

**IN THE FAMILY COURT AT BARNET**

**Neutral Citation No:** [2021] EWFC 130 (B)

St Marys Court  
Regents Park Road  
London

**Before HIS HONOUR JUDGE OLIVER JONES**

**IN THE MATTER OF**

**THE LONDON BOROUGH OF BARNET (Applicant)**

**-v-**

**M (1<sup>st</sup> Respondent)**

**F (2<sup>nd</sup> Respondent)**

**XX, YY and ZZ**

**through their Children's Guardian Laurence Dumont (3<sup>rd</sup> -5<sup>th</sup> Respondents)**

**MS C. IRVINE** appeared on behalf of the Applicant

**MS E. LECOINTE** appeared on behalf of the 1<sup>st</sup> Respondent

**MR. N. FRY** appeared on behalf of the 2<sup>nd</sup> Respondent

**MS L. HIBBERD** appeared on behalf of the Children's Guardian

**JUDGMENT**

**23<sup>rd</sup> December 2021**

## **Parties**

1. The LA is represented by Ms Celeste Irvine. It brings these care proceedings in relation to three siblings, XX, YY and ZZ. M is their mother who is represented by Ms Elpha LeCointe and is assisted by an intermediary, Ms McGreevy. F is the father of the children; he is represented by Mr Neil Fry. Both parents have been assisted using an interpreter although there were some days when they were able to share one interpreter rather than one each. The children are represented by Ms Laura Hibberd through their Children's Guardian Laurence Dumont.

## **Applications**

2. The local authority seeks care orders in relation to all three children. It proposes that they remain in long term foster care. XX and ZZ are currently placed together and the plan is that they should remain with that foster carer for the long-term. YY is on her own in a foster placement that is not capable of being her long-term home. The LA's plan is to identify a suitable long-term foster placement for her.
3. The parents seek the return of all three children. They would accept a Supervision Order being made. They have proposed a plan for support including family support from two of F's adult sons, JJ who would have M and the three children visit and stay overnight at his home every weekend and LL who would visit the family every Wednesday.
4. Alternatively, the parents seek an adjournment of the final hearing to enable further work to be undertaken. A Part 25 application has been made for the instruction of Dr Ruby to conduct work and advise the court.
5. The Children's Guardian supports the local authority's applications.

## **Background**

6. The parents are married, and F holds parental responsibility for all the children. They are both Asian although for the purposes of anonymity I shall not specify their countries of origin. English is not their first language.
7. The mother is middle-aged. She has impaired hearing although this has markedly improved since she had an operation. She never received any formal education as a child, has learning difficulties and her use of English is very limited although she was keen to give some simple parts of her evidence in English, for example identifying her name and address.
8. F is elderly. He has a range of health problems affecting his heart, kidneys, prostate and eyes. He has some English language skills although for the purposes of the final hearing requested an interpreter throughout.
9. This is F's second marriage. He has ten adult children from his first marriage. They are successful individuals with their own families. When F decided to remarry, he was advised against it by his children and subsequently F and his adult children became estranged. According to JJ there was some thawing of relations between the family and F over 1-2 years prior to the care proceedings, although he accepted that his relationship remained strained. His sister KK in her statement was clear that the estrangement continued until the care proceedings were underway.
10. The parents married abroad in 2006. In 2009 the mother moved to live with the father in England.
11. During the final hearing, the LA has prepared at my request a chronology that details the social work support and involvement the family over time. I accept that document and considered its contents but do not see the benefit of repeating its contents in this judgment.
12. XX and YY have made several allegations of physical abuse against the parents. Those are a matter of dispute at this hearing and I will deal with them later in this judgment.

13. The local authority issued care proceedings on 15<sup>th</sup> October 2020. On 21<sup>st</sup> October 2020 DCJ Mayer made interim supervision orders in relation to all three children. On 29<sup>th</sup> October 2020, Recorder Liebricht made interim care orders for all three children and they were removed to foster care.
14. The children were placed together in foster care. XX was placed in respite care between 6<sup>th</sup> December 2020 and 4<sup>th</sup> January 2021. The carers gave notice on 21<sup>st</sup> January 2021 because of a change in their circumstances with the foster father moving abroad.
15. On 3<sup>rd</sup> February 2021 YY made an allegation against the first set of foster carers and she moved to the respite foster care for a week between 14<sup>th</sup> and 21<sup>st</sup> February 2021.
16. On 19<sup>th</sup> March 2021, all three children moved to their second set of foster carers – who had previously been the respite foster carers.
17. On 4<sup>th</sup> October 2021, ZZ made an allegation of being slapped by the foster carer.
18. On 7<sup>th</sup> October 2021, the children moved to back to the first foster placement pending the identification of separate foster placements.
19. On 11<sup>th</sup> October 2021, XX and ZZ moved to a new foster placement and YY moved to a separate foster placement.

## **Law**

20. I am grateful to Mr Fry for setting out in a document the legal framework that the court must apply. That document has been agreed by all the parties and I adopt it.
21. The burden of proof lies in this case with the Local Authority. It is the Local Authority that brings these proceeding and identifies the findings they invite the court to make. Therefore, the burden of proving the allegations that they make rests with them.
22. The standard of proof is the balance of probabilities. As Baroness Hale said in *Re B (Children) (FC)* [2008] UKHL 35 [2008] 2 FLR 141:

*“I would...announce loud and clear that the standard of proof in finding the facts*

*necessary to establish the threshold under section 31(2) or the welfare considerations in section 1 of the 1989 Act is the simple balance of probabilities, neither more nor less.”*

23. If the evidence in respect of a particular finding sought by the Local Authority is equivocal then the court cannot make a finding on the balance of probabilities as the Local Authority has not discharged either the burden or the standard of proof (Re B (Threshold Criteria: Fabricated Illness) [2002] EWHC 20 (Fam), [2004] 2 FLR 200). In Re B (Children) [2008] Lord Hoffmann said:

*“If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.”*

24. It follows that it is not for a party against whom allegations are made to prove a negative case. Such a party is not required to provide any satisfactory or benign explanation as to why allegations have been made about their conduct (Re M (Fact Finding Hearing: Burden of Proof) [2013] 2 FLR 874). Put another way, there is no pseudo-burden or obligation cast on respondents to come up with alternative explanations: Lancashire County Council v D and E [2010] 2 FLR 196 at paras [36] and [37]; Re C and D (Photographs of Injuries) [2011] 1 FLR 990, at para [203] and Re D (a child) (Fact-Finding Hearing) [2014] EWHC 121 (Fam).

25. The inherent probability or improbability of an event remains a matter to be considered when weighing the probabilities and deciding whether, on balance, the event occurred: “Common sense, not law, requires that in deciding this question regard should be had, to whatever extent appropriate, to inherent probabilities.” – Lord Hoffman in Re B at paragraph 15. See paragraph 48(2) of the decision of Baker J in A London Borough Council v K & Ors [2009] EWHC 850 (Fam).

26. Any findings made must be established on the evidence available to the court, including inferences that may be properly drawn from that evidence, and not on suspicion or speculation (*Re A (A Child) (Fact Finding Hearing: Speculation)* [2011] EWCA Civ 12 per Munby LJ). The Court must not evaluate and assess the available evidence in separate compartments. Rather, regard must be had to the relevance of each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to come to the conclusion whether the case put forward has been made out on the balance of probabilities (*Re T* [2004] 2 FLR 838 at [33])
27. It is for the local authority to prove the necessary link between the facts upon which it relies and its case on Threshold. The local authority must demonstrate why certain facts, if proved, "justify the conclusion that the child has suffered or is at the risk of suffering significant harm" of the type asserted by the local authority (*Re A* above).
28. The evidence of the parents and carers is of the utmost importance. The court should form a clear assessment of their credibility and reliability. The court is likely to place considerable reliability and weight on the evidence and impression it forms of them; *Re W* and another (*Non-accidental injury*) [2003] FCR 346.
29. It is common for witnesses in these cases to tell lies in the course of the investigation and the hearing. The court must be careful to bear in mind that a witness may lie for many reasons, such as shame, misplaced loyalty, panic, fear and distress, and the fact that a witness has lied about some matters does not mean that he or she has lied about everything (see *R v Lucas* [1981] QB 720) and *Re JS (A Child)* above). It is essential that the court weighs any lies told by a person against any evidence that points away from them having been responsible for harm to a child (*H v City and Council of Swansea and others* [2011] EWCA Civ 195 and *A v Cardiff City Council* [2019] EWCA Civ 1360). The Family Court should adopt the approach of the Criminal Court, namely that a lie is only capable of amounting to corroboration if it is (a) deliberate, (b) relates to a material issue and (c) is motivated by a realisation of guilt and a fear of the truth (*Re H-C (Children)* [2016] EWCA Civ 136, paras 97-100). Where the issue of lies is relevant, the local authority should be asked to identify (i) the deliberate lies upon which they seek to rely, (ii) the significant issues to which they relate and (iii) on what basis it can be

determined that the only explanation for the lies is guilt. (A, B and C (Children) [2021] EWCA Civ 451).

30. It is important for the court to address carefully allegations of failure to protect, and not to make findings as a 'bolt on' to findings of perpetration. The court at a fact-finding hearing must not fall into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, a finding of failure to protect is almost inevitable. In *Re L-W (Children)* [2019] EWCA Civ 159 King LJ said:

*"62. Failure to protect comes in innumerable guises. It often relates to a mother who has covered up for a partner who has physically or sexually abused her child or, one who has failed to get medical help for her child in order to protect a partner, sometimes with tragic results. It is also a finding made in cases where continuing to live with a person (often in a toxic atmosphere, frequently marked with domestic violence) is having a serious and obvious deleterious effect on the children in the household. The harm, emotional rather than physical, can be equally significant and damaging to a child.*

*63. Such findings where made in respect of a carer, often the mother, are of the utmost importance when it comes to assessments and future welfare considerations. A finding of failing to protect can lead a Court to conclude that the children's best interests will not be served by remaining with, or returning to, the care of that parent, even though that parent may have been wholly exonerated from having caused any physical injuries.*

*64. Any Court conducting a Finding of Fact Hearing should be alert to the danger of such a serious finding becoming 'a bolt on' to the central issue of perpetration or of falling into the trap of assuming too easily that, if a person was living in the same household as the perpetrator, such a finding is almost inevitable. As Aikens LJ observed in *Re J*, "nearly all parents will be imperfect in some way or another". Many households operate under considerable stress and men go to prison for serious crimes, including crimes of violence, and are allowed to return home by their long-suffering partners upon their release. That does not mean that for that reason alone, that parent has failed to protect her children in allowing her errant*

*partner home, unless, by reason of one of the facts connected with his offending, or some other relevant behaviour on his part, those children are put at risk of suffering significant harm.”*

31. Section 1(1) of the Children Act 1989 provides that when the court determines any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration. In determining what is in a child’s best welfare interests the court must have regard to each of the factors set out in the welfare checklist in s.1(3). Section 1(5) provides that when a court is considering whether or not to make an order under the Act with respect to a child, it shall not make the order unless it considers that doing so would be better for the child than making no order at all. In public law cases this means that the level of state intervention should be no greater than is necessary in order to secure the child’s welfare.
32. The Court has to decide whether each child can be safely returned to the parents’ care under either a Child Arrangements Order with a Supervision Order, or under a Care Order, or whether each of their welfare demands that they be placed outside of the family in long-term foster care.
33. Where a parent has a learning disability, the court must make sure that this parent is not being disadvantaged simply because of their disability.
34. The essential question is whether the parenting that can be offered is good enough if support is provided. In *Re D (A Child) (No 3)* [2016] EWFC 1 Munby P endorsed and recommended what was said by Gillen J in *Re Guardian and A (Care Order: Freeing Order: Parents with a Learning Disability)* [2016] NIFam 8. Those cases establish a number of important points relevant in this case:
  - i) Parents with learning difficulties can often be 'good enough' parents when provided with the ongoing emotional and practical support they need.
  - ii) The concept of 'parenting with support' must underpin the way in which courts and professionals approach parents with learning difficulties.
  - iii) Courts must make sure that parents with learning difficulties are not at risk of having their parental responsibilities terminated on the basis of evidence that



would not hold up against parents without such difficulties. To that end parents with learning disability should not be measured against parents without disability and the court should be alive to the risk of direct and indirect discrimination.

iv) Multi-agency working is critical if parents are to be supported effectively and the court has a duty to make sure that has been done effectively.

v) The court should not focus so narrowly on the child's welfare that the needs of the parent arising from their disability, and impacting on their parenting capacity, are ignored.

vi) Courts should be careful to ensure that the supposed inability of the parents to change is not itself an artefact of professionals' ineffectiveness in engaging with the parents in an appropriate way.

35. The case of *Kent County Council v A Mother* [2011] EWHC 402 recognised (a) that parents with learning disability need to be supported and enabled to lead their lives as full members of the community, free from discrimination and prejudice, (b) a wider acceptance that people with learning disability may in many cases, with assistance, be able to bring up children successfully, (c) the need for professionals working with families and children to be trained to recognise and deal with parents with learning disabilities and (d) the need for Government Guidance to be followed:

*“All social workers, and family support workers, working with children and families need to be trained to recognise and deal with parents with learning disabilities. The Guidance issued by central government needs to be followed.”*

Mr Justice Baker in *Kent CC v A Mother* [2011] EWHC 402 (Fam) at para 135.

<http://www.bailii.org/ew/cases/EWHC/Fam/2011/402.html>

36. The Good Practice Guidance on Working with Parents with a Learning Disability (updated September 2016) DoH/DfES was issued to address a lack of evidence of effective joint working between adult and children's services. The Guidance provides, in summary:

i) Services need to help enable children live with their parents (as long as this is consistent with their welfare) by providing the support they and their families require. This accords with the general duty of local authorities under section 17(1) of the 1989 Act to provide a range and level of services to safeguard and promote the welfare of children

in need and their upbringing by their families (insofar as it is consistent with their welfare).

ii) Good practice is also underpinned by an approach to parenting and learning disability which addresses needs relating to both impairment and the disabling barriers of unequal access and negative attitudes. Such an approach recognises that:

- If the problem is seen as entirely related to impairment and personal limitations, it is difficult to understand how to bring about positive changes for parents and their children.
- If the focus is, instead, on things that can be changed (such as inadequate housing) and support needs that can be met (such as equipment to help a parent measure baby feeds), there are many more possibilities for bringing about positive improvements.

[p4]

iii) There are five key features of good practice in working with parents with learning disabilities: [p ii]

- accessible information and communication
- clear and co-ordinated referral and assessment procedures and processes, eligibility criteria and care pathways
- support designed to meet the needs of parents and children based on assessments of their needs and strengths
- long-term support where necessary
- access to independent advocacy

iv) Adult and children's services, and health and social care, should jointly agree local protocols for referrals, assessments and care pathways in order to respond appropriately and promptly to the needs of both parents and children. [1.2.1, p8].

v) It is important that services understand who is to take the lead on assessments:

- where there are no welfare concerns but adults need assistance with routine tasks of looking after children, adult learning disability services should take the lead on assessment and care planning
- where parents need support in the medium to long term adult learning disability and children's services jointly co-ordinate assessment and care planning
- where intervention is required to prevent children suffering impairment to their health or development or significant harm, children's services lead assessment and planning with specialised input from adult learning disability services (1.2.5 p12).

vi) Services in contact with parents with learning disabilities should use appropriate

assessment materials and resources and/or access specialist expertise. Failing to do so will result in the parent receiving an unfair and therefore invalid assessment, in breach of their legal rights. [1.2.6, p13].

vii) Where a parent has a learning disability it will be important not to make assumptions about their parental capacity. Having a learning disability does not mean that a person cannot learn new skills. [p13].

viii) In the case of parent support services, an assessment of a parent's learning needs and circumstances should inform the support provided to develop parenting skills. Research indicates that – for parents with learning disabilities – the key elements of successful parenting skills support are:

- clear communication, and ensuring parents have understood what they are told
- use of role-play, modelling, and videoing parent and professional undertaking a task together, for discussion, comparison and reflection
- step-by-step pictures showing how to undertake a task
- repeating topics regularly and offering opportunities for frequent practice
- providing/developing personalised "props": for example, finding a container which will hold the right amount of milk for the child so that the parent does not have to measure out the milk. [p16]

ix) A range of services is required. All families are different and at different stages of their life cycle families require different types of support. [1.3.3, p16]

x) A need for long-term support does not mean that parents cannot look after their children. [1.4.1, p20]

xi) Although a parent with learning disabilities can learn how to do things, their cognitive impairment will not go away. Just as someone with a physical impairment may need personal assistance for the rest of their life so a person with learning disabilities may need assistance with daily living, particularly as new situations arise. Secondly, children and their needs change. A parent may have learned to look after a baby and young child and be coping well. However, as the child enters adolescence other support needs may arise. [p21]

xii) Where a need for long-term support with parenting tasks is identified, it should form part of the community care and/or child in need plan. [1.4.2, p21]

xiii) Advocacy and self-advocacy should be made available to help parents access and engage with services. The Care Act 2014 imposes a duty on local authorities to provide an independent advocate where an individual would otherwise have substantial

difficulties in being involved in processes such as their own assessment and care planning. [p22]

xiv) The Equality Act 2010 imposes a duty on local authorities to make reasonable adjustments so as to eliminate discrimination and to advance equality of opportunity; the provision of an independent advocate may assist with this. The Human Rights Act 1998 entitles a parent to participate fully in the process; this includes stages prior to any formal legal proceedings being initiated. [p22]

xv) It is particularly important to avoid the situation where poor standards of parental care, which do not, however, meet the threshold of being of significant harm to a child, subsequently deteriorate because of a lack of support provided to the parent. A failure to provide support in this type of situation can undermine a parent's rights to a private and family life, and may also contravene an authority's disability equality duty. [p25]

xvi) Families affected by parental learning disability are likely to have an on-going need for support. [p27]

xvii) When children are placed in foster care, parents should receive practical support to maximise their chances of improving their parenting capacity. Without this, parents will have little chance of reunification with children who have been removed from their care. [2.2.12, p29]

xviii) Both children's and adult workers will need specific training in order to respond appropriately to the needs of families affected by parental learning disability. Child protection training strategies should include adult learning disability services. [p38]

xix) It is essential that assessments, training and support are both timely and appropriately tailored to the parent with a learning disability. Failure to build in, from the outset, the extra time that a parent with a learning disability needs in order to learn and understand, puts that parent at a significant disadvantage in child protection proceedings, compared to parents without a learning disability. [piii]

xx) There must also be joint working across all the agencies (in particular adult and children's services) and appropriate and effective communication permitting parents to participate fully in the process. [piii]

37. Munby P said at paras 28-29 of Re B-S:

*"28. ... the court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the*

*authorities would offer. So "before making an adoption order ... the court must be satisfied that there is no practical way of the authorities (or others) providing the requisite assistance and support." In this connection it is worth remembering what Hale LJ had said in Re O (Supervision Order) [2001] EWCA Civ 16, para 28:*

*"It will be the duty of everyone to ensure that, in those cases where a supervision order is proportionate as a response to the risk presented, a supervision order can be made to work, as indeed the framers of the Children Act 1989 always hoped that it would be made to work. The local authorities must deliver the services that are needed and must secure that other agencies, including the health service, also play their part, and the parents must co-operate fully."*

That was said in the context of supervision orders but the point is of wider application.

38. It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order. Judges must be alert to the point and must be rigorous in exploring and probing local authority thinking in cases where there is any reason to suspect that resource issues may be affecting the local authority's thinking."

39. Re L (Care: Assessment: Fair Trial) [2002] EWHC 1379 (Fam) stated:

*"154. If those involved in cases such as this are in future to avoid the criticisms which, understandably and, as it seems to me with no little justification, have been levelled against some of those involved in the present case they would be well advised to bear the following precepts in mind:*

*i) Social workers should, as soon as ever practicable:*

*a) notify parents of material criticisms of and deficits in their parenting or behaviour and of the expectations of them; and*

*b) advise them how they may remedy or improve their parenting or behaviour."*

## **Evidence**

40. I have read a bundle of just over 1700 pages. In addition, I have been provided with the following further documents during the final hearing:

- a. Children's Guardian's final analysis
- b. Foster carer logs
- c. Final statement of the father dated 13<sup>th</sup> May 2021
- d. Final statement of the father approved on 6<sup>th</sup> December 2021
- e. Statement of JJ dated 6<sup>th</sup> December 2021
- f. Email update from the school dated 14<sup>th</sup> December 2021
- g. Child and Family Assessment dated 21<sup>st</sup> September 2018
- h. Child in Need review outcomes note dated 27<sup>th</sup> January 2020
- i. Part 25 application by the mother
- j. Body Maps created at the child protection medicals of XX and YY on 10<sup>th</sup> March 2020

41. I have also requested and been provided with the ABE videos of XX and YY's interviews on 10<sup>th</sup> July 2020.

42. I heard evidence from a number of witnesses. I set out my brief observations of their evidence.

43. AA was the allocated social worker for most of the proceedings. She no longer works for this LA. I found her to be a fair witness. She gave credit where it was due and did not shy away from sharing information that was unhelpful to the local authority's case or to explain misunderstandings that could have unfairly cast the parents in a bad light.

44. CC is the deputy head teacher at the children's school. I found her to be a reliable and child-focussed witness. She has no reason to misrepresent anything about the children or the family. She told me that in the last few months XX has been much more settled at school. She described a significant change that coincides with XX and ZZ moving to their current foster placement. It also coincides with XX's EHCP being formally approved although I am satisfied that even before that stage the school was already

providing XX with a high level of additional support and there was only a relatively modest increase in provision after the EHCP.

45. DD is an assistant head teacher at inclusion lead at the children's school. He has been the SENCO since September 2019. He gave details about the additional services the school have made available for all three children. He was a fair and reliable witness and I accepted his evidence.
46. EE is one of two GP receptionists who witnessed the alleged incident where the father is said to have kicked one of the children in the car park. She did her best to assist the court. Some elements of that day she could recollect, such as whether she had served F at reception. Her account was inconsistent about the order of events and inconsistent with FF's account.
47. FF is the other GP receptionist. Her evidence was also inconsistent. She accepted that in her police statement (5 weeks after the incident) she got some of the details incorrect. Part of her statement was crossed out and those amendments were initialled, but in her oral evidence she said that the crossed-out part was true.
48. I have no doubt that both EE and FF were well intentioned and they both appeared to be shocked by the events they saw. However, their evidence was inconsistent, and I found it difficult to rely on them.
49. GG is a family support worker who attended the family home for 4 visits over two days. He appeared to be a fair and sensible witness and I accepted his account of what he observed. He was clear that he was not informed about the mother's learning disability before he attended.
50. Nadira Huda is the independent social worker who conducted a PAMS parenting assessment on the parents. Her opinion was that the parents could not care for the children because they do not have the authority or understanding of their emotional needs to be able to parent the children. Ms Huda also conducted the special guardianship assessments of the paternal family members which were positive, but those prospective carers withdrew.

51. I was impressed by Ms Huda, she appeared to be a fair and reliable witness who was open minded in the way she approached her work. She appeared to have a good level of understanding and insight into the case and was sensitive to the cultural aspects of the case as well as to the mother's learning disability.
52. I heard from BB the allocated social worker. Her role in the case began during the final stages of the case, after the assessments of the parents had been concluded. She seemed to have a good handle on the case, although I was concerned about the local authority's lack of persistence in pursuing the mother's adult learning disability support and the lack of progress with the investigations against the foster carers. BB "took on board" criticisms about this.
53. BB was not keen to agree that XX was a controlling and manipulative child. She said she would not use those words and framed it that XX is a child who tests boundaries and tries to take advantage.
54. BB explained the reasoning behind separating the children in the way that the LA did. I found her to be a fair and reliable witness although it was disappointing that some issues appeared to have not been given the attention they needed.
55. When I heard the father's evidence, I formed the firm impression that he was saying what he believed would place him in the best light. While he indicated that he would accept and cooperate with support, and while he spoke about how social services had failed to provide proper support, he was unable to specify what that support would be for. As to any failings of parenting in himself or his wife, he was unable to identify any. He was praising of the M's qualities, describing her as very talented. He could only identify that she had a language barrier and that there were cultural differences.
56. In a similar vein, he appeared to suggest there were no problems between himself and the grown up children of his first family, despite there being a wealth of evidence that suggests he did not even acknowledge their existence to professionals until a relatively late stage, and in contradiction to the evidence of his daughter KK and his own statement of 13<sup>th</sup> May 2021 wherein he accepted that he had, "cut them off following [his] second marriage and subsequently when [his] younger children were born."



57. In several the answers he gave, the father did not appear to appreciate the impact on the children of certain events. For example, he did not recognise that the children could feel let down or rejected by their older siblings having previously wanted to see them and then just stopped attending contact. Similarly, although the father was heavily involved with a particular cultural organisation, he had never taken the mother to it, despite her isolation in this country. He justified this because of her deafness and then because of the pandemic shutting down the activities, but there was a gap of many years after the mother's operation on her ears until the pandemic struck. The father appeared to lack an appreciation of the mother's needs.
58. The father denied saying to the mother, when Ms Huda was present, that he would send the mother back to her country if the children were not returned. Ms Huda had given compelling evidence of the mother crying at this exchange. The father asserted it was a misunderstanding but could not explain adequately how such a misunderstanding had occurred, instead simply blaming interpretation mistakes. I was not impressed by this evidence and preferred Ms Huda's account.
59. I found the father to be an unreliable witness and I could place little weight on his evidence.
60. I heard evidence from the mother. Her evidence had to be taken slowly with breaks being particularly important. I do not doubt that she loves her children and wants to care for them.
61. The mother saw her children in very black and white terms. When asked what the children are like she told the court that XX has a problem and described her asking and crying for things that she wants. In contrast both YY and ZZ were described as good because they, "listen all the time". She said that when YY was naughty it was because XX's behaviour was impacting on her and she would copy XX. I formed the firm view that she blames XX for the poor behaviour of the children.
62. The mother denied the allegations of violence against the girls apart from she accepted the incident that led to the police caution. She told me that she had been taking good care of the children before they were removed. She denied that there had been problems with YY – describing her as a quiet child at home, who "can't get angry", is not nervous and

does not hit other children. She asserted that YY's behaviour in foster care only arose after she was removed.

63. When asked about the details of the incident when she received a police caution, the mother was reluctant to talk about it. She laughed and smiled which I took to show she was embarrassed. She said her intention was to hit XX lightly, but then said she did not hit her. When asked about the mark on XX's eye, she said she, "hold her with her teeth". She accepted this meant bit her. She said she made this mistake once. She said she was angry a little bit and frustrated a little bit.
64. I must approach the mother's evidence with caution. She has considerable communication and cognitive deficits to overcome. The provision of an interpreter and an intermediary assisted with this, but nonetheless she remains a witness with considerable needs. The process of giving evidence would have been stressful and this may have particularly impacted her in the light of those needs.
65. I heard from JJ, one of the father's adult sons. In many ways he was impressive. He is a man with a successful career and family life. He appeared genuine in his wish to support the children. He was frank with the court about difficulties that had arisen within the paternal family and did not try to minimise these. However, I also had concerns about aspects of his evidence which I detail later in this judgment.
66. The Children's Guardian, Laurence Dumont provided a thoughtful report and gave evidence in a considered and fair way. She maintained her position and was unshaken in cross-examination. She did not accept that there was a gap in the evidence and a need to try out the package of work with Dr Ruby that the ISW had recommended. The Guardian's view was that the court already had the information it needed to make a decision and pointed out that the parenting assessment, and the assessments of Dr Jeffes and Dr Carstairs have already been completed.
67. She was cross-examined about the absence in her analysis of the advantages and disadvantages for the children of long-term foster care. She said they were the "usual ones" and offered to set them out in oral evidence. She denied that she had taken a linear approach to her recommendations and had considered the impact of foster care and

stressed the important to the children of remaining in their family for the relationships and cultural links.

68. I agree that the Guardian should have included in her final analysis her evaluation of the advantages and disadvantages for the children being in foster care. However, despite this, I accepted the guardian's evidence.
69. I have viewed the ABE interviews of XX and YY. These were conducted on 31<sup>st</sup> July 2020.
70. In her ABE interview, XX was calm. She understood the difference between truth and lies. Her demeanour was serious. She appeared to be a bright and inquisitive child who understood she was there to tell, "the whole story". She was worried about not being able to remember everything she had said before. The police officer opens her questions by asking about everything that happened on the day, "that Mummy had hit you with a shoehorn" – referencing a previous discussion with XX. XX then went into a rapid account of being hit by her mother for not cleaning up ice cream. Her account was spontaneous and detailed. When she repeated things that were said, she mimicked the emphasis put into her mother's words, "Go to bed now". At several points, she complained that while she had been told to stop playing on her device, her parents had not stopped her sister from doing so. Her sense of unfairness about this was still obvious in the way she spoke.
71. The account did include some inconsistency. At an early point XX said that M had also hit YY with the shoehorn. However, towards the end of the account she was asked, "You also mentioned earlier, you said that M hit [YY] as well; is that right?" XX's answer was, "No". The question is ambiguous. It is possible with her answer that XX was expressing a view that it is not right that YY should be hit. However, having watched the video, I consider it more likely that XX was contradicting her earlier statement.
72. Overall XX's ABE interview was a compelling and believable account albeit with an inconsistency about what had happened to YY.

73. YY was also ABE interviewed. Tellingly when the interviewer was trying to explain the purpose of the interview being to chat about something that happened at home with M and XX, YY interrupted, saying, “I don’t want to tell her... Because then she’ll get mad and she said I might get arrested”. Later in the interview after she described being grabbed by M to give her squishy to ZZ, which caused scratches to her shoulder, she also said “Mummy said to don’t tell the police or nobody”.
74. When prompted about the incident with XX and the shoehorn, she appeared to suddenly remember the incident and gasped, “Oh yeah”, before talking about XX being hit for spilling ice cream. Although the officer led the information about M hitting with a shoehorn, YY was able to elaborate and provided the details about the ice cream that collaborated XX’s account. Some elements of YY’s version differed, such as how the ice cream was spilt – that XX fell on a shoe, rather than XX’s version that it was hit out of her hand by M.
75. YY’s sense of time was typical for her age, she described events that occurred during the pandemic as happening a long time ago with “very” repeated multiple times.
76. At times in her interview, YY described what life was like at home. She described M having been arrested and taken away then promising to not hit again. She described sibling rivalry between herself and both of her siblings about candy, toys and use of devices to play Roblox. She described a home life in which the mother does all the chores and the childcare but the father, “always watched the phone, he doesn’t do anything, he just goes to the doctors cos he’s sick”. She also said that her mother does not love her, or XX, but just loves their younger brother and described a situation where their mother showed love to them when they were babies but stopped when they grew up. She also described that ZZ, “always bang his head when he get angry and crying”.
77. I have taken careful account of YY’s age, but she appeared to have a good level of understanding of what was being discussed. She was reasonably articulate for her age. When she spoke, there was appropriate emotional content to what she had to say, for instance whining as she said about her mother, “I don’t know why she doesn’t like me”. I found her account to be coherent and believable.

78. I have read several expert reports which were not challenged during the final hearing. I summarise the key points now:
79. Dr Anthony Wilkins, psychiatrist provided a certificate dated 27<sup>th</sup> October 2020 that the mother holds capacity in the proceedings.
80. Miriam John of Communicourt provided a report dated 21.12.20 that recommended the use of an intermediary and her recommendations were put into practise in the course of the final hearing.
81. Dr Peter Maggs, Consultant Psychologist provided a report (prepared pre-proceedings) on XX dated 11<sup>th</sup> September 2021. He found XX's cognitive skills fell into the "average" range, although her reading and spelling were below her chronological age. Her account of her family members was broadly positive although she did say, "Before, mum used to hit us a lot. She's sort of stopped. Now, she only does it sometimes, but not all the time."
82. Dr Maggs reported:

"Whilst [XX] identified positive qualities in her mother and noted, for example, that she could be physically affectionate, she reported that her mother has continued to use physical chastisement with her and I was left with the impression from [XX] that she finds her mother very stern at times. It seems likely that her attachment to [M] has been ambivalent and that she has tended to test the solidity of this relationship through pushing behavioural boundaries. [XX] described positive qualities in her father, who she appears to view as providing for her material needs. It is notable that she was not able to identify any negative qualities in her father."

"In the short, medium and long-term, [XX's] emotional and behavioural difficulties will have a significantly negative impact upon her family relationships, her engagement with education and her ability to sustain positive relationships with teachers and other people in positions of authority if they are not sufficiently addressed through access to a consistently positive quality of care."

83. Dr Peter Maggs, also provided a report on the YY and ZZ dated 11<sup>th</sup> February 2021. He reported that YY's full scale IQ was 75, putting her in the 5<sup>th</sup> percentile, i.e. the "very low" range although her reading and spelling was ahead of her chronological age. He found that YY, "presents with significant emotional difficulties, characterised by anxious feelings that she has expressed through angry and aggressive behaviour, expression of thoughts of self-harm and self-injurious behaviour in school. Her anxious feelings also appear to influence her attention and her ability to engage with schoolwork. Where these difficulties are not addressed, she will continue to experience angry outbursts at home in the short term. In the medium term (1-2 years) there is a risk that these will transfer to the school environment and that there will be further incidents of thoughts of self-harm and self-injurious behaviour. In the longer term (over 2 years), there is a risk that she will show worsening behavioural difficulties in the community and in school, characterised by aggressive and self-harming behaviour that could result in her increasing disengagement from education and possible school exclusions."

84. In relation to ZZ, Dr Maggs reported that ZZ will need advice and intervention by a speech and language therapist to promote his language and attention skills in school:

"[ZZ's] capacity to apply himself to early learning activities in school will depend on his ability to regulate his emotions, sustain his attention and follow directions. These abilities in turn will rely on the effective management of his emotional and behavioural needs at home so that he is fully receptive to education."

85. Dr Maggs also reported:

"[ZZ] is reported to show angry outbursts and testing of behavioural boundaries at home by his foster carer. He is also described as exhibiting aggressive play and angry outbursts in school when he has needed to share resources with other children."

"In the short-term and in the event that his language, communication, attention, emotional and behavioural needs are not met effectively, there is a risk that he will show restricted language development, poor engagement with learning and social interaction in school, delayed educational attainments and worsening behaviour at

home and in school. In the event that his difficulties are not addressed in the medium term, there is a risk that he will show sustained language and attention difficulties and worsening behaviour, at home and in school. In the longer term, there is a risk that [ZZ] will increasingly disengage from learning in school and show significantly challenging behaviour that results in exclusions.”

86. Dr Kari Carstairs, clinical psychologist, provided a report on the mother dated 4<sup>th</sup> June 2021. She confirmed Dr Jeffes’ prior diagnosis of a learning disability. Dr Carstairs made the following observations:

“M has an extremely simplistic, “black and white” view of the world. Her main coping style is one of avoidance. When faced with a complex emotional or interpersonal problem, she is highly likely to be insensitive to the implications.”

“M will have difficulty responding to her children’s emotional needs because of the limitations in her own psychological functioning. She has the capacity to develop a close attachment and I believe that she loves her children very much which is of course essential to good parenting but it is not sufficient and unfortunately, her level of understanding of emotional issues is limited and she has a strong tendency to block feelings out which impairs her ability to be attuned to the children.”

“I do not think that M’s parenting skills can be sufficiently enhanced such that she could be enabled to parent the children herself, in the absence of a strong and reliable support network. Her psychological limitations are too pervasive, across the cognitive, social, cultural and emotional domains, and it would place too much burden on her, only setting her up for failure in a way that would compound the situation for her and for the children. Her motivation to do her best is not in question but her capacity to apply new parenting skills and concepts is limited and she will need a comprehensive package of support from the extended family and from professionals through-out the children’s developmental years to implement positive change consistently”

## **Findings**

87. Many of the allegations set out in the schedule are not described in Re A compliant terms. They set out accounts that were allegedly given by the children, but do not assert whether the contents of those accounts were true. The parents in their responses have nonetheless responded on the basis that they deny the truth of the contents and at the final hearing the local authority put its case on the basis that it sought to prove the contents of the allegations were true. It is very poor practice by the local authority. The local authority needs to improve its drafting. In this case any prejudice has been avoided by the parties all having responded in the way that they did.
88. **Allegation 1** is: “On 9<sup>th</sup> July 2018, XX arrived at school with a graze around her eye which was swollen and a bite on her arm. Following a Section 47 enquiry, the mother was arrested and detained overnight. She admitted that she had inflicted the injuries and received a caution on 11.07.2018”.
89. This allegation is admitted. The mother’s evidence varied. The allegation was accepted in her initial response to threshold. Her statement dated 20<sup>th</sup> May 2021 makes no mention of any bite but accepts being cautioned for slapping XX. In her oral evidence, M admitted that she had bitten XX on the face. F’s case is that he accepts the allegation is true but that he was not present at the time as he had gone to the car with YY.
90. M was very keen to stress that this was the only occasion of physical abuse of any of the children. She told me she had made a mistake and learnt her lesson. She was unable to explain why she had bitten her daughter or explain how the circumstances had arisen where she had acted in this way.
91. I find that on or around 9<sup>th</sup> July 2018 the mother hit XX causing a graze around her eye and that she bit XX on the arm causing a mark and as a result she received a police caution on 11<sup>th</sup> July 2018. I do not accept the mother’s oral evidence of biting on the face, in the light of her cognitive issues and the passage of time I consider it likely that under the stress of questioning she confused the two incidents.
92. **Allegation 2** is that: “On 9<sup>th</sup> October 2018, two members of staff at the family doctors Surgery witnessed the girl’s father kick one of the siblings whilst in the car park and push her over.”



93. The father denies this stating that YY had a tantrum and threw herself onto the ground and he simply returned her into the car. The mother was not present. None of the children have given accounts of being kicked by their father as alleged despite both girls having been spoken to separately at school as part of a joint section 47 enquiry. There is no evidence of any injuries having been observed.
94. The local authority's case relies solely on the evidence from the GP receptionists about what they saw. The evidence of the two receptionists was not consistent between them about many of the details: the number of children present varied; the order of events varied (whether it was a kick then a push); whether the kick was direct or sweeping; whether something was shouted at the time; how the child got up. They did both agree about the child having a tantrum and they both agreed about having seen a kick.
95. The father submits that given his age and infirmity he would not have been able to have behaved in the way described by kicking the child. It is the case that at that point in his life the father had chronic age-related issues, including "Chronic musculoskeletal pain in his neck leg and arm". However, that argument does not appear to be definitive. I have heard that at the time F was mobile. If a person can put one foot in front of the other, then it is likely they can move in a way that would amount to a kick. On the other hand, if a person is unwell or in pain, the potential for them to lose their temper may be increased.
96. When I balance all the evidence about this allegation, I am not satisfied that the local authority has established its case to the necessary standard.
97. **Allegation 3** is that, "On 27<sup>th</sup> January 2020, XX alleged that the father got angry and pushed her to the ground (2 weeks before 27.01.20)". This allegation is strongly denied by the father.
98. The evidence for this allegation is contained within the first social worker statement and chronology and the child in need plan dated 27<sup>th</sup> January 2020.

99. According to the child in need plan, the class teacher logged that on 22<sup>nd</sup> January 2020 XX was very upset that morning, that she had asked to go to another child's birthday party but F said no and told her to do her homework, that she said okay and threw it on the sofa, that her father saw and pushed her to the ground then told her to put her coat on and go to school. She then gave an account of falling when opening the car door as the F moved the car forward a little.
100. The class teacher logged a similar account the following day on 23<sup>rd</sup> January 2020 when XX was upset about F not allowing her to do the dance class and said that F "doesn't care about her" and, "never lets her do anything." This account added that when F pushed her to the ground, she had hurt her cheek.
101. The end of the entry contains the following paragraph, "[CC – the assistant headteacher] feels that XX is a vulnerable child especially with her fabricating stories and not listening to the teachers or her parents." When that was put to CC during her evidence, she disowned the comment, saying she would never have used such a strong term as "fabricating". She said that XX told fantasy stories about having lived in Hawaii.
102. The social work chronology relates a different account. The homework incident is put at bedtime. It also states that XX reported no visible injuries.
103. I have not seen the log from the school. I have not had a statement or heard evidence from the class teacher who XX spoke to. Although the school prepared a document setting out their logged concerns relating to XX and YY, that document does not include this alleged incident.
104. In the child protection medical on 10<sup>th</sup> March 2020, six weeks later, XX said that, "her father is very kind and does not hit her but will occasionally shout at her".
105. When I consider the evidence before me in relation to this allegation, I am not satisfied that the local authority has established this allegation to the necessary standard.
106. I will deal with Allegations 4 – 13 as a group. They all relate to allegations of the mother physically chastising XX and/or YY.

107. **Allegation 4** is drafted as: “On 4<sup>th</sup> March 2020, XX and YY informed teaching staff that their mother had hit them that morning and that she frequently hits them. CP medical reports on 10.03.2020 confirmed that bruises on YY’s finger and XX’s leg were both non-accidental and consistent what the children had reported. XX had informed Dr Cainer and Dr Levy that her mother had hit the girls with a shoehorn and a slipper. XX reported mother ‘hitting her all over except on her head.’”
108. The mother’s response to this allegation is that, “XX and YY would frequently ask to use the internet and would not go to school. If they were refused use of the computer they said they would tell the school that the parents have hurt them. Even if they got hurt at school they would say the parents did this.”
109. The father does not accept the allegation. It is common ground that at the time he was in Morocco and the mother had sole care of the children. He does set out in his response that he was aware of a previous occasion when YY caught her finger in the door at home.
110. The local authority’s case relies on several sources:
- (i) An email from CC detailing that YY complained her finger hurt in class and said M had hit her. She went to the medical room where she said that: she had accidentally hit M with the hairbrush and then M hit her; she was calling out for F but he was on a plane; that M hits her a lot and her sister because she slammed a door and M had hit her brother; that she asked M to stop but she had not; that she was hit 4 or 5 times or 10 times, she stopped counting; that her hand hurts and her writing did not look neat this morning because she used the other hand. The email also records that later YY told another adult during playtime that she had shown her ring finger which had a mark on it; that she could not write properly and her hand hurt; that M hit her yesterday around 10 times and pointed to her hips, knees, side, hand and then said, “but not on my face”; that M had also hit XX.
  - (ii) A social worker note dated 5.3.2020 detailing a “log concern form” from the school in which XX was recorded as saying: M had got angry and hit her and YY; that ZZ had recorded it but M deleted the recording; that M had hit her with “the thing dad uses to put shoes on”; that her legs hurt and are sore from where her mum hit her.

- (iii) A social worker note also dated 5.3.2020 detailing that YY was spoken to by the social worker and that YY had said: that while M was brushing her hair she had accidentally elbowed M, and M had used a shoe horn repeatedly to hit her; that YY had a small mark on her finger and complained about not being able to write or do school work; that M had also hit XX that morning and had hit her on other occasions. The note also details that XX corroborated the events that M had hit YY that morning; that M regularly hits them with the shoehorn; that she had bruising on her leg - but when she rolled up her leggings none could be seen. The social worker also recorded that when M was spoken to with an interpreter and she denied hitting the children and claimed that YY had, “locked her finger on the door”. That wording is peculiar. It is not clear whether that was a typo for “knocked her finger on the door”, or whether the mother meant, “trapped in the door”.
- (iv) A child protection medical of XX was conducted on 10<sup>th</sup> March 2020. XX told the medic that M had said to YY, “you think you can hit your mother?” and then started to hit both of them; that ZZ recorded it on the phone but M deleted it; that she and YY have been hit a number of times with a shoe horn and a slipper; “hitting her all over except on her head”. The findings on examination of XX identified a number of marks only one of which was indicated to be consistent with the history given of non-accidental injury – a 22mm x 15 mm dark mark located above the right knee, variable in colour which XX explained as, “My mum, she hits me”. The report also recorded that XX has very poor dentition and needs urgent dentist treatment. It should be noted that this medical was a week after the alleged incident and the passage of time may have affected any marks.
- (v) A child protection medical on YY was also conducted on 10<sup>th</sup> March 2020. YY said to the medic that she had accidentally elbowed M who hit her in response. YY had multiple marks that were consistent with bruises although YY was unable to say how they had been caused. YY did point to a bruise on her right hand when she claimed M had hit her on the hand. The body map indicates a mark around the right wrist rather than the hand and the report records when asked specifically about that mark YY did not know how it was caused. YY also had poor dentition.
- (vi) The ABE interviews support generally the allegation of the girls being hit by their mother with a shoehorn, albeit they do not mention this occasion in their ABE interviews.

111. **Allegation 5** is that, “On 22.6.2020, XX informed social worker that mother continues to hit and smack her. She used a slipper to hit her a few weeks ago.”
112. The social worker’s case note records XX saying that her M is allowed to smack her with her hand, and she hit her on the bottom, the last time was about two weeks ago. XX also said that M had hit her with a shoe a few weeks ago.
113. The police CRIS report records the social worker having been told of a hit with a slipper. However, in my judgment the social worker’s case note of a shoe, rather than a slipper is more likely to be accurate.
114. **Allegation 6** is that, “On 28.6.2020, during a joint section 47 investigation with the police, XX and YY stated that the mother had hit XX with a shoehorn. XX also alleged that M had pushed her.”
115. Both parents deny this allegation and said it is untrue.
116. This allegation arose in the context of an investigation into allegation 5. XX’s account was corroborated to the social worker by YY. Both XX and YY give a broadly consistent account in their ABE interviews of XX being hit by her mother with a shoehorn because of spilt ice cream. As I have already indicated, I found both girls’ ABE accounts to be compelling and believable.
117. **Allegation 7** is that, “On 24.7.2020, XX informed Dr Peter Maggs that their mother hits the children.”
118. The mother’s response is that this is not true, and she did not hit any of the children. The father accepts that XX told Dr Maggs that, “Before mum used to hit us a lot. She’s sort of stopped. Now she only does it sometimes, but not all the time.”
119. Dr Maggs’ report has not been challenged and I accept his account of what XX told him is accurate.

120. **Allegation 8** is that, “On 10.9.20 XX said that her mother had hit her the previous night”. This is denied by the mother and the father.
121. **Allegation 9** is that, “On 11.9.20, XX maintains that she was hit with a slipper”. This is also denied by the parents.
122. Allegations 8 and 9 relate to the same incident. The allegation was being investigated after XX had written down at school, “Why did I get hit?” A visit was made to the school by the social worker AA with CC also present. During the visit YY when spoken to first, she denied that there had been any recent incidents of being hit. However, AA’s note also records YY saying, “M thinks she will be arrested by the police if she tells me what has happened at home”.
123. XX told AA that things have been “really bad” at home. She explained she had been slow getting ready for school and M had hit her with a slipper on her arm. XX also said that M had said, “why does she need these children to raise... she wish she had feed her poison when she was younger...”. XX said this was said after she was hit. She also reported that M had said she will tell the lady when she comes around later that she can take her for adoption and that F is going back to her step mother and M is going back to her country. XX added that she will feel happy if M goes back to her country.
124. There is an inconsistency in XX’s complaints about the timing of the alleged incident. Initially she said that something happened with M that morning but goes on to say that it happened last night and gives her account.
125. **Allegation 10** is that, “On 15.9.20, During a joint Section 47 visit, XX said her mother hit her with a slipper at night. Her mother also hit in the morning on her thigh. XX said her thigh was slightly red but she does not have a bruise or mark. Her mother used her school shoe to hit her. YY said her mum only hits sometimes but not all the time”
126. The mother’s response is that she did not hit XX or YY. She says she tried to make them go to bed on time and go to school but they threatened to say she had hit them. The father denies either child was hit. F acknowledged the comments made by YY.

127. The discussion is recorded in a case note prepared by the social worker. XX describes being hit with a “school slipper” because she could not sleep at night and being hit in the morning for not getting herself ready for school. She described her thigh being slightly red, but she does not have a bruise or mark. She took off her tights and showed there were no marks on her legs.
128. When YY was spoken to she said that she had been bad, and M had woken her very early for school. She said XX had been crying and did not want any breakfast. She said XX was screaming and shouting and did not want to come to school. She said that M hugged XX. She then said that M does not love her or XX but loves ZZ.
129. When asked if things have been okay at home, or whether there was anything she wanted to tell them, YY said that a long time ago when she and XX dropped some ice cream on the floor, “her mum hit her very very gently and softly”. She then said “her mum only hits sometimes but not all the time and she did not see her mum hit her sister. YY said since I told her mum not to hit them, she doesn’t hit anymore but she still hits sometimes but not everyday.”
130. I accept the recordings of what the children said were accurate. YY’s comments in my judgment suggest that she is a child who was trying to minimise what had been happening at home – she was aware of the risk of her mother being arrested.
131. **Allegation 11** is that, “On 24.9.2020 XX told her teacher *"I get abused by my mum, she hits me and my sister, she hit YY with part of a toilet roll, when its finished and it was hard."*
132. Both parents deny this allegation and assert it is untrue.
133. The allegation was made to a teacher at school. I do not have direct evidence from that teacher – it is set out in the school’s October 2020 safeguarding update. There is further information in an email from CC: “Wanted to let you know that XX disclosed again that she is being hit. She went to the teacher’s desk after lunchtime and told her that another child had wanted to tell her sometimes she felt that, ‘her dreams were

crushed'. This led to XX telling the teacher that she sometimes felt that way because 'I get abused by my mum. She hits me and my sister. Today she hit YY with the part of a toilet roll when it's finished, and it was hard.' I continue to remain very concerned at how the girls are presenting. XX is difficult to manage in class and YY is very clingy."

134. The parents were visited that evening by the social worker and the mother said that both XX and YY had said they were going to tell their teachers that she had hit them this morning because they did not wake up for school. F said the girls are not being honest about M hitting them.
135. On this occasion it was only XX who made an allegation, not YY as the parents indicated had been threatened. The way the allegation came out does not easily fit in with a pre-determined plan to make a false allegation. If that were the case, why did XX wait until the afternoon? The account from the school is that it was sparked by another child's comments. The description of the "part of the toilet roll when it's finished" is a peculiar detail. If XX was fabricating an allegation, it seems unlikely she would describe a hit with an object she does not know the name of.
136. **Allegation 12** is that, "On 2.10.2020 and 15.20.2020, School & SENCO staff reported that YY was emotionally distressed in school, banging her head on the book shelf expressing thoughts of wanting to kill herself and wanting to be adopted."
137. The parents accept the observation of the school about this. The mother says that YY learned at school that if they do good things, they will go to heaven but believed that she would come back from there. The father asserts that YY was acting out due to the attention that she was receiving from the SENCO and the social work team.
138. The evidence from the school is that on 2<sup>nd</sup> October 2020 YY was repeatedly banging her head on the bookshelf, then looking at DD and doing it harder. This sort of self-injurious behaviour should not be dismissed as just acting out. It is seriously disturbed behaviour. In the context of YY then saying, "I want to kill myself", the parents' minimisation of this incident indicates a failure to appreciate the seriousness of what was going on with YY. YY's indication that she wants to be adopted, in my judgment links this disturbed behaviour with her experiences at home.



139. YY also told her teacher on 15<sup>th</sup> October 2020 that a way to make the rest of her day better would be, “by killing me... I want to kill myself”. This is the second time in a short space of time that YY expressed a wish to kill herself.
140. **Allegation 13** is that, “On 5.10.2020 and 6.10.2020, XX reported she was slapped across her face by her mother causing her nose to bleed.”
141. The parents in response to this allegation point out that XX’s nose bled frequently. I have seen a medical letter to that effect. Whether or not XX suffered frequent nosebleeds is in my judgment a red herring. The issue is whether XX suffered a nosebleed because she was slapped.
142. XX’s account was given to her teacher: that she had been given some medicine and wanted some food with it; that M had told her to go to her room; followed her there and slapped her with both hands on both of her cheeks; her nose then started to bleed and blood fell on her pyjamas so M cleaned them.
143. I have not heard from the teacher who XX said this to. The account given was detailed and makes sense. XX says her nose bled after being slapped on the cheeks, which given she has a propensity to nose bleeds is entirely plausible.
144. **Allegation 14** is that, “On 27.10.2020, XX reported that her mother had hit her with a plastic step and also slapped her across her face. YY confirmed that their mother had slapped her sister across her face.” This allegation post-dates the relevant date for consideration of the threshold criteria. It arose at a time when the children were placed at home under interim supervision orders.
145. The mother denies hitting XX with a plastic step and slapping her face. The father also denies this and asserts that YY had been, “compelled by XX to corroborate her comments”.
146. The allegation was made to the social worker on 27<sup>th</sup> October 2020 during a visit. That visit was following up a visit the previous day when both girls had told the social

worker they wanted to be adopted. When asked if anything had happened since the previous day's visit, XX said yes, but she cannot tell. XX said it was something bad. And continuously said she cannot tell. XX explained because, "she is not allowed and her mum told her not to tell." The social worker said she would have to stay until XX told her what happened. Later XX said M slapped her, pointed to a plastic step which was in the hallway and said she had been hit gently with it on the arm near her shoulder.

147. XX explained that she had been refusing to go into the bathroom and had folded the step and was banging it on the floor and turned it upside down. M had snatched it off her and hit her on the arm near her shoulder. It was not hard and then she slapped her on the face.

148. YY initially denied that anything had happened. XX was present and told her that she should tell the truth because it is bad if she does not and she will "go to Satan" and "it is haram" if she does not tell the truth. YY said M did not hit XX with the plastic step but she did slap her across the face "very softly". The social worker checked, and no marks were visible on XX.

149. I have seen a photograph of the collapsible plastic step that is referred to. It looks like a relatively light object.

150. This allegation contains a strong element of the children being silenced by the mother from telling professionals what was happening. YY, while under pressure from XX, did corroborate XX's story in part about the slap but said it was "very softly". In my judgment that is likely to be minimisation by YY who like XX was under pressure from her mother not to tell. XX's own reluctance to tell the social worker was plainly a response to pressure from her mother. The account XX gave was detailed and plausible.

#### **Allegations 4-14**

151. I will deal with the allegations 4-14 combinedly. They all relate to whether the mother hit XX or YY. I am satisfied that XX and YY made all the statements that the local authority seeks to rely on in relation to allegations 4-14. The real issue is whether what they said was true.

152. There is a theme running through the parents' responses to allegations made by XX and YY that the children were fabricating these in order to get their own way. The parents rely on a number of points:
- a. There is evidence of XX having made up stories at school, and the documents refer to her "fabricating". CC said she would to have used that word, but both the social worker and Dr Maggs summarise from discussions with CC about XX that, "she can tend to fabricate stories in her interactions with others". The evidence is that these made up stories related to things like XX claiming to have been to Hawaii and that her father has a farm. I am not aware of the professionals at school identifying an example of XX having fabricated an allegation that was known to be false to get her own way. However, I am aware that XX, YY and ZZ have all made allegations of physical abuse in foster care (about two different placements).
  - b. The parents have both complained that the children are fabricating allegations to avoid going to school. This was put by the mother in her first position statement for the interim care order application. I accept that there were problems with getting XX and YY to school. The pandemic no doubt exacerbated this. The pandemic is likely to have also exacerbated the reliance on and normalisation of the children spending many hours each day on devices due to remote schooling.
  - c. There were major challenges with XX about her access to and use of devices which motivated her to make false allegations. The challenges about the management of XX's (and the younger children's) use of devices are significant and have continued in foster care. I have seen the notes of the FSW, GG, and heard his evidence about the children being absorbed in their devices and the parents' struggle with YY to take away the devices in the evening. I also have the evidence of the school, CC and DD, who when attended the home on 18<sup>th</sup> September 2020 to encourage XX to attend school heard XX screaming hysterically – the father said it had been for 2 hours and it was because she wanted the laptop which had been locked away
  - d. There is evidence from the school that XX can be controlling in social situations. I accept this is the case. It may increase the prospects that a child may lie to manipulate a situation, which is something I have considered in this case.

153. The behaviour of XX and her allegations have not happened in isolation. YY has also made allegations that the parents also say are false. Their view is that the YY has learned this way of behaving from XX and that XX has influenced YY to do this. I am not persuaded by that analysis. YY maintained her allegations of being hit when she was assessed by Dr Maggs – that was in February 2021, some months after the children had been removed into foster. I cannot discern how YY’s allegations at that time could have been motivated by a wish to manipulate or get her own way with her parents.
154. I have considered the various accounts that XX and YY have given. I am aware that at times they have not been consistent, and they have not been consistent with each other. The ABE interviews provide support not only for the incident of XX being hit with a shoehorn in June 2020 (allegation 6) but also for both children being hit by their mother on several occasions. XX and YY have given multiple accounts of being hit to various professionals, including teachers, CC, DD, Dr Maggs, the doctor at the child protection medical, the social worker and police officers.
155. The presentation of the children supports the contention that they have been physically abused – Dr Maggs’ opinion about this was unchallenged. The report from the school in October 2020, which I accept, of YY being so distressed that she was banging her head about the bookshelf and expressing thoughts of wanting to kill herself and wanting to be adopted is in my judgment indicative of the level of emotional distress that YY was suffering from at the time. This behaviour was very clearly tied in by YY to her experience at home – when she indicated her wish to be adopted. In my judgment it further supports the allegations that XX and YY have made.
156. On the other hand, there is evidence of the children resisting boundaries. The parents’ case stated as early as at the child protection medical in March 2020 is that the children have threatened to make allegations against them if they do not get their own way.
157. There are further allegations that have been made against their carers since the children were placed in foster care. I am not sure why the investigations into those allegations remain undetermined. It is possible that the children were hit by their foster carers. It is also possible that the children have made up false allegations against their

foster carers for some reason or other. In considering this evidence in this case, I must factor in both possibilities.

158. The children have never retracted their allegations against the mother. Before they were removed from the parents' care and subsequently, at times they indicated a wish for that to happen. However, more recently, the attitude of XX and YY has softened and YY had indicated a wish to return home. Despite that shift in attitude, neither XX nor YY has sought to retract their allegations, in circumstances where the consequences of their allegations have been profound – that they have been separated from their parents and YY has also been separated from her siblings.

159. I am mindful that there is very little physical evidence of injuries received by the children. This is a factor that is at odds with the level of complaint that the children have made. However, I remind myself that there are a number of factors that may cause marks to be caused, the strength of an impact, what was used to hit, where the blow landed and the struck individual's propensity to develop a mark. There is also a question about whether if marks were present, actions were taken in a timely way to be able to observe them – the child protection medicals state in terms that the passage of time meant that any mark would likely have faded. The absence of recorded injuries does not mean that nothing happened, however, the absence of recorded injuries when they might have been expected to be seen reduces the likelihood that any allegation relating to them was true.

160. I was unimpressed by the parents' evidence about the mother's caution for assaulting XX in July 2018. There is a significant inconsistency between what the mother admitted for the caution, what she set out in her written evidence and what she told the court. In her oral evidence, the mother appeared to want to set this incident apart, as a single episode, a terrible mistake that would never be repeated. The father's evidence was very similar in this regard. However, I struggled on the mother's account to understand how she reached the point where she not only hit her very young child in the face, but also bit her on the arm. The mother could not explain how she had lost control in such an extreme way and neither parent appeared to have any appreciation of how severe a loss of control that must have been. In my judgment both parents sought to minimise this incident significantly.

161. I have heard from both parents that the impact on the mother of being arrested and held by the police was significant and meant that she never hit the children again. I do not doubt that she was frightened of the possibility of something like that happening again. I am satisfied that the mother's arrest in 2018 did have a salutary effect on her. XX told Dr Maggs that the mother hits less than she used to. However, YY's evidence during her ABE interview was illuminating. YY was reluctant to say what had happened because of the risks of M being arrested, "I don't want to tell her... Because then she'll get mad and she said I might get arrested". Similarly, she also said, "Mummy said to don't tell the police or nobody".
162. In my judgment, YY made the comments she did to the police about the risk of M being arrested and not to tell the police about things that happened because that is what she had been told. I do not accept that YY could have simply fabricated such a comment. It is too well fleshed-out with the reality of the family situation to be a lie and it "rang true" in the way she spoke those words.
163. I must factor in the wide canvas of the family life. There were positives in the family, the mother has shown that generally she is capable of carrying on the day-to-day tasks needed to keep the family functioning properly. The home was kept clean. The children were clean and tidy at school. There were no substance misuse issues affecting either of the parents. I have not been asked to make any findings that the parents' relationship was problematic.
164. On the other hand, there were several concerning factors. The father's age meant that he was frail and lacking in energy to contribute to meeting the children's care needs. The mother's learning disability meant that her appreciation and understanding of her own emotional needs was lacking and that it was similarly lacking when it comes to her children. The mother was isolated by her lack of English language skills and her illiteracy. The family were in small accommodation, which would have been exacerbated during the pandemic lockdown which required them to remain at home for lengthy periods without access to parks and local facilities. The lockdown also severely interfered with the children's education, with many months of school taking place online from home or not at all.

165. A further factor that must be considered is that it is accepted by the parents that they were not able to set or enforce appropriate boundaries with the children. The children's routines were lacking. The parents were not able to control or limit the children's use of devices. At times the parents were not able to get the girls to go to school. While I accept that this factor increases the possibility that the children would use the making of false allegations as a threat, it also increased the possibility that the parents would see physical chastisement as an appropriate way to assert some parental control.

166. The children's accounts of physical abuse from their mother have likely been influenced by the pressure that I am satisfied the mother has put on them. I must factor this into when considering the inconsistencies in their accounts. I have also factored in the children's young ages which may also impact on their consistency.

167. When I factor in all the evidence I have heard, I am satisfied that the children's allegations of physical chastisement by their mother are true. I do not discount the possibility that XX and YY may at times have embellished or exaggerated what happened. I am satisfied that XX and YY both experienced on many occasions inappropriate physical chastisement from their mother, including being hit with items such as a shoehorn. I reject the suggestion that XX and YY have made false allegations based on a desire to manipulate their parents and get their own way. I am satisfied that this was a pattern of behaviour by the mother who would hit XX and YY in an attempt to manage their behaviour. This reduced in frequency after the mother received her police caution but nonetheless continued at a lower frequency. The hits the mother gave the children were not particularly strong, which is something the children have said and goes to explain the absence of recorded injuries for many of the incidents. When I consider all the evidence in the case and the wide canvas as well as the specific information that I have about each allegation, I am satisfied that XX and YY made the complaints set out in allegations 4-13 because those complaints were true.

168. **Allegation 15** is that "On 17.5.17 XX crossed a busy road to walk to school by herself. This was observed by a neighbour who picked XX up and took her into the school office. XX told the school staff that she went to school by herself that day. XX said there had been three separate occasions where she had walked to school unsupervised."

169. M's account is that XX was taken by the neighbour from the staircase not from the road and that XX never travelled to school on her own. F's account is that he was taking the girls to school but XX had gone out of the front door into the communal areas of the building on her own and the neighbour had taken XX to school without permission. He asserts that XX had demanded to go to school by herself but was never allowed to do so.
170. The LA relies on a statement from a neighbour which sets out that she saw XX walking on her own, so picked her up and took her to school. That neighbour was never called to give evidence.
171. The neighbour's statement does not include any reference to XX crossing a busy road by herself. There is a MASH referral from the school relating to this allegation, in which it is recorded on 17<sup>th</sup> May 2017 that XX said, "I walk to school by myself" and said that she had done so three times before.
172. In the absence of the neighbour being called to give evidence about what happened, I am not prepared to make the finding the local authority seeks.
173. **Allegation 16** is not being pursued by the local authority.
174. **Allegation 17** is that "On 15.9.2020 XX reports being hungry at school and presents as sad and worried when speaking with the social worker about comments her mother has made".
175. This allegation is poorly evidenced. The safeguarding update from the school prepared by CC of October 2020 sets out that XX wrote a post it note saying she had nothing for breakfast and was hungry and had displayed similar behaviour the week before. The FSW, GG, told the court in the limited involvement he had with the family over 2 days in mid-October 2020 he observed the children mentioning they were hungry but this cue was ignored by the parents for 20 minutes before he pointed it out. He also described being, "slightly concerned" about the children's diet having been told by XX that she had crisps for breakfast and having observed ZZ being given biscuits to eat.



176. I note in the fostering logs there are many references to XX being hungry and often to her not having eaten food at school because she did not like it. I note also that in the FGC conference minute of 2<sup>nd</sup> December 2020, XX is recorded as having said, “I get hungry a lot”.
177. While I accept that there were concerns about the children’s diet, I am not satisfied that the evidence of this report of XX being hungry at school is sufficient to establish a finding of neglect.
178. **Allegation 18** is that, “In her report of 11<sup>th</sup> September 2020, Dr Jeffes opines that the mother does not understand her own and others’ mental state, intentions, thoughts and feelings and is at a significant disadvantage in addressing the children’s emotional needs. Dr Jeffes further commented that the mother’s parenting should also be understood in the context of limited cognitive capacity. The mother has difficulty coping with more than one activity at a time, establishing effective boundaries for the children and thinking proactively on their behalf.”
179. In her response, M does not accept that she does not understand her own and others’ mental state, thoughts and feelings. She accepts that as she is not able to read or write and this places her at some disadvantage. However, she does not accept that she cannot cope with more than one activity at a time. She does have some difficulty in imposing boundaries which are consistently challenged by the children.
180. In contrast, the F accepts Dr Jeffes’ conclusions and recommendations, including that she may have some difficulty coping with more than one activity at a time.
181. Dr Jeffes was not called to give evidence. I accept her opinion about the mother’s limitations which accord with my own observations of her during her evidence as well as with the observations of other professionals who have assessed her. I make the finding the local authority seeks.
182. **Allegation 19** is that, “In the report dated 25.9.2020, ISW Christie Lawrence concludes that the parents lack understanding of the local authority’s concerns and do not believe physical chastisement is problematic.”

183. The mother denies this and asserts that she fully understands why the local authority were concerned. The father accepts the past use of physical chastisement by the mother to maintain discipline was a problem and accepts that the parents need help to learn parenting strategies on how to place and enforce boundaries for their children.
184. I did not hear evidence from Christie Lawrence. Her report was prepared and completed at the pre-proceedings stage. Her findings are in line with the findings of the Ms Huda, the ISW who was instructed in the proceedings.
185. During their evidence, the parents were very clear that they needed help and were critical of the local authority for having not provided it. However, they struggled to identify what the help would be for. The father's view was that the mother needed help with her language skills and some cultural aspects, but when asked, he was praising of the mother's skills, ability and intelligence. He presented an almost entirely positive picture of the mother. Similarly, the mother when asked was unable to identify what she needed assistance with. I recognise that they wanted to present themselves in a positive light to the court, but the impression I formed was that they lacked appreciation and insight into the challenges that they will have in meeting the needs of the three children.
186. I make this finding as sought by the local authority in allegation 19.
187. When I consider all of the findings I have made in the light of s.31 of the Children Act 1989, I am satisfied that at the relevant date of 15<sup>th</sup> October 2020, the children XX, YY and ZZ were suffering or were likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to them by their parents not being what it would be reasonable to expect a parent to give to them.
188. I am satisfied that at the relevant date XX and YY were suffering physical harm and ZZ was likely to suffer physical harm arising from the mother's physical abuse. I am satisfied that all three children were suffering emotional harm arising from the physical abuse that XX and YY were suffering.

189. While I have made the findings sought about the parents' lack of insight, I consider those issues were more relevant to my welfare decision rather than threshold findings.

### **Analysis**

190. It is my task to consider all the options available to the court, their pros and their cons, and determine what is in the best interests of each child. The welfare of each child is my paramount consideration and I have regard to the welfare checklist under s.1 of the Children Act 1989.

191. In so doing, I must have regard to the support available for each of the options. In this case, I am acutely aware there needs to be proper and thorough consideration of the support available in the light of the mother's learning disability.

192. I also have heard detailed evidence about the support available through the paternal extended family which will need to be properly factored in.

193. The children's wishes and feelings have not been constant throughout. When XX and YY were first taken into care they were both expressing a wish to not return home and to stay in care or be adopted. These wishes were still being expressed at the time of the together and apart assessment – 6 months after the children were removed.

194. More recently there have been some change. At the child in care review in early December, XX told the social worker that she likes her placement and wants to stay there. YY said she wants to go back to her parents.

195. ZZ has always stated consistently that he wants to go back to his parents.

196. XX has asthma and problems with her teeth. She struggles to comply with routines and boundaries, often not eating breakfast, not brushing her teeth and tending to stay up late.

197. Educationally XX has fallen behind her peers despite being assessed as having an IQ in the average range.
198. Dr Maggs' opinion was that "In the short, medium and long-term, XX's emotional and behavioural difficulties will have a significantly negative impact upon her family relationships, her engagement with education and her ability to sustain positive relationships with teachers and other people in positions of authority if they are not sufficiently addressed through access to a consistently positive quality of care."
199. I accept Dr Maggs' view that XX needs therapeutic intervention to extend her ability to regulate her emotions, notably her anxious feelings which she has expressed through anger. He recommends a CBT approach but warns it will only be effective if she has, "access to a consistently good quality of care at home."
200. I accept the evidence that I have heard that XX will need better than good enough care. She will need reparative care to help her overcome her difficulties.
201. YY is physically well apart from her poor teeth. Her IQ was assessed as being in the 5<sup>th</sup> centile – the low-average range. YY struggled with her concentration and her reading comprehension skills and her maths are below age-expectations.
202. According to Dr Maggs, YY presents with significant emotional difficulties. She is visibly anxious, with fidgetiness and difficulty in sustaining attention. Her father describes angry outbursts by YY which can last up to 30 minutes and involve both physical and verbal aggression and are triggered by occasions when her immediate desires have not been fulfilled. YY struggles to regulate her anger. YY has expressed thoughts of self-harm and displayed self-injurious behaviour, for example banging her head and these need to be carefully monitored. YY will need consistent behavioural boundaries and a good quality of care at home to promote her positive emotional and behavioural development. She needs therapeutic intervention that focuses on her ability to regulate her emotions, notably her anxious and angry feelings.
203. ZZ has delayed language development. According to Dr Maggs, ZZ has, "difficulties with his verbal expression, understanding of language and attention and listening... His

concentration was limited and he seemed to find it difficult to sit still and engage in full range of activities... presented to him”. He will need access to speech and language therapy. According to Dr Maggs, in order to show more positive development, ZZ will require access to a very good quality of care, notably to include the consistent application of behavioural boundaries and consistent emotional containment but also the promotion of advice provided by professionals.”

204. Dr Maggs’ view is that, “In the short-term and in the event that ZZ’s language, communication, attention, emotional and behavioural needs are not met effectively, there is a risk that he will show restricted language development, poor engagement with learning and social interaction at school, delayed educational attainment and worsening behaviour at home and in school. In the event that his difficulties are not addressed in the medium term, there is a risk that he will show sustained language and attention difficulties and worsening behaviour, at home and in school. In the longer term, there is a risk that ZZ will increasingly disengage from learning in school and show significantly challenging behaviour that results in exclusions.”

205. I heard from ZZ’s school that he has struggled more than his peers with increasing levels of structure to the school day. I heard from the FSW GG who observed that when ZZ wanted the TV remote control, he started shouting and screaming, banging his head on the sofa and trying bang his head on the wall. This was very similar to YY’s account in her ABE interview that she was told to give her squishy to ZZ because he was, “crying and banged his head in the wall. Cos he always bang his head.”

206. I am satisfied that all three children require better than good enough care. They need clear and consistent boundaries and carers who can support them to manage their feelings as well as support therapeutic work with them.

207. If the children remain in foster care this will mean that they are provided with a home where the carers should be able to maintain consistent boundaries, support them with therapy and with their education. It means that they will be protected from exposure to physical abuse.

208. However, it will also mean that they are separated from their parents who love them. They would grow up away from their natural family. This may impact on their identity, their understanding of their culture and even on their language skills. This may be particularly pertinent given the mother's limited understanding of English – if the children are not assisted to retain their mother tongue, there would be a significant barrier placed between them and their mother. That risk is exacerbated with ZZ who is young and has language difficulties. These difficulties could be reduced through regular contact between the children and their parents.
209. The father's age and health are a further consideration. It is not known how long he will live for, but it is unlikely that the children will reach adulthood before he dies. As Mr Fry submitted, the time they have remaining with their father is therefore particularly precious and important. The older two children worry about their father's health and being apart from him may exacerbate their concerns.
210. The children's relationships with each other will be significantly impacted in foster care. Attempts to place the three children together were unsuccessful and the plan now is that they be placed in separate foster homes, with YY on her own and XX and ZZ placed together. Regular inter-sibling contact is a feature of the care plan, but I recognise that this is far from the sort of daily interaction and commonality of experience that siblings receive when they grow up together.
211. The social worker AA prepared a together or apart assessment on the children dated 8<sup>th</sup> March 2021 that made a clear recommendation for the local authority to, "strive to identify a permanent long-term placement to keep XX, YY and ZZ together". She described that separation, "would be exceptionally damaging and against their best interest."
212. I do however recognise the difficulties that have been experienced when all three children were placed together. The first two foster placements struggled to meet the competing needs of all three children. The sibling relationships are marked by sibling rivalry and negative interactions are frequent. Placing the children together in foster care may increase the potential for instability and placement breakdown because of the

magnitude of the task of meeting their needs. However, that does not lessen the profound loss for the children of being separated as they will be if they remain in foster care.

213. In foster care the children will be exposed to the continual intrusion of social services in their lives. They will have regular social work visits, LAC reviews, LAC medicals. Instead of a typical family life, they will experience corporate parenting from the local authority with all the clumsiness that institutional decision making may bring. They are likely to have a series of different allocated social workers throughout their childhoods. They will be exposed to the potential embarrassment and difference of not living with their parents, something that many children in care find difficult. The children are all relatively young so they will spend many years in the care system. While some foster placements can be sustained throughout a childhood and into the following years when support is still available, there are many that do not. Foster placements can break down or be terminated for all manner of reasons and if that happens, the children will have to cope with the disruption and harm that flows from that. The longer a child is in foster care, the greater the prospect that something like this could occur. For ZZ, he is very young and would spend very many years in foster care. As JJ pointed out during his evidence, the outcomes for children who grow up in foster care in terms of academic success, employment, substance misuse, criminality and mental health issues are generally worse than for children who do not.

214. For XX and ZZ they have the benefit of already being with a carer who can care for them in the long term. They have settled well, and improvements are already being seen. For YY it is a different story. She is yet to be found a long-term foster placement. She has not found the separation from her siblings to be easy. If she is made subject to a care order, her future still holds a great deal of uncertainty about where she will be placed, and it is not known how she will settle there.

215. If the children return to the care of their parents, there is in my judgment a real risk of further physical abuse being perpetrated against them which would lead to further physical and emotional harm. The parents do not appear to appreciate the damaging impact of this on the children. It is telling that they both locate responsibility for the children's behavioural difficulties with XX. Prior to the proceedings, their view was that XX has some sort of mental problem that causes her to behave badly and that XX has

influenced and affected the other children who otherwise would be good. In his oral evidence the father repeated this explanation. Neither parent identified any responsibility in their own actions for the serious levels of behavioural difficulties that all three children exhibit. While the parents assured the court that things would be different now if the children returned to their care, I have no confidence that would be the case. The only aspect that has changed is that the children have shown some limited levels of improvement in foster care with some aspects of their behavioural issues – however this has been uneven and I am very aware that they have suffered a lot of disruption in foster care as well, having now been placed with their third set of foster carers and with the sibling group having been separated.

216. I have considered carefully the level of support available to the parents. The local authority has sought over a period to provide social worker and family support work to assist the family. Regular family support work was put in place between the end of July 2018 until May 2019. There plainly were improvements identified through this work, because the local authority felt sufficiently reassured to step the case down. The parents point out that the work with the mother did not take properly into account the mother's learning disability – which was only diagnosed in the course of the proceedings. However, I accept the guardian's evidence that family support work typically includes some of the strategies that are more suitable for people with learning disabilities, such as modelling techniques. In any event, the work appeared to have been positive because the parents reported it had helped and the local authority was satisfied by the progress made.

217. I was disappointed to hear the social worker's evidence about the mother's referral to the Adult Learning Disability Service. That referral was made over a year ago and no progress has been made. I appreciate that the pandemic has badly affected the provision of many services, but it appeared to me that the children's social workers have not followed up or pressed that referral in any way. They should have.

218. As to the professional support available, the local authority has prepared an alternative care plan that sets out the following provision if the children return to their parents:

- (a) Child in need visits every 4 weeks
- (b) Child in need reviews every 4-6 weeks



- (c) CAMHS referrals for XX and YY have already been made in August 2021 and the outcomes remain outstanding
- (d) 0-19 Early Help Hub to provide 1-1 and group work around parenting
- (e) ESOL classes to assist the mother to learn English
- (f) Universal services through GP, etc.

219. In her oral evidence, after it was pointed out in cross-examination, the social worker agreed that she would be able to follow up a referral for advocacy services and support tailored to the mother's learning disability.

220. The local authority did not commit in its final evidence, but I am satisfied that I should also give consideration to the possibility of the sort of parenting coaching that the ISW recommended should properly be factored in to my consideration of potential support for the family as well as the possibility of further family support work being provided to support the parents' care of the children.

221. I heard from one of the father's adult children, JJ. The situation involving the extended paternal family is complex. The father's relationship with the mother, his second much younger wife and their having children created a significant rift between him and his adult children. I accept KK's description of it as an estrangement. In his evidence I found the father was not forthcoming about this and sought to minimise it. There remain significant strains with some of the father's adult children having softened their approach and others maintaining distance from him.

222. The provision of family support has changed significantly over a relatively short period of time. In June 2021, there were two prospective Special Guardianship options put forward from the paternal family and KK attended a hearing before me at the father's request. The assessments of these options were positive. However, they withdrew as prospective special guardians in October 2021. Since then, there has been a reduced level of availability to speak to professionals although it did not appear to me that the local authority had particularly pressed to speak to the family members. Unfortunately, contact with the prospective special guardians had been prioritised over the summer, but after their withdrawal, they have not seen the children again. I am satisfied that XX and YY are aware of this and feel rejected by their older siblings as a result.

223. The proposed support plan from the extended family has also reduced over time. There was a family group conference that took place on 2<sup>nd</sup> December 2020 which provided a plan for a package of family support involving different family members on different days. That is no longer available.
224. The support that the family now puts forward amounts to an offer from JJ to have the mother and the children stay at his home with his wife and children every weekend for Saturday and Sunday. Under questioning, he extended this to include the father being present as well, but I was left with the impression that he would prefer the father not to be there. The purpose of this would be to provide the mother with modelling to see how to establish and maintain boundaries with the children. In addition to this, another sibling, LL would visit the family home on Wednesday.
225. I was surprised by JJ's evidence about the approach of the special guardianship assessor as Ms Huda the independent social worker had struck me as a skilful and considerate worker. His account was in any event second hand as it was the experiences of his siblings that he relayed. He asserted the process had been so intrusive and difficult as to cause his siblings to withdraw from the process, entirely reasonably in his view. I have not heard directly as to their reasons for withdrawing and it is a surprising chain of events given the positive assessment that was provided by Ms Huda and her comments of disappointment about the withdrawal.
226. I asked JJ about how he would respond if when trying to assert boundaries with the children he was faced with allegations being made against him – after all that was the parents' case about their own experience. He accepted that this was a risk he was prepared to take. However, I detected in him a brittleness. There was a strong antipathy towards the local authority, and he was resistant to having social services involved in his or his families' lives. Despite his stated intentions, I was left with reservations about whether the support on offer would be sustained for as long as the children needed it. That view was reinforced when I asked JJ about whether he would continue to see the children if the court decided to make care orders. Even when pressed quite strongly by the court and after the benefits to the children of maintain contact with the children had been spelled out, he was not able to say that he would do so.

227. When I factor in all the support available through professionals and the extended family, I am not satisfied that those supports are enough to make up for the deficits in the parents' parenting of the children. In this consideration I take into account not only the contents of the local authority's alternative care plan and the proposals from the extended family, but also the additional elements of support that could have been included: an effective referral to the adult learning disability service and the tailored support that may be provided; a referral to an advocacy service for the mother; and parental coaching as recommended by the ISW. The children all need better than good enough parenting. The ability to provide and maintain consistent boundaries has been given great importance by Dr Maggs for the positive development of all three children. I am not satisfied that the parents are able to provide this at the current time. Nor am I satisfied that they would be able to achieve this within the children's timescales even with the sort of support that could be in place.

228. The support proposed is, in my judgment, insufficient to ameliorate these difficulties. Even if thorough professional support is provided and the family support from JJ and LL does provide everything they are promising, I am not satisfied that would be enough. In my judgment it would not be enough to ensure that boundaries are established and maintained. Additionally, given my findings about the mother's physical chastisement of the children and the denials about this from both of the parents, I am not satisfied that the children would be safe from further physical chastisement during those periods when the children were with only their parents.

229. When I consider the two options available to the court, I am satisfied that the option of returning home to their parents, with support, would not allow for the children's high levels of needs to be met and they would not be safe from physical abuse. The option of remaining in long-term foster care has many deficits, with the children being separated and apart from their family as well as the potential negative impact of growing up in care. However, even with those deficits I am satisfied that option does provide a means by which the children can receive the care of sufficient quality to meet their needs. In my judgment it is the only realistic option available to me that is capable of doing so. It is a shame that the paternal family members who were positively assessed as prospective special guardians withdrew as that option is not available for the court to consider.

230. In all the circumstances, I am satisfied that it is in the best interests of XX, YY and ZZ that I make care orders for each of them. I consider this is a necessary and proportionate interference with the Article 8 right to family life of the parents and the children. It is the least interventionist means by which they can be kept safe and their needs met.
231. I have considered the care plan in relation to contact. The local authority proposed a reduction of contact to a level of every 6-8 weeks. The children's guardian recommended a more staged reduction in contact, down to a level of every 2 months which the social worker agreed.
232. In my judgment the guardian's staged reduction would be better for the children as it gives them a greater opportunity to adjust to the new arrangements. I am also persuaded that the local authority's initial approach of contact finalising at every 6-8 weeks is more suitable. In my judgment there is a real advantage to contact remaining flexible so that it can be adjusted in accordance with the children's needs. The difference between contact every 6 weeks and every 2 months is quite a lot – 6 sessions or 8 sessions per year. In my judgment it would be sensible to set out a plan for contact between the parent and the children built around the school holiday and half term periods, with sessions taking place at both ends of the long summer holiday. This would mean 7 sessions of contact per year but would take place in circumstances that would be easy for the children to understand and would enable a greater potential for the children to enjoy contact with additional activities in the community rather than be confined to a contact centre.
233. I strongly encourage the children's adult siblings to continue to see the children. JJ told me how hurt he would be if the court made care orders and that he would struggle to look the children in the eye, having "failed them". The offer of support from JJ and LL is not the reason for the orders I have made. They have made generous offers. It would be a mistake for him to carry a burden of responsibility for my decision which is based on the parents' shortcomings and the needs of the children.
234. There are complexities and tensions that flow through the family dynamics with the paternal family. However, none of those are the fault of XX, YY and ZZ. Their lives to

date have been very difficult and they have suffered. They would really benefit from knowing their adult siblings and their families. I have been impressed with the achievements and successes of the adult siblings. Both JJ and KK, when she attended court at an earlier hearing, impressed me. It would be a real positive for these children if their adult half-siblings can play a role in their lives. They would be linked to their culture, their language and their identity. They would have positive role models who could have a beneficial influence on them as they grow through childhood and in adulthood. They would have a real link with their father sustained through their older siblings which could endure even after he has passed away. There are many positives that their older siblings can give the children and I hope they will feel able to.

### **Part 25 application**

235. The ISW Ms Huda made a clear recommendation for a parenting coach, Dr Ruby, to work with the parents, primarily the mother, to address the areas of concern and teach alternative behaviour management and interaction skills. That recommendation was made in her report dated 3<sup>rd</sup> March 2021 but has never been followed by the local authority. Although there have been several hearings in relation to the case, that piece of additional work was not raised as an issue at any of them until the final hearing. The mother now makes a part 25 application for an assessment by Dr Mahera Ruby.

236. I have considered Dr Ruby's CV. She is a personal growth and family coach. She has a background as a Parent Support Practitioner. She has held several academic roles as a lecturer in Early Childhood Education at University of West London and as a teaching fellow at the Institute of Education and in the Department of Educational Studies in Goldsmiths. The clear focus of her CV is on intervention rather than assessment. She makes no mention of working with parents with learning disabilities. While she has particular experience with families from Asian communities, she is not from the same community as the family and does not speak their language.

237. The draft letter of instruction proposes 5 questions:

1. Please consider the recommendations made by Ms Huda to enhance the parenting skills of M and whether such recommendations can be implemented within the timescales of the children?
2. Please assess M's capacity to engage with one to one coaching as recommended by Ms Huda within her assessment and other support services in the form of a package of support that could aid M's functioning and parenting capacity?
3. Please assess M's capacity to understand and consistently apply any parenting skills and concepts that have either been modelled or could be modelled for her by professionals and extended family members?
4. Please consider M's disability (hearing issues) and lack of literacy/education and the impact upon her functioning and how any deficits identified with her functioning could be overcome with support services or other measures?
5. Please undertake a separate piece of work with the extended family around the support they may be able to offer.

238. In relation to the proposed assessment, I have real doubts as to whether the court is being asked to approve an assessment, rather than to direct a piece of parenting coaching, which was Dr Huda's proposal. In accordance with s.38(6) of the Children Act 1989 and the case of *Re G (Interim care order: Residential Assessment)* [2006] 1 FLR 601 HL – what is directed under s.38(6) must clearly be an examination or assessment of the child, including where appropriate his relationship with his parents, the risk that the parents may present to him and the ways in which those risks may be avoided or managed, all with a view to enabling the court to make the decision which it has to make under the Act with the minimum of delay. Any services which are provided to the child and his family must be ancillary to that end. They must not be an end in themselves. In *Re G* it was decided that the court has no power to make an order for a s.38(6) assessment if the main purpose is to provide a continuing court of psychotherapy with a view to providing a parent with the opportunity to change sufficiently so as to become a safe and acceptable carer.

239. In my judgement the proposed “assessment” by Dr Ruby falls foul of this same prohibition. What is sought is treatment – namely family coaching and parenting work, rather than assessment. In any event, I am not satisfied that this work is necessary for the court to be able to determine the issues in the case. While the parents can rightly point to the opportunity having been missed to try another means to support them to meet the children’s needs, I am not satisfied that the proposed work goes to the heart of the parents’ problem. The major obstacle to their being able to parent safely these children and meet their needs is their lack of insight and appreciation of the children’s emotional needs, rather than the absence of parenting skills around setting and maintaining boundaries.

240. I am mindful also of the impact of delay in these proceedings. The case has been significantly delayed by the need to assess members of the extended family who were put forward at a late stage and appeared to be credible options until they withdrew. That has been exacerbated by the pandemic and the lack of court time to hear the case. The children have been the subject of proceedings for over a year now. They have a profound need for stability and certainty about their futures. If the case was adjourned there is no time available for it to be relisted before next June. That further 6-month delay would be harmful to the children.

241. In the circumstances I refuse the mother’s part 25 application.

242. I am making Care Orders in relation to XX, YY and ZZ. I will invite the local authority to amend the care plans in the way that I have outlined, but in principle I approve the plans for the children to be placed in foster care for the long term.

243. I would like to express my thanks to the advocates for the care and skill they have brought to this case, to the interpreters for the hard work and expertise they have shown and to the intermediary for the care and attention she has given to ensuring that the mother is best able to engage with the process of the final hearing. I would also like to express my thanks to the parents for the respect and dignity they have shown during what must have been a difficult and stressful process. That is my judgment.

