too in relation to the personal hygiene of both children, and this has led to both of them being bullied at school, whether as a result of that or in relation to their weight.
71. There are significant concerns over the children's emotional health. The mother produced for the beginning of this hearing photographs of the pills she had found in D's room, with a note marked, 'My overdose tablets so that I can kill myself'. The suggestion has been made that this may have been brought about as a result of these proceedings but, in fact, the children were expressing unhappiness in their discussions with Dr van Rooyen before proceedings were issued. Her report goes into the issues of self-esteem, self-confidence, and wellbeing which these children have suffered.
72. Finally, there are concerns about D's school attendance. I accept that during the course of the proceedings her school attendance has increased from 83 to 88% but this is still below the level which is considered acceptable.
73. If I move on to the effects on these children of any change in circumstances, it is undoubtedly the case that the move into foster care will be very upsetting. Apart from the separation from their parents and their move from their home, there will be the psychological impact on these children of having their wishes ignored. This is being done in the hope, but no certainty, that moving away from home might promote a healthier lifestyle, better food choices, and provide these children with significant long-term benefits.
74. I accept what Mr Chaloner says, that I need to conduct a balance of the risks involved between moving and staying. I identify the risks of moving as follows:
 - a. first of all that the children will not settle, and they will be anxious and worried. This was a matter which Dr van Rooyen was specifically asked to deal with in her supplemental questions. She commented that these are children who are clearly anxious about the proposed plan for being placed away from the care of their mother. The thought of entering into foster care is very often associated with anticipatory anxiety; however, once they are in a nurturing, supportive, and predictable environment, which is expected to be offered by the foster carer,

anxiety levels do reduce. Achieving and maintaining lifestyle change is a gradual process, requiring reparative care over a period of time.

Although I accept that the move into foster care will be upsetting for the children, I do consider that it can be alleviated by the support which can be offered in this case by the Local Authority, by the school, by the foster carer, and above all by the parents. The children will be greatly comforted if the parents can find it within themselves to support this move into foster care and explain the reasons which underlie it.

- b. A second risk of moving, expressed particularly on behalf of C and by his father, was that C's part-time job might be affected. I want to repeat what everyone has said, how commendable it is that C works so hard, that his job is so important to him, and that he wants to contribute in this way. It seems to me that a child like C, who is so committed to work, will either be able to continue with his current job – he is clearly a keen and hardworking worker who his employers would want to maintain – or, if he is not, that he would be able to find another job, in the way that he has done when he wanted to increase his hours. I will just comment that I am surprised there has not been more concern from the adults involved in his care about the inappropriateness of C, who has these weight issues, working in these outlets, which provide such an easy and tempting access to unhealthy foods.
 - c. The third concern expressed was that this is a very hard decision for C, who will have to decide whether he wants to move into foster care, with the benefit that he will be with his sister, or whether he wants to remain at home. I accept that this is a hard decision for C but, in view of his age, there is nothing that can be done about this, and I do not see that this can be a determining factor in the welfare analysis that I conduct. Again, C can be very much assisted in making this decision by support and encouragement from the people around him, and above all I want it to be made clear to C that he must make the decision that he wants to make in his own interests, and not do something just because he feels that this helps his sister.
 - d. The final concern that was raised was that this might not work and indeed it might lead to a weight gain as obviously no-one can know what will be the outcome of decisions made by the Court. As I expressed to Mr Chaloner in the course of his submissions, all our jobs would be so much easier if we could know. However, I do consider it encouraging that these are children who are so responsive and so engaging, and I hope that, with the assistance of professionals, they will understand the reasons for this. It is the case that all the professionals involved in this case consider that this is the appropriate course of action - the Local Authority, the social worker, and Dr van Rooyen, who was in fact recommending this before proceedings began.
75. If I look at the risks on the other side, the risks of not making any change in circumstances, the major risk is that I do not consider there are any prospects of change. I do not accept the fact that D and C may not have put on weight in recent months is any evidence of green shoots. It is hugely concerning that weight gain has continued, even under the focus of these proceedings, and I am satisfied if the children remain in the family home, they will either continue to put on weight or that their weight will remain at these exceptionally high levels.

I cannot overstate how serious I consider that these risks are to their physical and emotional health. I do not accept what was said on behalf of the parents, that if the children remain with them and that further support is provided by way of parenting courses and therapy for the children, that this will stand any prospect of success. This is the case where so much help has been given to the family over the years, which must have included elements of parenting support, and where the children have been receiving support in some fashion or another from the social workers, family home workers, and their schools. I agree with the mother; I cannot see what else can be done in this case to effect change in the family environment. To agree to this proposal would just be condemning this family to more of what they have endured over the years since 2010 - social work involvement, attempts at improvement, short-lived improvements, and no sustained change.

76. The second risk in maintaining the status quo is that this is not a case where I am taking happy children away from a happy home and putting them somewhere where they may be unhappy; there are concerns about the children's level of happiness at the moment, more obviously expressed perhaps by D, but clearly C is also not content with his life and his appearance as it is at present.
77. Therefore, having conducted that balance, as Mr Chaloner has invited me to do, I consider that the balance of risk in this case is overwhelmingly against allowing the status quo to continue.
78. I move on to the fourth consideration in the welfare checklist, which is the age, sex, background, and other characteristics of the children. It is a very important factor in this case that these are siblings who are blessed with a very close relationship, in which they support and encourage each other, and the Together or Apart assessment in this case was very much in favour of these children remaining together.
79. Another significant factor is C's age; he originally said at the start of proceedings that he would go into foster care even if he was not made to do so, in order to support his sister, which is a tribute to that loving relationship. His most recent statement is more that he does not know whether he will want to move. I agree with what was said on his behalf, that I am sure even as now he does not know; he needs to know the factual basis before he can make a decision. However, it is very important that C makes decisions which are best for him, and that he does not feel under any moral or guilt pressure to support his sister.
80. If I turn to harm the children have suffered, I have already made a finding that the children have suffered harm from the parents' failure to promote exercise and healthy living, and good personal hygiene, and that this is accepted by the parents. I consider that this has led to social difficulties at school, and that it places them at the risk of severe health complications as they grow older. I have already said that I do not find any evidence on which to find that the situation will improve and I must therefore find that these children are at risk of continuing to suffer harm.
81. I do want to make it clear that I am not attaching any moral blame in this case, and that these issues go beyond questions of appearance or lifestyle choices, and that it is a question of the children's health which has driven my decision-making process.

82. If I turn to the capability of these parents, I endorse what has been said, that this is such a sad case because in so many ways. these parents are capable; this is a happy, loving family, with children who are articulate and likeable. However, unfortunately, for whatever reason, these parents have shown themselves to be incapable of meeting the children's health needs in this significant way, and it is concerning that, even under the threat of proceedings, the children's weight has continued to increase. I am concerned that the parents may be unable to understand the seriousness of these health issues.
83. I do not underestimate the challenge involved in changing a lifetime of eating habits. Both our genetic background and our cultural environment promote food, in particular unhealthy food, as a reward and a treat. Buying chocolates for someone is often seen as a sign of love or affection and few people ever offer a child a carrot as a reward for doing well in an exam. I therefore do not attach any moral blame to A and B for their inability to manage their children's upbringing. However, the fact remains, whether because of their own upbringing or their own mental health problems, they have shown themselves unable to do this. I am satisfied that there is no prospect of them being able to effect this change in an acceptable timetable, no matter what support is put in place.

Decision

84. If I turn now to the order in this case, the options for these children are either for them to remain in their parents' care, perhaps under a supervision order, or for a care order to be made with the children moving to long-term foster care, with the caveat that everyone accepts that C cannot be made to move. The advantages of them remaining in their family home are many and obvious; this is a loving, close-knit family. Even though the parents have separated they maintain good relations and the children are close to both parents. The children will remain in the environment in which they have grown up, and with the people they love.
85. The disadvantage is that their health needs will continue to be neglected and they will continue to put on weight, and suffer the long-term and serious health consequences that I have identified.
86. The removal to foster care poses the risk to the children that I have already identified, that they may struggle to settle in a new environment, that they will suffer the loss of day-to-day contact with their parents, and with each other, if C elects not to go into foster care. This will be done in the hope that they will be given the chance to learn new habits of healthy living, which will lead to short- and long-term health benefits.
87. Having reviewed the factors in the Welfare Checklist, and having considered the balance of harm test, I am satisfied that it is in the children's welfare interests for these orders to be made, that these children need the chance to learn ways of living more healthily, and to improve their health by losing weight.
88. I am aware that this is a serious, life-changing order, and one with which many people may disagree, taking the view that issues of obesity are matters of choice and lifestyle, with which it is inappropriate for the state to interfere. I have therefore asked myself whether this order, which I consider is in the children's welfare interests, is one which is necessary and proportionate to the risks in this case. That is obviously a question which has particular relevance in relation to C in view of his age. However, having specifically addressed my

mind to this issue, I am satisfied that this order is both necessary and proportionate for both children, in view of the serious and lifelong risks posed to their physical and mental health if nothing is done to change their lifestyle.

89. I am satisfied that it is proportionate to make an order in relation to C. He may choose not to comply with it but I do think it is of benefit for him to know that a judge, having reviewed all the evidence, is so concerned about his situation that she has thought it necessary to make an order.
90. I am aware that this order is an interference with the Article 8 rights of these family members but, for the reasons I have set out, I am satisfied that it is necessary and proportionate, and that these are the least intrusive measures which can be taken to promote the children's stability, security, and welfare. I therefore make the care order sought by the Local Authority and approve the care plans, and I do also approve the plans in relation to contact.
91. I will say to B and A, as has been said many times, that contact is kept under continual review but what is being proposed is just the initial arrangement, which is being done for the assistance of everyone, to ensure that support is in place, to make sure that emotions are regulated, the placement supported, and that there are no issues with food, and I do consider that that support is necessary to keep the contact on track. Obviously, if C does decide not to remain in placement then arrangements will have to be made for the sibling contact, and I am confident the Local Authority will take that on board.

End of Judgment.

Transcript of a recording by Ubiquis
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Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

This judgment has been approved by the judge.