

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION SITTING AT LIVERPOOL

Neutral Case Citation Number [2022] EWHC 3450 (Fam)

Case No. LV20P00346

Courtroom No. 25

35 Vernon Street
Liverpool
L2 2BX

Thursday, 14th July 2022

Before:
HIS HONOUR JUDGE PARKER
SITING AS A JUDGE OF THE HIGH COURT PURSUANT TO SECTION 9(1) SENIOR
COURTS ACT 1981

B E T W E E N:

D & E

and

F & A LOCAL AUTHORITY

MS GOMERSALL appeared on behalf of the First Applicant
MR BRINDLE appeared on behalf of the Second Applicant
THE FIRST RESPONDENT appeared In Person
MS PROCTOR AND MS JONES appeared on behalf of the Second Respondent
MS BURNS appeared on behalf of the Children through the Guardian

JUDGMENT

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

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

HHJ PARKER:

1. This is an application by the two applicants for the court to grant a declaration as to the children's legal status under its inherent jurisdiction as subsumed and incorporated into section 19 of the Senior Courts Act 1981.
2. I am dealing with three children: A, born on [redacted]; B, born [redacted]; C, born [redacted]. I am required to find whether I am able to make a declaration that each of these children are looked after children, and, also, when they became looked after children. The hearing began on 9 June 2022 and went part-heard to today, 14 July 2022. The first applicant is D who was the deceased father's erstwhile partner, represented by Ms Gomersall of counsel. The second applicant is E, the paternal aunt, represented by Mr Brindle. The first respondent is F, the mother, who attended as a litigant in person on the first day but not the second. The second respondent is the Local Authority, represented by Ms Proctor on the first hearing, and Ms Jones on the second. The third, fourth and fifth respondents are the children via their Children's Guardian, represented by Ms Burns.
3. The children, initially, lived with their mother but were removed by the Local Authority from the mother's care. The Local Authority temporarily placed the children with the paternal grandmother, J. Shortly thereafter, the children's father, G, applied for a child arrangements order. The child arrangements proceedings concluded with a lives with order in favour of the children's father dated 21 June 2019 made by District Judge Cuddy. In terms of contact with the mother, the Court ordered:

“The mother shall have indirect contact; letters, cards, gifts; with the children on Christmas and the children's birthdays as the mother requested. The indirect contact shall not include FaceTime, video messaging or phone calls”.

In addition, the judge gave permission for the order and a report from H, and the Children's Guardian's position statement together with the bundle to be disclosed to the Local Authority for the purpose of considering and providing services to the family. In addition, at a hearing

on 18 February 2019, the Court made a non-molestation order against the mother preventing her from entering or approaching the children's respective schools other than for the purpose of parents' evenings or pre-booked meetings with the school staff.

4. The children's father, sadly, died on 10 September 2020. The children discovered their father's body. The oldest child, A, called the paternal grandmother to seek help. When she could not reach the paternal grandmother, she called the father's ex-partner, D, who answered the call and attended upon the children. Upon the police learning of the father's death, they attended at the paternal aunt's property and asked whether she would accommodate the children. The paternal aunt agreed to accommodate the children. The eldest child, A, however, expressed a wish to remain with D and did so. Three days later, the Local Authority social worker attended the home of the paternal aunt and spoke to the children. The social worker informed the paternal aunt that if she was not able and willing to accommodate the children, the Local Authority would place the children with D.
5. The boys (B and C) have been accommodated with E, the paternal aunt, since the death of the children's father on 10 September 2020 and continue to be accommodated with her. The father's will contained a clause that the paternal aunt would be the children's guardian upon his death if he was the only surviving parent when he died. Obviously, the children's mother is alive and holds parental responsibility for the children, and, therefore, that clause of the father's will is not capable of being executed. Each of the applicants, D and E seek a declaration from the Court that the children for whom they care have been looked after children from the date of the father's death. That will have consequences for funding that is available to them as proposed special guardians.

The law

6. MacDonald J, in *Salford City Council v W and Others* [2021] EWHC 61 (Fam), said this:

“Having regard to the authorities set out above, I am satisfied that the Court does have jurisdiction under its inherent jurisdiction as subsumed and incorporated into section 19 of the Senior Courts Act 1981 to grant a declaration as to the children's legal status. As between the parties to proceedings, the Court may grant a declaration as to the rights of the parties as to the existence or facts as to a principle of law; *Financial Services Authority v Rourke* [2002] CP Rep 14 and *L v C (Application by Non-Biological Mother)* [2015] 1 FLR 674.

With respect to the further question of whether it is appropriate for this Court to exercise that jurisdiction in this case, notwithstanding that the application for a declaration is made without claim for any other remedy in these proceedings, I have decided that in the very particular

circumstances of this case, and subject to giving directions to ensure a fair hearing for Suffolk and Norfolk County Councils, it is appropriate for the Court to consider and to determine the application for a freestanding declaration with respect to the legal status of each of the children, even though that application is made without claim for any other remedy consequent upon that declaration. However, the following principles can be distilled from the caselaw I have summarised above with respect to applications for declarations without a claim for any other remedy in the proceedings in which the declaration is sought:

- 1) When considering whether to grant a declaration or not, the Court should take into account justice to the applicant, justice to the respondent, whether the declarations would serve a useful purpose and whether there are any other special reasons why or why not the Court should grant the declaration; *Financial Services Authority v Rourke*.
- 2) A declaration may be refused if it would prejudice the fairness of future proceedings.
- 3) When considering whether to determine an application for a declaration without a claim for any other remedy in the proceedings in which the declaration:
 - (a) That the power of the Court to grant declaratory relief is discretionary.
 - (b) There must, in general, be a real and present dispute between the parties before the Court as to the existence or extent of a legal right between them although the applicant does not need to have a present cause of action against the respondent.
 - (c) Each party must, in general, be affected by the Court's determination of the issues concerning the legal right in question.
 - (d) The Court must be satisfied that all sides of the argument will be fully and properly put and must, therefore, ensure that all those affected are either before it or will have their arguments put before the Court.
 - (e) In all cases, assuming that the other tests are satisfied, the Court must ask, "Is this the most effective way of resolving the issues raised?", and, in answering that question, it must consider the other options of resolving this issue".

7. In this case, all parties agree that the Court should consider whether to make a declaration that each of the children is and was a looked after child or not. In *Re B (A Child) (Designated Local Authority)* [2020] EWCA Civ 1673 in the judgment of King LJ, she said this:

"It is not necessary for the purposes of this appeal to set out or to consider the requirements of best practice which apply upon a child being accommodated under section 20 of the Children Act 1989. It is common ground that if this is section 21 accommodation, it was effected without any of the proper formalities. It is very properly accepted by Mr Roach that the fact that contrary to good practice, the formalities were never

completed, whilst pointing away from section 20(1) of the Children Act accommodation placement does not mean that J could not be held to have been accommodated under section 20(1) of the Children Act 1989. Whether this was or was not section 20(1) Children Act accommodation, Mr Roach accepts is an issue that turns on the facts. The judge held that section 20 of the Children Act is a permissive power. A local authority may provide accommodation in the circumstances set out in section 20(4) where the person with parental responsibility is able to provide the child in question with accommodation. However, section 20(1), the subsection which bites in this case, provides that the Local Authority shall provide accommodation for a child where, as is accepted, the father who had been caring for J was now prevented from providing him or her with suitable accommodation; section 20(1)(c) of the Children Act”.

8. In *London Borough of Southwark v D* [2007] EWCA Civ 182 the Court of Appeal said this:

“We are prepared to accept that in some circumstances, a private fostering arrangement might become available in such a way as to permit a local authority which is on the verge of having to provide accommodation for a child to sidestep that duty by helping to make a private fostering arrangement. However, it will be a question of fact as to whether that happens in any particular case. Usually, a private fostering arrangement will come about as a result of discussions between the proposed foster parent and either of the child’s parents or a person with parental responsibility but we accept there might be occasions when a private arrangement is made without such direct contact. We accept there might be cases in which the Local Authority plays a part in bringing about such an arrangement. However, where a local authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that in doing so, it is exercising its powers and duties as a public authority pursuant to sections 20 and 23. If an authority wishes to play some role in making a private arrangement, it must make the nature of the arrangement plain to those involved. If the authority is facilitating a private arrangement, it must make it plain to the proposed foster parent that he or she must look to the parents or person with parental responsibility for financial support. The authority must explain that any financial assistance from public funds will be entirely a matter for the discretion of the local authority for the area in which the foster parent is living. Only on receipt of such information, could the foster parent give informed consent to acceptance of the child under a private fostering agreement. If such matters are left unclear, there is a danger that the foster parent and, subsequently, the Court will conclude that the Local Authority was acting under its statutory powers and duties and that the arrangement was not a private one at all”.

Submissions made on behalf of D

9. The applicant has applied for a declaration pursuant to the inherent jurisdiction of the High Court dated 18 November 2021 at A47 as to the legal status of the child. The Court was

referred to the grounds for making the application as set out at A59. The application may be made in Children Act proceedings before the High Court in accordance with *Salford City Council v W*. In the event a declaration is made confirming the child was and is a looked after child, this will have a bearing on the manner in which the Local Authority should approach the issue of financial provision, both going forwards in terms of any future special guardianship allowance payable to the applicant and in respect of backdating payments to September 2019 when the applicant assumed care of the child. This determination will allow the substantive application for a special guardianship order to proceed which is, currently, stalled, given the dispute over the child's status, and, therefore access to any financial support by the applicant.

10. The applicant seeks a declaration that the child, A, is a looked after child pursuant to the definition in section 20 and section 22 of the Children Act 1989. The Local Authority does not accept that the child is a looked after child, and, therefore, they do not accept any duty to make payments or any future special guardianship allowance payments to the applicant. It is contended upon behalf of D that the child is a looked after child pursuant to section 20(1)(c) of the Children Act 1989:

“Every local authority should provide accommodation for any child in need within their area who appears to them to require accommodation as a result of...:

- (c) the person who has been caring for him being prevented, (whether or not, permanently, and for whatever reason), from providing him with suitable accommodation and care”.

In such circumstances, a fostering allowance should have been payable since September 2019 to the applicant.

11. A's father died, suddenly, of a heart attack, and, therefore, plainly, he could not have exercised his parental responsibility in relation to decisions regarding the child's placement. The mother, at the time, was having indirect contact only with the children which had not been consistent. She could not provide care for the child and was not able to accommodate her. The mother did not arrange, at any time, or request that the applicant care for the child. The applicant submits that it was the child who contacted the applicant who, in turn, contacted the Local Authority to inquire as to what should be done in those circumstances. The Local Authority asked if she would continue to care for the child which is what she did. Therefore, it is wholly unclear how, in the circumstances, the Local Authority asserts that a private fostering arrangement came into being. The police contacted Social Services and the applicant was contacted by social worker, I.

12. On 12 September 2019, the applicant was asked by the social worker if she was willing to continue to care for the child, and the applicant agreed. The Local Authority were accommodating the child from this point. Upon the death of the father, he had not named the applicant as a guardian for the child in his will. In fact, in his will, he cited E. He set out that E would be the children's guardian in the event of the death of both their parents. Thereby, a situation arose where all three children needed to be accommodated as the person exercising the parental responsibility had died suddenly. At a meeting on 13 September 2019 between the social worker and the paternal aunt, E, the child indicated she wished to remain living with the applicant, D and was allowed to remain in her care by the Local Authority social worker. The applicant, D, was not present for that meeting. The Court is asked to find that the Local Authority authorised that position by enabling or allowing the continued placement of the child with D, despite the paternal aunt wishing to care for all three children and disputing that the child (A) should continue to live with D given that she was not related to her.
13. The paternal grandmother was considered next, as next of kin but was unwell and unable to give any views as to the children's placement. This is supported by the case note at B31 dated 13 September 2019 which clearly expresses that the paternal aunt wished to care for all three children. At B33, the paternal aunt clearly described that the children should be placed in her care rather than the care of D. This is further supported by the paternal aunt's own statement at B10, paragraph 18, filed within the proceedings, where she states:

“I would like to make it clear that I did not support A living with D, and I wanted her to live with me and the boys as this was G's wish. The social worker at the time told me that A was old enough to make up her own mind and she had decided that she wanted to live with D”.

The Local Authority, clearly, acted upon A's wishes and feelings to place her with the applicant, D, which was contrary to the views of the family.

14. At C16, the fostering SGO assessment of E dated 16 September 2021, it is, again, made clear:
- “They did not consider D as a family friend who could care for the children long term. The family wanted the children cared for within the family”.

It is D's case that the Local Authority were keen for her to apply to the Court, and, although offered to pay the court fee for the application, this was, in the end, not required due to the fact that D is in receipt of benefits. At no stage did the Local Authority offer or arrange for the applicant to receive any legal advice in respect of her options.

15. The first contact with the mother as holder of parental responsibility appears to be the case notes of 19 September 2019 when she was in hospital being induced with her baby. By this time, the child had been living with the applicant, D, for over one week. There is no reference in that note to the mother agreeing or requesting that the applicant care for the child. Efforts were made to contact the mother again, by telephone on 2 October but, again, no reference is made to the placement of the children, as the mother was still in hospital. This is made clearer by the entry at B36 that the mother was advised that A was living with the applicant and B and C with the paternal aunt. The mother is recorded as being shocked, and did not know this, and had thought the children were together. She did not have the applicant's contact details but agreed to a change of school. There again, there is no reference in that note to an agreement by the mother to placement prior to be with the applicant. The first reference to the mother supporting the placement is on 15 October 2019 when she expressed a wish that all three children would be placed with the applicant, at B38. It was not until 25 October 2019 that a visit took place which was deemed as an initial private fostering visit, at B39.
16. At B45, the entry of 5 March 2020 makes it clear that the mother was not contesting the applicant's application but was not willing to delegate responsibility to the applicant. At B33, there was a reference to a telephone call with the applicant on 8 October 2019 from the allocated social worker. Underneath the "Actions" it is recorded that there should be an appeal regarding the child's school place "because A will be a looked after child". The Local Authority and the school were proceeding on the basis that she was a looked after child, as her access to therapy under the Young Person's Advisory Service was prioritised in line with the provision for looked after children. It is submitted on behalf of D that this is evidence of acceptance of looked after child status for the child, given no one was exercising parental responsibility for the child at the time, and efforts needed to be made to enrol her in a new school.
17. The initial referral record, 11 September 2019, at E3, 11.45am, records that no one was exercising parental responsibility for the child and there should be a legal planning meeting to consider whether to make an application for a care order. It is not clear whether that meeting ever took place. The note also records a telephone call with the mother who was requesting the children's return to her care; E2 at 2.15pm. The Local Authority gave advice to the mother and were clearly making arrangements in respect of her contact with the children, advising her not to attend at the school, which appears to have been accepted by the Local Authority.

18. At B37, the local authority responded to E's proceedings complaint letter, but, again, failed to issue proceedings. At B40, in the entry for 29 January 2020, the school queried why the child was not being made a looked after child. It is recorded that a manager had decided that she did not meet the threshold. It is not understood on what basis the decision was made. It is quite clear, on the facts, that no party with parental responsibility arranged for the child to be cared for by way of a private fostering arrangement, and, in any event, this is supported by the fact that the social worker did not ensure that the intended duration of the arrangements was understood and agreed by the parents and the proposed private foster carer, and notification of such an arrangement was given. It is quite clear, it is argued, from the legislation, that the children could not consent to their own accommodation even if they were mature enough to do so. The child was 12 at the time, and the person caring for her had died suddenly. There is no evidence of a private fostering arrangement having been established. Applying, also, the caselaw of *Re B*, no section 8 or residence order had been made which could terminate a period of accommodation; paragraphs 36 and 37 of the decision of Black LJ.
19. The Local Authority, it is submitted, failed to initiate proceedings and take the appropriate steps but were clearly accommodating the child as there was no other mechanism by which the child remained with the applicant. The Local Authority failed to provide adequate support for the child under any consideration of the arrangements. There is no evidence of a prearranged private fostering arrangement, and it is suggested that on a common-sense distillation of the facts the child is a looked after child that was placed in the care of the applicant by the Local Authority, the father having died, and the mother being unable to effectively exercise her PR, or, as her contact was limited to indirect contact at that stage. The applicant did not have and could not exercise PR for the child as she was not granted a separate order for another six months. This order was only sought in order to assist with schooling, access to medical care and other essential issues for the child, given that the Local Authority had failed to issue proceedings and no one was actively exercising parental responsibility for the child at that time. It is agreed that the order that was made was erroneous.
20. In short, there were many missed opportunities when the Local Authority ought to have issued proceedings in order to regulate the child's status. In the bundle, in respect of E's application, at B37, in the response to her complaint, the Local Authority accept that "The living arrangements and the needs of the family were not adequately explored during the assessment and child in need plan, and this led to a lack of appropriate support and emotional support being offered to the family". The social worker, I, was also acknowledged in the complaint

to be newly-qualified and inexperienced. At C15, in the SGO assessment of E, the Local Authority acknowledged that the mother could not be considered as a suitable parent for the children on the father's death due to her past concerns and lack of current contact with them.

21. The case asserted on behalf of D is that A acquired the legal status of a looked after child upon the death of her father on 10 September 2019. Specifically, upon the death of her father, there was nobody with parental responsibility able to care for A. The Local Authority had obligations to provide the child with accommodation, pursuant to section 20(1)(c) of the Children Act 1989. The first applicant was asked, not by the remaining holder of parental responsibility but by the social worker as the agent of the Local Authority if she would continue caring for A. The mother was not in a position to care for any of the children at the time but to the extent that it might be argued that she was theoretically able to provide accommodation, the Local Authority, plainly, considered that the children's welfare would be better promoted and safeguarded outside of the mother's care; section 20(4) of the Children Act which states, "A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare".
22. During direct work on 13 September 2019, all three children were clear with the social worker that they did not want to live with their mother, and this was observed to be something that worried them; B70. A failure by the Local Authority to follow proper section 20 practice, specifically, failure to obtain the mother's consent to the children's placements, does not preclude the legal status of the children, in fact, being pursuant to section 20. A section 20 arrangement without the proper formalities can, nonetheless, be a section 20 arrangement; *Re B* and the decision in 2020 of the Court of Appeal. The case notes demonstrate three occasions where the mother suggests she may act unilaterally to see or care for the children and she is advised against this by the social worker. On 11 September 2019, the social worker records that the mother is stating that she wants the children back in her care. It notes that this could cause them further distress and that she had spoken to the mother and encouraged her to take things slowly. On 16 October 2022, the social worker advises the mother against collecting the children from school. On 18 December 2019, the social worker records that she has told the mother that if she wants the children back in her care, she can apply to court and assessments can be undertaken of her.

23. The Local Authority took the central role in making the arrangement for where A should live, conducting a single assessment to explore the best living arrangements for all of the children. As the case notes make clear, the Local Authority was very aware that there was a dispute within the family network as to where the children were best placed. The first applicant was led to believe, through the Local Authority's actions, that the Local Authority was acting under its statutory powers and duties by undertaking a single assessment and holding a series of meetings around the issue of the children's placement, including completing direct work with the children around placement; repeatedly asking the first applicant to care for the children, initially, A, then asking her to consider for the younger two also; confirming, in conversation with the first applicant that A was a looked after child as evidenced in the case note of 8 October 2019, where the social worker states as an action point that the first applicant will appeal the school decision as A will be a looked after child; referring A to services including for therapy at the Young Person's Advisory Service in such a way that the service understood her to be a looked after child and prioritised her as such; B99.

Looked after child or private family arrangement

24. In *R (SA) v Kent County Council* [2011] EWCA Civ 1303 and *Southwark London Borough Council v D* [2007] EWCA Civ 182, the distinction between a looked after child and a private fostering arrangement was clearly outlined by the Court of Appeal. The relevant factors included:

- (a) whether the Local Authority took a central role in making arrangements for the child to live with someone in their home;
- (b) whether the Local Authority had made clear they were proposing, solely, a family arrangement, with limited financial support;
- (c) if the proposed financial arrangements were left unclear, there was a danger that the foster parent and the Court would conclude that the Local Authority had been acting under its statutory powers and duties.

25. The Local Authority's own Family and Friends Care Policy defines, informal family arrangements, as follows: "Where a child cannot be cared for within his or her immediate family, the family may make their own arrangements to care for the child within the family and friends network". On any assessment of the facts, even on the Local Authority's own case records, it is plain that the Local Authority took the central role in making arrangements

for A to live with the first applicant. It is submitted that the conflict that existed within the family, reflected in the Local Authority's case records, undermines any arguments that this falls into a category of "Family making their own arrangements". Not only was there a profound disagreement within the family as to who was best placed to care for the children, consent from the single remaining holder of parental responsibility, the mother, was not obtained. To the extent that there was some verbal agreement from the mother, at points, it is submitted that this was in the context of the social worker having said to the mother at an early stage, 11 September 2019, that, "Given the history, the social worker can't state, at present, whether she can have the children in her care". The mother was prone to multiple fluctuations as per the three occasions set out above when the mother sought to see or care for the children. It took place in a period when the mother had very recently given birth, when the mother, ultimately, made clear to the social worker that, in respect of A, pending the court hearing, she would not sign anything in the meantime to delegate responsibility to D.

26. In respect of the Local Authority's approach to financial arrangements, D is clear that when asked about financial support on 4 and 10 October 2019, she was told that she should apply for a special guardianship order, and the Local Authority would "sort out financial support afterwards". This falls short of the requirements set out in the *Southwark* criteria, making it clear that the Local Authority was proposing limited financial support. The waters were further muddied by the social worker's repeated references to A being a looked after child, both in relation to the school appeal process and in making the referral to YPAS for the therapeutic support, with A prioritised as a looked after child; B99.
27. The Local Authority's involvement and actions led not just to the first applicant understanding that A did have looked after status but the school subsequently querying, on 29 January 2020, why A, "is not being made a looked after child". The question as set out by Smith LJ in *Southwark* is whether a reasonable bystander, listening into conversations between the carer and the social worker would have thought that the Local Authority was shedding its legal responsibility to provide accommodation for the child and that the carer was taking it on. It is submitted by those on behalf of D that no reasonable bystander listening to the social worker's conversations with D in September and October 2019, would have been clear that this was the Local Authority's intention. As observed by the Court of Appeal in *Southwark*:

"We said, in respect of the situation where a local authority was facilitating a private fostering arrangement that the authority ought to ensure that the parties understood what they were agreeing to. It seems to us that a full explanation and a proper understanding is even more

imperative where the Local Authority is seeking to discharge its obligations by arranging that someone else will shoulder them”.

It is submitted that it is plain from an assessment of the facts in this case that the Local Authority did not make it at all clear what they were asking the first applicant to agree to, nor what the financial implications would be. There was no full explanation, nor was there a corresponding proper understanding. The facts and circumstances all point to the Local Authority exercising their statutory duty pursuant to section 20.

Submissions on behalf of E

28. It is submitted that as of 10 September 2019, the children required accommodation, and a duty, therefore, arose under section 20(1)(c) upon the Local Authority to accommodate the children. The father was the children’s primary carer by virtue of the child arrangements order. By virtue of his death, it is clear that the children’s father, was, as of 10 September 2019, permanently prevented from providing the children with suitable accommodation and care. The Court is reminded that whilst the mother holds parental responsibility for the children and survived the father, she was not, at the time of the father’s death, having any contact at all with the children and, as it is understood, her whereabouts were unknown. Given the emergency of the situation, it is submitted that the police exercised their powers under section 46 of the Children Act. In fact, as I understand it, that is not the case. The police discharged their duty under section 46(3).
29. The Local Authority attended on the children and paternal aunt three days after the children were taken to the paternal aunt’s by the police at the conclusion of the 72-hour limit prescribed under section 46(7). Again, it appears that there was no PPO in effect. By virtue of the fact the Local Authority informed the paternal aunt that if she did not agree to accommodate the children, the children would be placed with D, it is submitted the Local Authority performed an integral role in the placement of the children with the paternal aunt. It is, therefore, submitted that the children were placed with the paternal aunt by the Local Authority under section 20(1)(c). Moreover, whilst the Local Authority now contend that the children were accommodated by the paternal aunt by virtue of applying for family arrangement, the Local Authority failed to inform the paternal aunt of the legal status, as they saw it, of the paternal aunt agreeing to accommodate the children, or the consequences arising. It is submitted, therefore, that the children were accommodated with the paternal aunt on behalf of the Local Authority.

30. It is accepted that no formal assessment was undertaken of the paternal aunt pursuant to Regulation 24. However, a failure of the Local Authority to comply with the regulations and go on to undertake an assessment of the paternal aunt does not, it is submitted, detract from the practical realities of the situation. The paternal aunt was asked by police to accommodate the children, and she obliged. The paternal aunt, was, on expiry of the police protective measures, asked by the Local Authority to accommodate the children. The Local Authority, at that point, undertook an assessment of the paternal aunt's suitability to accommodate and care for the children. The Local Authority informed the paternal aunt that if she did not agree to care for the children, they would be placed with D. The children (B and C) were, therefore, placed with the paternal aunt by the Local Authority. In all the circumstances, it is submitted that it is incredulous and disingenuous for the Local Authority to submit that it did not place the children with the paternal aunt following the death of their father. On the basis that the children were placed with the paternal aunt by the Local Authority, it is submitted that the children fall within the definition of "looked after children" in accordance with section 22(1)(b).

The Local Authority's submissions

31. The Local Authority argue that the children were all, immediately and appropriately cared for within their wider family without the instruction or intervention of the Local Authority. At no point in time did the mother, who still has PR for the children, although restricted in terms of a court order to indirect contact only, ever seek or request that any of her children be cared for in a looked after capacity. On the contrary, she agreed to the children remaining within the family with E and D. The Local Authority argues that it would not intervene in the family's arrangements upon the death of a carer unless it was required to do so to protect the children's welfare. In this instance, there was no necessity to interfere, and, instead, it supported the familial placements and encouraged the adults to pursue special guardianship orders.

32. The real issue, now, is in relation to the contact arrangements between the children, and the nature of the relationship between the adult carers which is not positive. However, this does not require or support any argument that the children are, or ever have been, or should be considered as looked after children. In respect of A and D, it is acknowledged that D, as the ex-partner of G, was under no obligation to step in and care for A but this is what she chose to do. A did not want to go to her mother's care and wanted to be with D. The Local Authority

did not place A with D. The police initially established the familial dynamics and A went to stay with D accordingly. There was no pressure upon her to accept care of A, and she did so voluntarily.

33. The Local Authority, through the team manager, assert that A has never been subject to looked after children's proceedings or procedures. On the day that her father died, 10 September 2019, A had already called D following finding her father. The request to care for the children came from the police, and not from the Local Authority, and, therefore, the police arranged for the children to go with their family. The following day, the mother made several enquiries with regards to her children and provided consent for the children to remain with wider family. There were several family members vying for the care of the children. It is more likely that due to the number of carers available, the Local Authority would never have been required to apply to the Court for parental responsibility. The children requested not to go with their mother as they had not seen her for 12 months. It was the view of the social workers that the children were *Gillick* competent and were given the choice. Therefore, the Local Authority did not need to seek parental responsibility. A was not subject to section 20 of the Children Act as no one with parental responsibility agreed that A was to be accommodated.
34. Section 20 of the Children Act 1989 agreements are not valid unless the parents giving consent have capacity to do so. The consent needs to be properly informed and fairly obtained. At no time, has the mother provided consent for A to be cared for in a looked after capacity. The Local Authority asserts it was a private fostering arrangement. A fitted the criteria as a privately-fostered child, and it was recommended that D applied for a special guardianship order. The Local Authority say it is admirable that D has dedicated her time to caring for A. That is not a justification for the Local Authority to support her decision financially. In respect of B and C and E, the Local Authority argue that E did not wish to apply for a special guardianship order in respect of the boys but, instead, asked to be assessed as a foster carer. The Local Authority did not agree to this proposal given the boys went to live with her in a private family arrangement upon the untimely death of her brother, the boys' father. It was the right and proper course of action for E to assume the care of the boys. A Local Authority welfare check revealed no issues, and the Local Authority proposed no stipulations or terms on the arrangements, as the children were not placed with their aunt by the Local Authority. In the event E had not been able to have offered the boys a home, then, other family members may well have come forward to do so. Accordingly, to say foster care was the alternative to

E is to misrepresent the position. All three children are beneficiaries of the will, and E, as a trustee and executor of the father's estate.

35. At paragraph 15, the skeleton asserts that the police exercised their protective powers under section 46 1989. The Local Authority say there is no evidence that that was the case. When the police exercise protective powers, they provide the Local Authority with a record of this, stipulating the time when these powers were exercised, such powers only lasting for 72 hours. No such notice was received by the Local Authority, they say. The police attended the family home in an emergency situation and liaised with family members. It is understood that the police also carried out basic checks in respect of the family members who said that they would care for the children. This did not constitute an exercise of powers under section 46.
36. At paragraph 16, D's skeleton asserts by virtue of the fact that the Local Authority informed the paternal aunt that if she did not agree to accommodate the children, the children would be placed with the father's ex-partner. It is submitted that the Local Authority performed an integral role to the placement of the children with the paternal aunt. This is not accepted by the Local Authority. They argue that the Court is asked to look at the entry log at B72 dated 2 October 2019 which followed repeated requests by E to become a foster carer:

“E asked what would happen to the children if she cannot long-term foster the children. I advised that the children could either go back to their mum F or that D could apply for guardianship of the children”.

It is argued that it is clear from this that the Local Authority were just making E aware that there were other alternative carers willing to care for the children. This conversation did not constitute a placement with the aunt. The same submission, the Local Authority argue applies to the supplemental argument made on behalf of D at paragraph 7(c).

37. At paragraph 18 E's skeleton asserts that the Local Authority failed to inform the paternal aunt of the legal status or the consequences arising. It is submitted, therefore, the paternal aunt was bound to assume that the children were accommodated with the paternal aunt on behalf of the Local Authority. Contrary to that, the Local Authority say it set out at an early stage that the aunt would be responsible for the children financially, and advised as to what benefits she could claim. Indeed, at a very early stage of the children being with the aunt, she asked to be a foster carer for them as she had identified that this status would prompt foster carer allowances. The aunt was informed on multiple occasions that the Local Authority did not consider the children to be looked after, and they did not consider the aunt to be a foster carer, and, as such, she would not be entitled to this financial support.

38. The Local Authority respond to the skeleton on behalf of D. The skeleton argument relies upon the principles set out in *Financial Services v Rourke* and referred to in *Salford v W*. In this regard, the Local Authority accept that the Court can exercise its inherent jurisdiction to grant a declaration. However, the Local Authority say that, in doing so, the Court must have regard to the legal principles which govern and determine a child's legal status which the Local Authority say are not met in this case in a way which indicates the children are or have been looked after. At paragraph 28 of D's skeleton, which asserts, "On 12 September 2019, the applicant was asked by the social worker if she was willing to continue to care for the children and the applicant agreed, the Local Authority were accommodating the child from this point". The Local Authority argues that it does not accept that asking an existing carer if they intend to continue with care, amounts to placement rather than "This is a sensible question to confirm what the arrangements are for placement".
39. Paragraph 29 of D's skeleton:

"At a meeting on 13 September 2019 between the social worker and the paternal aunt, E, the child indicated that she wished to remain living with the applicant and was returned to the care of the applicant by the Local Authority social worker. The applicant was not present for that meeting. The Court is asked to find that the Local Authority authorised that position, placing the child with the applicant, the paternal aunt wishing to care for all three children and disputing that the child should continue to live with the applicant, given she was not related to her".

This meeting was to form part of a single assessment and was a welfare meeting to meet with all children to ascertain their wishes and feelings and address any concerns following the death of their father. The case note records, at B68, 12 September 2019, "D asked if Social Care could do a home visit at J's as she reported she thinks it is important for J [paternal grandmother] to be included, which I agreed with". Then, later, B69:

"E asked if the home visit can take place at her home address. I advised I could contact D and inform her of the change of visit and to the children, at the paternal aunt's home".

Then, later the same day, at B69:

"Advised D that I had spoken to E and E has told me that the children will be staying with her tonight. I advised that I would carry out a home visit with E and the kids tomorrow as I would not want to overwhelm the children at this time. D agreed although she said that she would have liked to have been present".

Again, the Local Authority was not making these arrangements and not interfering with the arrangements, it is argued but, rather, continued to offer support and liaise between different

family members. It is understood that A had been with D since the point shortly following the father's death, D being the first person whom A contacted. The Local Authority did not actively remove A from E's care or place with D.

40. With reference to paragraph 33 of the skeleton of D, and 12 of the supplemental, the Local Authority does not accept it was proceeding on the basis that A was a looked after child. The case note of 8 October 2019, at B75, relates to D's attempts to obtain a place for A in her chosen school. The note of the telephone call with D records, "D advised that [redacted] School does not have any places at the moment but she can appeal this decision if A is a looked after child". This record appears to set out the advice that D has been provided by the school. The Local Authority does acknowledge that, further, in the same entry, it reads, "D to appeal school decision as A will be a looked after child". The Local Authority can only assume that this entry was made in error as the same entry discusses D making a private law application, and it is clear, from all logs, the Local Authority considered any of the children to be looked after.
41. The Local Authority also acknowledges that the Young Person Advisory Service, a service independent of the Local Authority, set out in their report, at B99, "A's referral was prioritised in line with our provision for looked after children". This entry does not say that A is a looked after child but merely that she has been prioritised in line with the provision for looked after children. The Local Authority did not suggest to YPAS that A was looked after. The case entry and a report from an outside organisation do not constitute evidence of acceptance of looked after child status. The Local Authority does not accept that these two references, one from an outside agency and one emanating from D's account of her conversation with the school, amounted to repeated references to A being looked after.
42. At E11, it records:

"Mum has rung the school to ask can she come to school to give the children a hug. Mum has been advised against this and encouraged to take it slower and at the children's pace".

Offering Mother advice in respect of this in circumstances where the children were grieving, and had said that they did not want to see their mum did not constitute making arrangements, it is argued. The Local Authority often offers advice to parents on how to handle difficult situations with their children. Indeed, the Local Authority was supportive in D's own attempts to arrange contact between A and her mother. Reference is made by the Local Authority to the *Southwark* decision. The Local Authority asks the Court to take note of the following facts within *Southwark* to distinguish it: that in *Southwark*, the Local Authority instructed the

school not to allow the father to take the child away from school. Following a meeting, the father was instructed by the Local Authority not to have any contact with the child pending investigations. The Local Authority telephoned the carer and asked if she would care for the child, and then took the child to the carer's property. The Local Authority arranged for a meeting with the carer the following day to discuss the arrangement. The Local Authority approved arrangements for the child to stay with alternative carers when the carer was on holiday.

43. The above, it is argued, led the Court to the conclusion that *Southwark* had played a central role in making arrangements for the child to live with her carer. In contrast to this Local Authority, they did not arrange for either placement of these children. The Local Authority has not put any stipulations or constraints on the placements or otherwise attempted to exercise any control. Indeed, when the family asked that the children's belongings be taken to the Children's Services' offices, it was pointed out to them that this would be inappropriate as this was a family arrangement and the family needed to try and sort these things out themselves. Reference is then made to the *Southwark* judgment at paragraph 49. The Local Authority asserts that in this case, it did not play an active role in making private arrangements for the children. Those arrangements were in place at the point the Local Authority became involved. Nevertheless, the Local Authority provided both carers with information, providing leaflets regarding looking after someone else's child, informing the carers as to what benefits they would be entitled to and what orders they could apply for to secure the placements. The carers were repeatedly advised that whilst the Local Authority could consider specific requests under section 17, it would not be providing ongoing financial support to either placement.
44. Further, it is argued that as highlighted in the *Southwark* case, the Department of Health has published guidance to the operation of the Children Act 1989. Volume eight deals with private fostering. At paragraph 1.1.5 the Guardian states that:

“Private fostering is the arrangement made between, *usually*, the parent and the private foster parent who becomes responsible for the child in such a way as to promote and safeguard his welfare. The role of the Local Authority is to satisfy themselves that the arrangements are satisfactory and the foster parents are suitable”.

The judgment set out at paragraph 49:

“Usually, a private fostering arrangement will come out as a result of discussion between the child's parents or a person with parental responsibility but we accept that there might be occasions when a private arrangement is made without such direct contact. We accept that there might be cases in which the Local Authority plays a part in

bringing about such an arrangement. However, where a local authority takes a major role in making arrangements for a child to be fostered, it is more likely to be concluded that in doing so it is exercising its powers and duties as a public authority pursuant to sections 20 and 23”.

In quoting the above, the Local Authority reminds the Court that, whilst usual, it is not required that a parent makes the arrangements for private fostering. The Local Authority contends that it has not played a part in making the arrangements for any of the children either to be privately fostered or to be placed with family members. In the alternative, the Local Authority argues that to the extent that it may have played a part, that part was minimal and not central to the arrangements made.

The Local Authority involvement with the family before the death of the father

45. The friends and family assessment of D, at E6, sets out the following information in respect of the subject children: historical allegations of child abuse relate to F’s first child K, date of birth given, removed from her care by Kent Social Services due to K sustaining a number of injuries which formed the basis for his removal. The family were first referred to [redacted] Children’s Services in 2010. This department has completed three initial assessments: 30 December 2010, 15 February 2011, 3 March 2011, and two core assessments: 11 May 2011 and 14 July 2011. Initial child protection case conference held 11 July 2011 noted:

“There are a number of issues of concern in respect of parenting these children. Parents are separated but there is a history of domestic violence and the adult relationship appears volatile. Mother’s oldest child removed from her care and placed for adoption by [redacted] Social Services. Allegation of sexual abuse of A by Father. G currently being investigated by the police. Mother has history of heroin misuse and current mental health problems. Being treated through prescribed medication and counselling. Concerns regarding Mother’s ability to meet the children’s daily needs appropriately. She struggles to manage difficult behaviour, develop appropriate routines and B was referred regarding failure to thrive. Mother is said to spend a lot of time on the computer while the children are in highchairs. Mother also says she intends moving to another part of the country with the children where she has no support in order to pursue a relationship with a former friend. She has only just got reacquainted with. Children subject to child protection plan under category of ‘neglect’.

Children placed in the sole care of their father November 2011.

June 2012, G granted residence order in respect of his three children.

13 September 2012, children removed from child protection plan.

3 December 2012, case closed to Children’s Social Services. G secured a residence order and has been caring for the children since November

2011. G is fully engaged with Children's Services, and child in need plan.

15 November 2012, F changed her name from [redacted] to [redacted] by deed poll.

27 October 2014, family and private law proceedings re contact.

3 November 2015, contact from F, the mother. Alleged she had seen her ex-partner, G, driving with his new partner, D, who had their youngest son, B, sitting on her lap in the passenger seat. Following discussion with F, she was unsure if it was her son. F advised should she witness anything like this again, to contact police. F currently being assessed for contact with her children to be at her home address. No further action. There is a history of domestic violence recorded for F and her partner, G. There is a total of 15 incidents between February 2009 and September 2016. The majority of these incidents have been verbal arguments over child contact and the fact that their children are in the sole custody of their father.

October 2017, referral from Dad. G was in court yesterday and says mother of the children has applied to have the children in care. G was upset about this as it was the first he knew about it. G says, previously, Social Services have allowed him to look after the children, and a few months ago, he claims a social worker rang him and told him he was doing a good job. G says no one has discussed with him the possibility of the children being put in care. G wanted information about why he has not been considered in this process and what information [redacted] Social Services hold. M, contact referral officer, advised G that if he wanted information held on file, he would need to complete the online access to records. At this point, M, contact referral officer, spoke to N, duty MASH, social worker, for advice, and then advised G that if he had a solicitor, he should speak to his solicitor about obtaining case records from the court.

1 March 2019, information request from the [redacted] Hospital relating to the mother. F had booked in, pregnant".

The Guardian's argument

46. In the chronology that is set out below, the Guardian sets out the evidence she contends must be looked at when considering the assertion that the children have been looked after children following the death of their father and that this was not a private arrangement. These entries reflect significant involvement of the Local Authority, it is argued, and a lack of clarity around the situation which points away from the Local Authority establishing the basis of a private arrangement. First entry on the day after the father's death:

"F has rung in relation to her children, A, B and C. She has stated that she has been made aware that the children's father, G, has passed away. She stated she hasn't had contact with them for a year, other than letterbox, as she has had to walk away from court due to the impact arguments between her and G was having on the children. She has PR

and would like the children back in her care. I advised that, given the history, I can't state, at present, whether she can have the children in her care, informing that I would need to look at the history and court order, if possible and would, firstly, need to check that the children are okay and well-supported. Mum stated that she has already been in contact with her Guardian who has advised her to contact Children's Services.

47. Then, later, at B21:

"Lengthy discussion with Mum re what is best for children right now. I advised that they had told family they want to stay with them. They don't want to go with Mum. Mum wants a social worker to speak to them because she feels they will say this to the paternal family in fear of offending them. She agreed to take it at the children's pace but seemed reluctant".

E169, 23 September 2019. Home visit by the social worker to E. The Local Authority assert that they have not placed the children in E's care and the arrangement is a private law arrangement. E requested a visit from the fostering team to provide information. Her request is to foster as this provides more support". E170, 2 October 2019. Discussion between E and social worker, I, where it is clear E does not consent to the children being placed with D but she is not in a position to care for them on a long-term basis. This supports the assertion there is no agreement between the family about the plans for the children".

48. E171, 4 October 2019. Discussion between the social worker, I and E with regard to placement of the children and the potential placement with either their mother, F, or D if E cannot continue to care for them. During the course of this discussion, E was advised by the social worker, "I advised E she does not have any rights over the children". Social worker advised that F still has parental responsibility for the children and needs to be included within the assessment. E172, 4 October 2019. Discussion between the social worker, J and D to consider whether D would be in a position to care for three children if E cannot continue to look after the boys. She is advised that she can make an application for all three children if she wishes and is provided with the application form. It is argued that this evidence is the Local Authority are actively engaged in supporting and directing the carers in making long-term arrangements for the children.

49. E172, 7 October 2019. Visit by the social worker, I, to the home of the mother, F. "The living arrangements for the children are shared with F". The visit is noted to be four weeks after the children's father had passed away. The entry is not explicit in terms of F agreeing to the continuing arrangements for the children or that this may be implied by F indicating she will

take contact at the children's pace. F agreed to engage in the single assessment and consented to a change of school for A. E173, 8 October 2019. Telephone call between I, social worker, and D. This discussion centred around [redacted] School not having a place available for A and a discussion that the decision can be appealed if A is a looked after child. The actual entry states, "D to appeal school decision as A will be a looked after child". This supports the contention that the Local Authority considered and advised D that A had looked after status.

50. E175, 15 October 2019. Discussion between I, social worker and F. F indicated that she wanted all three children to live with D and that she would be attending court with D to support her. This is further evidence that there is no family agreement about the arrangements for the children, it is argued. E176, 24 October 2019. The entry references the outcome of the Local Authority assessment and that the proposal is for C and B to be on the child in need plan due to family conflict and instability. E178, 22 November 2019. Telephone call between D and the social worker, I. D advises that [redacted] rejected A but the social worker has advised D to appeal the decision, D requesting supporting letter. The entry indicates the letter will be provided.

51. E181, 29 January 2020. Telephone call between the social worker, I and [redacted] School. The school query why A is not being made a looked after child. The social worker advises she has spoken with her manager who advises that A does not meet threshold for looked after child. The school ask if D is not given the special guardianship order and A cannot return to the mother then would this not make her a looked after child? The social worker advised school that:

"At the moment in time A is under private fostering regs with permanence plan for special guardianship order with D. Therefore, social worker asked why we would make A a looked after child"

O also speaks to the school. Advises A is not a looked after child and that head of service has oversight of the case and is in support of this. A plan agreed for Mother to sign a letter which would give consent for D to be contacted with day-to-day queries but that Mum would still be consulted for significant events, health and education. It is contended that this entry suggests the status of A remains unclear to A's school four months after the father's death but also confirms the Local Authority consider this to be a private fostering arrangement. It is argued by the Children's Guardian that the criteria for a private fostering arrangement is not met in the case of the boys and E.

52. At E182, 5 March 2020. Conversation between J, social worker, and F. This is an indication she will not contest the decision for A in court but would not sign anything, in the meantime,

delegating responsibility to D. F indicates that she has not decided what she is going to do about the boys but also says she wants to ‘step back’ as it is too much for her. The Guardian argues that this highlights the lack of clear, agreed plan around the arrangements for the children almost six months after G had passed away. The Local Authority will continue to act as the central point of contact giving advice, and directing the parties in terms of the steps that they needed to take to try to organise delegation of parental responsibility.

53. E183, 10 March 2020. Discussions between the social worker, I and [redacted] School highlight the importance of having a child in need meeting to sort out issues around parental responsibility for A. The social worker confirms F as saying that she will not sign any consent forms that delegate parental responsibility to E. This is evidence that no one was exercising parental responsibility on a day-to-day basis and that the Local Authority remained pivotal as the point of contact for the adults and professionals involved. E148, 10 March 2020. E indicates that she has asked the Local Authority, previously, if A is a looked after child and that she has been told that she is. The Local Authority say that A is in a privately-fostered arrangement in response. Six months after G’s death, E clearly remained unclear about the framework for A’s placement with her. E188, 4 August 2020. E expressed concern to the social worker about the child in need plan closing as she did not consider all outstanding actions had been dealt with, for example, A seeing her brothers and her father’s will. E expresses a need for ongoing support from the Local Authority.
54. The children’s Guardian argues that the significant number of Local Authority recordings indicate the level of involvement they had with this family following the death of G. There had been no communication between D and E nor between E and F. The Local Authority had coordinated all steps in respect of the children and been central to making arrangements for them. It is clear from the evidence, it is argued, that neither applicant had parental responsibility nor could they exercise parental responsibility for the children following the death of G. The Local Authority logs indicate that whilst F was contacted by the social worker about delegating parental responsibility, she did not do so. In addition, the Children’s Guardian argues that the case of *R v Kent* and *Southwark v D* considered the distinction between a looked after child and a private fostering arrangement. Clearly, in this case, it is argued E could not be considered as party to a private fostering arrangement due to the condition of section 66(1)(a)(iii) of the Children Act 1989 that provides that a carer cannot be a relative.

55. The issue, however, is relevant to D and the position of A. When considering whether there was a private fostering arrangement for D and A, the Department of Health published guidance on the operation of the Children Act 1989. Volume eight deals with private fostering. In this case, it is submitted that there was no arrangement made between D and F, and whilst it is noted that a private arrangement could come about, with a third party obtaining the agreement of the carer and the consent of the parent, it is not evidenced that it was undertaken in this case.

My findings

56. I find as a fact that each of the children is a looked after child and has been a looked after child since the date of the father's death.

My reasons

57. Overall, I accept the submissions made on behalf of D and E and the Children's Guardian. I do not accept the submissions made by the Local Authority. The key points, but not an exhaustive list of points to support the Court making the declaration sought by the applicants, are, in my judgment, these:

- a) the Local Authority had a duty to accommodate these children from the date of their father's death pursuant to section 20(1)(c) of the Children Act 1989.
- b) The Local Authority had significant involvement with the family before the father's death. That is set out earlier in this judgment.
- c) The event that triggered their duty under section 20 was the father's death.
- d) At that stage, he was caring for the children and the only other person who had parental responsibility was the mother.
- e) She was unable to provide good-enough care for the children.
- f) There was no agreement as to where these children should live in the immediate aftermath of their father's death.
- g) The mother did not immediately agree that they should live with either D or E.
- h) D did not agree that the children should live with E.
- i) E did not agree that the children should live with D.

- j) The burden fell onto the Local Authority to ensure that these children were accommodated in accordance with their duty under section 20, and, in my judgment, they set about discharging that duty.
- k) They clearly had significant involvement in brokering the living arrangements for these children moving between their mother, F, D and E.
- l) The fact that the children began to live with D in the case of A, and E in the case of the two boys, and still reside with them now, in my judgment, is fortuitous. It could quite easily have changed if the Local Authority had decided it should.
- m) In my judgment, had the Local Authority considered that either home was inconsistent with the children's welfare, they would have taken action to remove any or all of the children accordingly.
- n) I do not accept the Local Authority's case that they would simply become involved after the event on the back of a private family arrangement, and have simply made sure that each of the carers is appropriately supported in those family arrangements made by the family.
- o) In my judgment, in this context, a private family arrangement is synonymous with a private family agreement, yet it is abundantly clear from all the documents in this case, that there never was any family agreement.
- p) It is clear that in the aftermath of the father's death, F wanted the children returned to her care. She did not reach any agreement with D or E.
- q) It is clear that the social worker was key in managing and effectively lowering the mother's expectations in that respect.
- r) She did so, also, in respect of contact.
- s) It is also clear that E did not want any of the children to live with D. D also considered having all of the children live with her, and she did not reach any agreement with E.
- t) At E7 in the bundle, there is reference to a telephone call made by the police at 10.00am on the morning of the father's death. The police wanted Social Services to do checks on D and J. At 11.30am the same day, a telephone call was made to D by the social worker. She was told by D that A had wanted to stay with her and she did. The boys had gone to E. There was a court order in place that the mother did not have direct contact with the children but was allowed limited indirect contact. C was saying that he did not want to go to his mother's and the children had not seen their mother for a year. The children wanted to stay, either with her or the paternal grandmother. At 11.45 that morning, there was a telephone call to the Local

Authority legal department by the social worker. It was noted that only the mother had parental responsibility:

“The children are very vulnerable, and it is our obligation to assist the carers in obtaining an order. We could look at a care order because somebody has got to exercise parental responsibility. The mother has no relationship with the children. They don’t know her. They are saying they don’t want to go with her. Family arrangements: the Court will direct us to assess if the girlfriend is suitable. It would need to go before the Court to gain a family arrangement order/residence order. We could offer financial support. A legal planning meeting would be beneficial”.

- u) There was, then, a telephone discussion between the social worker and the mother. During that conversation, the mother said that she had parental responsibility and would like the children back in her care. The social worker advised her that, given the history, she could not state, at present, whether she could have the children in her care. She would need to look at the history and the court order, if possible, and would need to check that “the children are ok and well-supported”. In my judgment, it is clear, at that stage, that the Local Authority had taken upon itself a central role in deciding where the children were to reside. The only agreements that have been reached in this case is that the Local Authority, individually, have agreed with D to continue caring for A and E to continue to care for the boys. Ms Jones, very properly, conceded, today, that there had been significant Local Authority involvement.
- v) In my judgment, the Local Authority did take a major role in making arrangements for the children to be fostered and did so exercising its powers and duties as a public authority pursuant to sections 20 and 23 of the Children Act. It did not, in my judgment, make the nature of the arrangement plain to the parties involved. It did not make it plain to the proposed foster parents that they must look to the parents or person with parental responsibility for financial support. They did not properly explain that any financial assistance from public funds would be entirely a matter for the discretion of the Local Authority. D and E did not, therefore, give informed consent to acceptance of A in the care of D and the boys in the case of E under a private fostering agreement or private family arrangement.
- w) It is clear that, in the case of A, the Local Authority dealt with E’s express wish to care for all three children in accordance with the brother’s wishes by saying that A was old enough to make up her own mind and she had decided that she wanted to live with D. The Local Authority acted upon A’s wishes and feelings which were contrary to the views of the family. I do not accept that it was simply a mistake when the social worker recorded as follows, on 8 October 2019, at B33, “The actions – there should be an appeal regarding the child’s school

place as A will be a looked after child". This represented an admission by the social worker of the reality of the situation. Furthermore, her access to therapy and the Young Person's Advisory Service was prioritised in line with the provision for looked after children. In my judgment, the Local Authority are unable to rely upon a failure to comply with proper section 20 procedures to support their case that they did not owe any duty pursuant to section 20 of the Children Act.

57. The Local Authority has failed to initiate proceedings in this case and to take appropriate steps, notwithstanding they were accommodating the children, in my judgment. It is clear from the evidence that neither applicant had parental responsibility or could exercise parental responsibility for the children following the death of G. The Local Authority logs indicate that whilst, F, the mother, was contacted by the social worker about delegating parental responsibility, she did not do so. [Redacted] School raised concerns that there was no one with parental responsibility for A, and this is noted to have caused difficulties, in parents' evening being attended to by D or other decisions being made by or on behalf of A.

58. In all the circumstances, I make the declaration sought that A, B and C have been looked after children since their father's death. That concludes this judgment.

End of Judgment.

Transcript of a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

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