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IN THE FAMILY COURT

Case Numbers:
WD20P00633 & WD20P00634

15th February 2021

Before His Honour Judge Middleton-Roy

Between:

'M'

Applicant

- and -

'MGP'

1st and 2nd
Respondents

'MUA'

3rd and 4th
Respondents

'FG'

5th Respondent

The Local Authority

6th Respondent

**The Children 'G' and 'B'
through their Children's Guardian**

7th and 8th
Respondents

Miss Beer, Counsel, instructed by Bretherton Law for the Applicant

The 1st and 2nd Respondents appeared in person

Mr Murray, Counsel, instructed by McAlister Family Law for the 3rd and 4th Respondents

The 5th Respondent did not attend and was not represented

Mr Tautz, Counsel, instructed by the 6th Respondent Local Authority

Miss Hepburn, Solicitor, Hepburn Delaney Solicitors, for the 7th and 8th Respondents

Hearing dates: 8th, 9th and 10th February 2021

JUDGMENT

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His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children and the adult parties in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain. 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 and may result in a sentence of imprisonment.

The Application

2. The children who are at the centre of application are half siblings who are the subject of Special Guardianship Orders made at the conclusion of public law proceedings brought by the Local Authority in 2018 and 2019. The eldest child, a girl, is twelve years old. I refer to her in this judgment as "G." She lives with her maternal grandmother and her maternal step-grandfather ("MGP") under a Special Guardianship Order made in September 2018. The youngest child, a boy, is 2 ½ years old. I refer to him in this judgment as "B." He has lived with his maternal uncle and aunt ("MUA") since September 2018. The maternal uncle and aunt became Special Guardians for 'B' following a Special Guardianship Order made in January 2019.
3. The mother of the children ("M") applies to discharge the Special Guardianship Orders in respect of both children. Her applications were filed in May 2020. The maternal grandparents support the mother's application to discharge the Special Guardianship Order in respect of 'G'. G's father ("FG") took no part in the proceedings, save for confirming at the outset of the application that he supported the mother's discharge application.
4. The maternal uncle and aunt oppose the mother's application to discharge the Special Guardianship Order in respect of 'B'. Neither the Local Authority nor the Children's Guardian support the mother's application. 'B's putative father does not share parental responsibility for 'B.' He took no part in the public law proceedings and he has taken no part in these private law proceedings. His current whereabouts are not known. He has had no contact with 'B.'
5. The mother has made clear that, even though she desperately seeks to have both children returned to her care, she remains deeply grateful to each of her family members who have given loving care to both children. The mother tells the Court that she has reached a secure stage in her recovery from addiction to substances and she now seeks to reunite the two siblings into her care. She evidences through hair strand testing completed within these proceedings that she has abstained from the use of drugs for over two years and she continues to engage meaningfully with drug support services. She has also been proactive in seeking support regarding her mental health, although she has been unable to complete the specific therapy recommended by the independent psychologist.
6. Special Guardianship Orders last until a child's 18th birthday. A Special Guardianship Order is of great importance to everyone concerned, not least the child who is its subject. Applications for such Orders are not to be embarked upon casually or impulsively, not least because of the status it gives the Special Guardian, which allows an exercise of parental responsibility, which may override that of the child's natural parents and terminates the parental authority given to a Local Authority under a Care

Order. The carefully constructed statutory regime, including the requirement for leave to apply to discharge, demonstrates the care required before making a Special Guardianship Order and that it is only appropriate if, in the particular circumstances of the case, it is best fitted to meet the needs of the child concerned. The same care required when making a Special Guardianship Order is also required when considering whether such Order should be discharged.

7. In the course of these private law proceedings, the Court received evidence by way of an updated parenting assessment from the Local Authority social worker, updated evidence from an independent psychologist, toxicology evidence, evidence from each of the parties, save the father, and thorough and careful analyses from the Children's Guardian. The Court had the benefit of the same Children's Guardian who was involved in the previous public law proceedings and the same independent psychologist.
8. At this Final Hearing, the Court heard evidence remotely by video from the independent psychologist, the social worker, the mother, the maternal grandmother, the maternal uncle and from the Children's Guardian. The maternal step-grandfather and the maternal aunt were present and available to give evidence. All parties agreed it was not necessary for the Court to hear directly from them, both having filed written statements. The Court has considered all the evidence, whether or not referred to specifically in this judgment. At the conclusion of this hearing, the Court announced its decision, these written reasons following.
9. Litigation between family members is rarely a good solution to improving family relations. The mother's application was pursued with vigour from the outset. The rhetoric used in the earlier stages of the proceedings was unhelpful and the Court encouraged the parties to guard against increasing the level of conflict, having regard to dynamics of the adult family members, each of whom continued to play a key role in the children's lives. The Court wishes then to express its gratitude to each of the advocates in this final hearing for the exceptional care and skill taken in presenting the parties' respective positions, for their professional and thorough yet sensitive approach, during what has been inevitably a period of heightened emotion. What is clear is that this is a loving, impressive family network with a close bond, in which these two exceptionally lucky children have enjoyed the highest quality care during a time of significant disruption in their lives. I have no doubt at all that these delightful children are loved dearly by each of the adults involved. The commitment of the Special Guardians of both children has been remarkable and outstanding. The mother and the maternal uncle and aunt each recognise that they may benefit from mediation, to assist them in improving the relationships of the key adults in the children's lives. I endorse their proposal as a sensible one, which has the potential for great benefits.

The Relevant Law

10. Section 14A Children Act 1989 defines a Special Guardianship Order as an Order appointing one or more individuals who is over the age of 18 years and who is not a parent of the child, to be a child's Special Guardian.
11. Section 14C Children Act 1989 prescribes the effect of a Special Guardianship Order. While the Order remains in force, a Special Guardian appointed by the Order has parental responsibility for the child in respect of whom it is made, and, subject to any other Order in force with respect to the child under the Act, a Special Guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child, apart from another Special Guardian.
12. Pursuant to section 14D Children Act 1989, a Special Guardianship Order may be varied or discharged by the Court on the application of a defined list of persons,

including any parent of the child concerned. A parent applying to discharge the Special Guardianship Order must first obtain the leave of the Court before making an application. The Court may not grant leave unless it is satisfied that there has been 'a significant change in circumstances since the making of the Special Guardianship Order.'

13. Under section 14E, in proceedings in which any question of making, varying or discharging a Special Guardianship Order arises, the court shall draw up a timetable with a view to determining the question without delay and give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.
14. Section 14F provides that each Local Authority must make arrangements for the provision within their area of special guardianship support services, which means counselling, advice and information and such other services as are prescribed, in relation to Special Guardianship.
15. Section 1(1) Children Act 1989 provides that, when a Court determines any question with respect to the upbringing of a child, the child's welfare shall be the Court's paramount consideration.
16. In any proceedings in which any question with respect to the upbringing of a child arises, the Court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child (s1(2) Children Act 1989).
17. Under s1(3) Children Act 1989, the Court shall have regard in particular to —
 - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of the child's age and understanding);
 - (b) the child's physical, emotional and educational needs;
 - (c) the likely effect on the child of any change in his circumstances;
 - (d) the child's age, sex, background and any characteristics of the child which the court considers relevant;
 - (e) any harm which the child has suffered or is at risk of suffering;
 - (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
 - (g) the range of powers available to the court under this Act in the proceedings in question.
18. The Human Rights Act 1998 applies to these proceedings. Under Article 8, everyone has the right to respect for private and family life. There shall be no interference by a public authority with the exercise of that right except such as is in accordance with the law and is necessary in a democratic society. Each individual family member in this case has that right, including the children, their mother, the father, the Special Guardians and the wider family. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks.

The Relevant Background

19. There is a significant background to the case. In short, the mother has been known to the Local Authority since 2008, arising from concerns about her drug use, initially while she was pregnant with 'G'. There was further involvement with the Local Authority from 2009–2016, arising from concerns around domestic abuse between 'G's parents. 'G' was made the subject of a Child Protection Plan. However, professional concerns persisted in connection with parental drug use and neglect, including concerns that 'G' presented as hungry, was not attending school regularly and concerns that her medical

needs were not being met, amongst other things. Although there followed reports of improvements in the home environment, 'G' was again made subject to a Child Protection Plan in 2017 when the mother was then pregnant with 'B'. The Local Authority was concerned that the mother was again abusing illicit drugs, impacting on her care of 'G', in addition to concerns around the mother's mental health. The Local Authority issued public law proceedings in April 2018 in respect of 'G' seeking a Care Order. The Local Authority issued public law proceedings in respect of 'B' following his birth.

20. The mother had been using cannabis since the age of thirteen and in later years, ecstasy, speed and cocaine. By all accounts her cocaine use persisted for around seventeen years until around two years ago. She became dependent on cocaine and later, on crack cocaine. In the previous proceedings, toxicology evidence showed that the mother tested positive for cocaine, two cocaine metabolites, benzoylecgonine and norcocaine, and the 'crack' cocaine marker anhydroecgonine methyl ester in each of the six month-by-month sections analysed. A third cocaine metabolite, cocaethylene was also detected in the two older sections and in the most recent section, the detection of cocaethylene indicating the use of cocaine with alcohol.
21. Comprehensive independent expert evidence from Dr Clark-Dowd, Clinical Psychologist in 2018 highlighted concerns about the mother's ability to meet the emotional needs of her children and focus on their care due to her unmet mental health needs. In Dr Clark-Dowd's opinion, the mother's profile suggested:
 - (a) drug dependence within the clinically significant range including long-term dependence upon substance as a means of coping. Under the influence of substances, she exposed her children to risk in a number of ways. Due to the illegal nature of her drug use, she exposed her children to both direct and indirect risk, through being unable to care appropriately whilst under the influence of substances, through access to criminal lifestyle and financially. The mother historically reported to have been slow to respond to her daughter's needs whilst under the influence;
 - (b) the presence of problematic schizoid personality features: Individuals with schizoid personality traits experience social impassivity, lack of emotional reactivity and marked difficulty experiencing strong emotion. This generally leads to difficulty connecting with others on an emotional level as well as their own emotional experiences. They can be apathetic and interpersonally disengaged. Strong schizoid personality traits within her profile are likely to contribute to her difficulty understanding the emotional needs of her children, leading to her dismissing or minimising their needs;
 - (c) raised levels of anxiety and depression;
 - (d) histrionic personality traits: Those with histrionic personality features have a strong need to be loved and attended to at any cost. They can present as socially competent as well as confident and self-assured, however, underneath the surface, these individuals need constant reassurance and validation from external sources in order to maintain acceptable functioning and are more likely to experience difficulty in processing and containing their own feelings, in particular, at times of strain, expressing these feelings externally, which is likely to be frightening for a child in their care.
22. Dr Clark-Dowd reported that the mother, *"is likely to experience fluctuations between need and difficulty understanding both the emotional position of herself and others. Her*

difficulty recognising her daughter's extensively documented and substantial emotional need is likely to continue in the future without significant psychological intervention."

23. Further, Dr Clark-Dowd reported that the mother minimised professional concerns relating to the emotional impact of her care upon her daughter and the mother had significant difficulty holding in mind and understanding the needs of her daughter. The evidence identified further risk factors in respect of poor supervision, failing to meet the basic needs of the children in terms of attending appointments and providing adequate food, as well as failing to give priority for educational and developmental needs. Dr Clark-Dowd concluded that the mother's histrionic personality features as well as schizoid traits were likely to influence her difficulty prioritising the needs of her daughter above herself, as well as truly understanding the concerns raised. Further, *"her ability to meet the needs of her child fluctuate over time and will be exacerbated by stresses. This becomes all the more acute, given the level of demand associated with the new baby, as well as the fact the [mother] is due to care for her new child alone...[the mother] does not recognise the risks she herself posed to her daughter. She does not adequately understand the risks posed through her substance use on her unborn child. She minimised a number of difficulties outlined in the documentation. She fails to reflect upon the emotional experiences of ['G'] and denies the concerns raised by professionals. In addition, within the papers provided...it is of significant concern the depth of worries and issues raised by ['G'] to family members as well as the school."*
24. In respect of future work to address her difficulties, Dr Clark-Dowd was of the professional opinion that the mother would require, *"substantial and ongoing monitoring and intervention with reference to her substance abuse disorder. Based upon the historic nature of her substance misuse, her desirability as well as discrepancies between her reporting and observation by professionals, as well as disclosures/allegations by her daughter...lack of substance dependence should be evidenced by [the mother] through monitoring and by testing. Given the long-term nature of her drug use, it is anticipated that she will require professional ongoing support...in order to refrain from using drugs, particularly once her new baby is born. [The mother] references herself having turned to alternative substances...when she stopped using cannabis she told me she began drinking alcohol more frequently. Coupled with anticipated stresses and the psychological and emotional as well as physical impact of caring for a new baby on her own, this will place a significant further risk of turning to drugs, or alcohol, as a means of coping with her feelings."*
25. Furthermore, Dr Clark-Dowd was of the opinion that the mother, *"would benefit from psychological work aimed at addressing problematic personality traits, her own emotional history, as well as features of anxiety and depression...given the long-term nature of these difficulties. [The mother's] reliance on unhelpful ways of coping, for example overdependence on avoidance based coping styles, as well as use of substances and difficulty engaging consistently with support offered in the past...I would suggest this psychological work would be long-term, for example 12 months in duration. A relational therapy, such as psychodynamic psychotherapy would be helpful in order to truly address [the mother's] long-term difficulty understanding the emotions of herself and others. It is anticipated that such work would take place on at least a weekly basis."*
26. In respect of the effectiveness of any treatment programme, Dr Clark-Dowd was of the professional opinion that the mother, *"will find it difficult to engage in psychological work meaningfully, without substantial support...she has a strong tendency to disengage...Schizoid personality traits are notoriously difficult to treat due to the very*

nature of the problems. It will require substantial commitment...and motivation, in order to explore and better understand her own emotional experiences as well as that of others. At this stage, I consider it unlikely to be effective. A potential to improve her parenting would not be available until at least 12 months into this work."

27. At the conclusion of the public law proceedings, the Court made Special Guardianship Orders in respect of both children against a background of unanimous professional opinion. 'G' has remained with her maternal grandparents and 'B' has remained living with his maternal uncle and aunt. By all accounts, both children have thrived in the care of their respective Special Guardians.

Leave to Apply

28. All parties accept that since the conclusion of the public law proceedings, the mother has made exceptional progress in respect of addressing her drug misuse. She has sustained abstinence from all illicit drugs for around 2 years. She has completed a recovery programme, including a 12 Step programme through Cocaine Anonymous and Narcotics Anonymous. She continues to attend regular meetings with both organisations. She received one-to-one support with a local drug support service, meeting regularly and consistently with her key worker. She submitted to regular and random drug testing, each producing negative results. Moreover, she became involved in voluntary work with Cocaine Anonymous and Narcotics Anonymous as a Treasurer and Secretary respectively. She currently works on a voluntary basis as a peer mentor. She engages in further voluntary work in the community assisting elderly neighbours and volunteering with the ambulance service as a driver's assistant. Additionally, the Court is informed by the mother that she uses yoga, meditation and Buddhism to support her emotional wellbeing.
29. Following the mother's application to discharge the Special Guardianship Orders in respect of both children, the Court gave directions for updated toxicology testing in respect of drug use. The mother filed evidence in the form of hair strand test results which suggested that the mother's cocaine use was more recent than she declared. The mother challenged the interpretation of those results. The Court gave directions, on application of the mother, for further expert evidence from a Consultant Trichologist, Dr Rushton. In his expert opinion, unlike the conclusions reached in the previous public law proceedings, the conclusions reached by the most recent laboratory testing of the mother's hair sample were unreliable, as the laboratory did not take into account the different rate of hair growth due to the mother's mixed ethnicity and textured afro hair type, incorrectly applying a hair growth rate for caucasian hair types and further, the laboratory did not analyse the hair strand washings, suggesting that the impact of external contamination or BZEs generated during the analytical processing were not taken into consideration. The conclusion reached by Dr Rushton was that, taking those factors into account, the most recent hair strand test was consistent with the mother's account of abstaining from substances of abuse from February 2019.
30. The mother's progress in respect of addressing her drug use is remarkable and impressive and she should be commended highly for her commitment and achievements. I have no hesitation in recognising that the removal of both children from her care motivated the mother to begin to engage with services and become drug free. The mother told the Court that she has fully embraced her recovery and I find no reason to doubt her.
31. On the basis of all the evidence available, no party opposed the mother's application for leave to apply to discharge the Special Guardianship Orders relating to both children. On all the evidence, the Court was satisfied that there had been a significant change in circumstances since the making of the Special Guardianship Order. The Court was

satisfied, accordingly, that the test for the granting of leave was met. Following the granting of leave, the Court gave directions through to final hearing, including updated evidence from the independent psychologist, from the Local Authority and from the key adults, including the mother and the Special Guardians.

Welfare

32. All parties accept that, leave having been granted to apply to discharge the Special Guardianship Order, at this Final Hearing when considering whether the Special Guardianship Orders should be discharged, the jurisdiction is welfare-based. There is no obligation on the applicant parent to satisfy the Court that the threshold requirements from the previous public law proceedings no longer apply. The issue in respect of the upbringing of both children must be determined with the child's welfare as the Court's paramount consideration in accordance with section 1, Children Act 1989. The Court must have regard in particular to the list of factors set out in s1(3) Children Act 1989 as part of the Court's multifaceted and rounded consideration, taking into consideration all the evidence.
33. The Court has the benefit of expert evidence from the same independent Clinical Psychologist who assisted the Court in the public law proceedings. In her updated report of November 2020, Dr Clark-Dowd acknowledged the evidence that the mother has been abstinent from drugs since September 2018, having committed herself to the 12 Step programme of rehabilitation via Cocaine Anonymous and Narcotics Anonymous. Dr Clark-Dowd also noted that the mother had tried to access the therapy recommended in her previous reports but this had not been offered to the mother. Dr Clark-Dowd noted that the mother had engaged in sixteen sessions of counselling and additionally has self-care strategies including good diet, meditation and prayer. Dr Clark-Dowd reported that updating psychometric assessment highlighted the presence of "*high levels of desirability...prominent Histrionic and some Narcissistic personality traits...though reporting of schizoid traits has reduced.*" Dr Clark-Dowd noted that the mother's tendency for desirability, both to herself and in terms of attempting to be seen well by others, remains significant.
34. Dr Clark-Dowd concluded that, in her professional opinion, the mother remains in a process of recovery from substance abuse and dependence, particularly given the issue of a lack of transparency in the history of her parenting to date. Dr Clark-Dowd highlighted that positive aspects of the mother's updated picture must not be discredited and the mother's motivation and reported achievements should be fully acknowledged. She has worked hard to address her issues of substance dependence. This and the wider psychological difficulties are not as acute as they were in the previous assessment. Further, her motivation and ability to make change is commendable.
35. Ultimately, Dr Clark-Dowd concluded that the mother has engaged in rehabilitation but the evidence suggests that the mother is in a recovery process that requires further psychological support. The issues for the children are the mother's risk of relapse, her ability to address this should it occur and more importantly, her willingness to report this in an honest and timely way. In Dr Clark-Dowd's opinion, the mother is part-way through a process of rehabilitation, which should not be rushed. Dr Clark-Dowd was of the opinion that there is a risk of premature confidence of change, particularly the natural risk of relapse, now and in the future, especially if professional monitoring reduced when the children or one of them was returned. The mother's "*defensive/desirable*" responding also remains a concern, as the mother continues to exhibit a wish to minimise flaws. Dr Clark-Dowd expressed the professional opinion that the main concern is with regard to the mother's openness and honesty with professionals. The mother continues to hold an idealised view point that cannot be sustained. This itself could lead to a risk of relapse, meaning that if she 'fails', she would try to cover it up, dismiss it or defend it. Dr Clark-

Dowd acknowledged that the risks for the two children may be different with regard to compliance, risk-reporting and vulnerability ahead.

36. Dr Clark-Dowd was of the professional opinion that the mother could engage in further psychological work to address the issues of defensiveness that remain of concern. She noted that this would be difficult for the mother as she lives by the narrative that she is open and honest. A psychological therapy such as Compassion Focussed Therapy (CFT) or Cognitive Analytical Therapy (CAT) of around 12-16 sessions delivered on a weekly basis could help to reduce her risk profile. This therapy would challenge her in respect of mentalising the position of the child, to help her consider her daughter's position in light of 'G's own developmental needs as she enters adolescence and is exposed to risks herself which as substance misuse. The work could be completed whilst a child was in her care. It would need to be funded on a private basis. Dr Clark-Dowd did express caution that she was not sure how truly effective this work would be due to the mother's ongoing lack of insight into this specific issue. Ongoing regular drug testing was very strongly recommended if one or both children were placed in her care, so as to monitor her abstinence on a continued basis in the medium term.
37. The mother produced in evidence a letter from her local wellbeing centre, from Dr Robins, dated February 2019. This followed a referral from the mother's GP arising from Dr Clark-Dowd's initial assessment in the public law proceedings. Dr Robins reported that at the time of her assessment of the mother, there was 'no evidence' of schizoid personality disorder or any other mental disorder apart from dependence syndrome, currently abstinent in partial remissions. Dr Robins reported no role for secondary mental health services. Dr Robins' qualifications are not recorded in the letter. Dr Robins is not an independent expert appointed by the Court. Dr Clark-Dowd commented, in respect of Dr Robins' observations, that the 'threshold for NHS mental health services and psychological treatment is different to that in care proceedings,' where the considerations include the risks to the children, which may be different from clinical need. Further, the methods of assessment and modes of data vary greatly. In her oral evidence, Dr Clark-Dowd accepted that in the past, schizoid personality traits were a 'huge part of the mother's functioning' but that there has been a change. Dr Clark-Dowd maintained her professional opinion that the mother has underlying psychological difficulties which are still at play and there is a concern about her ability to admit it, if she were to relapse without completion of the work recommended. In summary, Dr Clark-Dowd told the Court, "*this is not simply about the mother succeeding in abstinence. This is not a one-issue case.*" I find no reason to depart from the careful, considered, independent expert evidence of Dr Clark-Dowd.
38. The social worker commended the changes the mother has made to her lifestyle over the past two years. The social worker informed the Court that the mother fully engaged with all aspects of the parenting assessment, she was punctual, polite, open and considered throughout the process. The social worker considered that, in the main, the mother presented as insightful and reflective with regard to the previous public law proceedings and was able to discuss in depth why she felt she had made the required changes for the children to be returned to her care. Furthermore, the social worker reported that the home conditions have improved significantly since the previous proceedings.
39. The social worker acknowledged that the mother has a strong support network now. However, the social worker was of the professional opinion that the mother remains in the process of recovery from years of drug use and there are a number of factors that remain untested which pose a risk to the children if they were both returned to her care. The social worker identified the factors leading to a future risk of significant harm as including a risk of domestic abuse in relationships, the mother's ability to manage the competing demands of two children of differing ages, one of whom is entering

adolescence and the mother's ability to maintain her recovery from drug misuse, whilst caring for two children. The social worker held the professional concern that the mother continues to lack the ability to view things from the child's perspective, that the mother is overly optimistic about the process of transition of the children to her care and that she remains not able to override her own thoughts and feelings to consider the best options for the children. The social worker expressed professional concern as to the long-term psychological impact on 'B' of removing him from all he knows, which would be likely to cause him further trauma.

40. Whilst the social worker acknowledged that the mother has greater insight and seems better equipped to meet the needs of 'G', the social worker concluded that there remain risks that if both children were in her care, they may not receive long-term consistent and safe care from the mother throughout their childhood. In this regard, the social worker noted that 'G' would be able to meet some of her own needs and would also be able to voice concerns, should she feel able, to family members or teachers, whereas 'B' would remain solely reliant on his mother and would be unable to voice his own concerns. The social worker was of the professional opinion that if both children were returned to the mother's care, it would present with more challenging situations and heighten the risks. The social worker also noted 'G's expressed wish to live with her mother and further, that 'G' did not have a strong bond with 'B'.
41. I turn to consider the factors in the welfare checklist prescribed by s1(3) Children Act 1989 in respect of both children.
42. *The ascertainable wishes and feelings of the child concerned, considered in the light of the child's age and understanding:* 'G' is twelve years old. She expressed a clear view to professionals that she wishes to live with her mother but that she would wish to finish Year 7 of school first and remain living with her maternal grandparents until then, with a view to moving to her mother's care in the Summer. She has expressed the wish to return to her mother's care without a transition period. 'G' has also told professionals that she would like 'B' to live with her and the mother but only once they have a bigger house. She commented that 'B' could not share her room as there is no space for a cot, so he would have to sleep in their mother's room. 'G' is a child who is at an age where her wishes and feelings carry weight and must be respected. The wishes and feelings of a mature child do not carry any presumption of precedence over any of the other factors in the welfare checklist. The child's preference is only one factor in the case and the Court is not bound to follow it. The weight to be attached to the child's wishes and feelings will depend on the particular circumstances of each case. In particular, having regard to the words of s 1(3)(a), it is important in every case that the question of the weight to be given to the child's wishes and feelings is evaluated by reference to the child's age and understanding. Within this context, and on the face of it, the older the child the more influential will be their views in the decision-making process. However, ultimately, the decision is that of the Court and not of the child. It is important to recall in this context that the child's best interests are the Court's paramount consideration. On the specific facts of this case, the child's wish to return to her mother's care are capable of being realised, without causing further significant harm, for the reasons articulated by the social worker and the Children's Guardian.
43. In respect of 'B', at two and a half years of age, he is too young to express a view. It is assumed that he would wish to have his needs met with ongoing consistent care, affection, stimulation and support throughout his minority, with carers who consistently prioritise his needs. 'B' refers to his Special Guardians as his mother and father. He recognises them as meeting his primary care needs. He treats his cousins, with whom he lives, as his siblings. His understanding of his biological mother and half-sibling is not yet fully developed, in light of his age.

44. *The child's physical, emotional and educational needs:* 'G' has the physical needs of any child of her age. She needs consistent care, support, guidance and boundaries that meet her developmental needs and to live in an environment that is calm, predictable and safe. She is at an age where her self-care skills are very good and she continues to develop her independence daily. She has not always had her health care needs met in the past, having missed medical appointments. She has experienced significant instability and neglectful parenting in her early childhood up to the age of ten years. She is having all her needs met in the care of her Special Guardians. She is receiving secondary school education. Returning to her mother's care would likely mean a change of education provision. 'G' has indicated she is content to change school. It is understood that the mother has not yet secured a school place for 'G' close to the mother's home. Furthermore, the social worker considers that, as 'G' has been told that her mother chose drugs over her, 'G' may benefit from therapeutic support to understand her experiences, if she were to return to her mother's care.
45. 'B' requires his physical and emotional needs to be met consistently. He too requires consistent care, support, guidance and boundaries that meet his developmental needs and to live in an environment that is calm, predictable and safe. He requires stability and an established routine. Having regard to his age, he is completely dependent upon his carers to ensure his needs are met consistently and in an attuned and sensitive way. He needs and deserves to be held in mind always. He requires a carer or carers who are focused on his needs as a priority, to maintain his emotional and physical well-being in the short, medium and longer term of his minority. His needs are being met by his Special Guardians. Further, he attends nursery twice per week as part of his established education routine.
46. *The likely effect on the child of any change in his circumstances:* 'G' has been in the care of her Special Guardians, her maternal grandparents, for two years. Returning to her mother's care, including a change of school, will inevitably be a significant change in her circumstances but one which is in line with her wishes and feelings. It is a change that has the benefit of the support of her existing carers, namely her Special Guardians, and the support of her mother, into whose care 'G' would be received. Accordingly, having the emotional and practical support of each of the key adults and the child is likely to minimise the impact of change. The professionals each acknowledge that the mother has made enough change for 'G' to return to her care and the professionals each recognise that, on balance, a change in circumstances of the type envisaged would best meet the child's emotional needs and support her wellbeing in the short, medium and long term.
47. 'B' has been in the care of his Special Guardians since the age of three months. He has known them as his primary care givers throughout that time. In their care, he has thrived. He is treated as part of the Special Guardians' family. The Special Guardians treat him as their son. The Special Guardians' children each treat him as their sibling and he knows them as his siblings. There is overwhelming evidence of the Special Guardians providing a level of commitment, care and affection that is exceptional. Whilst a move to his mother's care would have the advantage of him living with his birth mother and half sibling, which would in turn likely benefit him in terms of his identity as he matures and develops into middle-childhood and adolescence and have the potential advantage of 'B' coming to know the members of his family with whom the mother has direct contact, including his birth-maternal grandfather, from whom the maternal uncle is estranged, remaining with his Special Guardians will continue to provide him with the benefits of living and being raised by family members, including extended family members, with whom he has already developed a warm, loving and affectionate bond. A change in placement for 'B' will inevitably result in an actual loss of his relationship with those family

members, which would be detrimental to him. His cultural, ethnic and emotional identity can be nurtured in his existing placement with his Special Guardians.

48. Removing 'B' from the care of those who have provided him with all his care needs throughout the very large majority of his life, and contrary to their wishes, would be a very significant change for 'B', particularly having regard to his young age. His level of understanding and development is such that he is unlikely to comprehend why he has been removed from what he perceives as his core family unit. The professionals all consider that this will be detrimental to his emotional wellbeing and development. His educational needs are currently being met by his Special Guardians. A change of placement for 'B' would also require a change in nursery provision, albeit, having regard to his young age, this change is not significant. The likelihood is that he would adapt readily to a new educational placement.
49. The Court specifically excludes from its consideration the economic disparity between 'B's Special Guardians and his mother. 'B's maternal uncle is a professional sportsman. It is a fact that 'B' enjoys an environment of opulence that few are lucky enough to experience, whereas 'B's mother lives in a small property and is dependent on State welfare benefits. In my judgement, it would be wrong to have regard to this fact when considering the effect of a change of circumstances for the child, when considering a potential move from his Special Guardians to his mother's care.
50. Having regard to the siblings, 'G' and 'B' and the effect on them jointly of a change of circumstances, there is a consensus among the professionals that both children returning to the mother's care may not have the positive effect on the sibling relationship desired by the mother. The children have never lived together as siblings. There is a marked age disparity between them.
'G's positive contact with her mother has been mostly on a one-to-one basis since the mother has abstained from illicit substance misuse. The professionals consider unanimously that it is highly probable that 'G' may struggle emotionally with the level of care and attention that the mother would need to afford 'B' at this time when 'G' is approaching adolescence and when 'B', in light of his age and stage of development, will be more demanding of his mother's time, requiring more care and attention.
51. *The child's age, sex, background and any characteristics of his which the court considers relevant:* 'G' is a twelve-year-old girl of dual heritage. In her early childhood until the age of nine years, she experienced periods of significant emotional harm caused by her mother, as detailed in the preceding care proceedings. The social worker observed that 'G' may benefit from therapeutic support to understand her lived experiences. Placement of 'G' with her mother would ensure her cultural heritage and identity could best be promoted. 'G' has no other specific characteristics of relevance to the Court's determination.
52. 'B' is a two-year-old boy of dual heritage, which is a different paternal heritage to that of 'G'. Placement with his mother or continued placement with his Special Guardians would ensure that his cultural heritage and identity can be promoted. The maternal uncle's evidence as to how he and his wife promote and intend to promote 'B's cultural heritage was impressive and compelling. This can further be maintained through continued regular contact between 'B' and his mother, 'G' and wider family, whilst living in the care of his Special Guardians. He is regarded by all as a happy and much-loved child, who is thriving in all areas of his development. He is a valued member of his Special Guardians' family and has formed secure attachments with his Special Guardians and their children. Both Special Guardians speak very lovingly about him and have clearly invested a lot of emotion and time into ensuring his transition to their care was as smooth as it could possibly be and to ensure that he is very much a part of their family.

53. The Children's Guardian reported that, although 'G' and 'B' are siblings, they are two individual children whose journeys thus far are very different. 'G' resided with her mother to the age of nine years, so has experienced the negative and positive aspects of her mother's care. 'B' was removed at three months old from his mother and although he has, in the opinion of the Children's Guardian, formed an attachment towards his mother, his earliest memories and most secure attachments are with his Special Guardians. The Children's Guardian noted that consideration must be given to the differing and competing needs of each child. 'G' is at an age where her self-care skills are very good. She continues to develop her independence daily. She is also able to verbalise any concerns or worries she may have to appropriate adults, whereas, 'B' is completely dependent upon his carers to fulfil and ensure his needs are met consistently and in an attuned and sensitive way.
54. *Any harm which the child has suffered or is at risk of suffering:* 'G' has already experienced significant harm in the care of her mother in the form of emotional harm, neglect and exposure to domestic abuse, set out at length in the preceding public law proceedings, arising from the mother's illicit drug use, lifestyle and mental health needs. 'G's basic care needs were not met, including her physical, emotional and educational needs. This resulted in significant Local Authority involvement in her life. As the Children's Guardian articulated in his final analysis, 'G' was nine years old when removed from her mother's care: *"I have no doubt that she would have had both negative as well as positive experiences and memories of being parented by [her mother]...['G'] would have experienced feelings such as anger and disappointment which she may have projected at [her mother] as well as experiencing feelings of loss and abandonment towards [her mother] all of which would have been very difficult emotions for ['G'] to self-regulate, when placed in the care of her maternal grandparents...['G'] would have been observing and tracking [her mother] in terms of how she was presenting and the efforts she was making to ensure she remained a focal point of her life. ['G'] having lived with her mother and experienced the neglectful care and inconsistent emotional presentation of [her mother], would not have felt confident or wanted to progress her relationship with her mother, if [her mother] would have continued to present in the way that ['G'] had become used to whilst in her care."*
55. The professionals identify numerous factors that have the potential to destabilise the mother, which remain untested, including the mother's future relationships, maintaining recovery from abstinence from drug use, managing the demands of parenting one or two children whilst maintaining her recovery and seeking support in the event that she was struggling to parent. There is a consensus of professional opinion that if both children were in the care of the mother, there is a real risk that the children could both be exposed to further drug use and neglectful parenting. Further, the Children's Guardian is of the opinion that, if the mother is unable to meet the competing needs of both children and encounters personal difficulties, as she has done historically, 'B' is at risk of experiencing a further placement breakdown which would ultimately be catastrophic to his emotional and psychological and overall development.
56. *How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs:* In the past, the mother was assessed as not being capable of meeting the needs of both children. The Local Authority's updated parenting assessment in these proceedings concluded that the mother could care for both children, however, the identified risks mean that their care may not be consistent and safe in the long-term. There remain significant risks and areas of concern that remain untested, as identified. There is a consensus amongst the professionals that the mother is better equipped and has better insight into the care needs of 'G', having regard to 'G's age, stage of development and 'G's ability to voice concerns

to other family members, the school or other professionals. Furthermore, 'G' is able to meet some of her own needs. 'B' is not of an age or stage of development where he could voice any concerns to family members or professionals, should they arise. He remains entirely dependent on his primary care giver.

57. The professionals are concerned that the mother struggles to mentalise the situation from 'B's perspective such that a return of 'B' to his mother's care would not be in his best interests. The professionals are concerned that 'B' has been removed from his mother's care once and has settled well with his Special Guardians. The professionals are all concerned that if 'B' was moved from his current primary care givers, there is a real risk of the placement with his mother not being stable. There is a risk of 'B' being de-stabilised, displaying challenging behaviour as a consequence and of the mother being unable to manage the situation, if she felt rejected by 'B', whilst also trying to settle 'G' into the placement.
58. Conversely, 'B's Special Guardians are considered by all the professionals to be wholly capable of meeting his needs both now, and in the short, medium and long-term future. The quality of care provided to date by these very Special Guardians has been exceptional.
59. There is unanimity of professional concern that if both children were returned to the care of their mother, that would result in a challenging situation for both children, which would not be in the best interests of the children individually or collectively. There is unanimity of professional opinion that the mother is presently able to care safely for 'G' only.
60. *The range of powers available to the court under this Act in the proceedings in question:* Placement of either child with their mother could be supported by a Child Arrangements Order, however, that would not provide any element of professional support and such Order would be of little value in the specific circumstances of this case.
61. Placement of one or both of the children with their mother could be supported under a Supervision Order. Neither the Local Authority nor the Children's Guardian recommends the same. The Local Authority observes that the mother has been assessed as capable of meeting 'G's needs alone and as such, a Supervision Order would serve no purpose. Furthermore, none of the professionals consider it to be in the best interests of 'B' to move from the care of his Special Guardians.
62. The Local Authority recommends the making of a Family Assistance Orders to support 'G's placement with her mother. Family Assistance Orders are relatively uncommon. Section 16, Children Act 1989, enables a Court to make an Order requiring an officer of the Local Authority or Cafcass to advise, assist, and where appropriate, befriend any person named in the Order. Section 16 requires the Court to consult with the Local Authority or Cafcass and an Order can only be made with the consent of every person named in the Order, other than the child. The Court has consulted with both the Local Authority and the Cafcass Children's Guardian. Both recommend the making of a Family Assistance Order and the mother gives her consent. Whilst the making of a Family Assistance Order does not confer shared parental responsibility on the Local Authority to make decisions about the child, it has the advantage of allowing a framework of ongoing support from the Local Authority to be provided to the family for a defined period of time to assist and support the family with issues that may arise with a view to mitigating any potential risks. The Family Assistance Order has the potential to provide a level of professional input that is the least interventionist response proportionate to the risk.
63. The Local Authority recommends a Family Assistance Order to support 'G's placement with her mother only, with 'B' remaining in the care of his Special Guardians. The nature

and degree of professional concern in respect of both children being in their mother's care remains such that the professionals do not consider that a Family Assistance Order or any form of Order would provide the level of support or intervention necessary for both children together.

64. A Family Assistance Order may be made for a defined period of up to twelve months. The Local Authority recommends an Order of six months' duration. However, having heard the evidence, the Local Authority would now not oppose a twelve-month Order. The relevant issue having regard to the duration of the Order is the uncertainty as to the timing of 'G's return to her mother's care. The Local Authority and Children's Guardian accept that the timing of 'G's return to her mother is a matter between her mother and her Special Guardians. The child expressed a wish to professionals to move from the care of her maternal grandparents to her mother, after the end of the current academic year, in July. The mother expressed the wish for the move to take place during the school Easter holidays, in March or April, which is supported by the Special Guardians. No school placement has yet been identified for 'G' by the mother. If the Court made a Family Assistance Order now, at the conclusion of these proceedings, for a six-month period, it would expire in August, which potentially may be only one month after the child transitions to her mother's care, substantially reducing the effectiveness of the Order. If the transition to the mother's care took place in the Easter school holidays, the proposed six-month Order would be effective for only three or four months. In my judgement, a twelve-month Order would maximise the benefit to the child of the advice, assistance and support envisaged by the Order, which plainly would be in the best interests of the child and a proportionate interference with private and family life.
65. Having considered the factors set out under s1(3) Children Act 1989, I turn to consider the advantages and disadvantages of the various realistic options for the children.
66. Placement of 'G' with her mother, without 'B' would allow her to be raised by her mother for the remainder of her minority, promoting a strong sense of identity, whilst allowing her to continue to have an ongoing relationship with her wider family, including her existing Special Guardians. Such placement has the advantage of being in line with 'G's expressed wishes and feelings. It is an option that is supported by her mother and Special Guardians, which has the potential benefit of the transition being smooth and the likelihood of safeguarding 'G's emotional wellbeing. A potential disadvantage of 'G' being in her mother's care is that she could be at risk of neglectful parenting, exposure to her mother's drug use and her emotional and physical safety not being secured in the future. The mother has not always been open and honest with professionals in the past and there remains a concern that if the mother were to struggle in the future, she would not notify professionals. Furthermore, the professionals remain concerned that the mother can struggle to understand the impact of her choices on the children. She could continue to make decisions that may be in her interests but not in the best interests of the child. A further disadvantage of 'G' being placed alone with her mother is that she would remain separated from her half-brother 'B'. 'G' would continue to maintain her relationship with 'B' through regular monthly contact, as she has done ever since the Special Guardianship Orders were made. This option has the potential in the future to make 'B' feel excluded from his direct birth family or treated differently from 'G', particularly as he grows older and begins to develop an understanding of his circumstances. I am satisfied on the clear and compelling evidence of the maternal uncle and aunt that they have actively supported 'B's understanding of his circumstances and will continue to do so in the future through ongoing sensitive discussions in line with his age and level of understanding as he grows and develops, together with undertaking attuned life-story work, such that the emotional impact on 'B' will be lessened. The sensible agreement between his Special Guardians and his mother to develop a common narrative will undoubtedly further assist.

67. Continuing 'G's Special Guardianship placement with her maternal grandparents would continue to provide 'G' with a safe, loving secure and stable environment in which her daily care needs were met. The continued placement would not be in line with 'G's current wishes and feelings and, although a placement with direct family members, is not the best option to promote 'G's identity, having regard to the fact that 'G' has known the care of her mother for the first nine years of her life.
68. Placing both 'G' and 'B' with their mother together is the mother's preferred option but is not recommended by any of the professionals for the reasons identified. Such placement would have the plain advantage of allowing both siblings to be raised by their mother, together as a sibling group, promoting their sense of identity, whilst allowing them to continue to have ongoing relationships with all wider family members, including their existing Special Guardians. It is not an option promoted by 'B's Special Guardians. It carries with it a likelihood of immediate emotional harm for 'B' of being removed from the care of those family members whom he considers to be his primary carers and undoing the close relationship he has with his cousins whom he sees as his siblings. The professionals also consider that such a move away from his primary caregivers, having particular regard to his age and stage of development, carries with it a risk of medium and long-term harm that is difficult to quantify but cannot sensibly be ignored. Further, placement of both siblings with their mother together carries an enhanced risk of neglectful parenting, a risk of relapse in their mother's drug use and their emotional and physical safety not being secured in the future. The professionals all consider that for both children, a breakdown in their placement in these circumstances would be likely and hugely damaging. In the case of 'B', having regard to his age and stage of development, the professionals consider that such breakdown could be catastrophic for him. The risks for the child of attempting a transition to the care of the mother are too many, which collectively lead me to conclude that the outcome would be a likelihood of placement breakdown and an inevitable separation of the children again into different futures. All the risks identified by the professionals are evidently possible and some of them are probable. I do not need to be satisfied that they all will happen. I am, however, satisfied that they are all likely in one form or another and that to ignore them would be wrong.
69. Placement of 'B' with his mother without 'G' is not an option recommended by any of the professionals nor proposed by any of the family members.
70. Continuing 'B's Special Guardianship placement would undoubtedly benefit him. The professionals all recognise that continuity of care for 'B' is important for him, having regard to his age and stage of development. Although the continuation of this placement carries with it the disadvantages associated with being separated as a sibling group and of 'B' being placed away from the care of his mother. 'B' would continue to maintain his relationship with his mother, with 'G' and with his maternal grandparents through regular monthly contact, as he has done ever since the Special Guardianship Orders were made. The professionals recognise that this option also has the potential in the future to make 'B' feel excluded from his direct birth family or treated differently from 'G', particularly as he grows older and begins to develop an understanding of his circumstances. However, as articulated clearly in the maternal uncle's compelling oral evidence, he and the maternal aunt have and will continue actively to support 'B's understanding of his circumstances through ongoing discussions appropriate to his age, stage of development and understanding as he grows, supported by attuned life-story work with the view to promoting his identity and lessening the emotional impact on him of growing up outside the family unit of his mother and half-sister. Those disadvantages of 'B' remaining with his Special Guardians are considerably outweighed by the benefits to 'B' of the placement continuing. 'B' has received a high level of physical and emotionally attuned care from his Special Guardians. He would receive a continuity of care without experiencing further disruption in his living arrangements and day-to-day care. He would maintain the positive

relationships and attachments he has formed with his Special Guardians and their children. Ultimately, there is a significant prospect of all his needs being met throughout his minority and he will more likely be safeguarded from harm. He would be able to continue attending his current educational placement, where by all accounts he has settled well. I find no reason to depart from the unanimous expert opinion that 'B's needs will be best met by continuation of the Special Guardianship Order, where 'B will have the benefit of a continuity of the quality and consistency of emotionally attuned care, love and attention he is currently receiving, in a family placement, in which he is very happy, settled and contented.

71. The mother has effected a transformational change in terms of her abstinence from harmful illicit drug use. The parties and the Court accept the mother's account of her abstinence from September 2018 onwards. In terms of her own development, she has demonstrated a level and scope of change which on any basis justified the granting of leave. Having considered the possible outcomes for these children and the positives and negatives of each, the Court must conclude that the best interests of the children, by reference to their individual welfare needs, demand separate outcomes. In my judgement it is clear from the evidence what the children need, and there is only one outcome which will meet their welfare needs both now and in the future.
72. I find no reason to depart from the conclusions of the Local Authority and the Children's Guardian that 'G's welfare needs are best met by the existing Special Guardianship Order in favour of her maternal grandparents being discharged and 'G' returning to the care of her mother on a full-time basis. In my judgment, the making of a Family Assistance Order for a period of twelve months is a necessary and proportionate way to support that placement with the professional advice and assistance from the Local Authority that comes with it. I am satisfied that the Special Guardians and the mother are best placed to determine the timing of the move, taking 'G's wishes into consideration regarding her education and the availability of a school placement. It would appear to me to be prudent for 'G' to transition into her mother's care following the completion of the current academic year but ultimately that is a matter for the key adults in her life. Once the transition to her mother's care has taken place, I am confident that the mother and the maternal grandparents can agree a flexible arrangement for regular ongoing contact between 'G' and her maternal grandparents so that this important relationship in her life can be maintained.
73. In respect of 'B', for the reasons articulated by the Local Authority and the Children's Guardian, and for the reasons set out in this judgement, 'B's welfare needs are best met by the existing Special Guardianship Order in favour of his maternal uncle and aunt remaining in place and for the mother's application to discharge the Special Guardianship Order to be dismissed. The obvious benefits of being brought up within the birth family are, in my judgement, significantly outweighed by the real risk of a failed attempt at rehabilitation in the short and medium term, which would result in long-term damage to 'B' and the possibility of a further separation of the siblings. This outcome for 'B' is an undoubted interference with his right and the rights of his mother and sister to family life but is mitigated by 'B' continuing to live with his family members who have provided him with his primary care needs throughout the majority of his life to date. In my judgement, that interference remains both necessary, having regard to his welfare needs, and proportionate to the risks.
74. In respect of direct contact between 'B', his mother and sister, I find no reason to depart from the analysis of the Children's Guardian when recommending that the existing direct contact arrangements continue on a monthly basis for four hours, supported by but not supervised by the maternal grandmother. This is already at a level which enables 'B' to maintain a meaningful relationship with his mother and sister, which enables him to

continue to develop his sense of self and identity, reinforced by his Special Guardians and enables him to understand the dynamics within the adult relationships prevalent to him and his journey. Further, the nature, duration and level of direct contact is appropriate taking into consideration the geographical distance between 'B' and his mother, which involves a considerable amount of travelling. The Special Guardians and the mother agree that monthly video contact should also take place, such indirect video contact taking place two weeks after the direct contact, such that 'B' will in effect spend time with his mother and sister fortnightly in a pattern of alternating direct and indirect contact. These arrangements should be the subject of ongoing review by the Special Guardians, with the expectation that the duration of contact and the need for the element of support from the maternal grandmother be reconsidered in line with 'B's changing and developing needs as he grows. This will ensure that 'B's welfare needs are met by maintaining the connection with his mother and sister to as full an extent as possible. No party considers that an Order for contact is required.

75. For the reasons given, the Court discharges the Special Guardianship Order in respect of the child, 'G' and makes a Family Assistance Order for a duration of twelve months. The Court dismisses the mother's application to discharge the Special Guardianship Order relating to the child, 'B'.

HHJ Middleton-Roy
15 February 2021