

**IN THE FAMILY COURT AT WEST LONDON**

West London Family Court,  
Gloucester House, 4 Dukes Green Avenue  
Feltham, TW14 0LR

Date: 18/05/2018

**Before :**

**HIS HONOUR JUDGE WILLANS**

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**Between :**

**LONDON BOROUGH OF EALING**

**Applicant**

**- and -**

**(1) AP**

**Respondents**

**(2) IP**

**(3-5) E, A & N**

**(by their Children's Guardian)**

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**Ms Laura Hibberd for the Applicant**  
**Ms Janet Mitchell for the First Respondent**  
**Dr Bianca Jackson for the Second Respondent**  
**Ms Neelim Sultan for the Third – Fifth Respondents**

Hearing dates: 14-18 May 2018

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**JUDGMENT**

**His Honour Judge Willans:****Table of Key Relationships / Personalities in the Case**

Reference in Judgment	Relationship
LA	London Borough of Ealing
AP	Mother
IP	Father
MP	Uncle
E	Child
A	Child
N	Child
Guardian	Children's Guardian
HW	Coral Practice Manager
KH	Adoption Social Worker
AD	Allocated Social Worker
SA	Parenting Assessor Social Worker

**Introductory points:**

1. I am asked to make life-long decisions for three young children [*from country X*], E, A and N. The LA supported by the Guardian ask me to make final care and placement orders envisaging a future under which the children are placed for adoption. This plan is opposed by the children's mother, AP and father, IP. The children's parents both argue for the children to be returned into the care of AP.
2. In making my decision I have considered the documents contained within the electronic bundle<sup>1</sup>; the oral evidence of the witnesses who appeared before me<sup>2</sup>; and, the representations (both oral and written) made on behalf of each party. In this judgment I focus on aspects of the evidence to enable me to make the right decision. I have however borne in mind all the evidence put before me. I will make appropriate findings where necessary. I will not resolve all matters put before me where to do so would have no material impact on my decision.
3. At the end of the evidence I adjourned to consider my decision. I have provided a written judgment with the hope that this will be of greater assistance to the parties and principally to the family. I am conscious that an oral judgment would need to be translated and I would not have wanted the parents to have any sense of being the last people to know what had happened to their children. Whilst this is a written judgment I have not allowed myself the luxury of a significant period of reflection and the judgment is delivered within the intended currency of the final hearing. It is very important these parents know as soon as possible my decision.

**The realistic options:**


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<sup>1</sup> In addition to which I received additional contact notes and some limited additional papers during the hearing

<sup>2</sup> In order: HW; JS; KH; AD; AP; MP; the Guardian

4. In considering what is best for the children I have identified the realistic options as being: (a) rehabilitation to AP<sup>3</sup>; (b) family severance either under a care order alone (meaning long term foster care), or under care and placement orders (meaning adoption).

#### **The duration of the proceedings:**

5. This application was issued on 6 April 2017 and concludes on 18 May 2018 in week 58. The explanation for this can be found in the significant attempts made to transfer the case to the [X] jurisdiction. On 13 June 2017<sup>4</sup> the Court determined the proceedings should be transferred to [X] as that jurisdiction was better placed to deal with the proceedings. The parents are [*of X nationality*]; the older children were born in that jurisdiction and are nationals of that country. However, the [X] authorities refused to accept such transfer and it was only with the refusal of an appeal against that decision<sup>5</sup> that this Court on 2 February 2018<sup>6</sup> concluded that all efforts had been exhausted and that the case must be determined in this jurisdiction.

#### **The applicable legal principles:**

6. The key points upon which I direct myself are as follows:
  - a. The child's welfare is my paramount consideration. In due course I will approach the child's welfare by reference to the welfare checklist. This will require me to reflect upon section 1(4) of the Adoption and Children Act 2002. Significantly this assessment requires me to have regard to the welfare of the relevant child throughout his or her life. The assessment is undertaken at the individual level for each child but does not miss the fact the relationship each child has with other of the children is an important welfare consideration. In this way the Court respects the global need of the children.
  - b. In considering the making of a care order I must first consider whether the legal threshold has been crossed. By this I refer to section 31(2) Children Act 1989 and the test as to whether the child has suffered significant harm or is likely to suffer the same having regard to the care provided to them (or likely to be provided if an order is not made) not being what the Court would expect of a reasonable parent: "*significant harm test*". If this threshold is not crossed then a care order cannot be made. If it is crossed then I may make (but I am not obliged to make) a care order reflecting on the welfare of the child. In this case threshold is not in dispute and is agreed as being crossed.
  - c. To the extent residual issues of disputed fact remain I must remind myself that the disputed matter is an allegation until it is established as a fact. The responsibility for establishing the truth of the allegation is with the party making the allegation and the responsible party proves the allegation if it is established on the balance of probability. The party facing the allegation is not required to disprove the allegation. All evidence and particularly that of the parents will be

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<sup>3</sup> IP has not put himself forward as carer in the final evaluation and there are no alternative kinship carers

<sup>4</sup> B44

<sup>5</sup> Made by AP

<sup>6</sup> B73

relevant to deciding the issue. In assessing the credibility of a witness who has been shown to be untruthful elsewhere in the evidence I must remind myself as to what is known by shorthand as the *Lucas Direction*<sup>7</sup>.

- d. The crossing of the legal threshold is not in itself a justification for the making of final care orders. The question of disposal is a wholly separate question requiring a qualitative evaluation of the evidence before the Court with the welfare of the children as the paramount consideration.
- e. In making decisions as to disposal I should bear in mind my decision has the potential to amount to a serious interference in the private life of this family. Consequently, I must subject my assessment to a test of proportionality and ask whether the proposed order is reasonable, necessary and lawful. I should also remind myself that the required standard of parenting is not perfection or anything like it. The starting point is a test of *good enough parenting* and no more. Associated with this principle is the important reminder that the Court must accept a broad range of parenting styles and skills within this category of *good enough parenting*. In this case I have been asked to consider whether these children need more than good enough parenting. I bear in mind that *good enough parenting* does not suggest a particularly high standard of care and that the elevation to *more than good enough parenting* should not be permitted, absent good evidence, to create a significantly heightened requirement.
- f. In being asked to make a placement order I am asked to act at the extreme of family interference. Such a level of interference requires particular justification having regard to its obvious and draconian implications. Consequently, I would have to ask myself whether to coin a phrase “nothing else will do”. Furthermore, the question of a lack of parental consent would arise. I would have to consider dispensing with this lack of consent and would only do so if the welfare of the child required me to do so.
- g. In carrying out my analysis I must confront the realistic options for each child. I should consider each in turn weighing the benefits of the option against its detriments. I should then take care to weigh each option against the other options taking a holistic rather than a linear approach. It is only by this form of careful analysis that the Court can be confident the welfare of the children and the tests of proportionality are met.
- h. I have not weighed down this section with substantial reference to case law. The case law is well known to the Court and provides the principles set out above.

### **My impression of the witnesses:**

7. I found the Coral witnesses, HW and JS, well informed, professional and helpful witnesses. The examination suggested no dogmatism in their approach and their answers were direct and to the point. I found JS particularly skilled in the uncomplicated way she could convey the significant nature of child attachments and their development and how they ‘go wrong’. I disagree that her evidence was theoretical if this is to

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<sup>7</sup> Namely that such a witness must not be taken or assumed to be generally untruthful. I must have an eye to the context and circumstances of the proven lie and guard against drawing an over easy inference against the individual

suggest it had no direct association with the facts of this case. I agree her evidence has a theoretical aspect but that is because attachment principles operate at a deep neurological level. However, she applied these principles with skill to the facts of the case based on her own reading and observations of the case. A clear demonstration of this was the passionate and energetic way she talked of E's sharp intelligence when seeking to get an answer to a particular question. It is right to observe that these witnesses were not particularly controversial. They were probed as to for instance what else could have been done to assist the mother, and to accept the positives that could be identified but they were not fundamentally challenged as to their own observations and conclusions.

8. KH also gave largely uncontroversial evidence. The focus of examination of her was as to likely timescales and the confidence one could have in obtaining placements for the children. I found her to be a straightforward and experienced practitioner. She didn't bring a sense of over optimism to the future (correctly in my judgment) and was able to explain the rationale underpinning the plan of action. She made appropriate concessions as to planning when probed on behalf of the Guardian but was firm in her overall assessment of what is felt to be best for the children. Again, she was not a controversial witness in respect of the evidence she could give<sup>8</sup>.
9. AD brought together the LA's reasoning. I do not lose sight of the fact that in a case in which there has been a number of commissioned parenting assessments she is likely (and entitled) to place significant weight on those assessments. To do otherwise would be perverse. There are three points I would make about her evidence, two negative and one positive. First, her evidence suffered from lacking an appropriate holistic analysis of the **realistic options** in the case. In simple terms her final analysis did not include AP as a realistic option. This was a material gap in her evidence and suggests a lack of experience in the structuring of a final analysis. There can be no excuse for failing to include within the competing options analysis a balancing account of the care proposed by a parent. A parent who wishes to care for a child will always be a realistic option even if they are in due course rejected in favour of an alternative option. The impact of failing to include the parent within the analysis is to call into question whether the witness has in fact provided a reliable analysis upon which the Court can rely. The implications of failing to do so could be serious in respect of further delay. It is to AD's credit that she accepted this error (albeit after some questioning) and was frank in apologising for doing so. It is also relevant to note that she could provide background evidence which showed there had been a consideration of AP as a realistic option (but this had not been drafted into her statement). During the hearing I noted the fact that this issue had not been raised at the IRH when the statement was available. From experience I am aware of all sorts of deficits in evidence being raised at IRH to enable the same to be filled. Within inquisitorial proceedings the duty is on all parties to ensure the Court has the evidence it requires to do what is best for the children. The second point was a degree of unwillingness on the part of the witness to directly answer the question without tagging on further information to justify her reasoning. I felt this once again suggested inexperience. I appreciate the process of cross examination can feel frustrating for a witness who feels the emphasis of the questions is such as to miss the bigger picture. However, a witness must simply answer the question and leave it for the other advocates to correct any misunderstanding suggested by a partial line of enquiry.

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<sup>8</sup> This is not to understate the controversial nature of the implications of the planning she was seeking to explain

The Court is conscious of the respective roles of each advocate and is astute to the often-partial nature of enquiry. The witness can expect the Court to bring into its assessment all the evidence. The third point is a more general point. I felt the witness understood her case well and gave honest and child focused evidence. She was resolute as to areas of dispute (e.g. the assistance she had offered the mother) and I felt she justified her evidence when asked to do so. Despite my misgivings above I did not find her to be an unreliable witness.

10. The Guardian is an experienced professional who deployed a clear understanding of the dynamics of the case. She gave passionate evidence which was firm and evidenced. She (like the other witnesses) gave appropriate acknowledgment as to the love felt by the family for these children. She was also able to accept the effort and commitment shown by AP. I felt her analysis came from a position of sad resignation and that she would have liked to have provided a more positive answer if this was justified. She provided an independent approach as shown by her differing views with respect to the prioritisation of placement for E. She was questioned as to her failure to attend contact and whilst this might be seen as a criticism of the time she had put into this case I would not find such a criticism justified. She explained the logic behind her non-attendance and in her evidence as to her repeated engagement with the IRO gave a clear impression of her commitment to the welfare of each of the children.
11. I intend to deal with AP, IP and MP together. As will become apparent within this judgment a central issue touching upon the welfare of the children has been the dynamic of their triangulated relationship. I should first note that IP did not give oral evidence and aside from an initial response document did not provide written evidence. He was however considered within the assessment process and attended every day of the hearing in the company of Border Force Security<sup>9</sup>. I could form some impression from his physical presence. AP was present throughout the hearing and gave both written and oral evidence. She is heavily pregnant being due to give birth to her fourth child in early June 2018. She was involved in the assessment processes. MP was also involved in the assessment process and gave written and oral evidence. He remained in Court after giving his evidence. Although AP and IP are married and the parents of the three children, MP is AP's current partner and there are grounds for believing that either he or IP may be the father of the unborn child.
12. It is very important to pay respect to the calm and contained manner with which all present and gave their evidence. The nature of the evidence and the issues arising between all three was highly emotive yet there was no element of outburst at any point. That is not to say there was no emotion displayed. At various points all three individuals were plainly overcome by the emotion of the issues under consideration. This was of course a wholly natural response and I was left with the clear impression that these parents and MP have a strong and warm affection / love for the children. I have no doubt their emotions were genuine and heartfelt. Having heard the evidence I formed a clear impression that AP is doing the best within her capacity to obtain the return of her children. She has shown commitment to these proceedings and in doing so commitment to the children. She has been a co-operative parent in respect of assessments and I have picked up no suggestion of anger or obstructiveness on her part. I formed the view she is an intelligent individual. Not only did she give a significant amount of her evidence

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<sup>9</sup> He is currently awaiting 'deportation'

in English but she spoke in clear and sensible terms. I have little doubt that she will follow through on that which she says she will and that she will complete all courses to which she is referred. She seems both compliant and well intentioned. I was not able to form such a clear impression with respect to IP and MP. Their involvement in the process has been episodic at times. IP did not give evidence and MP's evidence was less clear (even when translated) and at times difficult to follow. Ultimately, I had the sense that questioning was curtailed due to the significant difficulties in obtaining a clear structured answer from him.

13. Sadly, my impression was not wholly positive. Although the hearing did not involve any substantive dispute as to the underlying domestic violence nature of the relationships there were significant conflicts in evidence and within the evidence of each witness that led me to believe that I continued to receive only a partial understanding of what had happened. I was left with a real sense that matters were being significantly minimised and that there was an important level of naivety demonstrated by each of the adults. I felt they were each allowing their wishes and hopes for the future to take ascendancy over the realities of their experiences and what this might instead suggest for the future ('hope over reality'). I was left with the impression that I should apply a large measure of caution when approaching their evidence.

#### **Background history:**

14. I intend to summarise the background by reference to the key source material. I do not understand there to be any real controversy as to the background history. I am greatly assisted by the background history provided by CM<sup>10</sup> which shows that both parents (and likely MP given the family connection) experienced a traumatic upbringing surrounded by instability and rejection. Difficulties continued at a prominent level into their adulthood and relationship. Prior to arrival in the UK they were experiencing significant disruption in the daily life with various relocations and continuing family disapproval, their relationship was then fractured from 2015 with moves between [X] and UK and during this period there is evidence of the children suffering. Their arrival into the UK was into an environment of financial deprivation and inappropriate accommodation. The older children came to share these experiences with their parents. After about 4 months AP and the children returned to [X] but their experiences on return were negative with continuing rejection, some abuse and deprivation. Superimposed upon this has been the establishment of a relationship between AP and MP and the impact that this had had on IP. It appears MP came to the UK at the request of his brother in 2015 and has remained here since living at various locations.
15. I appreciate this is but a brief summary of a significantly problematic history experienced by all the relevant adults in the case. It leads the professionals to conclude that there will be significant work required for all adults to address the impact that this upbringing and experiences has had upon their own approach to parenting and the experiences of the children. To her credit AP accepted this was the case.
16. I have also borne in mind the accounts given by both AP and MP in their witness evidence as to their respective histories. In my judgment this supplements, rather than challenges the parenting assessment history.

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<sup>10</sup> F15-20

## Matters arising since October 2016

17. I note the following:

- a. In October 2016 AP returned with E and A to the UK for the second time. She was at that time approximately 7 months pregnant with N. She joined IP in shared accommodation with other migrant workers.
- b. In about December 2016 there was a violent incident when MP struck AP. She was heavily pregnant at the time. It is alleged he then proceeded to break into her room with the children.
- c. In January 2017 N was born.
- d. In April 2017 there was the precipitating event when the children were found with injuries and removed. AP agrees she struck the older children with an implement<sup>11</sup>.
- e. On 6 April 2017 proceedings commenced. The children have remained in foster care since removal on that date and have had regular contact with AP, IP (prior to his leaving the jurisdiction) and MP.
- f. On 29 April 2017 it is alleged IP hit AP with a phone and strangled her.
- g. On 9 May 2017 within the parenting assessment AP was expressing the wish to be with MP.
- h. On 16 May 2017 at a home meeting as part of the assessment there is a suggestion of IP having attempted to strangle himself.
- i. On 23 May 2017 AP alleged IP had raped her. She later withdrew the allegation whilst maintaining its truth.
- j. On 1 June 2017 MP withdrew from the assessment. On the same day AP and IP were said to be back together.
- k. On 9 June 2017 there was an incident between AP and IP which ended with each hitting the other.
- l. On 26 June 2017 IP withdrew from the assessment and AP indicated she wished to resume her relationship with MP.
- m. In early July 2017 the parents attended together but were arguing about their ongoing relationship. This culminated with IP indicating he wished to be assessed alone.

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<sup>11</sup> Majority of references taken from F11. I have also considered the social work chronology at C54.



- n. On 7 July 2017 MP contacted the assessor upset about the indication of a likely negative assessment.
- o. On 29 July 2017 AP suffered a black eye at the hands of IP<sup>12</sup>.
- p. In about late August / Early September 2017 the unborn baby is conceived. There is doubt as to which of IP or MP is the father.
- q. In September 2017 IP returned to [X]. He was refused re-entry to the UK later in the month and then in February 2018 sought to enter the jurisdiction via Scotland. He was detained and has been kept in detention pending this hearing being recently moved closer to the Court Centre.
- r. In September 2017 AP completed a parenting course.
- s. In January 2018 the CORAL assessment commenced with a final report on 27 February 2018<sup>13</sup>.
- t. In February 2018 N was hospitalised on two occasions.

### **Summary of evidence:**

18. I do not intend to weigh this judgment down with a summary of the evidence I heard. I kept a careful note of the evidence given and have considered it in reaching this decision. Within this judgment I touch upon aspects of the evidence. This was not a case in which I was asked to determine significant disputes of fact.

### **Threshold:**

19. Threshold is not in dispute in this case<sup>14</sup>. It is accepted the children had suffered significant physical harm at that time. I agree threshold is plainly crossed on the facts of this case. I appreciate the threshold matters are not intended to be an exhaustive summary of the concerns in this case.

### **My factual analysis of the case:**

20. A stand out feature in this case is the triangular relationship between the adults and the impact this has had on the children.

21. It is abundantly clear that this relationship deserves description as toxic in nature<sup>15</sup>. Having read and listened to the evidence it is plain to me that:

- a. All three adults have an unacceptable tolerance of domestic violence in their relationships.

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<sup>12</sup> C137 although likely misreported as being August 2017

<sup>13</sup> Chronology of work at E36-41

<sup>14</sup> C78

<sup>15</sup> In this regard I have read and accept the account given by CM at F12-14

- i. In the case of MP, I was struck by the apparent acceptance of DV as a means of conflict resolution. I remind myself as to what MP told me. In December 2016 whilst he had previously slept with his sister in law he was not in a relationship with her. She was heavily pregnant with his brother's child. He wanted to talk to her. She left the room and did not come back. After a while he traced her to the kitchen where she was talking to another male tenant. Angry with her 'behaviour' he hit her on the head. This is a shocking indication of his attitude to DV. He was willing to hit his brother's wife; he was willing to hit a heavily pregnant woman; he was willing to hit her in front of another adult; he was willing to hit her for being 'rude' in not telling him where she was going. I have formed the view he has a very low threshold for resorting to violence and that he has a very significant need for intervention work at an intensive level to correct this behaviour style. Without successful completion of such work he is likely to repeat such behaviour. I do not consider an online course is likely to be sufficient. In my judgment he needs a form of intensive and likely group inclusive work such as is offered by the DVIP. I have no doubt that this behaviour has its roots in his difficult upbringing.
- ii. I am clear the DV is not restricted to violence alone. I heard evidence as to AP being without a mobile phone and MP refusing / failing to provide her with credit. This was at a time when she needed credit to return calls from the social worker as N was in hospital. She also needed the phone to obtain work as an interpreter and was wishing to call IP. Although MP challenges there was anything improper in this I find otherwise. I accept the evidence of CORAL as to the conversations with him as to the importance of providing credit to AP and I share their opinion as to the failure being resultant from a wish to control AP. MP sought to suggest he had no funds only to accept in evidence that he had savings but did not want to use these. Whilst this would itself suggest very poor prioritisation in keeping a functioning phone from his partner who has a child in hospital I tend to the view that it was done to ensure AP did not have the facility to act independently to include calling IP at her discretion.
- iii. There is also clear evidence of minimisation. Having heard the evidence, I find it highly likely the December incident continued with MP seeking to break into AP's room. I prefer the evidence of AP in this regard.
- iv. It is clear IP is also prone to DV and has used serious violence against AP (and it seems likely threatened it against MP). It is a striking feature of this case that the DV continued throughout the period of assessment and has been acted out in the full glare of the proceedings. This suggests an equally tolerant attitude on the part of IP to DV as part of a relationship. I bear in mind IP has not taken the opportunity to challenge the allegations made. I am in difficulty in concluding that this behaviour has been managed and the risk reduced as there is no evidence of any meaningful work to address the issues; I am confident the behaviour is deep rooted and longstanding; and, in any event IP has been detained

and thus contained throughout the period. He was last free in the jurisdiction in early September 2017. About one month before that date I find he gave AP a black eye as she claimed in her statement by punching her. I have no evidence to persuade me he is emotionally a different person today.

- v. As with MP I find there is a need for intensive work to address these concerns.
- vi. Whilst I must accept AP has herself been subject to allegations of DV on balance I find that she is essentially the victim in this relationship. The concern I have in her regard is as to her acceptance of DV as the norm and her ability to make meaningful changes that will cause the children to be able to have a safe home environment in which to live. I have no doubt her upbringing has in part left her with a warped appreciation of appropriate behaviour. The consequence is a normalisation of DV. This is shown by her ready acceptance of the DV from MP in December 2016 and the maintained interest in a relationship with him thereafter. It is reinforced by her apparent minimisation as to the seriousness of this assault. I cannot overlook the willingness of AP to flit from relationship with IP to relationship with MP notwithstanding the obvious risks that each pose to her. My conclusion is that she has internalised as acceptable that which is plainly unacceptable. I consider her ability to move on is substantially limited by her social isolation and her continuing reliance upon either of MP or IP. I note and accept the evidence of some ambiguity in her feelings to IP and MP as recently as February 2018<sup>16</sup>.
- vii. Consequently, I doubt very much that a course such as the Freedom Project will over 12 weeks correct this deep-rooted difficulty. She fairly accepts that there is a need for therapeutic help to allow her to understand how her experiences have shaped her parenting and approach to life. I agree but consider this will be a significant part of her developing understanding as to matters of DV. I therefore consider she will likely remain vulnerable for a period much closer to a year from now whilst she undergoes more intensive work.
- viii. It is also fundamental that those who she chooses to share her life with also take on the need for work. It will be of no benefit if she completes the course but is unable to implement the lessons taught. I am struggling to see how this process can have any prospects of success if it is undertaken in concert with a relationship with MP (and to an extent IP) whilst the male adults are unaccepting of any difficulty. In this regard I bear in mind the evidence of MP which was that whereas he agrees the need to undertake work the purpose of the same was to show he is not the bad person he is said to be. Whilst I give full allowance for language issues I had the clear sense he was saying that the course would not change and improve him but rather it would show he needed little if any

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<sup>16</sup> E128 §185

improvement in the first place. This is not fertile territory for positive change for either MP or AP (whilst with MP).

- ix. I have commented on naivety above and this is applicable in this context. AP told me how things would be different now as ‘they’ (AP/MP and IP) have spoken; are adults; and will put the children first. This begs the question as to how things were different about a year ago when all of this was happening? The reality is that change will require more than just good intentions. I don’t doubt these adults will have had at various points the same good intentions but they have fallen away given the high emotions surrounding their complex relationship. I am bound to observe that the future period with the new baby and IP possibly released and present will likely pose further potential for high emotions.
- b. The triangular relationship is itself a source of significant distraction to the adults and demonstrates a poor lack of prioritisation of the children’s needs. A consideration of the chronology plainly demonstrates how **all** the adults have allowed their own emotional needs to take priority over the needs of the children. This has included the multiple moves into and out of this jurisdiction; the acceptance of unacceptable accommodation for the children to meet adult needs; and, most importantly the willingness to transition through relationships time and again without regard to the impact of the same on the children. As was put to the Court it remains unclear as to how the current relationship with MP is going to be explained to the children who seem unaware that he is both their mother’s partner and the likely father of the child to be. I was told E is particularly excited as to the new baby but no-one seems to have given any thought as to the impact on E of discovering he has been implicitly led into a lie as to who the father of the child is. As noted from the chronology much of this discord and disruption/distraction took place during the parenting assessment upon which the parents must have believed the LA would base its conclusions. That AP, MP and IP were willing to allow their relationship needs to get in the way of the assessment is concerning.
- c. A significant part of the assessment evidence points to the impact upon the children of the parenting they have received. The assessments identify the challenging behaviour of the older children and the difficulties experienced for the mother in managing the same. I do sympathise with the points made as to the nature of the contact venue and allied observations. However, my first responsibility is to ascertain the nature and cause of the difficulty. I accept the evidence of the professional witnesses that the children exhibit behaviour patterns that are harmful to them and which arise out of the care they have received. I adopt the views of JS in this regard as to how poor attachments have been laid down leading to poor resultant behaviour responses. This unfortunately creates a vicious circle in which AP (and IP/MP) who themselves have poor developmental experiences struggle to contain the children in an appropriate manner with the result that in the case of AP she ends up harming the children as shown by the precipitating event. I have no doubt she had no wish to hurt her children and deeply regrets the same but faced by the situation she was overwhelmed and had no strategy other than the recourse to unacceptable force. In my judgment one cannot divorce this issue from the

points made above. AP would likely struggle based upon her own life experiences but this is made all but impossible when she must cope in a context in which her energy and attention is on the management of her adult relationships. As noted above the relationship is a distraction and the children suffer. This means that improvements in parenting will likely run in parallel with addressing the relationship based issues. I do not think one can divorce the two and hope for an improvement based on parenting work alone. It also means that the challenges as to a suggested lack of professional pro-activity in advice around contact would have been limited in its' impact by the absence of progress in the world outside contact.

- d. I bear in mind the criticisms made of the LA in respect of failure to make referrals. However I also note the failure of AP to engage with the IAPT referral despite reminders between August – November 2017. In my judgment this was an unfortunate missed opportunity. My assessment of AP is that she has the capacity to be pro-active and I am left wondering why she was consistently unable to act in this regard. I also bear in mind that due to delay this was a case in which there were two separate intensive assessments and that one would expect matters to settle in contact over a sustained period. Whilst I accept more could have been done (this may often be the case) I am not of the view that this has had a material impact on the outcome to this case.
- e. My sense (and in particularly regarding AP) is of adults who do love the children and would not consciously wish to hurt them but are simply unable to prioritise the children's needs over their own. This is not necessarily a constant situation but it is sufficiently regular in occurrence to be a matter of significant concern. The result is that the children get emotionally lost as the adults' struggle to manage their own emotions and needs. A fall-out from this is the children competing for attention. They love their parents and want them to be predictably available and when they are not they respond understandably in ways which are viewed as poor behaviour. The reality of this can be seen in the recent significant improvement in behaviour in the current placement. This has undoubtedly arisen from the children receiving predictable and consistent care. The Guardian told me that she was stunned by the children when she recently saw them. The older two children were like different children. This positive change was the most she had seen in her experience. This is significant evidence from a highly experienced Guardian.

### **My welfare assessment:**

22. I have regard to the wishes and feelings of the children in the light of the age and understanding. These remain young children with a limited understanding of the complex relationships I have referred to within this judgment. E has expressed the wish to return to [X]. I accept the evidence of the Guardian that this reflects a likely wish to be with his father who he identifies as being in [X]. Whilst I do not have a clear understanding of their wishes and feelings at this time it would seem appropriate, given the warmth they express for their family in contact, to consider it likely that they would wish to grow up in their family if possible. This must of course be read subject to the risks that may be attendant upon such placement and their likely lack of full understanding of the same.

23. I have regard to the needs of the children. E is now in school and A will start in September 2018. I remind myself that E's schooling was not being appropriately promoted when in his parent's care. It appears to have been a further feature missed in the chaos of daily life. It appears these are bright children and they have a right to the opportunity to achieve to their maximum and this requires carers who can both promote and facilitate access to schooling. Their chief needs however are at an emotional level. The evidence paints a clear picture of emotional difficulties and lack of emotional availability on the part of the primary care giver. This can be seen in the evidence of JS. The impact of the same is found in the significant behavioural issues evidenced within the papers. The children both deserve and need parenting which is predictable and consistent. The absence of the same has been a considerable factor in their presentation to date. For this to be properly addressed it is likely the care givers will need to provide their primary focus to the children and not be distracted by extraneous issues. This is not to say the children must be the "be all and end all" of the adults' life but the care given must be able to be reflective of their needs and available to meet those needs as they arise. In many ways it is easier to state what they **do not need** at an emotional level. In my judgment it would be devastating for these children to once again find themselves in a position in which their needs seemed very much secondary to everything else that was going on around them including the adult inter-personal relationships.
24. I have regard to the likely effect upon each child (throughout his life) of having ceased to be a member of his birth family and becoming an adopted person. Such a step would have profound implications for the children. Most obviously they would likely suffer the emotional bereavement of being separated from their parents. The older children have a sense of their identity and who their parents are and the loss of this will have a significant and negative impact upon them. Having regard to the planning of the LA (and Guardian) there is also a real possibility that they would themselves be separated. It may be that this would be less significant than the loss of parental relationship but it would remain a matter of significance. It would be an exacerbating feature on the basis that one child would have to come to terms with the fact that he/she was not living with the other two, who were together. This is likely to lead to further distress and issues of a sense of rejection. This would not be a temporary measure but would endure throughout childhood and possibly life. Each child may at some point have feelings of loss and emotional concern as to the wellbeing of the parents. Each child might come to wonder why they could not be raised by their parents / with their siblings and whether they were to blame in part for this outcome. All of this accumulates to provide a situation requiring focused and skilled care to avoid long-term difficulties. I do not conclude this could not be done but I am confident it would be a task requiring real commitment and skill.
25. I have regard to the personal characteristics of each child. I have identified already their personal characteristics as to age and sex. I have noted their cultural heritage. It is an important part of their make-up for these children that they are of [X] heritage with all this brings. It is at the heart of their identity and they benefit from an upbringing that can both promote and endorse their identity. It gives a clear sense of their place in the world. All children want to know about their history and to be able to take pride in the cultural history. At school (particularly in a multi-cultural city such as London) children are encouraged to share with each other aspects of their background. This is for

important and positive reasons as to identity, self-worth and mutual respect. One feature to bear in mind is the sibling relationships shared by these children. It is a matter of contention whether or not there is a premium to the children being together. Objectively, I would start from the position that the children's relationship has value to each of them and is worthy of retention if possible. In the event of placement outside of the family the children may provide each other with a level of emotional support which acts to reduce the loss of separation. By sharing the experience of separation, they are likely to find it less distressing. I bear in mind the significance of sibling relations and the very strong prospect that for these children this will likely be the most enduring relationship in their lives. At the same time, I take notice of the evidence of sibling competitiveness (albeit moderated in recent times) and of the more limited relationship between the older children and N.

26. I have regard to harm the child has suffered or is at risk of suffering. I have found the threshold crossed on the basis of the older children having suffered significant harm. I have made findings as to the nature of the adult relationship that leaves a continuing risk (if unmoderated) of both indirect physical and direct emotional harm. I do not intend to repeat these matters.
27. I have regard to relationships each child has with relatives and other relevant individuals; the value of such relationships; the potential for such individuals to provide for the children; and, the wishes of the individuals as to the children. In this case it has not been possible to identify alternative kinship carers other than MP. MP has been subject to assessment within the Court process and it can be seen within this judgment that he has been a central figure. His relationship with the children is continuing and has value to them. He cares for them and I believe wants the best for them. His capacity to care for the children has been assessed together with AP and in the course of this judgment I will consider the merits of placement with AP (and MP).

Within this heading I also reflect upon the parenting capacity of each parent. Under section 1(3) Children Act 1989 this would be a material consideration. In my judgment it falls to be considered under this heading failing which it would not be considered at all.

It is clear IP accepts he is not placed to provide care for the children. So much is clear from the assessment undertaken in [X]<sup>17</sup>. He is currently detained and there is a likelihood of removal leading to a situation in which he would be unable to accommodate the children. The [X] assessment makes clear that a current repatriation of the children to [X] would be into institutionalised care. I have already reflected on his wishes for the children. His relationship with the children is one of value to them – most particularly it would seem in the case of E.

AP is better placed to care for the children notwithstanding she has her own practical challenges. It is clear she wants to care for the children and there is a strong bond of warmth between them. It would seem she has the skills with respect to basic care although her financial difficulties encroach on meeting the basic needs of the children. The central issue in this regard is as laid out above her capacity to make change;

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<sup>17</sup> H38

implement and sustain the same and do all of this within the timescales for the children whilst maintaining a likely relationship with MP (or IP) and raising her unborn child.

**My balancing exercise:**

28. I intend to deal with the three realistic options in turn:

- a. Rehabilitation to AP has obvious benefits which cannot be overlooked. It would avoid the need for family severance and any need to interfere at a meaningful level in the family's private life. In doing so it would enable the children to maintain their sibling bond and grow up together. All things being equal one might expect this environment to be the one best suited to arming the children to deal with the adversities of life. It would avoid the need for the children to suffer the quasi-bereavement of separation and would thus remove the need for focused work to ensure emotional baggage is not carried forward for unpacking at a later date. It would permit the children the day to day opportunity to spend time with their mother and other family thus avoiding the risk of emotional disturbance and a sense of rejection. It would permit the maintenance of a full understanding of issues of identity and place in the world. Language and cultural understanding would have the chance to flourish. Most importantly it would allow the children to know their biological family love them and hold them close to their heart.

The downside to a such an option relates to the potential for the children to return to an environment largely unchanged from that which existed at the time of their removal. If this were to be the case then they would be at risk of continuing emotional and physical harm. In such a scenario their life chances and needs would be diminished / not met. The positive features arising out of parental care would be overwhelmed by the reality of poor parental care. In such a circumstance there would be a likelihood of the children suffering further significant harm and of future removal.

- b. Long term foster care has the advantage of providing consistent and professional care. As demonstrated by the current carer it has the potential to permit progress for each child. A feature of long term foster care would be the likelihood of continuing parental contact at a child focused level. If the children had to be separated then the impact of separation would be mitigated by regular contact with both parents and siblings. It is a legal structure that has the tendency to encourage the parents to improve their position as it permits the opportunity for a parent to apply to the discharge the order. As such it would have the likely indirect effect of encouraging positive parental development with a positive benefit for the children. At the same time it would be a controlled environment in which issues of ongoing concern could be properly managed and appropriate safeguarding kept under review. Long term foster care would leave the LA as statutory parent. One benefit of this would be the likely heightened levels of resources available to the children in the event of need for support. The potential for ongoing contact would advantage the children by meeting their cultural needs.



However, foster care has some well-known disadvantages. I have in mind the judgment of Lady Black in **Re V (Children)**<sup>18</sup>. The essential downside is that the foster carer is a contractual party and their potential to provide ongoing care may be subject to the day to day adversities of life<sup>19</sup>. It simply does not provide the same permanence of everyday life as provided for by the natural family or an adoptive placement. Whilst foster carers undoubtedly provide love and warmth this is not the same level of commitment as to be expected in the natural family or adoptive family. The child has a very different sense of place and security in foster care and this brings potential emotional insecurity. A child in foster care is subject to the ongoing involvement of the LA with reviews and medical being a constant reminder of the nature of the placement. A child in foster care requires permission to travel overseas and checks need to be made before the child can enjoy sleepovers. All of this tends to create what is referred to as a stigma of being subject to foster care. A central concern is the lack of permanence that one can expect from foster care in comparison to the other options under consideration.

- c. Adoption can be seen to offer an obvious contrast to both the positives and negatives of the other options. In the case of positives, it importantly provides an opportunity for a permanent home in a family that seeks for the child to be a member of that family for the rest of their life. In this way it offers a significantly heightened level of security over that of foster care. The process of adoption involves a thorough testing and matching process and whilst one cannot offer guarantees it does give optimism that the adopter is well placed to meet the needs of the child and has the skills and resources to do so. A successful adoption will (for the reasons given above) offer the child the springboard to develop positively. For the very same reasons it is likely to provide an environment in which the child is nurtured and provide predicable and consistent care.

But adoption comes with a high likelihood of severance. It would be foolish not to accept that adoption in this case would likely sever the children from their family at least during their minority. As explained in the preceding sections this has the potential to have a significant and enduring impact upon children and particularly those who have a sense of their identity and their family. The older children in this case will remember who their parents are and this will make the process of absorption into a new family all the harder. Adoption does not offer guarantees and adoption placements can fail. This is more likely the older the child. Due to the nature of the adoption any failure is associated with significant emotional harm to the child.

### **My conclusions:**

29. I am quite clear it would be wrong to return the children to AP without there being a material change in the risks posed to them whilst in her care. In reaching this conclusion I have regard to the fact that the placement will in all likelihood include the involvement of MP (and if not IP). To return in such a situation would be to simply place the children at continuing risk of significant harm (physical and emotional).

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<sup>18</sup> [2013] EWCA Civ 913 at §96

<sup>19</sup> E.g. the ill health or retirement of a carer

30. In my assessment the concept of material change would require both AP and MP to accept the need for work and to engage in the same and following such work to demonstrate an ability to implement and sustain the change. Given the evidence I have heard as to the likely enduring role of IP I consider it would also be necessary for him to engage in a similar process.
31. At this time, I am confident AP would pursue such programmes and would likely regularly attend completing the course. I am however far less confident in respect of MP given his evidence and the level of commitment suggested by the same. I do not think it would be sufficient for him to simply complete an online course. This would provide no meaningful level of confidence as to his future conduct.
32. Given my findings above I judge the timescales for completion are measured in the period of at least 1 year for AP. Whilst the DV work may be completed within about 3 months (subject to her availability post-birth) there remains a need for work addressing deep seated issues and the need for some period to show sustained implementation. If MP fails to engage then it will be important to see how AP adjusts in the light of the same having particular regard to her isolated situation. She will not be in a protective situation if she remains with a partner who does not himself recognise the issue of DV. It may be the timescales for a secondary carer are somewhat less but there is a need for a form of more intensive DVIP work which I judge is likely to be measured over 6 months.
33. I remain doubtful the combination of features set out above will come to pass in any event. The history and recent events are suggestive of a deep-rooted difficulty which will not be easily remedied. The recent past has demonstrated the fluctuating emotions present in this relationship and I am far from confident that this situation has settled with any meaningful degree of permanence.
34. I have reached the conclusion that both the timescales of the work and the prospects of success are such as to fall outside the timescales of the children. I consider the children simply cannot wait to see what will happen. These proceedings commenced over a year ago. The reality of the foregoing is that there has been more than enough time to demonstrate significant steps toward change – yet the first half of this period was taken up with distractive adult behaviour with all adults prioritising their own needs over those of the children. When the parents should have been working positively with the first assessment they were engaged in their own personal disagreements. The mother then put herself in the position of falling pregnant further complicating the already complex position. Between August and November efforts to engage IAPT were not taken. This is not a case in which there was insufficient time to prove change.
35. These children need an answer now and not a solution based on a hope of change with no clear plan for the contingency of a likely failure. They simply could not return today. AP and MP are to lose their accommodation at the end of the month. It is noteworthy that it was only on the evening of the day on which she gave her evidence that AP appears to have confirmed to MP that he might not be the father of the unborn child due to her having slept with his brother in late summer 2017. In reality what are the chances of the children returning to a materially changed situation if they were to return immediately? There is no satisfactory evidence upon which I could confidently reach

that conclusion. So, they could not return today and I cannot safely predict when they could return.

36. In that situation I consider I must make a care order in respect of each child to permit them the opportunity to continue to receive safe and predictable care. The LA need to continue to share PR to safeguard the interests of these children. Their welfare interests as assessed above are only consistent with making a care order.
37. I have considered each of the options with care. I have reached the conclusion that the welfare of each child can only be met by the making of a placement order. These children require permanence. None of the children are of such an age that this is beyond achievement. I have balanced the benefits/disadvantages of adoption /foster care against each other. In my judgment the balance is in favour of adoption. In my judgment it cannot be right for N to spend her entire childhood in foster care. This is not an appropriate plan for a child of her age. The downsides far outweigh the positives. The position is not materially different for the older children. Whilst foster care would allow them contact, it would on balance suffer significantly by comparison to the benefits that a permanent home could bring them. In my judgment foster care would only be the appropriate solution if I had real confidence of a potential for change in the foreseeable future. I sadly do not have that confidence and judge that foster care for these children would likely be a life in foster care. That is not in their welfare interests if there is an option offering permanence.
38. In my assessment the welfare of the children is only consistent with the making of a placement order. Nothing else will do. For reasons which I understand the parents cannot consent to this outcome. As the welfare of the children requires it I dispense with their consent.
39. Whilst these decisions amount to an interference in the lives of this family it is for the reasons I have given an inevitable and necessary interference to keep the children safe and to protect their emotional wellbeing. It is furthermore proportionate as it is in fact the least interventionist step consistent with their welfare. I do not consider a return home with a supervision order would remedy the concerns set out above. I do not consider a written agreement would reduce to any satisfactory level the risks I have identified. Such an agreement is only as good as the commitment of the individual parties at the moment of tension. I have no doubt a written agreement would not have remedied the issues that arose in December 2016 or thereafter.
40. I approve the care plan as modified during the hearing. I do not accept that it is inchoate simply because it has contingency planning built into it. In my judgment the primary aim should be placement of all children together. However, I understand why this may not be possible. On balance I do not consider the contingency to this should be foster care together over adoption of the siblings on a severed basis. I accept the evidence of the LA and Guardian as to the interests of the children being for individual adoption over joint placement in care. I accept the evidence that the balance of placement is in favour of N and A together as a contingency plan. I consider the preference for E should in such a situation remain placement (this will in my judgment be an option most likely to maintain contact between siblings) but that the LA should be open to consideration of non-placement if the alternative to placement appears to be a foster placement which is ideally matched to E. I approve the timetable for the searches set out in the evidence.

41. As to contact I agree there should be a plan for placement with an insistence on sibling contact. I consider prospective adopters should be very conscious as to the significant benefits to any children in their care of an ongoing sibling relationship. I do not disagree with the suggestion of a starting point of contact twice per year but would suggest this should not be regarded as a fixed view. I agree with letter box contact and the contact transition plan. As to parental contact post-placement I would expect the adoption team to provide a prospective adopter with a fair and balanced understanding of the benefits of contact and the nature of the parents so that a proper decision can be made by the adopters.
42. I can only guess at the distress that this decision will cause to the parents. I am sorry to be in the position of having to separate them from their children. The position for AP is particularly sensitive given the impending birth. I can only hope that she is able to reflect on this decision (together with MP) so that she can put herself in a better position to parent that child.

His Honour Judge Willans