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IN THE FAMILY COURT

Case Number: WD21C00336

17th December 2021

Before His Honour Judge Middleton-Roy

Between:

The Local Authority

Applicant

- and -

The Mother

1st Respondent

The Father

2nd Respondent

**The Children 'O' and 'T'
(through their Children's Guardian)**

3rd and 4th
Respondents

Mr Holmes, Counsel, for the Local Authority
Miss Pritchard, Counsel for the First Respondent
Miss May, Counsel for the Second Respondent
Miss Cudby, Counsel for the Third and Fourth Respondents

JUDGMENT

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His Honour Judge Middleton-Roy:

Anonymity

1. The names of the children and the adult parties in this judgment have been anonymised, pursuant to the Practice Guidance of the President of the Family Division issued in December 2018, having regard to the implications for the children of placing personal details and information in the public domain.
2. 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.

Summary of Findings and Conclusions

3. This short summary of the Court's findings and conclusions is set out for the benefit of the parents at the outset, the substantive judgment following.
4. The Court finds that :
 - (a) the threshold for making public law orders is met;
 - (b) on the Local Authority's evidence, the predominate risk to the children is around emotional harm through exposure to parental conflict;
 - (c) the basic needs of the children can be met adequately by either parent;
 - (d) there is solid, evidence-based, reason to conclude that both parents are committed to making the necessary changes;
 - (e) there is solid, evidence-based, reason to conclude that both parents will be able to maintain that commitment, such that the likelihood of future emotional harm is reduced;
 - (f) accepting that protective measures could not provide an absolute guarantee, basic protective measures could readily be put in place to further reduce the likelihood of harm to an acceptable level or at least to ensure that the authorities were alerted to any deteriorating situation before enduring harm was suffered;
 - (g) the high test for adoption has very plainly not been met. Adoption is not in the best interests of either child and is plainly a disproportionate response to the risk;
 - (h) the welfare needs of both children demand that there be a transition back to the care of both parents;
 - (i) the Court recommends a transition of the children to their parents' care over a period of 21-28 days;
 - (j) a Child Arrangements Order will be made, recording that the children live with both parents (a joint 'lives with' Order),
 - (k) the Court endorses the father's proposed plan of time the children will spend in the care of each parents, under the joint 'lives with' Child Arrangements Order;
 - (l) the Court invites the Local Authority to accept a Supervision Order of 6 months' duration;
 - (m) the Court intends to make final Orders in these terms, without further adjournment.

The Application

5. The children with whom this Court is concerned are siblings age 3 and 2 years. To protect their anonymity, the Court will not refer to them in this judgment by name. The Court will refer to the older child as 'O' and the younger child as 'T'. Their mother is the First Respondent in this case. Their father is the Second Respondent.
6. The Local Authority applies for Care Orders and for Placement Orders for both children, with the plan that the children are adopted, without the consent of their parents.

7. The Local Authority applications are opposed strongly by both parents. The Local Authority's applications are not supported by the Children's Guardian.
8. There is an unhappy procedural history to this case. The case was allocated to a named Judge. At the outset of these proceedings, at a remote hearing conducted by video, on application by the Local Authority, the allocated Judge made an Interim Care Order on 30th March 2021 and approved the Local Authority interim care plan of removal of both children from their parents' care. The children were placed in Local Authority foster care, where they remain. The allocated Judge listed the action for final hearing before me. An Issues Resolution Hearing took place before a Recorder, also listed as a remote hearing by video.
9. The action first came before me for final hearing in September 2021. At that stage, the case was not ready for final determination. All parties and Counsel attended the final hearing remotely by video. No advocate was in the same location as their client. The mother was not able to participate effectively in the hearing. Her internet connection was such that she could not see or hear almost anything of the proceedings. The Local Authority had not complied with an Order made by the Recorder at the Issues Resolution Hearing to serve relevant documents in time for the final hearing. The first day of the final hearing was not effective. Miss May of Counsel properly identified at the final hearing that the Local Authority's Child Permanence Report was signed by a person who was not a person within the prescribed description for the purposes of section 94(1) of the Adoption and Children Act 2002, not meeting the conditions under Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005. The error had seemingly not been identified during managerial supervision in the preparation of the report, indeed the supervisor had not signed the report, nor had the error been identified by the Local Authority's Agency Decision Maker. Having regard to the potential criminal liability that arose from a breach of the Regulations, all parties invited the Court to adjourn the final hearing in order that the Local Authority could provide an explanation for its error and an opportunity to remedy the same. The final hearing was re-listed before me commencing 29th November 2021, the parties and Counsel attending the Court building physically, not by video.
10. The parents have not been afforded judicial continuity. In addition to the three different Judges involved in these public law proceedings, the parents appeared before two other Circuit Judges, a lay bench of magistrates and at least three different District Judges in private law Children Act proceedings and proceedings under the Family Law Act 1996, totalling at least nine different tribunals. It is unquestionable that judicial continuity allows for effective case management and efficient use of judicial time. Only one Judge need read the case papers. It is easier to identify the relevant issues in the case and identify where matters have gone awry. The judicial control exercised over the case is firmer and case management is more consistent. More particularly, in a case such as this, where one or more of the respondent parents has challenges in communication, both in terms of verbal communication and in hearing others, judicial continuity affords the parent the opportunity to engage more effectively in the proceedings with a single Judge hearing the case throughout and affords the Court the opportunity to best understand the communication needs of that parent.
11. The mother in this case has cerebral palsy. People with cerebral palsy may experience a wide spectrum of disorders of movement, posture and communication problems, as well as hearing difficulties. The mother experiences all those challenges. She tells the Court that her speech cannot always readily be understood. Effective communication underlies the entire legal process, ensuring that everyone involved understands and is understood. Without that, the legal process runs the risk of being impeded or derailed. Those challenges are heightened in the context of remote hearings which create many barriers that reduce effective engagement in a hearing. In light of the mother's particular vulnerabilities and communication needs, necessary adjustments, including ensuring judicial continuity, listing each hearing as an attended hearing, not by video, and arranging the court room to best accommodate the mother's communication

needs were matters of particular significance to ensure that the mother's participation in the proceedings and the quality of her evidence would not be diminished.

12. At the start of the relisted final hearing, the Children's Guardian, having previously supported the Local Authority's applications and care plans of adoption, reserved his position, wishing to hear the evidence, before formulating his recommendation. Having heard all the evidence, the Children's Guardian no longer supported the Local Authority's applications for Placement Orders. The Children's Guardian now recommends to the Court a return of the children to the primary care of their father under an Interim Care Order, with a gradual transition of the children from foster care to their father's care. The Children's Guardian recommends that there be oversight by the Court and the professionals before any final welfare determinations are made, and that final decisions are adjourned for a further period of around three months, the children to remain the subject of Interim Care Orders until then.
13. For the reasons set out in this judgment, the Court does not approve the Local Authority's care plan. Further, the Court respectfully does not agree entirely with the approach of the Children's Guardian.
14. In short summary, the Local Authority's concerns relate to physical and emotional harm of both children through exposure to their parents' acrimonious relationship, exposure to domestic abuse and exposure to their parents' poor mental health.
15. Ground Rules for the final hearing were established at the Issues Resolution Hearing and revisited at the start of the final hearing, taking into consideration the particular needs of both parents. At final hearing, the Court heard evidence from the allocated social worker, a domestic abuse practitioner, from both parents and from the Children's Guardian. Following the conclusion of the final hearing on 3rd December 2021, the Court reserved judgment and received helpful written submissions from all parties. The Court has considered all the documents filed, amounting to over 3,500 pages, contained in six lever arch files. It is of note that at the Issues Resolution Hearing the Court extended the permitted page limit for the bundle to only 750 pages. It is not possible nor necessary in the time available in this judgment to refer to each document or each piece of evidence I have read or heard nor to each submission made. Nevertheless, the Court has considered all the information before it.

The Relevant Law

16. The Domestic Abuse Act 2021 provides at section 1 that the behaviour of a person ("A") towards another person ("B") is "domestic abuse" if A and B are each aged 16 or over and are personally connected to each other, and the behaviour is abusive. 'Personal Connection' is defined in the Act at s2 as including where two people are or have been married to each other. Behaviour is defined as being "abusive" under s1(3) if it consists of a single incident or a course of conduct that includes physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, psychological, emotional or other abuse. A victim of domestic abuse is defined under the 2021 Act, so far as is relevant, as including a child who sees or hears, or experiences the effects of, the abuse.
17. Section 31(9) of the Children Act 1989 defines "*harm*" as meaning ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another. "*Development*" is defined as meaning physical,

intellectual, emotional, social or behavioural development. “*Health*” is defined as meaning physical or mental health.

18. The Family Procedure Rules 2010, Practice Direction 12J at paragraph 3 defines domestic abuse as, “*any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 years or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial or emotional abuse.*”
24. “*Controlling behaviour*” is defined in PD12J as meaning, “*an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.*”
25. “*Coercive behaviour*” is defined in PD12J as meaning, “*an act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim*”.
26. In *JH v MH (Rev 2)* [2020] EWHC 86 Russell J set out further guidance on the Court’s approach to addressing domestic abuse by reference to PD12J: “*Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them.*” This Court is fully cognisant of the relevant guidance and this Court explicitly bears that guidance in mind.
27. Section 31(2) of the Children Act 1989 provides that a Court may only make a Care Order if the Court is satisfied that the child concerned is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child or likely to be given if the Order were not made not being what it would be reasonable to expect a parent to give. These provisions are commonly called the threshold criteria.
28. If satisfied that the threshold criteria are made out, the Court must proceed to consider section 1 of the Children Act 1989. At this second stage, the welfare of the child is the Court’s paramount consideration.
29. When considering whether or not to make a Placement Order, the Court’s paramount consideration under section 1(2) of the Adoption and Children Act 2002 is the welfare of the child throughout their life. The Court must at all times bear in mind, pursuant to section 1(3) of the 2002 Act that any delay in coming to the decision is likely to prejudice the child’s welfare. The Court must take into account all the matters set out in the welfare checklist at section 1(4) of the 2002 Act and consider the whole range of powers under that Act and the Children Act 1989.
30. Section 52(1)(b) of the 2002 Act makes clear that the Court cannot dispense with the consent of any parent of a child to the child being placed for adoption or to the making of an Adoption Order in respect of the child unless the Court is satisfied that the welfare of the child requires the consent to be dispensed with.
32. The Human Rights Act 1998 applies to these proceedings. Under Article 8, everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this 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 child, the mother, the father 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.

Threshold

33. The relevant date for determining the threshold criteria is 11th March 2021 when Local Authority issued proceedings. The Local Authority asserts that the children were suffering and/or were at risk of suffering significant harm in the form of emotional harm, physical harm and neglect attributable to the care given and likely to be given to them not what it would be reasonable to expect a parent to give.
34. The Local Authority relies upon the following to establish that the threshold criteria under s31(2) Children Act 1989 are made out.

...

3. 'O' and 'T' both sustained a lot of bruises caused by accidental means, as a result of the parents' lack of supervision. The father alleged that the children sustained "suspicious bruises" whilst in the care of the mother and the mother made allegations that 'T' had sustained unexplained bruises whilst in the father's care, all of which raised concern that the children were at risk of physical harm, with the children undergoing four child protection medicals each. The child protection medical of 'O' on 28.09.2020 concluded that, without clear explanation for the mechanism of the injury to her ear, non-accidental injury was "highly suspected". This happened when 'O' was in the mother's care. The mother subsequently provided an explanation.
4. 'O' and 'T' have suffered emotional harm whilst in their parents' care due to being exposed to significant domestic abuse between their parents prior to their separation in June 2020 and being caught up in their acrimonious relationship following their separation:
 - a. There have been 15 notifications received from the Police since June 2020 (the majority relate to the mother's breach of the non-molestation order by phone and email harassment, when the children were not present, and include allegations made by the father of physical harm and neglect in the mother's care). At the Review Child protection Conference on 11.01.2021 the police shared that 25 calls or contacts to the police were made by the parents since August 2020:
 - i. On 3.3.2020 the mother accused the father of assaulting her on 25.2.2020;
 - ii. On 07.06.2020 the father alleged the mother sexually assaulted him on the 4.6.2020;
 - iii. On 8.6.2020, the mother alleged the father assaulted her on 7.6.2020;
 - iv. On 11.06.2020 the father was granted a non-molestation order against the mother until 15.06.2021, which she continued to breach and as a result was arrested on occasions.
 - b. On 25.8.20, the father was charged with assault by beating on 28.2.2020 and common assault on 7.6.2020 of the mother. He was acquitted of these charges on 31st August 2021 at trial.
5. 'O' and 'T' have suffered emotional harm having been exposed to the parents' poor mental health at times:
 - a. On 4.11.2019 the father attempted an overdose away from the family home;
 - b. On 22.06.2020 the ambulance service attended to the mother due to attempting suicide via an overdose. The children were in the home;
 - c. The children are frequently caught up in the acrimonious relationship between the parents as set out in paragraph 4 above. The parents are unable to prioritise the children's emotional needs at those times.

6. Dr McEvedy opines that the father has problems of emotional dysregulation consistent with personality difficulties and that, *'the combination of his personality difficulties and adult ADHD are likely to have impacted on his ability to sustain a harmonious relationship with the mother, although of course, her conduct may also have played a part in the conflict between them'* and *'conflict between them is likely to have impacted on the wellbeing of the children.'*
 7. Dr McEvedy reports that the mother has features of emotionally unstable personality and the mother suffered an episode of mood disorder previously during mid-2020 and, is at risk of a further episode which may impact on her parenting.
 8. 'T' has severe eczema which the parents have been unable to treat consistently, and 'T's dietary and skin treatment has been a topic of dispute between the parents. 'T's skin and dietary needs were more consistently managed in his father's care and had improved by the relevant date during the PLO process.
35. There is no dispute by the parents that the threshold criteria are met for the making of public law Orders.
 36. There are three elements to threshold. The harm must be actual or likely, it must be significant and it must be due to parenting that is not reasonable. The concessions made by the parents, together with the totality of the evidence in the case, leads me to the conclusion that all three of these elements are satisfied. Whilst the father accepts that at the relevant date, the children were likely to suffer significant harm, on the clear evidence before the Court, including the parent's own oral evidence, the facts undoubtedly disclose at the relevant date actual significant harm and a risk of significant harm that cannot sensibly be ignored. The threshold under section 31(2) of the Children Act 1989 is plainly met. I make findings in accordance with the agreed threshold statement, which I endorse and adopt as my findings as part of this judgment.
 37. Having made those findings and applying the threshold test to them, I now proceed to consider welfare and proportionality evaluations as a separate exercise.

Welfare

38. The background facts are largely not in dispute between the parties. The family first became known to social services following a referral from the midwife, who reported that the mother was pregnant with her first child and that the mother had cerebral palsy, speech and language development disorder, high frequency deafness and learning difficulties. A Child and Family assessment was initiated. Following a pre-birth conference and the completion of that assessment, the case was 'stepped down' by the Local Authority to one where the family were supported by 'Universal Services.'
39. In March 2020, the Local Authority received a referral from the Children's Centre relating to a domestic abuse incident between the parents. The father had been arrested on charges of common assault and assault occasioning actual bodily harm on the mother and 'O'. 'O' was observed to have an injury to the mouth. The mother was observed to have bruises to her arm. Subsequently, a decision was taken by the police to take no further action and the charges were not pursued.
40. 'O' and 'T' both became subject to Child Protection Plans under the category of emotional abuse on 1st July 2020. A decision was made at a Review Child Protection Conference on 5th August 2020 that 'O' and 'T' would remain subject to a Child Protection Plan, under the category of Emotional Abuse.

41. There were fifteen reported domestic abuse notifications received from the police in respect of the parents since June 2020. During a Review Child Protection Conference on 11th January 2021, the police identified 25 calls or contacts to the police made by the parents since the previous review period in August 2020. From the end of November 2020, there have been 12 incidents or concerns reported relating to injuries or bruises sustained by the children occurred whilst in the care of one or both parents.
42. The children were the subject of five separate child protection medical examinations in August 2020, September 2020, and on 8th, 11th and 19th January 2021. Two of those medical examinations took place during the pre-proceedings 'Public Law Outline' process.
43. 'O' and 'T' were both made the subject of Police Protection Orders on 2nd October 2020 for 72 hours arising from concerns relating to neglect and concerns about non-accidental injuries. 'T' and 'O' were placed in emergency foster care. Section 20 consent was obtained from the parents for a further 7 days pending further consideration and joint investigation by police and Local Authority Children's Services. A plan was put in place by the Local Authority for 'O' and 'T' to return to their parents' care, with an intensive support package.
44. The Local Authority evidence suggests that concerns about 'O' and 'T's physical safety and emotional harm in their mother and father's care escalated during the pre-proceedings stage, resulting in the Local Authority beginning these legal proceedings, initially with the plan for the parents to share the care of the children under an Interim Supervision Order. However, the parental acrimony continued. In February 2021 the nursery school and the social worker were concerned about a further injury to 'O' with concerns that the children's physical needs were not consistently attended to and that they continued to be exposed to parental conflict, notwithstanding the additional parenting support provided. On issuing proceedings, the Local Authority invited the Court to make an Interim Care Order. The allocated Judge made an Interim Care Order and endorsed the Local Authority's interim care plan of separation.
45. A cognitive assessment of the mother was completed by Dr Timberlake, Clinical Psychologist, pre-proceedings, dated 27 January 2021. Dr Timberlake assessed the mother's IQ as falling within the borderline range of abilities. She was not assessed as having a learning disability. It was recommended that the mother be provided with both verbal and visual prompting aids and memory aids when working with her. Further, it was recommended that those working with the mother should adapt their work to use visual as well as verbal information, presented through the use of role modelling, videos and visual aids. The mother was assessed as struggling with her verbal comprehension skills, which were in the lower than average range, highlighting that she struggles to understand the meaning of spoken or written words as would be expected for her age range. It was recommended that her understanding is supported using simplified accessible concrete language as well as visual information and that it would be useful to regularly check her understanding by encouraging her to repeat back what she has understood from a given task or discussion. It was recommended that any spoken or written information should also be made short, concise and factual and where possible supported by visual material or role modelling and observed practice. The mother was assessed as struggling most with her processing speed in comparison to the other areas tested. It was noted that the mother can correctly process information to complete a simple task when provided with extra time. For more complex unfamiliar tasks, it was recommended that tasks are broken down into smaller parts and that be given extra time to process each part of such information being provided. Dr Timberlake concluded that, with adaptations made, the mother may be able to parent competently.

46. A full psychological report of the mother was completed by Dr Eracleous, Chartered Clinical Psychologist, pre-proceedings, dated 16th June 2020. The mother is reported to have accepted to Dr Eracleous that the children, “*would have observed domestic abuse,*” in the parental relationship, describing that when the father visits, “*it’s really bad*”, due to his ongoing anger and that the mother was playing games, using contact with the children to “*get at him*” and generally being antagonistic. The mother reported to Dr Eracleous that she saw changes in the children, such as ‘O’ hitting her brother, mother aunt and uncle. The mother told Dr Eracleous that when she reflects, she wishes that she’d handled everything in a different way and she expressed much guilt about what the children witnessed. The mother told Dr Eracleous that she had reflected with her Community Mental Health Team worker about her responses and she had now gained skills in ‘calming down’ and responding ‘more helpfully.’ Dr Eracleous reported that the mother, “*appeared keen to develop ways of managing differently, acknowledging that her difficulties had impacted negatively on the family.*”
47. In respect of the mother’s insight into Social Service’s concerns, Dr Eracleous reported that the mother was clear that the negative impact of the parental relationship on the young children and the parents’ respective unmet mental health needs had a negative impact on the children and would continue to do so, if they went unaddressed.
48. In Dr Eracleous’ opinion, the mother experienced significant developmental trauma in her own adolescence, which likely impacted on her social, emotional and cognitive development. In addition, she had to contend with the impact of cerebral palsy on her speech, hearing and mobility. She struggled with her learning, was subjected to ongoing bullying and prejudice and she struggled in her relationships. Dr Eracleous reported that since March 2020, the mother’s mood has somewhat improved and she feels that she is finally getting the right support from the Community Mental Health Team. Dr Eracleous reported that, it appears that the mother has traits of Emotionally Unstable Personality Disorder / Borderline Personality Disorder, such as having made a suicide attempt, self-harm, sudden mood changes, temper outbursts and her interpersonal struggles. However, the mother presented as willing to reflect, make changes in order to have better communication with the father, but not to resume a relationship, for the benefit of the children. The mother felt that if both parents made changes and worked on their respective mental health difficulties, they would be better able to communicate for the sake of the children. The mother was willing to continue to engage with the Community Mental Health Team to obtain psychological intervention. Dr Eracleous recommended that the mother should continue to engage with the Community Mental Health Team with a view to a psychological intervention, she would further benefit from assistance with childcare, as she did not have any social support with the children and she will need support to communicate about childcare issues with the children’s father.
49. A psychiatric report of the mother was directed by the allocated Judge and a report was prepared by Dr McEvedy, Consultant Psychiatrist dated 9 July 2021. Dr McEvedy noted that the mother came across as, “*open and straightforward*” and appears to have engaged well in assessments. Dr McEvedy concluded that, “*while there may be some doubts arising from the interventions in terms of the mother’s ability to work consistently with involved professionals, I see no reason to doubt that she wishes to do so.*”
50. Dr McEvedy concluded that the mother is not suffering with any active mental illness. In his professional opinion, it is possible or probable that the mother had an episode of mood disorder in mid-2020. Dr McEvedy agreed with the psychological assessment from 2020 that there are

‘traits’ of personality abnormality, but not amounting to a full diagnosis of personality disorder. Dr McEvedy considered that it is likely that the mother had at least two episodes of major depression, when she was 16 years old and in 2020. In his opinion, it is reasonably likely that the mother may experience a further similar mood disorder episode within the next five years. Dr McEvedy noted that the mother is no longer suffering with significant mood symptoms and intervention is not currently needed.

51. Dr McEvedy observed that the breakdown of the relationship between the mother and father, *“has evidently been acrimonious on both sides, and both parents need to be agreed that this is unsatisfactory and needs to change if the quality of communication between them regarding the children is to improve.”*
52. In respect of the father, a cognitive assessment completed by Dr Timberlake, Clinical Psychologist dated 15 January 2021, pre-proceedings, concluded that the father’s full-scale IQ fell in the average range of abilities illustrating that he did not meet any of the criteria for a Learning Disability. He displayed a personal strength in perceptual reasoning skills, illustrating that he has strength in understanding visual information. It was recommended that those working with him should, where necessary, consider the use of pictures, role modelling, videos and visual aids. This may be more helpful when illustrating abstract concepts. The father was noted to have good verbal comprehension skills but a lower than average processing speed, meaning that he would benefit from extra support to process information and be provided with extra time to complete tasks. For more complex unfamiliar tasks it was recommended that tasks are broken down into small parts and that he be given extra time to process each part of such information being provided. It was noted that the father also displayed some difficulties with his working memory skills which fell in the lower than average range. Dr Timberlake recommended that the father be provided with both verbal and visual prompting aids when working with his, including the use of memory aids.
53. A psychological assessment of the father was completed by Dr Eracleous, Chartered Clinical Psychologist pre-proceedings, dated 30 June 2020. Dr Eracleous reported that the father experienced neglect in his own childhood and moved into a foster care placement for his adolescent years. He was diagnosed with ADHD. He struggled at school with expulsions, due to what was perceived as challenging behaviour, likely developmental trauma from the parenting he received and from bullying. He struggled with some antisocial behaviour, drug use and social difficulties, including homelessness and unemployment. He made two suicide attempts in nine months, during his relationship with the mother. Dr Eracleous noted that the father scored in the moderate depression range and mild anxiety range, the father stating that, having removed himself from the family home and the relationship, his mental health was improving.
54. Dr Eracleous reported that the father demonstrated acknowledgement that the unhealthy relationship he had with the mother was detrimental to the children. The father reported that he had apologised to ‘O’, promising that, *“it would not always be this way.”* The father accepted that he has felt mistreated, angry and fearful of losing his children and that this led to his unacceptable behaviour of physical violence. Moreover, the father reported then that he understands that any communication between himself and the mother quickly escalates to arguing and therefore direct contact with the mother should not continue. The father reported continuing to experience mild to moderate levels of depression and anxiety, which he felt was steadily improving, having removed himself from the toxic environment. The father reported that parental separation is in the best interest of the children, as the animosity and abuse would negatively impact on their development.

55. The father was clear with Dr Eracleous that his relationship with the mother was a detrimental one to the children, as they were exposed to arguing, violence on at least two occasions and abusive treatment between them both ways. Dr Eracleous reported that the father demonstrated insight into his own struggles and those in the relationship, which the father felt has improved gradually now that he has removed himself from the relationship.
56. Dr McEvedy, Consultant Psychiatrist completed a psychiatric report in respect of the father dated 9 July 2021. In Dr McEvedy's opinion, the father's developmental history, and as much as is known of his behavioural difficulties in childhood and adolescence, suggests a retrospective diagnosis of conduct disorder in those years. The relevance of this, Dr McEvedy informed the Court, is that a conduct disorder diagnosis in adolescence may prefigure the development of adult personality difficulties.
57. In Dr McEvedy's opinion, there are some traits of emotionally unstable personality difficulties in the father's profile, including apparent difficulties in relationships, some apparent difficulty in control of his temper and a history of self-harm, on at least two occasions in February and November 2019 by overdose. Dr McEvedy reported a sense from the father that he has difficulty trusting others. The father's own responsibility for the conflict in his relationship with the mother of the children was, 'not entirely absent' and he very much regrets his aggression in the February 2019 incident.
58. Dr McEvedy noted the father's report that his ADHD symptoms are significantly less marked than in earlier years. Dr McEvedy concluded that they may attenuate further in coming years even without treatment. The father's personality difficulties, probably arising from a combination of his difficult upbringing and his ADHD, are likely, in Dr McEvedy's view, to persist without psychological intervention.
59. On balance, Dr McEvedy reported, it is unlikely that the father has a history of major depression. *"I note in particular that when he took the overdose in November 2019 this was impulsive, in the context of relationship conflict, and the conclusion from the brief psychiatric admission was that his presentation was that of adjustment disorder (non-mental illness category of response to stressful/adverse circumstances) rather than a mental illness."*
60. The father was recommended to self-refer to local primary care talking therapies in November 2020 and the local well-being team, not in respect of a current mood disorder, but rather in respect of long-term problems of psychological adjustment and relationship difficulties. Dr McEvedy noted that, if an intervention for that is not offered within the particular primary care talking therapies service, they may either refer on or recommend another service, which might be within local secondary care mental health services. In respect of ADHD, Dr McEvedy recommended that the father could be re-referred to the adult ADHD service for a review of whether a different stimulant medication would be of benefit. Dr McEvedy concluded, *"I believe that a psychological intervention might well be beneficial for [the father]. I would hope that this could be one in which his dominant idea, that he has been the long-term victim of abuse, including in the relationship with [the mother], can be given an alternative perspective, in which relationships are seen as dyadic, that is interactive and therefore that both parties must accept their share of responsibility."*

61. Dr McEvedy concluded, *“In my opinion, [the father] is motivated to comply with measures advised by the local authority, but his awareness of the reasons for local authority concerns is probably not very good. The reason for this seems most likely to be his dominating self-analysis, that he is the long-term victim of abuse, and that others unfairly try to paint him as an aggressor. Unless he can gain a broader perspective, which allows him to both accept some greater responsibility for his role in the difficulties over childcare and in contact with [the mother], and therefore that he can become a capable agent, it is difficult to see how much progress he will be able to make.”*
62. The Social Worker, in her oral evidence, acknowledged that the Health Visitor had no concerns with the health and development of either of the children during her involvement with family from April 2020 to February 2021. The Social Worker acknowledged that both children have a warm and loving relationship with both parents. The Social Worker told the Court in her oral evidence that there were no concerns about either parents’ basic care of either child. The Social Worker told the Court, *“the concern of the Local Authority was the parents finding fault with each other.”* Further, the Social Worker accepted in her oral evidence that the children were content, clam and happy children, despite the conflict between the parents. The Social Worker confirmed in her evidence that many positives were noted in the parents’ individual care of the children, noting, *“clear strengths”* in their parenting and no concerns about their basic care, observing a clean, tidy home environment, the children being well fed and neither children having any signs of developmental delay. The Social Worker acknowledged that the father had completed work around discipline and boundaries and that the Local Authority, *“never had any issue”* in respect of the father’s ability to implement appropriate discipline and boundaries. The Social Worker acknowledged in her oral evidence that ‘T’s eczema was well managed in the father’s care. Further, the Social Worker acknowledged that the father demonstrated *“good strengths”* in his work around domestic abuse, including a good understanding of healthy relationships.
63. In respect of the parental relationship, the Social Worker acknowledged that police call-outs had ended by January 2021 with no reported police involvement since. The Social Worker acknowledged that following the commencement of these court proceedings and prior to the first Case Management Hearing, the Local Authority had been considering a care plan of the children remaining in the care of one or both parents under an Interim Supervision Order. The Social Worker acknowledged that the plan was to keep the children at home and improve the parents’ ability to co-parent, while they were going through an acrimonious divorce.
64. It was acknowledged further by the Social Worker in her oral evidence that in or about February 2021, the father contracted covid and he was not able to care for the children. The mother then had sole care of the children for three weeks, during which time ‘T’s eczema flared up, the nursery reported a ‘bruise’ to ‘O’s forehead and a mark to ‘T’s bottom. The Local Authority had concerns regarding ‘inconsistencies’ around handover of the children between the parents and the nature of the communication between the adults, the combination of which led the Local Authority to change its care plan to one of removal under an Interim Care Order: *“at the time, the parents were in a high level of disagreement and conflict.”* The Social Worker accepted in her oral evidence that the father was right to have taken steps to move out of the family home when the children were exposed to verbal arguments between the parents. Further, the Social Worker accepted in her oral evidence that the father had taken some responsibility for actions of physically assaulting the mother in 2019 and 2020. The Social Worker accepted that there was no evidence of the father having been involved in any other abusive relationship and he has no convictions for violence. Furthermore, the Social Worker accepted in her oral evidence that the parents have since positively engaged in mediation with each other and they have developed a parenting plan together, the Social Worker accepting that the father’s parenting plan

was “*sensible*”. The Social Worker told the Court that the father’s engagement with mental health support services, “*is not a concern*”. Further, the Social Worker accepted that there is wider family support, noting the paternal grandmother is, “*a good source of support*” and that the children respond very positively to her. The Social Worker accepted in her oral evidence that the father is polite, respectful and calm and that he has warm and loving interactions with the children. Further, he acted in a child-focused way in not introducing the children to his new partner, whereas, in respect of the mother, the Local Authority identified concerns in respect of her new partner and this negative information was shared with the mother but she remains in a relationship with that person. The Social Worker accepted that the parents are able to say positive things about each other and that they are now working together in a child-focused way. The Social Worker was concerned as to whether the improvements in the parental relationship can be sustained, telling the Court, “*we are not confident the parents would adhere...because we have not seen it previously...there could potentially be future disagreements*”.

65. The Social Worker was asked in cross-examination about her written welfare analysis which concluded by stating that the Local Authority is recommending adoption, “*as the preferred placement option.*” The Social Worker told the Court, “*I am aware it’s not a decision for me...that would be the preference...there is a certain level of risk the Local Authority does not feel would warrant the children returning to their parents’ care.*”
66. The Social Worker is newly qualified. She appears to have been allocated to the case immediately after qualification in October 2020. The Children’s Guardian praises the Social Worker’s efforts with the family but suggests that the Social Worker should have had more support. In my judgement, any assessment of the background facts and any proper assessment the totality of the evidence, could not lead correctly to the conclusion that the welfare of the children demanded the making of a Placement Order leading to adoption. There was, in my judgement, no adequate assessment of the current risks, no adequate assessment of the draconian nature of the Local Authority’s care plan and no consideration at all as to the proportionality of the proposed response and the Local Authority evidence left some key questions unanswered.
67. The Court heard from the domestic abuse officer who told the Court that both parents showed good insight into the impact of domestic abuse on children. The sticking point in respect of her intervention with the father had been that he had not shown sufficient responsibility during the domestic abuse intervention. The domestic abuse officer accepted that during the period of intervention, the parents were in the middle of a relationship breakdown and that the father was, “*not ready for the intervention at that time*”. It was acknowledged that the parents have since fully separated. The domestic abuse officer told the Court, “*there was lots of reflection from the mother about her own behaviour, what she contributed to the relationship, how she felt angry with other people, that she directed her anger towards others, and how detrimental it had been to the children.*” She told the Court that the mother always expressed the genuine intention to want to work with the father, to co-parent with him and for them to communicate better. The domestic abuse officer told the Court that it was, “*really positive*” that the father has since completed work around strengthening his parenting and “*real strengths*” were highlighted. Further, domestic abuse officer acknowledged that the parents’ engagement in mediation together is positive and that it, “*sounds really encouraging...that they have talked through details about what caused conflict in the past and may cause conflict in the future if the children are returned to one parents’ care or their shared care.*”
68. There were aspects of the domestic abuse work that were not ideal. The intervention took place at a time when the parents were involved in their divorce, criminal proceedings, private law proceedings, Family Law Act proceedings and these public law proceedings. I accept that the

parents were both experiencing significant pressure at the time. Further, the domestic abuse officer had not had sight of the report from Dr Eraclous which would have provided relevant background information. In her oral evidence, the domestic abuse officer informed the Court that she is not a qualified therapist, yet she asserted that part of the work she undertook with the father amounted to Cognitive Behavioural Therapy. The father was, seemingly, expected to engage in quasi-therapeutic intervention with the domestic abuse officer, without the safeguards of confidentiality necessary for effective therapy. Further, notes of the sessions were provided to the Social Worker without, it seems, the father being provided with feedback regarding his progress until a witness statement was filed in these proceedings in May 2021 in respect of work relating to September 2020 to January 2021.

69. The Court had the unique benefit of hearing evidence from both parents. Both parents have their own vulnerabilities. Both parents have also impressively overcome difficulties arising from their own childhoods. In the case of the mother, she has managed the additional challenges associated with cerebral palsy.

70. The mother told the Court that previously there were “a lot” of communication difficulties between the parents. *“Earlier on, before the undertakings were made, there were a lot of issues, especially after the Non-Molestation Order. We couldn’t talk. The communication was going from one parent through Local Authority to other parent. That was not helpful at all...my worry was that going from one parent through someone else [the Social Worker] to the other parent, she [the Social Worker] did not always understand me properly because of my speech. I know I have a speech impediment...there were a lot of problems...when I spoke directly to [the father] there was no conflict.”*

71. The mother told the Court that, since the restrictions around their communication imposed by the Non-Molestation Order and subsequent undertakings were removed, both parents were able to and did attend mediation together: *“There were certain things I was scared to talk to [the father] about...I did not want to hurt his feelings. Having a mediator there made me feel more relaxed...he realised that I would never hurt my children. He has apologised for the conflict.”*

72. The mother told the Court, *“Both of us were to blame...We both realised we were both in the wrong, not just one of us. We have both done things we regret...the children shouldn’t hear arguments full stop...it would have scared them and upset them...I know they did get upset... We learn from mistakes and we look at what’s ahead, showing the children everything will be ok, learning from what we’ve done wrong and trying to put it right...now, when I express to him how I feel about something, he lets me speak. If he cuts me off, he says, ‘I’m really sorry’. He is listening to me now, since the undertakings were removed in September [2021]...if he doesn’t understand, he asks me to explain...he’s been working on it and over the past few months he has shown me he can listen to my point of view and take my views into consideration. It’s not all about him and what he wants...He’s a brilliant dad and he loves his children...He would never hurt the children for one second... He will do what he thinks is best for them...we’ve been going through house rules, so what I do in my house for the children he will do similar in his house and if something works well for him, I will add his rules in my house.”*

73. In my judgement, the mother gave an impressive account of her understanding of how the parental acrimony in the relationship prior to and during the parents’ separation impacted on the children. In my judgement, the mother demonstrated genuine insight. Further, in my judgement, the mother gave impressive evidence to the Court of the benefit of the parents both engaging in mediation to seek to resolve their difficulties in communicating effectively with one another as

separated parents with, the aim of co-parenting for the benefit of the children, a process that was only possible since the restrictions that prohibited their communication, imposed by the Non-Molestation Order and subsequent undertakings, were finally removed in September 2021. At the same time, in my judgement, the mother was realistic that the improved communications between the adults are still at an early stage of development. The mother was asked whether she was worried that the father may be trying to present a positive picture and things matters may deteriorate in the future, to which she responded. *“I don’t know, part of me says no, part of me says yes, I can’t answer that right now...he’s been working on it.”* In my judgement, the mother has clear insight into the harm to the children through parental acrimony, she is committed strongly to improving the parental communication, she has demonstrated a willingness and ability to make improvements and she is realistic as to the continued challenges in maintaining that positive trajectory of improvement.

74. The Court also had the real and unique benefit of hearing the father’s evidence. It was plain for the father’s evidence that he has engaged fully and wholeheartedly in a significant number of courses recommended to him and others he has sourced of his own volition. Those courses include domestic violence awareness courses, a Caring Dads course, a ‘Families Feeling Safe’ course, supporting families with protective behaviours and a Children’s Centre Tool kit. He has also engaged in Dialectical Behaviour Therapy (“DBT”), having attempted to access Cognitive Behavioural Therapy (“CBT”) unsuccessfully. The father told the Court, *“It’s very helpful. There is written information and videos and group work...on how people see your behaviours and how people feel, it’s really good, I’ve learned a lot. I’ve learned I can be dismissive of people. I’ve improved a lot, I think. I can take other people’s opinions on board now. I didn’t do that before. I listen to people a lot better than I used to...my behaviour [in the past] definitely contributed to conflict because I did not listen, as I do now...I was a very frustrated person. That wasn’t fair. It was not nice of me to criticise and so say those things...she [the mother] would have felt upset and judged...sometimes I could be dismissive of advice...going forward, I now take advice on board...my behaviour was unacceptable...I should never have hit [the mother] no matter what the circumstances...hearing everything, the children would have been scared, upset and hurt...it would have been a lot of stress for them, they should not be seeing the acrimony between us...it’s not acceptable, my behaviour was not acceptable...I’ve learned to cool down. We are not in a romantic relationship now and never will be. We don’t have that extra strain that was once involved...it has taken time to heal, with the divorce, getting past that...it was still very heated then...going forward we can we can now talk more openly and take each other’s opinions on board...if we have issues, we deal with it between the two of us...We can be amicable with each other...there are always risks. I can’t predict what will happen. I can be the best me...I don’t ever want to be in that position again with anybody. I hate that it happened. I don’t intend it ever to happen in the future, it’s just not me...I will always take more advice...sometimes it’s the ‘how to’, if someone tells me how, once I work things out, I’m good with it. I need to ask people for advice...The courses have really helped. I will keep doing them. All parents should.”*

75. Like the mother, in my judgement, the father gave an impressive account of his understanding of the negative impact on the children of parental acrimony and domestic abuse in their relationship and demonstrated clear insight. Further, in my judgement, the father gave an impressive account of being proactive in seeking relevant interventions, engaging in them, developing his learning from them and putting his learning into practice, so far as he is able presently in circumstances where the children are not in the care of either parent. He has demonstrated a strong commitment to attaining skills and learning how to improve as a parent and in his communications with adults. Furthermore, the father has been proactive, in the absence of any plan from the Local Authority as to a possible transition of the children to the parents’ care, crafting and submitting his own plan and formulating a carefully considered timetable for the children to spend time with both parents in the event that children return to their care.

76. It is of further note that the parents travelled together to court each day by car. The parents sat in court in close proximity to each other, at their choosing, and communicated with each other as the case progressed. Their behaviour in the court room was nothing other than civil and appropriate, notwithstanding the pressures and tensions inherent in the crucible of the court, where the parents faced the potential of losing their children to adoption. Whilst inevitably only a snapshot of the parents' ability to behave respectfully and amicably with one another, the level of civility demonstrated is not something that could have been contemplated six months ago, let alone demonstrated and sustained.
77. The Children's Guardian initially supported the Local Authority's applications for a Care Order and Placement Order for each child when the matter was first listed for final hearing in September 2021. Following the adjournment of that final hearing, the Children's Guardian reserved his position until he had heard all the evidence, particularly the oral evidence of the parents. I commend the Children's Guardian for having taken that approach. The Children's Guardian plainly wished to consider the parents' evidence when formulating his recommendation. That approach meant that the Court did not have the benefit of a revised detailed written analysis from the Children's Guardian. Nevertheless, the Children's Guardian's approach was, I find, considered, careful, balanced and fair. Having heard all the evidence and reflected upon it, the Children's Guardian does not support the Local Authority's application for a Placement Order. The Children's Guardian recommends that the children should be rehabilitated back to the care of the parents, with the father being the primary carer. The Children's Guardian recommends that the case should remain open to the Court for a further two to three months under an Interim Care Order, for the Court to retain oversight while the children transition back to their parents' care and for the Children's Guardian to remain involved. The Children's Guardian considered that the Court may then, at an adjourned final hearing after three months, consider whether a Care Order at home for a period of time might be appropriate or a Supervision Order. No specific recommendation was made in relation to the frequency of contact between the mother and the children or the detail of the transition of the children from foster care to their parents' care.
78. The Children's Guardian ultimately does not support the Local Authority's application for a Placement Order. The Children's Guardian conclusion in that regard is, respectfully, the only conclusion that could properly be reached on the evidence. Where I disagree with the Children's Guardian's revised recommendation is the duration of the transition of the children back into their parents' care and the need for the Court to retain oversight during that period. In my judgement, for the reasons articulated below, the children will benefit from final decisions being made by the Court now, without this litigation continuing.
79. On the totality of the evidence the Court must conclude that prior to their removal into foster care, the children were happy, healthy and meeting their developmental milestones, they were up-to-date with immunisations and had a warm, loving relationship with both parents. There were no concerns in respect of either parent meeting the basic needs of the children. All professionals describe the father as polite and calm. There is no reliable evidence of him behaving in an emotionally dysregulated way in the presence of the children or otherwise.
80. In respect of bruising, six bruises or scratches were noted on the children in a six-month period when the children were in the care of their father from August 2020 to February 2021. The father took the children to the GP and acted appropriately. On each occasion father gave an explanation. He accepts on one occasion 'T' fell from his booster seat and on another occasion, he fell from his bike while he had a bottle in his mouth. The father accepts he is accountable

for those injuries for want of adequate supervision. The father appropriately recorded the majority of the minor grazes and other bruises in the contact handover book and he was largely able to account for the bruises sustained in his care. The Local Authority does not advance a case of inflicted injury. The father accepted professional advice, put a safety gate in the kitchen and bought a new table, chairs and a highchair. He self-referred to the parenting Tool Kit parenting course. The evidence is that his supervision of the children had improved by the date the Local Authority issued proceedings, at which point the Local Authority was contemplating an Interim Supervision Order.

81. There were five noted bruises or marks on the children whilst in the mother's care during the same period which had not been recorded by the mother in the contact handover book. The existence of the bruise or mark was also noted by the Social Worker on each occasion. The mother had reported one accident. The only potentially suspicious bruise was to 'O's ear and the mother provided an explanation. Both children had bruises whilst in the mother's care, reported by the nursery, which ultimately led to the Local Authority applying for removal. The Local Authority does not now advance a case of inflicted or non-accidental injury.

82. Miss May for the father points out that, whilst in foster care, in the five-month period from April 2021 to August 2021 there are 47 reported incidents of the children sustaining bruises or marks. It is not suggested that the foster carer deliberately caused these injuries or that the injuries were caused through want of supervision. Plainly, both children are active, mobile and inquisitive. Both children are now attending nursery. 'T' is reported now to be steadier on his feet, as would be expected for his age and has fewer bruises in foster care recently. No concerns have been raised in contact about either parent's supervision or boundary setting. The evidence leads to a plain conclusion that the risk of accidents due to lack of supervision has reduced significantly. Further, any risk of the parents getting embroiled in disputes about how bruises were caused are much reduced, now that they have a direct line of communication with each other, having regard to their improved ability to communicate effectively and having regard also to their evidence that they have reflected on the consequences of their previous acrimony.

83. On the evidence, both parent's mental health is now stable. The parents' physical or mental health would not prevent either parent from caring for the children. Dr McEvedy recognised in his addendum report that the father has been cooperating with recommendations. Positive communication has been taking place between the parents and has been harmonious. In my judgement, this is evidence of tangible progress. The totality of the evidence demonstrates that any risks arising from the parent's mental health has reduced significantly.

84. The father has accepted responsibility for his past behaviour and he has been consistent about his shame and remorse when he assaulted the mother in February 2019, bruising her arms when grabbing them and pushing her into a chair. All professionals agree he was right to then leave home to prevent the children being exposed to further arguments. The parents have separated and have not reconciled. They have concluded the legal divorce proceedings. The father took proactive steps to retract allegations made to the police about the mother to prevent prosecution. There is no evidence that the children have witnessed any incident of domestic abuse since June 2020. There is no evidence of the father perpetrating domestic abuse in any previous relationships. The parents had been able to agree contact arrangements for handover of the children. Handovers largely worked well at nursery when both parents were present. The parents jointly applied to Court in June 2021 to discharge the undertakings, which replaced the Non-Molestation Order. The clear evidence is that they have communicated amicably since then. They both attended a successful mediation appointment together, acknowledging each other's strengths.

Further, they agreed a parenting plan, outside mediation, agreeing all matters, save for the issue of with whom the children should live.

85. The parents have engaged with the intensive support provided by the Family Support Workers. Further, the father has attended a Domestic Abuse Awareness course at the Children's Centre, he has completed work on discipline and boundaries with the child-care practitioner, he self-referred to parenting classes and completed the Parenting Tool Kit, he engaged with the domestic abuse officer and demonstrated many positives and good insight. He has attended two Caring Dad's courses. He is attending a 'Families Feeling Safe' course which supports families with protective behaviour. He has been seeking CBT and is attending group DBT. He has engaged effectively with each intervention.
86. Miss May submits that the Local Authority did not properly analyse the risks to the children in each parent's care separately, notwithstanding the fact that the parents had been separated since June 2020. As a result, it is submitted, the Local Authority did not have a firm grasp of each parent's strengths and weaknesses and did not tailor support to their individual parenting needs. I find weight in that submission. Further, it was submitted that the evidence does not support a finding that the risks in the father's care are so serious that only placement away from him will protect the children from harm and promote their welfare for the rest of their lives. In my judgement, Miss May's submission is entirely correct and is the only conclusion the Court can properly reach on the evidence.
87. There were, of course, very real concerns in respect of parental acrimony, incidents of domestic abuse, the parents persistently denigrating one another, making allegations against one another, which repeatedly involved the police and which resulted in the children being subjected to child protection medical examinations. Those are concerns that cannot sensibly be ignored and inevitably lead to a conclusion that there is some risk of future harm if that behaviour were to be repeated.
88. I accept the submission from the parents, however, that the Local Authority has not undertaken a global and holistic evaluation of the children's needs and the options by which they can be met. The analysis was linear and arrived at a 'preferred option'.
89. It is a long-established principle in public law proceedings that the best person to bring up a child is the child's natural parent, provided the child is not in danger. The Court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life.
90. The Court is reminded of the observations of Hedley J at paragraph 50 in *Re L (Care: Threshold Criteria)* [2006] EWCC 2 (Fam):

"Society must be willing to tolerate very diverse standards of parenting, including... the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, whilst others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event it could simply not be done."

91. Further, the Court is reminded of the observations of Baroness Hale of Richmond JSC in Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33, (para 143):

“We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, [or] who suffer from physical or mental illnesses or disabilities...”

92. The Court is required to make the least interventionist Order when protecting the welfare of the children. The making of an Order is a step that must not be sanctioned by the Court unless satisfied that that is both necessary and proportionate and that no other less radical form of Order would achieve the essential end of promoting the welfare of the children.
93. Removal of children from their families is taken extremely seriously. It is not enough that the social workers think that a child might be better off living with another family. That is not permitted in a democratic society. It is not enough to show that a child could be placed in a more beneficial environment for their upbringing. The Local Authority’s case for adoption as a ‘preferred option’ for these children demonstrates an incorrect approach and a misunderstanding the legal principles.
94. Further, I reject the submission made by the Local Authority that the proportionality assessment under the Human Rights Act is solely a question for the Court to undertake. Article 8 of the Convention provides that everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health morals, or for the protection of the rights and freedoms of others. The Local Authority is a public authority. To suggest that the Local Authority is not required to undertake a proportionality assessment but that such assessment should be left to the Court is wrong. The essential purpose of Article 8 is to protect individuals against arbitrary interference by public authorities. In addition to this negative obligation there are positive obligations inherent in an effective concept of ‘respect’ for family life. In both contexts a fair balance has to be struck between the competing interests of the individual and the community as a whole. The Local Authority’s decision-making process must be conducted fairly and so as to afford due respect to the interests protected by Article 8. Section 6 of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. The procedural protection offered by Article 8 is not confined to the trial process but extended to all stages of the Local Authority’s decision-making process. The Local Authority in this case did not expressly consider at all the question of whether its ‘preferred’ welfare option for these children of adoption was the proportionate response to the risk.
95. Intervention by the State in the family may be appropriate but the aim always should be to reunite the family when the circumstances enable that and the effort should be devoted towards that end. In exercising the jurisdiction to control or to ignore the parental right, the Court must act cautiously and must act in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded.
96. The Court’s assessment of the parents’ ability to discharge their responsibilities towards the child must take into account the practical assistance and support which the authorities or others would offer. In my judgement, the Local Authority did not adequately address the practical assistance and support that could be provided to both parents, in the context of the extant risks.

Local Authorities need to enable children to live with their parents, as long as this is consistent with their welfare, by providing the support the children and their families require. This accords with the general duty of Local Authorities under section 17(1) of the Children Act 1989 to provide a range and level of services to safeguard and promote the welfare of children in need and their upbringing by their families, insofar as it is consistent with their welfare. A need for long-term support does not mean that parents cannot look after their children. A parent with cognitive impairment will not see their cognitive impairment go away but they may learn how to do things. In the same way, a parent a physical impairment may need assistance for the rest of their life. This is particularly so when new situations arise and as the needs of the child change as the child grows and develops.

97. The essential question is whether the parenting is good enough, if the right support is provided. Multi-agency working is critical if parents are to be supported effectively and the Court has a duty to make sure that has been done effectively. The Court should not focus so narrowly on the child's welfare that the needs of the parent arising from their disability are ignored.
98. In my judgement, the Local Authority's case left some key questions unanswered. The Local Authority did not adequately address *the type of harm* that might arise to the children if returned to care of either parent as sole carer, in the context of the parents' evidently improved communication with each other, having been assisted by mediation and against a background of the father in particular having embarked on and completed a series of effective interventions aimed at addressing the particular areas of concern highlighted by the Local Authority. In oral evidence, the Local Authority clarified that the future risk to the children is of emotional harm through exposure to parental conflict. However, in my judgement, the Local Authority did not then adequately address *the likelihood* of that harm arising. On the evidence, the heightened concerns of the Local Authority arose at a time when the parents were in engaged in an acrimonious separation and subsequent divorce. The Local Authority had envisaged prior to the first Case Management Hearing, an Interim Supervision Order with the children remaining in the care of a parent. The evidence before the Court now is of a considerably improved situation where the likelihood of the children experiencing emotional harm through parental conflict is markedly reduced. That process of the parents' separation, legally and emotionally, has concluded, and the landscape for these parents and the children is now very different. The plain evidence before the Court is that the type of conflict evidenced in the past is no longer evident. Whilst there remains the potential for future conflict, particularly around these separated parents' co-parenting their two children, in my judgement the totality of the evidence leads to a firm conclusion that the likelihood of the children witnessing any conflict between their parents is markedly reduced with the parents engaged in a considered regime of contact handover where the parents do not come into contact with each other, coupled with both parents' clearer insight as to the harm their conflict would cause the children, the skills the parents have developed through targeted learning and their commitment to engage in further learning. The Local Authority's assessment of risk based on a 'lack of confidence that the positive changes would be sustained', is respectfully the wrong approach.
99. Further, in my judgement, the Local Authority did not adequately address in its analysis *the consequences*, that is, what would be the likely *severity* of the harm to the children if the type of harm did come to pass? Nor did the Local Authority adequately consider the question of *risk reduction or mitigation*: That is, *would the chances of harm happening be reduced or mitigated by support services that are or could be made available? How likely is it that the children would come to catastrophic emotional harm?* Where separated parents co-parent, it is unrealistic to expect an idyll, absent any conflict. Both parents gave clear evidence to the Court as to how they would approach potential area for future conflict that might arise in respect of the exercise of their day-to-day care of the children and exercising key issues of Parental Responsibility.

Their evidence as to their approach to addressing potential areas of conflict through improved oral and written communication was impressive. The parents benefited from gaining skills through targeted learning. Both parents expressed willingness to engage in future ongoing learning. Both parents agree to engage with professionals, including GPs, Health Visitors, Community mental Health Teams and other health care professionals, Social Worker professionals and education professionals. They have demonstrated they can do so, whilst also being entitled to express their own views in the exercise of their Parental Responsibility for their children. Both parents benefited considerably from the process of mediation and both expressed their willingness to do so again in the event that their discussions did not lead to a resolution on any point of disagreement. In addition to those universal services available, the Local Authority told the Court in oral evidence that further support from Family Safeguarding Services, including domestic abuse officers and psychologists could again be provided. Support around contact handovers outside school term times, if considered necessary in the short term, could be provided. Additionally, the Local Authority could undertake announced or unannounced visits to the parents' homes to ensure that the children were continuing to have their basic care needs met. All this available support would serve to further reduce the risk, such that the chances of the children suffering significant emotional harm could be mitigated. Accepting that the range of protective measures could not provide an absolute guarantee, in my judgement they would reduce the likelihood of harm to an acceptable level or at least ensure that the authorities were alerted to a deteriorating situation before enduring harm was suffered.

100. The paramount consideration of the Court must be the welfare of both children individually throughout their life.
101. The children have no understanding of their situation, in light of their young ages. It is likely, however, that any child would wish to remain with their birth parent or extended birth family if it was safe to do so and where all their welfare needs were met.
102. In my judgement, the Local Authority gave wholly insufficient consideration to the likely effect on the children throughout their lives of ceasing to be a member of their original family if a Placement Order leading to adoption were made, and the children became adopted persons. The children enjoy and have enjoyed a warm and loving relationship with both parents and with wider family members, notwithstanding extended periods of time in foster care. Both children are likely to experience feelings of loss if separated from their birth family. The impact of such loss will likely affect them in different ways at different stages of their development, across the whole of their lives. At their current young ages and in the increasingly familiar care of their foster carer, it is likely that any distress or confusion experienced in the short term could be managed. However, if adopted, all direct contact with their mother, father, grandmother and wider family would cease, permanently. As the children grow older and become more aware of their adoption, their observations about families may trigger a sense of being different and an awareness of their loss. Some children feel the loss most keenly in adolescence when they are striking out for independence and trying to determine an identity which is in some way different and separate to that of their parents. Placing the children in an adoptive family will mean that they are both denied permanently the opportunity of being cared for by their mother and their father and enjoying a range of birth family relationships. This is a very significant loss indeed, the extent of which will only be realised and felt as they become aware of and understand the enormity of their adoption. The children may develop an adoptive identity, which may become their primary identity. In my judgement, ceasing to be a member of their birth family is likely to have an adverse, harmful effect on both children throughout their lives.

103. The advantages of the children returning to the care of their mother or father or both undoubtedly include the benefit of being raised within their birth family network and having the opportunity of direct contact with the other parents and with extended family members. This would provide the children with the opportunity to have good awareness of their identity, cultural needs and heritage. This would plainly be the best option for both children, where it is achievable, whilst maintaining their safety, without exposure to the risk of significant physical and/or emotional harm.
104. The disadvantages of such option are the possibility of the children being exposed to emotional harm, through exposure to domestic abuse and parental acrimony. For the reasons given, the evidence leads to a plain conclusion that those risks have reduced and can further be ameliorated to such a degree that the risks could be managed. This is not a case where parental substance misuse or alcohol misuse is a current feature relevant to the assessment of risk. Whilst there remains a dispute between the parents as to with whom the children should live following their return from foster care, the parents have in other respects mutually agreed a parenting plan, to their credit. Disputes as to with whom a parent should live are a common feature of private law applications before the Family Court and are capable of being resolved by the Court, in the absence of parental agreement. It is not the role of the State to remove children from the care of their parents in circumstances where the parents cannot agree with whom the children should live.
105. There remains the option of either parent making a further application for protective Orders, either under the Family Law Act 1996 or the Children Act 1989, in the event that the parents require the protection of the Court. There also remains the opportunity for the parents to engage in further mediation in the event of any further disagreements relating to the parenting or the exercise of their Parental Responsibility and in the event that agreement cannot be reached through mediation, either parent can apply to the Court for an order under section 8, Children Act 1989.
106. The advantages of adoption for the children are that, given their young ages, needs and profile, adoption could provide them with a stable, secure attachment relationship throughout their minority into adulthood, offering a permanency option in a legally secure, permanent placement, without the Local Authority being involved in the whole of his childhood.
107. The plain disadvantages of adoption for the children include the severing of the parental relationship, along with a severance of all ties to the extended birth family, including with grandparents and wider family members. The enormity of the impact of ceasing to be part of their birth-family, with the knowledge that their adoption was without the consent of his mother and father, cannot be underestimated.
108. In the judgement of this Court, the welfare of the children throughout their lives very plainly does not demand the draconian remedy of a Placement Order, leading to adoption. Furthermore, the high degree of justification necessary under Article 8 is very plainly not established. Such interference is neither necessary nor a proportionate response, having regard to the risks. Further, this is not a case where the Court concludes that the welfare of the children requires the Court to dispense with the consent of both parents pursuant to section 52(1)(b) of the 2002 Act.

109. Having regard to evidence and the welfare evaluation, the Court respectfully agrees with the Children's Guardian's recommendation that a transition of the children back to the care of their parents is necessary and would best meet the welfare needs of each child.
110. In my judgment, the parents will benefit the making of a Child Arrangements Order pursuant to section 8, Children Act 1989 which records with whom the children should live, to provide a framework for the purposes of clarity. This will in turn assist the children in achieving consistency and minimising parental conflict. The parents have agreed a parenting plan. I commend that agreement. The father seeks to be the children's primary carer. The mother also seeks to be their primary carer. Concepts of 'primary carer' are unhelpful. They can suggest that one parent is better than, more capable than or preferred to the other. Further, nothing can be gained from division of the care of the children by references to the percentage of time they spend with either parent. In my judgement, the best interests of the children demand that they benefit from spending regular time in the care of each parent under a joint 'live with' Child Arrangements Order, reflecting the need for the active involvement of both parents in their lives.
111. The Court acknowledges that the previous shared arrangement between the parents did not work well due to the parents' animosity towards each other. For the reasons already articulated, the parents have since demonstrated an ability to facilitate the handover of the children more effectively. Moreover, their communication between themselves and in respect of the children has improved considerably in the time since their separation and with the benefit of successful mediation. Their communication is more civil and more measured. They are no longer antagonistic and unsupportive of each other. The parents have considered the practical arrangements, including ensuring that eczema creams and other necessary everyday items pass between the parents or are duplicated in each household.
112. The father advanced a written proposal, which he revised during his oral evidence, which envisages the children spending time with both parents in a two-week rotating pattern, handovers taking place at nursery, when the parents do not need to meet each other. The Local Authority has provided no input into that plan and the Children's Guardian had no observation regarding the father's proposal. The mother preferred a seven-day plan of the children living with one parent in one week, alternating with the other parent the following week. In my judgement, the father's proposals have real merit in light of the children's current ages and stage of development. They result in the children not having a full week without spending time with the other parent. In my judgement, having the unique benefit of hearing from both parents, the father's proposal is sophisticated and neither over-simplistic nor over-complicated. It is advanced by the father to ensure the involvement of both parents in the lives of the children, for the benefit of the children. It reflects the fact that the children enjoy a warm and loving relationship with both parents and that both parents are capable of meeting the children's basic care needs. There is no factual background of coercive or controlling behaviour based on any evidential findings, which might lead to a conclusion that such arrangement was inappropriate. The children would not be split between two disparate households who are in conflict. The proposal is not aimed at compelling the parents to co-operate. Rather, it reflects their renewed cooperation and their commitment for ongoing cooperation. The father's proposals afford greater opportunity for the children's skin care to be managed consistently, minimising the possibility of an eczema flare up, as had happened in the past when the mother had extended care of the children. Further, the plan takes into consideration the uncertainties around the mother's new relationship and the concerns expressed by the Local Authority, such that the children can stay with their mother some nights of the week, without her new partner being present.

113. In my judgment, the father's considered plan appropriately meets the welfare needs of the children as they are now. It carries with it a responsibility on the part of both parents to balance the time the children spend with each parent with the quality of such time, taking into account everything else that comes with a joint 'lives with' arrangement. It is a plan that ought to be revisited and considered further as the children grow and develop and their needs change, including when they begin full time primary education. In my judgment, a joint 'lives with' Child Arrangements Order reflecting the father's timetable of care, would record that the children live with their father on the days set out in the plan and live with their mother on the other days. The Child Arrangements Order should provide for such further or other arrangements as the parents agree from time to time, allowing for flexibility. The parents have demonstrated an ability to safely put in place handover arrangements outside nursery term time and such provision can be made for that in the Child Arrangements Order.
114. The practical aspects of reunification of the children into their parents' care will require careful thought and cooperation by the parents with the Local Authority to ensure that the transition for the children is supported. I respectfully disagree with the Children's Guardian's recommendation, given in his oral evidence. The father proposed a short transition of 7-10 days. In my judgement, the father's proposals were largely well considered and were child-focussed. The father proposed an exchange of information from the foster carer as to the children's current regime, including being provided with updated information in respect of the children's dietary requirements, bedtime routines and their current likes and dislikes, so as to ensure consistency of care between the parents and the foster care. The father also proposed a meeting of the parents and the foster carer. Again, that proposal appears to be sensible and child-focussed, subject to the consent of the foster carer. In my judgement, a shorter transition of the children from foster care to their parents' care has the potential to avoid confusion for the children, as would inevitably be the case if the transition was prolonged. A gradual increase in contact, leading to staying contact with each parent, prior to a full transition is important. I agree with the Children's Guardian that the transition could not be achieved in 7 days. I also agree with the Children's Guardian that there would need to be a team around the transition, through the Social Worker, Family Support Worker and/or Child Practitioner. However, these are parents who are familiar to the children. The children have lived in their parents' care previously. The parents are capable of meeting their basic needs. The children see their parents regularly as the parents attend contact consistently. These are not extended family members who are unfamiliar to the children, where a 'testing out' period might be prudent. In my judgement, a transition period leading to a full transition over 21 to 28 days would better minimise the disruption and confusion for the children, whilst ensuring that the transition could be properly professionally supported.
115. Placement of the children in their parents' care in their respective separate homes under a Care Order is a possible option open to the Court but not one advocated by any of the parties. It would mean that the children would remain as Children Looked After for the rest of their minority. Although the children would live at their parents' homes, the Local Authority would retain parental responsibility until the children were eighteen years old respectively. They would remain subject to all the Child Looked After processes including reviews, health assessments, having an allocated social worker and an Independent Reviewing Officer. The Local Authority would continue to act as their corporate parents, assisting with decision making in their lives. With this parental responsibility, should any concerns arise in the future the Local Authority would be able to remove the children swiftly and promptly into a place of safety in order to limit any harm suffered. In my judgment, that level of continued State intervention would not provide the family with the self-confidence needed to demonstrate the positive progress they have made and exercise their parental responsibility effectively. A Care Order at

home could be deemed as oppressive. I am not satisfied on the facts as they are presently that this option is in the best interests of the children

116. In my judgement, the welfare of the children demands the making of a Supervision Order alongside a Child Arrangements Order in order for the Local Authority to befriend, advise and assist the parents through the period of transition and in the first months of the children returning to their parents' care. A Supervision Order Court would enable both parents to continue to endeavour to work together as a team to make sure that the plan for the children to return to their care could be put into effect, with the oversight of the professionals. A Supervision Order will allow the Local Authority to remain involved with the family with the option to apply to extend. A Supervision Order allows the Local Authority to continue to advise, befriend and assist the child and his parents. It will allow the Local Authority to make sure that any emerging risk is identified promptly and challenged. Should concerns escalate, the Local Authority has sufficient means to safeguard the children promptly if necessary, either through the police exercising Police Powers of Protection or seeking from the Courts an Emergency Protection Order to move the children to a place of safety. The Supervision Order would reflect the many positives highlighted in the evidence, balanced with the ongoing work envisaged by both parents and recognising the hope of the parents for a future private family life. In my judgement, a Supervision Order is necessary, best meets the children's individual welfare needs and is the proportionate response to the risks.
117. The Children's Guardian told the Court in his oral evidence that that in his opinion, if the plan does not work, it will break down very quickly. Having that in mind, it would appear to me to suggest that the Supervision Order should be for six months' duration, being a duration which is proportionate to the issues, provides the opportunity to maximise support early, balanced against the intrusion of ongoing State intervention. The Court invites the Local Authority to accept a six-month Supervision Order. The Court is alive to the risks in the case. In the event that the parents are not able to co-parent effectively, without reverting to the type of parental acrimony that resulted in these proceedings commencing, it is open to the Local Authority to issue fresh proceedings, seeking an extension to the period of the Supervision Order.
118. With respect to the Children's Guardian's professional opinion, the Court does not consider that the welfare of the children demands that the time within which the Local Authority's application is to be determined should be further extended. The Court is not satisfied that it is necessary to delay the final outcome of the proceedings for a further two or three months or for the Court to monitor the parents' progress before final orders are made. In my judgement, the welfare of the children demands the making of a final Order now. That decision to make final Orders not only meets the welfare needs of the children but is also consistent with the overriding objective of enabling the Court to deal with cases justly, having regard to the welfare issues involved, including ensuring that the case is dealt with expeditiously and fairly, in ways which are proportionate to the nature, importance and complexity of the issues, saving expense and allotting to it an appropriate share of the Court's resources, while taking into account the need to allow resources to other cases.
119. In September 2021, the father had made an application for an Independent Social Worker to undertake an assessment. That application was adjourned to the conclusion of these proceedings. The father continues to advance that application for an Independent Social Worker to oversee the transition of the children from foster care to their parents' care and to report to the Court about the children's rehabilitation. In my judgment, such independent evidence is patently not

necessary to resolve the proceedings justly. The father's application for an Independent Social Worker is dismissed.

Conclusion

120. For the reasons given, the Court dismisses the Local Authority's application for a Placement Order.
121. The Court invites the Local Authority to accept a Supervision Order of six months' duration.
122. The Court dismisses the father's application for an Independent Social Worker.
123. The Court makes a Child Arrangements Order, recording that the children live with both parents, endorsing the pattern of time the children spend with each parent, as advanced by the father.
124. The Court encourages a transition plan to take place within 28 days, to take effect after 17 December 2021, being the date of handing down of this judgment.
125. The Court dismisses the Children's Guardian's oral application to adjourn the final hearing for up to 3 months.
126. The Court makes these Orders as final Orders.

HHJ Middleton-Roy
17th December 2021

Postscript: Following delivery of this judgment, the Local Authority accepted the making of a Supervision Order for a period of 6 months. The Local Authority set out its plans for the support to be offered to parents under the Supervision Order. A transition plan was formulated and the parents offered their s20 consent during the period of transition, for which the Court is grateful.