

IN THE FAMILY COURT
SITTING AT MIDDLESBROUGH

Neutral Citation Number: **[2024] EWFC 248 (B)**

Case No: MB23C50373

Date: 12th July 2024

Before:

HHJ MURRAY

Between:

STOCKTON ON TEES BOROUGH COUNCIL

Applicant

- and -

(1) T

Respondent

(2) B

(3) L

-and-

(4) C and D

(Children through their Children's Guardian)

Ms Hughes (instructed by Cygnet Law) for the **Applicant**
Ms Benson (instructed by TBI Law) for the **1st Respondent Mother**
Mr Thornton (instructed by Watson Woodhouse Solicitors) for the **2nd Respondent Father**
Mr Hunter (instructed by AHM Solicitors) for the **3rd Respondent Maternal Grandmother**
Ms Harrison (instructed by Freeman Johnson Solicitors) on behalf of the **children**

Hearing dates: 1st, 2nd, 3rd and 10th July 2024

JUDGMENT

HHJ Murray:**Preamble**

1. On 10th July 2024 this matter returned back into my list for judgment after 3 days of evidence and submissions. I informed the parties that I had formed the view that it was appropriate for my judgment, then prepared from notes, to be formalised in a written judgment. However, I went on, with the agreement of the parties, to set out my decision and how I intended to progress the case. The following paragraphs below, at 2 to 14, are what I said.
2. In respect of C, I have determined that the right placement for her, so as to meet her welfare needs, is with her father, B.
3. For reasons that I set out within my judgment, I approve a plan whereby the mother's contact will reduce to weekly contact. I have also determined that, for at least in the short-term, the mother's contact ought to remain supervised.
4. I will make a Supervision Order for a period of 12 months in favour of the local authority.
5. In respect of D, I have carefully considered the issue of harm, risk of that harm occurring, and the consequences should that harm arise. I have fed that assessment of harm into my overall welfare analysis as I have considered the 3 realistic options that I have identified:
 - i. Return to mother under the least interventionalist Order that will keep D safe
 - ii. A plan of placement outside of the family by way of adoption
 - iii. An adjournment measured in months to allow the mother to engage in work as recommended by Mr Marshall.

6. When I have done so, I am not satisfied on the evidence before me, that nothing short of adoption will do so as to meet D's welfare needs. As such, I do not approve the Local Authority plan of adoption.
7. Nor do I, when I have analysed the evidence before me, consider that an adjournment to allow the mother to undertake work is in D's best interests.
8. Instead, I have determined that with the right package of support put in place, by professionals, by family and friends, the risks of harm associated with D's placement in his mother's care can be mitigated to a level whereby he can be rehabilitated back into the mother's care.
9. I will adjourn this case for consideration of my judgment and will invite the local authority to prepare a support plan which will include safety planning, crisis management strategies and work for the mother to engage with, including parenting work.
10. I will list the matter back before me on 30th July 2024, allowing just over 2 weeks for that support plan to be prepared.
11. I will direct an advocates meeting next week to allow discussion of my judgment and allow the parties to consider what needs to be included in that support plan.
12. It is my hope and expectation that the Local Authority will accept the Court's assessment of risk in this case and that the hearing on 30th July 2024 can look at the practicalities of how a rehabilitation plan will work and under what legal framework.
13. I do not agree that the L's contact can progress to unsupervised contact. Although I have noted positive aspects in respect of L, a proper assessment is required by the

local authority in due course before consideration could be given to that. However, I am clear in my view that L plays an important part of the support that will be available to the mother in her care of D. I would hope to see a plan produced which allows L to play an active role in supporting the mother, including attending at her property and assisting her if required, not only on an emotional but also a practical level.

14. I have considered whether C's proceedings need to be delayed any further, given my determination in respect of her long-term care. However, I have formed the view that issues of contact involving the mother as well as the siblings, are inevitably tied to support plans for rehabilitation. In my view, it is right that B remains involved in those discussions and, for the short delay it will cause, C's proceedings ought not be concluded in advance of 30th July. That position can be reviewed on the 30th July 2024.

Introduction

15. This case is about 2 children, C who is 8 years old and D who is 3 years old. They are represented through their children's Guardian, Ms Patterson.
16. The children's mother is T. I will refer to her hereafter as "the mother" hereafter. C's father is B. D's father is unfortunately deceased. His name was H, and the circumstances and ongoing impact of his death are a significant feature of this case.
17. The maternal grandmother is also a party to these proceedings. Her name is L (referred to as "maternal grandmother" hereafter).
18. The local authority issued these proceedings on 21st July 2023. As I give this judgment, the proceedings are therefore 11 months old. The basis upon which the

Local Authority issued proceedings is set out in a threshold document, which is, for the most part, accepted.

19. Before I come on to that threshold document, it is important to give some context as to how the point was reached whereby the Local Authority were issuing public law proceedings. Before I do so, I make the observation that the Court would have been assisted greatly in this case by the production of a chronology. It is exactly this type of case, involving specific issues, being raised on specific dates, over a significant period of time, where plans have changed, that a chronology dating back pre-proceedings would have been extremely helpful. As it is, I have pieced together the chronology from the various different pieces of evidence I have in the papers. As I have done so, I have applied the civil standard in my determination of that factual background and have applied the relevant legal principles, to which I will return.

Background

20. When the mother was 12 years old, she lost her nana to cancer. Although some time ago, it is clear to me that her passing had a significant impact upon her. The mother was already experiencing difficulties in school, reporting physical bullying and general unhappiness. She was diagnosed as being dyslexic, but the issues were only compounded by lengthy absences from school and home moves, due to the bullying. However, when her nana died it appears that her unhappiness grew. She would later say to the psychologist instructed in this case:

“I’ve had anxiety all my life and depression started getting bad from 12 when my nana died...”

My anxiety has always been there. My depression, I know it got bad after she died. I was depressed when she was ill but not as bad. Body dysmorphia, poor self-image that caused that, result of the bullying.

21. The mother self-reports that shortly thereafter, aged 13, she started drinking alcohol which eventually escalated to drinking during the week as well as during the weekend. Around this time, aged 13, the mother also reports that she was sexually assaulted.
22. When the mother was approximately 18 years old, she took an overdose. It appears that she then overdosed at least a further 2 times. She had been prescribed a number of different anti-depressant medications which she reported were not assisting her mental health.
23. The mother was 19 years old when she met B. Although their relationship only lasted 6 months, the mother fell pregnant and she gave birth to C in January 2016, when the mother was 20 years old. Although there are difficulties reported within the relationship, both during and after separation, it appears from the evidence that I have before me that there were no issues being raised in respect of any deterioration on the mother's mental health or her ability to meet C's day-to-day needs. The only Local Authority involvement seems to be in respect of an incident between her and B, which resulted in C falling out of her pram. Nothing I have read suggests that the local authority was raising concerns at that point in respect of the mother's care of C.
24. However, although there does not appear to be any significant decline in the mother's mental health during this period, it seems that the mother's underlying issues remained. From the papers it seems that the mother was diagnosed with an emotionally unstable personality disorder in around 2019 or 2020.

25. It was also around 2018/2019 that the mother met H. The mother had met him whilst at college, when C was around 2 years old, where she studied art and design, receiving a distinction and level 2 qualification. She succeeded at college despite her underlying mental health difficulties and the stresses of caring for a young, and no doubt demanding, toddler.
26. It seems that the relationship between the mother and H was a positive one. I have read nothing to suggest otherwise. D was born to the relationship and the mother, H, D and C all lived together. The mother and H eventually got engaged. They were due to get married in 2022.
27. In February 2022, on a day unremarkable except for the tragedy that would follow, the mother woke up on a morning to find H lying dead beside her. D was also in the bed with them. The mother called 999 and attempted CPR, but, without success. His death was unexpected and sudden, he died from pneumonia, obesity, and an undiagnosed lung condition.
28. I have no doubt that the loss of H impacted upon the mother significantly, especially in the context of her earlier life experiences. She was supported by the maternal grandmother, with whom she eventually went to live with. Whilst C appears to have been supported by a counsellor at school, the mother did not attend any bereavement counselling. She explains that at first she was informed to wait a little while, and then when she did try to access the counselling, was told that there was a lengthy waiting list.
29. For the next year, there does not appear to have been any significant deterioration in the mother's mental health. However, about a year after H's death, the mother entered

into a relationship with a man called K. Her entering into a relationship with K also marked the start of her regularly smoking cannabis with him.

30. The mother says in these proceedings that everything came to a head one year on from H's death. The anniversary of his death had just passed, the mother was regularly smoking cannabis, she felt that her mother was not supporting her as much as she had been, due to work commitments. There had also been an incident in August 2022 whereby the mother and maternal grandmother had been involved in a physical altercation, and whilst not taking place in front of the children, had taken place in the home where the children were upstairs.
31. Although the papers are not clear as to chronology, I am satisfied to the requisite standard that the mother is right when she says that an incident between her and C then took place.
32. On the lead up to May 2023 the mother had been struggling to get C into school. She would tell me in evidence that C would run and hide from her when she was trying to get her ready, and having to also look after D. There had been issues raised by school around C's attendance and her coming in late on a morning. On 5th May 2023 the mother accepts that whilst trying to get C ready for school, she slapped C on the arm in frustration. It seems that the mother informed the school that very morning that she had done so, which led to a safeguarding referral. That was the first, and last, time that any concern has been raised in respect of the mother physically chastising either C or D. It was at that point the Local Authority became involved.
33. It seems that the mother recognised that she was struggling and agreed for C to go and stay with her father, B. C has remained with B ever since. The mother told me in evidence that things then became too much for her. She told me that she decided to

start an overdose process, which she expected to take place over a number of days with an increase in unprescribed medication. As she started that process, D was in her care. However, as the days went by, she told me that she had made arrangements for D to be looked after by the MGM. Although she thought that the overdose process would take 7 days, she ended up telling the social worker and her family action worker what she was doing. She was taken to hospital but shortly discharged home because the amount of medication she had taken was not life threatening and had merely made her unwell.

34. However, by the 4th June 2023, the mother's mental health had deteriorated to the point that she was detained under the Mental Health Act 1983 and placed in Roseberry Park. From the documentation I have read including the description provided by the mother to professionals, it seems that the mother was experiencing an emotional and mental breakdown.
35. The mother remained in Roseberry Park until around 24th July 2024; some 7 weeks¹. Her cannabis use ended on her admission to Roseberry Park. Hair strand testing took place during the currency of these proceedings which indicated that the mother had not been using cannabis and there has been no concern raised by any professional that she has resumed use.
36. And so it was on 21st July 2023, whilst the mother was still residing in Roseberry Park, that the Local Authority issued proceedings. The threshold relied on by the LA is:

¹ There is some conflict in the papers about whether the mother was discharged at this point or on 2nd August 2023. It seems that the mother was discharged as an inpatient on/or around 24th July 2023 but remained there on a temporary basis until alternative accommodation could be identified.

1. *At the time that protective measures were taken, the mother was an in-patient at Roseberry Park and was unable to exercise her parental responsibility. Mother's mental health difficulties (recent and current) have placed the children at risk of physical and emotional harm due to the impact on her ability to safely parent them.*
 - (i) *C has suffered physical harm as a result of Mother assaulting her on 5th May 2023 following Mother taking medication not prescribed to her for the preceding five days in an effort to overdose.*
 - (ii) *C has reported Mother telling her she can't survive without her mummy because she is the most important person in the world. This, coupled with the sudden death of D's father, has led to C being anxious that her or Mother may die if they are not together.*
2. *Mother misuses cannabis, both her and her partner have admitted to smoking cannabis to self-medicate their mental health issues.*
3. *In the care of Mother and maternal grandmother, the children have been exposed to frightening adult behaviours and domestic violence which will have caused them emotional harm and placed them at risk of physical harm.*
 - (i) *On 9th August 2022 police were called as a result of a physical*

altercation between Mother and maternal grandmother, where they were fighting on the floor, pulling each other's hair. Both C and D were present.

(ii) (ii) Maternal Grandmother is a victim of significant domestic abuse perpetrated by her ex-partner.

PROCEEDINGS

37. The matter came before me for an urgent hearing on 21st June 2023. At that stage D was in the care of MGM but the LA were raising concerns about MGM's ability to protect D, and MGM's own daughter J, from risks associated with an ex-partner called Q.
38. I made an ICO I respect of D and adjourned the removal hearing for a contested hearing I also made a CAO I respect of C in favour of B.
39. At a hearing on 24th July 2023 those Orders continued, with the inclusion of an interim supervision Order in respect for C. It was on that date that the Court was informed that the mother was no longer an inpatient at Roseberry Park but that she was staying there until suitable accommodation could be found. The Local Authority did not seek to remove D from MGM's care, on the basis that an exclusion Order was made preventing Q's attendance at her property.

40. On 9th August 2023 the case was timetabled through to Final hearing on 16.01.2024. The Court approved an application for psychological assessment of the mother by Mr Marshall as well as HST testing of the mother, to which I have already referred. The MGM was also joined as a party to the proceedings.
41. Mr Marshall filed his substantive report dated 12th October 2023. I will consider the contents for that report in greater detail later in this judgment.
42. The Local Authority filed its final evidence on 10th November 2023. The analysis of the mother's ability to care for both or either of the children relied heavily upon the conclusions reached by Mr Marshall, quoting large parts of his report. A positive special guardianship report had been prepared in respect of the MGM to care for D. Therefore, the plan for C was for her to remain in the care of her father B, under a CAO and the plan for D was for him to remain in the care of MGM under a CAO. By the time of the IRH the plan was for both children to be made subject to 12m SO. In respect of the MGM, it was noted that the MGM was currently engaged in proceedings relating to her own daughter, J.
43. At the Issues Resolution Hearing on 3rd January 2024, the interim care order held in respect of D was discharged and replaced with a CAO in favour of the MGM. At that point, the mother was agreeing that D, alongside C, should remain in the care of MGM.
44. On 11th January 2024 an urgent application for a hearing was made by the local authority. That application was based upon information received that the MGM had been in contact with Q, alongside an allegation that MGM had breached the exclusion requirement made back on 24th July 2023.

45. The matter came back before the Court on 12th January 2024 for an urgent hearing. D was placed back into the care of the local authority with the CAO in favour of MGM being discharged. D was removed from MGMs care and placed in local authority foster care, pending a contested hearing.
46. At the return date, MGM, then living in a refuge, did not seek D's immediate return. The proceedings were extended and re-timetabled through to a final hearing on 10th April 2024.
47. On 19.02.2024 the Court received a further application made on behalf of the Local Authority for a directions hearing. It was confirmed that the Local Authority plan was now one of adoption. However, due to availability for dates for an adoption medical and Agency Decision Maker approval, the Local Authority were saying that the current timetable could not be complied with.
48. On 4th March 2024, the proceedings were extended yet again, with the final hearing being listed on 26.06.2024, time estimate 3 days. At that stage an application for an Independent Social Worker to undertake an assessment for the mother was approved on the basis that no assessment had been undertaken of the mother, because she had previously supported the Local Authority's plan for MGM to care for D, and that the plan had now changed to one of adoption. Poppy Sinclair was identified as the independent social worker. She produced a substantive assessment dated 21st May 2024 and an addendum on 13.06.2024. I will consider that assessment in due course but suffice it to say at this juncture that Ms Sinclair's opinion was that the mother would be able to care for one child at this time and that the mother should not be ruled out at this stage.

49. On 25.06.2024 I was alerted, as Designated Family Judge, that due to unforeseen judicial unavailability, a tribunal was not available to hear the case on 26th June 2024. Concerned by the delay that had already been caused in this case, I listed the case before me in my list on 26th June 2024 for mention. I was able to make arrangements with the court listing staff, to move work already in my list and to enable me to hear this case as a final hearing the next week. And so it was that I have heard the final hearing listed on 1st July 2024.

POSITIONS

50. The Local Authority plan for C is that she remain in the care of B, underpinned by a Child Arrangements Order in his favour for a period of 12 months. The plan is for the mother's current contract to be reduced from 3 x per week to 1 x week.
51. That is a plan which is agreed by all parties, save for the mother (supported by maternal grandmother) in respect of the issue of contact. The mother had only recently changed her position in respect of C, agreeing to C living with B. However, the mother's position is that she would like to work towards a Shared Care arrangement with B. To that end, she does not agree that there should be a reduction in her contact.
52. The Local Authority plan for D is one of adoption. That is a plan supported by the CG. B has no role to play in respect of the placement decision in so far as D is concerned. The mother, supported by the maternal grandmother, argues that D ought to be returned to the mother's care. In submissions, counsel on behalf of the mother clarified that mother's primary position was that D ought to be returned to her care forthwith, but her secondary position was that further time ought to be allowed for the mother to engage in work to better her position.

Law

53. Although counsel has not directed me to any specific statute or case law, in determining this case I have reminded myself of the relevant legal principles engaged in applications of this nature.
54. Each child's separate welfare is my paramount consideration. With respect to both C and D, I must have regard to the general principle that any delay in determining the issues is likely to be prejudicial to a child's welfare. That is specifically set out within s.1(2) of the Children Act 1989.
55. I must have regard to what is often termed "the least interventionist approach". I must only make orders if they are necessary and proportionate, and I must have regard to the Article 6 and Article 8 rights of each family member. When I consider Article 8 rights, that also includes each child's Article 8 rights.
56. When I look to the proposed plans for C's future, I must have regard to the welfare checklist, set out in s.1(3) Children Act 1989
57. As the local authority plan for D is adoption, additional considerations also apply in his case. My paramount consideration is not simply D's welfare but his welfare throughout his life. As such, I must have reference to s.1(2) of the Adoption and Children Act 2002 and it is the welfare checklist at s.1(4) of the 2002 Act which applies.
58. One of the matters that I must consider within both the 1989 and 2002 checklists, is any harm (within the meaning of the Children Act 1989) which the child has suffered or is at risk of suffering. In public law proceedings, the litigation is primarily centred around the identification, assessment and risk of harm. In accordance with *Re F (A*

Child: Placement Order; Proportionality) [2018] EWCA Civ. 2761 approved in *Re H-W (Children) (No. 2)* [2022] UKSC 17. It is important therefore to consider in this case:

(1) *The type of harm* that might arise.

(2) *The likelihood* of it arising.

(3) *The consequences*: what would be the likely severity of the harm to [that child] if it did come to pass?

(4) *Risk reduction/mitigation*: would the chances of harm happening be reduced or mitigated by the support services that are or could be made available?

45. It is only having undertaken that exercise that the realistic options can be weighed up against each other and principles of necessity and proportionality applied.

59. Before I can make final public law orders for either child, I must be satisfied that the threshold as set out within s.31 of the Children Act 1989 is crossed. That threshold has been conceded by the mother, albeit some slight detail of the threshold remains in dispute.

60. When I consider findings sought by the Local Authority, be they threshold or welfare findings, the burden is on the local authority to prove those findings to the civil standard, that is on the balance of probabilities.

61. I am satisfied that those matters already agreed in the LA document are not only made out in the evidence to the requisite standard, but that they also meet the threshold for the making of final public law orders. No party has tried to persuade me otherwise. I

will deal with the outstanding disagreement in due course. However, just because the threshold has been crossed does not mean that public law orders automatically follow.

62. What I must then apply is a welfare analysis as to what order, if any, best meets D's and C's welfare and whether it is necessary and proportionate to make any such order. If I am satisfied that threshold is crossed then I must go on, essentially, to conduct a welfare analysis of the competing realistic options for both children.
63. In doing so, the principles I must apply to the local authority's applications for care and placement orders in respect of D are definitively stated in two cases: *Re B (Care Proceedings: Appeal)* [2013] UKSC 33 and *Re B-S* [2013] EWCA Civ 1146. I have reminded myself of the contents and guidance contained within those cases.
64. In *Re B-S*, the President said that the court must have in mind at every stage of the process the following matters:
- (a) Article 8 applies. The overarching principle remains that explained by Hale LJ (as she then was) in *Re C and B* [2001] 1 FLR 611 at [34]:
- “Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child.”
- (b) The test to be applied is both stringent and demanding as Lady Hale said in *Re B* at [198]:

“...the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by overriding requirements pertaining to the child’s welfare, in short, where nothing else will do...”

In the particular circumstances of this case, I also remind myself of Lady Hale’s words in the same case at para 143:

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

- (c) The court must consider all the realistic options before coming to a decision.
- (d) The court’s assessment of the parents’ ability to discharge their responsibilities towards the child must take into account the assistance and support with the authorities could offer.
- (e) There must be adequate and reasoned judgments in providing the observations of McFarlane LJ (as he then was) in *Re G (A Child)* [2018] EWCA Civ 965 at [50]:

“...the judicial task is to undertake a global, holistic evaluation of each of the options available for the child’s future upbringing before deciding which of those options best meets the duty to afford paramount consideration to the child’s welfare...”

65. I may not make a placement order in the absence of the parents' consent unless I am satisfied that each child's welfare require me to dispense with the parents' consent and that is contained within s.52 of the 2002 Act.
66. I have also reminded myself in this case of what has later been described as the wise and powerful words of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050, para 50:

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

Evidence

67. I have had the benefit of reading not only the Court bundle and updated contact and police records, but also from hearing from the following witnesses:
- a) Poppy Sinclair (Independent Social Worker)
 - b) AP (allocated social worker)
 - c) The mother
 - d) Jill Patterson (Children's Guardian)

68. The evidence concluded on the afternoon of 3rd July 2024. I then heard submissions from all parties and adjourned to give judgment today, 10th July 2024.

Expert evidence

69. Although the expert evidence is an important part of the evidence before me, I remind myself that it is but one piece of the evidential picture, which I have the advantage of considering as a whole. It is often said that the expert advises but it is the Judge who decides.
70. There have been two independent experts who have provided assessments in this case, the psychologist Mr Marshall and the independent social worker, Ms Sinclair.

Mr Marshall

71. In closing submissions counsel on behalf of the local authority submitted that the Local Authority relied on the opinions expressed by Mr Marshall's evidence, specifically that there would be a significant risk of harm, if a child is placed in the mother's care. It is important therefore for me to look at exactly what Mr Marshall has opined. The following comes from Mr Marshall's executive summary (those parts in bold are my own emphasis):

*In my view, there is evidence of pervasive difficulties from the mother's history and in my view, she would meet the criteria to be described as having a personality disorder with borderline features and a severely insecure adult attachment style of the dual or disorganised type. Taken together, in my view the mother is likely to present as a particularly reactive individual who experiences difficulties in regulating herself emotionally by adaptive means. In my view, there is a **significant risk** at this stage that a child in the mother's care is exposed to her impulsive responses and that*

*particularly at times of distress, the mother focuses upon her own needs and experiences difficulties in prioritising the needs of others, including a child in her care. In my view, there is an **ongoing risk** at this stage that the mother presents as inconsistent in her ability to recognise and respond to the emotional needs of a child in her care, which **risks some degree of emotional harm** and indeed, this **may include physical harm** given the mother had chastised her child as described in her self-report... The mother experiences difficulties in recognising and communicating her own emotional state and needs on a consistent basis. It is of note that the mother recognises this as a limitation and in my view, given her report of her understanding of her difficulties and her willingness to engage in therapy, there are some reasons for optimism which she may benefit from therapeutic provision; however, in my view, owing to the longitudinal nature of the difficulties experienced by the mother she would need to demonstrate a period of sustained change **before the risks as outlined above**, can be considered significantly reduced.*

72. Later at para 27:

*She also describes that at times she has experienced psychotic features although it is of note at the time of the assessment she did not describe the experience of such and in my view, at the time of the assessment there were **no immediate risks**; however, to emphasise the mother's mood may deteriorate rapidly and she lacks insight into warning signs and in my view, it is important that she continues to engage with the mental health team and regularly with her GP, particularly given her experience of difficulties that led to her being under a mental health section recently.*

73. Further from para 34 into 35:

*In my view the mother's difficulties are such that she experiences a lack of insight as to a deterioration regarding her mental health which from an external observer including a child in her care may appear as impulsive and unpredictable. In my view, this risks **some degree of emotional harm** to a child in her care with the mother presenting as inconsistent in her ability to recognise and respond to the emotional needs of a child in her care, depending upon her own emotional needs at a given time which she will prioritise... In my view, there remains a **significant risk** at this stage that a child in the care of the mother is **exposed** to her impulsive reactions which have included the mother taking an overdose by her own description and indeed physically chastising C.*

74. And then finally para 38:

*The mother recognises the need for additional support in providing care for the children though reported she would feel able to provide care for D, though would require additional support such as parenting classes to enable her to manage C's behaviour. It is my view, however, that at this stage a child in the care of the mother remains **at significant risk of being exposed** to the difficulties as described above until she has been able to demonstrate a sustained period of change.*

75. In my view, Mr Marshall is setting out the difficulties that the mother faces, and opining that there is a risk that a child in her care would be exposed to those difficulties but particularly so where there is a deterioration in respect of the mother's mental health. His opinion in respect of the children suffering harm, as a result of risk of exposure, is limited to "some degree" of emotional harm and "may include physical harm", on the basis of the single incident involving the mother slapping C in May 2023.

76. That report was prepared in October 2023. For context, the mother had been discharged from Roseberry Park and was living in hostel accommodation whilst more permanent accommodation was identified. Dr Marshall had opined that due to the pervasive nature of the mother's difficulties, the mother should engage in a longer-term therapeutic approach such as Dialectal Behaviour Therapy (DBT), typically delivered over the course of approximately 6 months. He also suggested that additional intervention could be provided to meet her individual needs to focus on the mother's experience of trauma with a cognitive behavioural therapy (CBT) approach
77. Following the cautiously positive independent social worker assessment from Poppy Sinclair, Mr Marshall was asked to prepare an addendum. He did so on a paper-based exercise, having not seen the mother since he prepared his substantive report. I note that his second appointment with the mother was on 2nd October 2023; now 9 months ago. The addendum is dated 26th June 2024 and I quote from it:

Based on the updating information in the case documents, my views remain largely unchanged from those expressed in the initial report. It is important to note that there is evidence of positive change, including the mother no longer using substances for a prolonged period and the reports that she has positively engaged with the local authority throughout this time. I would note, however, that the independent social worker report indicates a period of stability in relation to the mother's mental health for a period of approximately one-year and that the difficulties that led to her being under a mental health section, had been cumulative following a number of stresses... it is important to emphasise that the mother's difficulties are longer-term. Indeed, based on the mother's own self-report and the information in the case documents that were made available to me at the time of the initial assessment, the mother had

experienced significant difficulties from adolescence, which included body dysmorphia and a number of overdose attempts as a teenager, with information in the case documents indicating that the mother had been diagnosed with a personality disorder a number of years ago, and that these problems had continued over a pervasive and sustained period.

78. Mr Marshall continues, having reflected on the positive aspects but also of some of the additional concerns raised by the local authority:

To emphasise the positive aspect of the mother's level of insight, in my view her recognition at the time of the assessment of the severity of her difficulties at times and her ability to report a pattern of mood fluctuations, and negative thought patterns, indicates reasons for optimism that were she to engage in therapeutic intervention that the mother may be able to engage meaningfully and benefit from such, though of importance the mother would need to focus on adaptive coping skills in recognition of warning signs and triggers. However, at this stage the mother has not been able to engage in intervention to improve these difficulties and therefore, my views remain as set out in the initial report.

79. Before I move on to the independent social worker's evidence, it is important for me to note that the concerns around the mother's lack of engagement comes from evidence filed from a Senior Community Psychiatric Nurse at Stockton Treatment and Intervention Team, situated at Wessex House. In that report dated 24th June 2024, I am informed of the difficulties that the mother initially faced upon entering Roseberry Park in early June 2023. Those difficulties included showing paranoid delusions and behaviour with hyper vigilance of her surrounding environment. It is noted that the mother was using illicit substances prior to admission but that she remained abstinent

from substances and started to make improvements. Upon discharge from Roseberry Park, she remained involved with the team until she was discharged from secondary mental health services on 2nd May 2024. When she was discharged there were no concerns being expressed about the mother's presentation and she remained stable with her mental state, continuing to take medication.

80. Although the service was aware of Mr Marshall's opinion in respect of DBT the service did not, for the reasons set out in their report, consider that the mother met the criteria for DBT.
81. However, an offer was made by Wessex House for behavioural activation in advance of the possibility of engaging with CBT work. Despite multiple attempts to engage the mother in undertaking that work, the service says that the mother did not engage in attending appointments. She was therefore discharged from their psychological team due to non-engagement. It is not clear to me at what point in the chronology that the mother did not engage with that process. The mother tells me from the witness box that it was at a time when she had understood the LA plan was D's placement with MGM. The Local Authority say that at the point of non-engagement, the mother was already aware that adoption was a potential plan for D at the time. I have heard evidence from the social worker as to the attempts made to try to get the mother to engage with services. However, following the change of plan, I am aware that the mother has made some attempts to engage in CBT with IMPACT. Again, there is some confusion in the papers as to what has happened in respect of that referral. The social worker final evidence dated 3rd June 2024 suggests that the mother is on a waiting list for CBT, but enquiries made by Ms Sinclair indicated that she may not

have been. At the point of this final hearing, I am told that the mother has been referred and is awaiting a start date.

Poppy Sinclair

82. Ms Sinclair produced a substantive report dated 21st May 2024 and an addendum dated 13.06.24. At the time of preparing both reports, she had the benefit of considering Mr Marshall's report from October 2023.

83. Her assessment involved 5 assessment sessions with the mother, with the last taking place on 6th May 2024. She also observed 3 supervised contact sessions, the last taking place on 15th May 2024. I quote selections from her report:

Para 41:

In my view the mother presented very open and shared her difficulties around different stresses and her history of emotional well-being and mental health difficulties. The mother told me that as a result of the breakdown last year, everyone is now more aware and she feels better supported by her mother, who now lives close by. The mother told me that she feels able to identify when she is not feeling well, or down and will seek support from her mum or her GP.

Para 74:

The mother demonstrated, in my view a good understanding of the concerns the professionals have in relation to her. There continue to be various gaps with regard to the work required, however the mother continues to report discrepancies in relation to the views of the various professionals.

Para 78:

Despite the difficult proceedings and the proposed plan for D being shared, the mother to her credit has been able to maintain stable mental health, without further breakdown or incident. It is acknowledged that the recommended work remains outstanding, which is a concern. It is clear within the bundle that the work was offered by Wessex House and was not completed due to other things that clashed for the mother and it was agreed that a referral would be made to Inspire to complete the proposed work

Para 80:

The mother demonstrated good insight into the concerns and how she has managed previously, how she has made some progress even in the absence of therapeutic work and what she still needs to do. The mother presents motivated and reflective but, in my view, needs a higher level of assistance to access the support on offer.

84. From her observations of contact, Ms Sinclair opined that, in general, her observations of the family time with the mother were positive. She raised some concern about conversations about B being framed negatively and the need for the mother to be mindful about the way conversations take place in front of the children. Although there were no significant concerns during contact, Ms Sinclair noted that, at times, the mother struggled to manage her time between the competing interests of D and C. Whilst not raised as a direct criticism of the mother, Ms Sinclair does raise concern as to why consideration was not given to the mother having some quality contact with D alone, especially once the plan for D had evolved into one of adoption.
85. In her conclusions, Ms Sinclair says at para 116 onwards:

The mother has experienced poor mental health throughout her life to date; seemingly as a result of a cumulation of many unfortunate circumstances including experience of an absent parent as a child, the loss of her grandmother when she was 12 years old, being bullied at school, difficult intimate relationships, alleged rape, becoming a young mother at 20 years old, suffering a miscarriage and losing her longer term partner suddenly in 2022, resulting in her being a single parent of two young children.

It is my view that the mother appears to have managed incredibly well up until her overdose and subsequent breakdown in 2022, against the backdrop of her history. There are clearly a number of areas in which the mother requires additional help and support, however it is my view that the catalyst to the mother's mental health being significantly affected was likely the passing of her partner H

86. Whilst expressing disappointment that the mother had not completed any specific work following Mr Marshall's report, Ms Sinclair notes that the mother has positively engaged with her CPN, is taking her medication and that there has been no further mental health breakdown or significant deterioration in the mother's mental health, for approximately 12 months.

87. As such, at para 121 she opines:

121. The above in my view needs to be taken into consideration and has to be given some weight in terms of the mother's current mental health, stability of this, particularly against the backdrop of these difficult court proceedings, a change of plan for D and recently a further breakdown in her relationship with her partner.

122. It is my view that the mother has a significant knowledge of the practical skills required to care for children, how to meet their basic care needs and the risks to be monitored as children develop through the age brackets. The mother has been observed to put these skills into practise during contact and her home has been observed to be clean and appropriate for a child/children to live in.

123. I acknowledge there are still areas which require improvement and support, however there is in my view a good foundation for positive progress to be made in light of the mother's ability to maintain stability in her mental health over the last year. There is of course a risk that the mother's mental health could deteriorate again, particularly if something significant was to occur; however, I suggest the mother is generally better equipped to manage any difficulties at this time, given she is taking her medication, has better support from her mother, and does not currently have the children in her care.

124. This assessment of the mother on the whole was positive and, in my view, she should not be ruled out as a sole carer at this stage.

88. Ms Sinclair was provided with additional information and asked additional questions arising from her report which she answered in her addendum. She did not move from the views she expressed within her substantive report.
89. In her evidence to me, Ms Sinclair remained of the view that the mother should not be ruled out as a sole carer for D. She told me that she was concerned about the information indicating the mother's lack of engagement with the work suggested by Mr Marshall. She told me that she agreed with Mr Marshall, in that it was important that the mother undertake the work recommended. However, she reflected upon the progress that the mother had made since her decline in early June 2023 and her

engagement with professionals involved with her mental health, if not specific courses, since that time. Ms Sinclair was reminded in cross-examination that the mother's mental health seems to have been stable but that it has been at a time when neither child has been in her care. Ms Sinclair again reflected that it could not be said that significant stressors were still not in play; for example, the removal of D into foster care, a change of plan to one of adoption and the ending of a romantic relationship during the proceedings.

90. I found Ms Sinclair to be a balanced and fair witness. She told me that in her view this was a finely balanced case. She did not minimise the LA concerns around the mother's mental health, but ultimately nor did she accept that the mother's lack of engagement in specific work identified by Mr Marshall, meant that she could not safely care for D. She accepted that the mother needed to do more work to deal with the long-term issues, but despite probing cross-examination from the local authority and on behalf of the Guardian, she was not moved from the view that the mother was able to provide D with good enough care.

Social worker evidence

91. I then heard from the social worker. Before I consider her evidence, it is important that I set out what was said in *Re B-S* [2013] EWCA Civ 1146.

30. We have real concerns, shared by other judges, about the recurrent inadequacy of the analysis and reasoning put forward in support of the case for adoption, both in the materials put before the court by local authorities and guardians and also in too many judgments. This is nothing new. But it is time to call a halt...

33. *Two things are essential – we use that word deliberately and advisedly – both when the court is being asked to approve a care plan for adoption and when it is being asked to make a non-consensual placement order or adoption order.*

34. *First, there must be proper evidence both from the local authority and from the guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option. As Ryder LJ said in Re R (Children) [2013] EWCA Civ 1018, para 20, what is required is: “evidence of the lack of alternative options for the children and an analysis of the evidence that is accepted by the court sufficient to drive it to the conclusion that nothing short of adoption is appropriate for the children...”*

36 *We draw attention in particular to the need for “analysis of the pros and cons” and a “fully reasoned recommendation”. These are essential if the exacting test set out in Re B and the requirements of Articles 6 and 8 of the Convention are to be met. We suggest that such an analysis is likely to be facilitated by the use – which we encourage – of the kind of ‘balance sheet’ first recommended by Thorpe LJ, albeit in a very different context, in Re A (Male Sterilisation) [2000] 1 FLR 549, 560.*

92. Referring to highlighted cases where a proper analysis of the options by the relevant social work team were either missing or inadequate, Sir James Munby, then President of the Family Division said:

40. *This sloppy practice must stop. It is simply unacceptable in a forensic context where the issues are so grave and the stakes, for both child and parent, so high.*

93. Over the last few years, I have become increasingly concerned that the clear guidance set out in *Re B-S*, which led to the term “*Re B-S* analysis” has either been forgotten or

is no longer forming part of the training that social workers receive. I have noticed a gradual slide towards a linear analysis, often without any proper analysis of the pros and cons being included at all.

94. I am afraid that this case is one such case.
95. In the final social worker statement dated 24.05.2024 there is at page 34 the “*Realistic options analysis*”. That is the way that it is phrased in the table of contents and that is the way it is headed at page 34. That realistic option analysis commences with a table with 3 columns. The first column is titled “Long-term placement options explored”. Under that header are 6 options:
- A) C to remain in the care of the mother subject of no order/ supervision Order/ Care Order.
 - B) D to remain in the care of the mother subject of no order/supervision order/ Care Order.
 - C) C to be placed in care of B subject to a CAO and SO
 - D) C to reside with B subject to an interim care order
 - E) C to be removed from parents care and placed with family/friend/foster carer subject of a Care Order
 - F) D to be made subject of a Care and Placement Order with a plan of adoption
96. The next column is headed: “*Is this option realistic and viable or has it been discounted?*”. In that column every option has been marked “Discounted”, except for the Local Authorities settled plan that C be placed in B care and that D be made

subject to a Care and Placement Order. Those two options, and those alone, are labelled “realistic”.

97. The final column is headed: “*Reason(s) why it is viable or why it has been discounted?*” What then follows under each option is either a justification as to why it has been either discounted or a justification as to why it is realistic. There is absolutely no analysis of the pros and cons of each option. As I say, it is simply a justification of the column 2 marking. For example, under the discounted option of C remaining in the care of the mother column 3 reads:

“The mother has not completed any of the recommended work in respect of her mental health and it is the view of the local authority that this option would not provide C with any safety and that she would be at risk of significant harm. The work the mother needs to complete is not within C’s timescales and there is no order that would enable C to be safe in her mother’s care”

98. It is with considerable alarm that I then read that the “analysis” for D remaining in the mother’s care, is identical, word for word, except for replacing the name C, for D.
99. Turning to the only realistic option for D identified by the Local Authority, that being adoption, the third column reads:

The local authority is of the view that there are no viable family to safely care for D to ensure his needs are consistently met and prioritised. He is a young boy who requires permanence, a safe and loving home where he can be accepted into a new family remain there, free from the risk of harm into adulthood beyond.

100. After the table the LA’s “preferred and proposed placement option” is set out. In respect of D, it reads:

The preferred and proposed placement option is for D to be placed for adoption.

Adoption would mean that D would sever all ties with his birth family and contact would take place on an indirect basis only. D would no longer be part of his birth family or have an ongoing direct relationship with the mother.

The plan of adoption would allow D to be cared for by safe adults, who would ensure that his needs are prioritised above their own. D would be safeguarded from poor parental mental health.

The Local Authority will always support and prefer parents to care for their children where they can. However, due to the historical involvement and significant concerns around the mother's mental health and her disengagement from mental health services, the Local Authority cannot support a placement with the mother. An adoptive placement will ensure that D's needs are fully met, and he will be free from significant harm.

101. That justification is an echo of what was said earlier in the statement, **before** reaching the realistic options analysis, following consideration of the strengths and weaknesses of the mother's parenting:

*"The Local Authority feel that a **plan of adoption is the only viable option** to support D. The Local Authority are concerned that the mother did not engage in NHS CBT which has now led her to be on the waiting list for IMPACT, this waiting list is up to twelve months, and this is simply not within the timescales of D. D needs to be able to have safe and consistent care from the adults around him [my emphasis]"*

102. I am afraid that the final social worker statement is lacking in terms of a proper analysis of the pros and cons of the options available to the Court for D; placement

with the mother or a plan of adoption. Even where there is some rudimentary analysis of the cons of adoption, any weight to be applied to such analysis is lessened due to the linear approach having been undertaken in respect of the options.

103. It is simply not good enough.
104. I raised my concern that there was a deficiency in the analysis with the social worker when she gave oral evidence. To her credit, she accepted that a proper *Re B-S* analysis had not been set out within her final evidence. I then went through the process of identifying with her in her oral evidence, the pros and cons of each option in respect of D. My concern is not that she was unable to articulate the clear pros and cons for each option, but rather the lack of evidence that the process had been undertaken in a non-linear way before she reached her conclusion on final planning.
105. The social worker informed me that, as set out within the final evidence, the Local Authority's view had been reached on three main strands:
 - a) Mr Marshall had identified issues specific to the mother around her mental health, including but not limited to impulsivity and lack of insight, which would have a detrimental impact upon the children if they were exposed to such behaviours, including the mother not prioritising their needs
 - b) Mr Marshall had identified the need for the mother to undertake therapeutic interventions to lessen the risk to the children
 - c) The mother had failed to engage properly, or at all, with the therapeutic interventions that had been arranged by the mental health service.

106. I have used the words “lessen the risk to the children” intentionally in (b) above. Like the submissions made by the local authority in closing, I formed the impression from the social worker’s oral evidence that a risk of exposure to the mother’s underlying mental health presentation, had been read as a risk of a child suffering significant harm in the mother’s care. And that without a proper analysis as to how “risk of exposure” converted to “risk of harm”, and what that harm looked like, then inappropriate weight was placed on his reporting.
107. In respect of the evidence of the efforts made by the social worker to engage the mother in attending pre-CBT work, I accept her evidence to the requisite standard. Although I am not clear as to the dates, I do accept that this social worker was trying to ensure the mother attended therapeutic work.
108. The social worker also raised some concern in respect of the mother’s contact with the children. Primarily, the concern expressed was that the family time appeared at times to be chaotic, with the mother unable to implement boundaries or share her attention between the two children. The latter is pleaded within the welfare findings sought, as the mother being inconsistent in her ability to provide emotional warmth. The social worker was able to point to a number of examples within the evidence to support that concern. Under cross-examination, the social worker accepted that the mother had, for a significant period of time within the proceedings, been suggesting that her contact could be separated or managed differently. The social worker told me that consideration had been given to how the contact might be managed, including separating out the siblings contact with the mother. However, I was told that there is a long waiting list for family time and the resources were not available to allow contact between, for example, D only and the mother to take place. The social worker also

accepted in cross-examination that the evidence was not before the Court to say that the mother could not meet D's needs alone in contact. She said:

"I can understand why the Court might think that is a gap"

109. I found the social worker to be a genuine and honest witness who was only trying to assist me in her evidence. However, I formed the view that significant reliance was placed on the opinion of Mr Marshall, perhaps inappropriately, and that such reliance had steered the final planning for the Local Authority without an adequate realistic options analysis being undertaken.
110. I am very alive to the pressures placed on social workers in the current working climate and what a difficult job it is, often without expressed praise or gratitude. I do not want any of the concerns I have raised to give the impression that I consider the allocated social worker to have done a poor job in this case. When I consider the case papers, I have had no cause for concern about her social work on the ground. My concern is that this allocated social worker, having qualified in 2022, may not have been taught in training the very important lessons set out by the Court of Appeal 11 years ago. What is important moving forward, is that the Court is provided, in each relevant case, with a full and reasoned *Re B-S* analysis, so that the Court, and parties, can understand how the Local Authority has reached the conclusions it has.

Parental evidence

111. I then heard from the mother. The mother presented as very anxious from the witness box. I have reminded myself of the mother's particular vulnerabilities and have been careful not to assess the mother from the witness box based solely on her presentation.

112. The mother told me that things had reached “*a head*” in May 2023, where everything simply became too much for her. She told me of the progress that she had made at Roseberry Park. She told me about the work she had done with her mental health team, in particular one worker Georgina, with whom she had a good relationship. She told me that she felt that she was being given different messages as between Mr Marshall and the mental health team who were engaged with her on the ground.
113. I was initially confused by the mother’s evidence. She told me that she understood that she needed therapeutic input and then, later, told me that she thought that she was coping well and could care for D. She told me that she did not need to do DBT, because her mental health team said it wasn’t right for her. She told me that she didn’t need to do CBT as it was more about coping strategies and not about counselling. She said:
- CBT s not counselling, Counselling is thorough and in depth. CBT is about coping strategies.*
114. The mother told me that she hoped to access counselling through Harbour. It was counselling which she said she thought might be the best help for her.
115. The mother told me that she had already undertaken CBT courses in 2017, 2018 and 2019. She told me that she understood what CBT taught around coping strategies and that was not what she needed. She told me that she had worked well with her mental health team who had helped her with coping strategies and recognising her triggers.
116. Upon reflection, I consider the mother was telling me that she accepted that she needed support going forward, but that the work identified by Mr Marshall was not necessary to allow D to return safely to her care.

117. I was also unclear about the mother's evidence in respect of the plan for C. I was told at the commencement of the hearing that the mother accepted the plan in respect of C. However, during her evidence the mother told me that she thought she could also care for C. I formed the impression that the mother's position had changed. However, in submissions, it was made clear on the mother's behalf that it was still her ambition, at some point in the future, to reach a position whereby she was sharing C's care with B. However, she accepted that C needed to be with B at this stage.
118. I took from that submission that the mother did not want to say that she did not want C to live with her. I accept that she does want that very much. However, I understand what a hard thing it must be for the mother to say that she wanted to prioritise D and her concern about how that might make C feel.
119. The local authorities interpretation of Mr Marshall's evidence was clear in the way that questions were framed of the mother in cross -examination. I noted the following exchange:

Q: You are aware that Mr Marshall has produced a report? And you have had that report since October 2023?

A: Yes, I know that Mr Marshall did a report. I am not sure if I got it in October though. I got it myself and read it. I do not know if I got it in October, it may have been a couple of weeks ago. I understood that he was recommending DBT which was not agreed [by Wessex House].

Q: You are aware that what he was saying was that you needed ongoing support for your pervasive difficulties?

A: Yes

Q: And that he was saying that it was important for you to continue your engagement with mental health services and maintain your medication.

A: Yes. I understood that.

*Q: And do you understand that his opinion, whose opinion is not challenged, is that any children would be **at risk of significant harm** [my emphasis] in your care until you do that work?*

A: Yes

120. As I have already set out, that is not the opinion expressed by Mr Marshall, but rather the position of the local authority.
121. There was one area of particular concern from the mother's evidence. At the start of the final hearing I was provided with a letter, produced by C, indicating that she wanted to live with her mother. When it was explored in evidence as to how that letter was produced, the mother told me quite candidly that she was concerned that C ought to be listened to and had suggested she write me a letter. The mother did not seem to understand the pressure, especially at this later stage in proceedings, that the suggestion would put on C. There were other elements of the mother's evidence in respect of C which caused me concern. For example, when asked about the appropriateness of conversations, or things said to C in contact, the mother appeared to believe that because C is 8 years old, she should only be told the truth.
122. Whilst I accept the importance of a parent being truthful to an 8-year-old, it seems to me that the mother did not seem to grasp the nuanced way that things could be discussed, or closed down with an 8 years old, so as to protect them from what you might consider to be the truth. I was concerned that the mother did not seem to

recognise that what she said to C, in particular in respect of B, might negatively impact upon her.

Children's Guardian

123. Finally, I heard from the children's Guardian. Ms Patterson had produced a final analysis dated 18th June 2024. The Guardian supports the LA plans for C and D. In respect of the former, she had suggested that the Supervision Order ought to be 12 months in duration; something the Local Authority took onboard and agreed.
124. The Guardian's analysis raises a number of understandable concerns in respect of the mother's engagement with services, following on from Mr Marshall's report, and despite what seems to have been support put in place by the local authority to encourage her to engage.
125. The Children's Guardian did produce a very helpful and full *Re B-S* analysis, weighing the pros and cons of each option before arriving at her conclusion. She refers to *Re B-S* specifically within her analysis and stresses the high nature of the test that must be met before a Court can sanction a plan of adoption. Having considered all options, she has formed the view that nothing but a plan of adoption for D will do, so as to meet his welfare needs now and into his majority.
126. Ms Patterson maintained that view in her oral evidence. She accepted all of the positives put on the mother's behalf but told me that her view was that until the mother had undertaken the work recommended by Mr Marshall then it would be unsafe to place D in her care. When asked whether she was encouraged by the mother's engagement with her mental health team, Ms Patterson said:

Not really, no. In December 2023, 6 months ago she told me she would do anything for her children. She knew in January 2024 that the Local Authority plan was not for D to be with maternal grandmother. But she has not done anything.

127. I take Ms Patterson to be raising understandable concern about the mother not engaging with Wessex House, to the point that they discharged her from the psychological team.

128. When it was suggested to Ms Patterson outright, that this was not a case that met the test for adoption, Ms Patterson responded:

In this case, Mr Marshall did an assessment of the mother. He made recommendations as part of that assessment. Whilst Wessex House did not agree that the mother was suitable for DBT, they did then offer CBT. We are now in June and CBT has not started. Nor do we know when it will start. I have to think about the timeframes for D. And where we don't know whether it would start or how successful it would be, I cannot say that delay would therefore be in D's best interests.

129. Ms Patterson is an experienced and well-respected Guardian who often appears in my Court. I am impressed with the analysis that she has undertaken in reaching the view that she has. But I remind myself that the evidence of the Guardian is yet another piece of the evidential picture, which I must consider and feed into my overall analysis alongside all of the other evidence in this case.

Findings sought

Threshold

130. As I have indicated earlier in this judgement, I am satisfied that the conceded parts of threshold are made out on the evidence and meet the threshold under s.31 Children Act 1989. I turn to those matters which are not accepted by the mother.

Finding sought: 2(i): C has suffered physical harm as a result of Mother assaulting her on 5th May 2023 following Mother taking medication not prescribed to her for the preceding five days in an effort to overdose

131. I understand the mother does not agree that finding on the basis that the chronology is wrong. As the mother told me in evidence, and as she told Mr Marshall, the incident with C had occurred first. She agreed for C to stay with B, albeit she is clear to me in her evidence that she did not consider it was to be long-term. It was after that when the mother started to take medication over a number of days before finally telling the social worker what she had done. As I have already indicated, the LA case on the chronology is unclear and I prefer the evidence from the mother. I make the following two separate findings instead, satisfied that they are made out to the requisite standard:

Finding 2 (i): C has suffered physical harm as a result of Mother slapping her on 5th May 2023.

Finding 2 (ii): C and D were at risk of suffering significant emotional harm as a result of the mother's overdose following the incident involving C on 5th May 2023.

Finding sought: 2(ii) C has reported Mother telling her she can't survive without her mummy because she is the most important person in the world. This, coupled with the sudden death of D's father, had led to C being anxious that her or mother may die if they are not together

132. The evidence from this pleading comes from a conversation that the paternal grandmother has with a social worker on 12.05.2023. This was at a time when C was in the care of B following the incident between the mother and C on 5th May 2023. Paternal grandmother tells a social worker that C has informed her that the mother attended at the school fence and had spoken with her. The recording sets out the following: *C became upset and crying. C advised that mummy had said to her that mummy was the most important person in the world and that C cannot survive without her mummy. C became visibly upset and crying and advised that she believes mummy or herself may die if they are not together* [my emphasis].
133. The mother accepts that she attended at the fence, told C that she loves her and wants to live with her, and that making such comments were wrong and will have caused C emotional harm. When asked by Mr Marshall about that incident, the mother was adamant that she would not have said that C could not survive without her mummy.
134. I have read the above recording carefully, upon which the Local Authority rely. I have my concerns from that recording as to whether the paternal grandmother is saying that it was the mother who said that C “cannot survive”, or whether it was C who was saying she “cannot survive” without her mummy. However, even if it was the latter, my view is that the mother’s attendance at the school fence, no doubt in an emotional state resulting, as the mother told me in evidence, with C becoming upset and distressed, was an emotionally harmful thing to do. On balance, I am satisfied that the following finding is made out to the requisite standard:

Finding 2(iii): Following the incident on 5th May 2023, the mother attended at C’s school fence and told C that she loved her and wanted to live with her. The circumstances of

that attendance caused C upset and distress and would have been emotionally harmful to her.

Finding sought: 4 In the care of Mother and maternal grandmother, the children have been exposed to frightening adult behaviours and domestic violence which will have caused them emotional harm and placed them at risk of physical harm

4(i) On 9th August 2022 police were called as a result of a physical altercation between Mother and maternal grandmother, where they were fighting on the floor, pulling each other's hair. Both C and D were present.

135. Although the mother accepts the factual basis of the finding, she does not accept that the altercation placed the children at risk of physical harm. The mother accepts that the children were in the house, upstairs, whilst the altercation took place downstairs. The mother told me that the altercation lasted about 2 minutes and the children never came down.

136. The local authority submits that if the children had come down during the altercation, then they may have been caught up in the altercation and physically harmed. I am not satisfied that the Local Authority have proven to the requisite standard that there is a real risk of that happening in that hypothetical situation. I am satisfied that the proportionate finding is that:

Finding 4(i): On 9th August 2022 police were called as a result of a physical altercation between Mother and maternal grandmother, where they were fighting on the floor and pulling each other's hair. The children were in the house at the time and although not present during the incident were exposed to a risk of emotional harm.

Welfare

137. Finding 1 (i) through (iii) are taken verbatim from Mr Marshall's substantive report. In so far as they relate to his assessment as of October 2023, on balance I accept Mr Marshall's opinion.
138. Findings 2 and 3 are pleaded by the Local authority as a consequential finding from those paragraphs that the children would be at risk of significant harm if they were to be returned to the care of the mother, including in circumstances where the mother has failed to engage in CBT. I will discuss those findings shortly at paragraph 149 onwards, as I identify the harm in this case and consider the risks and consequences of it arising.
139. Finding 4 is pleaded as follows:

Proceedings in relation to maternal grandmother's daughter concluded in March of this year, with the court finding that maternal grandmother had lied to professionals and the court about remaining in contact with her ex-partner who was a known perpetrator of domestic abuse. The court further endorsed a final care plan that would see maternal grandmother's daughter residing out of her mother's care, with a requirement for contact to be supervised. As such, D would be placed at risk of significant physical and emotional harm were he to be placed in the care of his Maternal Grandmother..

140. That finding is a matter of record. I have carefully considered the judgment of DJ Lalas from 13th March 2024 and am satisfied that the finding is made out, in so far as it relates to either of these two subject children residing in the care of the maternal grandmother.
141. Finding 5 is pleaded as follows:

During family time, mother, is inconsistent in her ability to provide emotional warmth to either of the children and is unable to implement boundaries, which in turn has caused the children to suffer emotional harm.

142. I have carefully considered the contact records provided in support of that pleading. I have done so in the context of the social worker accepting in evidence that separate contact was not progressed due to resources and that there was no evidence in respect of the mother's ability or inability, to meet one child's needs alone. I can understand the concern of the local authority and the concerns arising out of the mother's management of contact involving both children together; those concerns are set out clearly in the contact records.
143. However, I am not satisfied that the finding as pleaded is a fair or accurate reflection of the mother's ability to meet a single child's needs in contact or provide emotional warmth. I am certainly not satisfied, in so far as it relates to D, that the local authority has proven to the requisite standard that the mother would be inconsistent in her ability to provide emotional warmth to D and would be unable to implement boundaries so as to cause emotional harm. Whilst I am sympathetic to the issue with a lack of resources, I am mindful that I must not reverse the burden of proof. It is for the Local Authority to prove the finding.
144. On the evidence I am satisfied that the following finding is made out:

Finding 5: During family time involving both children together the mother can be inconsistent in her ability to provide emotional warmth to both children at the same time and is unable to implement boundaries, which in turn has caused the children to suffer emotional harm.

145. Finding 6 is pleaded as follows:

Maternal Grandmother has been inappropriate during supervised family time during the course of proceedings, speaking regularly about the court process, adult matters, and informing D that he will be coming home. D's mother has failed to intervene during contact sessions, demonstrating a lack of insight into her mother's behaviour. Neither maternal grandmother nor the mother have been able to demonstrate an understanding of how issues such as this are inappropriate, subjecting the children to significant emotional harm

146. I have again carefully considered the contact records in support of this finding. I have also considered the concerns, raised previously, that I have had about the mother's understanding of the impact on the children of the things she says in contact. There is evidence that the children have been exposed to adult issues, with C referring to herself as being anxious and using other adult-based phraseology. I am satisfied on all of the evidence I have read and heard, that the finding is made out.

147. As I go on to undertake my welfare analysis of the realistic options, I filter those findings, both threshold and welfare, into that analysis.

Identification of Realistic Options

148. I turn then to identify realistic options for D and C.

C

149. The only realistic option I am asked to consider for C is one of placement with her father. No party seeks to persuade me that there is any other option to consider. There

remains an issue in respect of frequency of contact, which I will consider in due course.

D

150. No party has attempted to persuade me that long-term fostering is a realistic option in this case. Ms Patterson has properly raised it as an option within her analysis and I agree with her view that this is not a case, in D's particular circumstances, whereby long-term foster care is a realistic option. For D, there are but three realistic options:

A) A plan of rehabilitation back into the care of the mother, underpinned by the least interventionist Order to keep D safe.

B) A plan of permanence outside of the family by way of adoption, underpinned by the making of a final Care Order.

C) An adjournment of the proceedings, for some indeterminate period but probably lasting in the months, to allow the mother to engage in therapeutic work.

Identification of harm and assessment of risk

151. As I have indicated earlier, in public law proceedings it is often that element of harm, or risk of harm, within the 1989 and 2002 welfare checklists which becomes the primary focus when engaging principles of necessity and proportionality. As I go on to undertake a balance sheet analysis of the identified 3 competing realistic options, I will be considering not only the findings I have made, but also filtering into that analysis the relevant parts of the welfare checklist. To that end, it is right that I should at this stage ask myself those 4 important questions about the harm in this case:

a) What is the type of harm that might arise?

- b) What is the likelihood of it arising.
- c) What are the consequences: what would be the likely severity of the harm to D if it did come to pass?
- d) Risk reduction/mitigation: would the chances of harm happening be reduced or mitigated by the support services that are or could be made available?

Emotional harm A

152. As I consider all of the evidence as a whole, and Mr Marshall's report specifically, I am satisfied that the primary type of harm D would be exposed to in his mother's care, would be emotional harm. The harm arises should D be in the mother's care when she has a mental health crisis as she did in May 2023, or more generally exposed to presentations occurring as a result of her underlying mental health difficulties. The latter is described by Mr Marshall as the mother being a particularly reactive individual who at times experiences difficulties in regulating herself emotionally. If there were a decline in the mother's mental health or she became distressed following an accumulation of difficulties, she may not be in a position to adequately meet D's needs and may prioritise her own needs and act impulsively because of her own emotional crisis.

153. I consider the emotional harm primarily to therefore be two-fold:

- a) Exposure to the mother's general presentations, which may impact upon her ability to provide consistent and stable care

- b) Exposure to the mother's presentation at times of heightened levels of distress or mental health deterioration, which may lead the mother prioritising her own needs over D's needs.

154. D might also suffer emotional harm as a result of being exposed to frightening behaviours, such as the altercation between the mother and the maternal grandmother in August 2023.

155. I then consider how likely it is of that harm arising. What is the risk of it occurring? In answering that question, I look not just at Mr Marshall's evidence but at the entire evidential picture before me. Mr Marshall quite properly identifies long-term issues that the mother has, which require further work. He expresses a view as to the risk of the children being exposed to the mother's presentations. But that does not equate to the children being at risk of significant emotional harm, as submitted by the local authority. I keep in mind the following aspects of the evidential picture:

A) The mother had, up until May 2023 safely cared for D for almost 2 years and C for 7 years, despite the underlying issues identified by Mr Marshall. The local authority had previously been involved but, as far as I am aware, had not raised concern in respect of the mother's ability to provide good enough care generally, or raised concern in respect of her mental health specifically. I make clear that I am mindful that the mother is likely to have been significantly impacted by the circumstances of H's death in February 2022, but the issues raised by Mr Marshall are couched as "longitudinal" issues which had existed long before May 2023 and had resulted in her diagnosis when she was 18/19 years old.

B) That after the incident on 5th May 2023, the mother immediately told the school about what had happened which led to the safeguarding referral.

- C) That after the incident on 5th May 2023, the mother agreed to C going to stay with B.
- D) That although the mother engaged in a prolonged overdose process, she had made arrangements to reduce D's exposure to her decision making.
- E) That at the time of the incidents in May 2023 and her breakdown in early June 2023, she was experiencing the first anniversary of H's death.
- F) That at the time of the incidents in May 2023 and her breakdown in early June 2023, she had been regularly consuming cannabis.
- G) That she has remained abstinent from cannabis use since June 2023
- H) That she engaged well with Roseberry Park and made progress leading to her discharge.
- I) That she has engaged well with her mental health team, even though she has not attended the CBT sessions arranged for her.
- J) That for the last year, contrary to the suggestion made by the Local Authority, I find that the mother has been under immense stress, in particular following the removal of D from the MGM's care, the breakdown of a romantic relationship and the LA formulating a plan of adoption for D
- K) That despite that extreme stress, there has been no significant deterioration in the mother's mental health since her discharge from Roseberry Park in/or around 25th July 2023.

- L) That the mother has been honest with professionals, and the Court, that she has struggled with the current situation but has not acted impulsively or reactively to her feelings of low mood, anxiety, or depression.
- M) That Mr Marshall was forming a view in October 2023, when the mother was living insecurely in a hostel having recently been discharged from Roseberry Park and has not met with the mother for some 9 months.
156. When I consider that evidence alongside that of Mr Marshall, I am led to the view that the risk of D suffering a degree of harm through general exposure to the mother's presentations is high. However, when I consider the likelihood of D being exposed to the kind of deterioration of the mother's mental health that occurred in May/June 2023, then for the reasons set out above, I consider that risk to be real but not high.
157. I then look at what the consequences for D would be if he did suffer that emotional harm. It is a question of the severity of the harm. As I have indicated, I do not accept that Mr Marshall opines that it would be significant harm; again, he refers to "some degree" of emotional harm. The determination of severity, or consequences, is one for me. I consider that the consequences for D would be that a deterioration in the mother's mental health would likely result in his needs not being properly met and neglected. The mother may not be able to prioritise D's needs. He may need to be removed from the mother's care, causing disruption and instability. He may be impacted emotionally and psychologically by the mother's presentations, at its extreme in terms of the mother self-harming or incidents of overdose.
158. The consequences of D being exposed, more generally to the mother's presentations arising from ongoing issues with her mental health, are less severe. I agree that there is likely to be some degree of emotional harm. D may grow and recognise that his

mother is particularly upset or sad on occasions, and that may have an emotional impact upon him. Exposure to the mother's presentations may impact at times upon his own mental health.

159. But I remind myself again that the mother has cared for these children over a number of years without evidence of them being negatively impacted until the events of May 2023. I remind myself that many parents up and down the country suffer from poor mental health, but are still able to parent safely
160. I consider that the risk of the emotional harm arising can be mitigated by the mother's continued compliance with appropriate medication and support services. She has engaged well with those support services since her discharge from Roseberry Park until her discharge in May 2024. She can be supported with referrals, if not made already to IMPACT for CBT and Harbour for counselling work. A plan could be put in place, involving wider services, whereby the mother could reach out and obtain support if she needed it. Whilst I do not mean to minimise the stresses of raising a child, I am drawn back to the fact that there has now been over a year whereby the mother has accessed support and assistance, through professional services, maternal grandmother and her close friends, and has not been impacted by way of a significant deterioration in her mental health.

Emotional harm B

161. I also consider the type of harm caused to both children if they were exposed to adult conversations, as I have found they have been during these proceedings. The type of harm is emotional harm and the risk of that harm occurring in respect of D are different, in my judgement, to that in respect of C. For C there remains an element of hostility as between the maternal family and B.

162. I have already expressed my concern as to the mother's inability to grasp that conversations she has had in contact may be inappropriate. She specifically did not seem to understand that things she says to C may have a negative impact upon her, both in terms of negative way she may frame B, but also in terms of C's ability to feel settled and secure in B's care. For as long as C remains in the primary care of B, there is a high risk that the mother's interactions with C may continue to make her feel that way. The consequences of that behaviour are that C may not feel able to settle into B's care. She may not feel that she has been given permission to be happy and secure in B's care.
163. It is less likely that D will be exposed to that emotional harm because B is not his father. However, I remain concerned that the consequences of that harm might add to the concerns that I have already read about in the sibling assessment, in respect of the sibling relationship. There is a real risk that if D is exposed to negative views of B, whilst C is living in the care of B, that the sibling relationship may be negatively impacted.
164. In my view, and package of support for the mother must include work undertaken with the mother, be that with a family support worker or by way of a programme, to assist the mother's understanding of the impact of such behaviours on a child. Specifically, as the mother's behaviours relate to emotional harm of this type suffered by C as result of her contact with the mother, the harm can be mitigated by the mother's contact remaining supervised until she has been able to access that work and/or programme which will then reduce the risk of the emotional harm and the need for supervision.

Physical harm

165. The secondary type of harm is physical harm. As I consider the papers, I am satisfied that the potential for physical harm arises solely from the evidence in respect of the incident on 5th May 2023. Like the emotional harm, the physical harm is linked to the mother's emotional and mental well-being.
166. In respect of the physical harm, I consider the likelihood of it occurring to be low. The only time that this mother has caused physical harm to either of her children was when she slapped C on 5th May 2023. Since the death of H, the mother had not had any professional support round that loss. I am satisfied that a number of factors resulted in her slapping C, including the anniversary of H's death, her regular use of cannabis and the change in the support that MGM was able to provide. I consider her actions to have resulted not as a result of her general and ongoing mental health difficulties, but when coping with extreme life events, such as the anniversary of the death of her fiancé in the circumstances he dies and was found, have become particularly difficult.
167. The consequence of the harm is that the mother may act impulsively and strike D if he were misbehaving. I do not minimise any physical harm caused to a child, but I remind myself that the sole evidence I have as to the physical harm caused at the point whereby the mother's mental health was reaching crisis point, is a slap which caused no marks.
168. I consider that the mother could be supported in parenting work to reduce an already low risk that the mother would act in such a way again. A support plan could be drawn up, identifying agencies to contact if the mother was feeling low or at a crisis point, which would mitigate the risk that the children would be exposed to either emotional or physical harm.

169. Drawing that analysis together in terms of the welfare findings sought by the local authority at paragraphs 2 and 3, I find on balance that the following findings are made out on the evidence I have before me:

2. As a result of the above, and in the context of the evidence as a whole:

a) a child in the mother's care would be at significant risk of harm if there was a significant deterioration of the mother's mental health. The likelihood of that harm arising is low, but could be lessened further were the mother to engage in CBT work, which she has failed properly engage with during the proceedings.

b) a child in the mother's care would be at risk, generally, from suffering emotional harm as a result of being exposed to the mother's presentations arising from her own mental health difficulties.

Realistic option analysis

170. Having undertaken that assessment of harm, I then go on to consider that harm, and risk of harm, as part of my global analysis of the realistic options and my applications of the principles of necessity and proportionality. As I do so, I have the welfare checklist firmly in mind, even if I do not specifically refer to each paragraph of that checklist.

171. The advantages of returning D to his mother's care immediately, are obvious. It would allow D to remain part of his birth family. It would ensure that the bonds that he has undoubtedly formed in the care of his mother, and then through regular contact since separation, would be preserved. It would mean that he would have not just the opportunity of being brought up by his biological mother, but within the wider family unit. He has connections with other family members, in particular, with the maternal

grandmother and his maternal aunt J, and those relationships would also be maintained.

172. Whilst I am alive to the outcome of the sibling assessment, I am also alive to the wider evidence which suggests that C has talked about D in a positive way and that, in the Guardian's view, C does have an attachment to D. Placement of D in the mother's care would allow for the potential of development of that sibling relationship and bond. It is often said that sibling relationships are the most enduring, lasting beyond the deaths of parents.
173. Growing up within his family would provide the benefit of security of identity; knowing his place in the world and how those around him fit into that world. He would be loved, as I have no doubt the mother and the maternal grandmother love him.
174. The disadvantages of returning D to the mother's care are fundamentally based around the continuing risk of emotional harm that I have identified. That risk manifests in general as part of the mother's ongoing presentation as a result of her poor mental health. However, both the severity of the harm and the risk of it increases, should the mother's mental health deteriorate to the point that it did in May/June 2023. The concern is that the mother's poor mental health may impact negatively upon D, not just now but throughout his life. There is a real concern that the mother has not seemed motivated previously to engage in therapeutic intervention when offered, and that those issues identified by Mr Marshall around the mother's presentations, and inability to prioritise a child in her care, particularly at points of crisis, would remain unresolved.

175. A further disadvantage is that D may be exposed to ongoing inappropriate and adult based conversations, as have been observed in contact. As I have discussed, that would likely be emotionally harmful to D but may also be counterproductive in terms of rebuilding any relationship between the siblings.
176. There is also the identified risk of physical harm, should the mother's mental health significantly deteriorate.
177. I look to the advantages of refusing to conclude the proceedings now, that being the second of the two options put forward by the mother. It would mean that more time would be given to the mother to evidence whether she is able to engage with the CBT work recommended. It would allow for a longer period of time to evidence whether there has been a deterioration in the mother's mental health. It would allow the mother to undertake other courses or programmes associated with bereavement and parenting work.
178. The obvious disadvantage to adjourning the case is the delay that would be caused. At the end of this month, these proceedings will already be 1 year old. I remind myself that issues of delay are so significant that not only is there a 26-week statutory timescale for public law proceedings, but that the reason for that timescale is because any delay in determining the proceedings is likely to prejudice D's welfare (s.1(2) CA 1989).
179. I ask myself what the purpose of that delay would be and if it would be meaningful. If the purpose of the delay is to allow the mother to undertake CBT, then I remind myself that the mother has already undertaken CBT on 3 occasions, the last time being in 2019. Whilst I am told that the mother is now on a waiting list, I have no

evidence as to how long she will be on that waiting list or how long the CBT will take.

180. If the purpose of the delay is to allow additional time to evidence a sustained period of time where the mother's mental health has not declined, I remind myself that here has now been a period of some 12 months where, even under the stressors of these proceedings and the plan of the local authority, there has not been a decline. I ask myself, rhetorically, how long is long enough?
181. If the purpose of delay is to allow the mother to engage in other therapeutic interventions, such as bereavement counselling or parenting work, then I do not have timescales for that work.
182. Any delay has to be meaningful. Identification of work to address the mother's underlying mental health difficulties is important, as is engagement and completion of such work, but I must look to the necessity and proportionality of that work taking place whilst long-term decisions for D remain outstanding.
183. I look at the option of adoption and the advantages first. Such a placement offers the prospect of carefully selected carers committed to meeting D's needs and with a lifelong commitment to emotional security and stability. It is a regime that gives a child an opportunity to establish an enduring relationship with primary caregivers and gives to a child that sense of permanence and what is often described in these courts as a "forever family". Adoption would allow D to build long-term and enduring relationships with a new family, the benefits of which would stay with him throughout his life. He would have a family life free from the intrusion of the State. There would be an element of normality to everyday family life. He would no longer be at risk of the emotional harm that I have identified, may be caused to him if he were in the care

of his mother. He would not be at risk of being exposed to the mother's presentations and behaviours, as identified by Mr Marshall.

184. The disadvantages in respect of adoption are as follows. First of all, the interference on the family life simply could not be greater. Although most adoptions are successful, a not insignificant number break down resulting in harm to a child. I acknowledge, as I must, Baker J's observation in *Re HA (A Child)* [2013] EWCA Civ 2974 that adoption is not and should not be considered a panacea. It would mean that contact with his mother would stop. The relationship between D and his mother would be severed in law and in fact. He would lose the benefit of the natural affection and love that his birth mother and wider birth family, could provide. Although the post adoption sibling contact landscape has begun to change, the reality is that it is likely that D's relationship, or opportunity of developing that relationship, with C would be lost.
185. Ceasing to be a member of his birth family by way of adoption severs all legal ties between a child and their parents and with it the risk of a damaging impact on the child's sense of identity and emotional wellbeing, not just now and during D's minority but also as the D enters into his majority and throughout the rest of its life.
186. I look then at each of those options through the lens of necessity and proportionality. I acknowledge the understandable concerns that have been raised in respect of the mother's mental health, in particular when her mental health deteriorates to the point that it did in May/June 2023. I do not minimise those concerns and note Mr Marshall's opinion that there is a significant risk that D would be exposed to the mother's impulsive responses and that particularly at times of distress, the mother may focus upon her own needs rather than prioritising D's needs. I also acknowledge

Mr Marshall's view that there is an ongoing risk that the mother may present as inconsistent in recognising and responding to D's emotional needs, if he were in her care.

187. However, when I have undertaken my analysis of the harm that may be caused, the likelihood of that harm arising, the consequences should that harm arise, and what could be put in place to mitigate the harm/risk of harm, I am drawn back inevitably to the question of the proportionality and necessity of the Local Authority's plan. Despite the clear and understandable concerns raised by Mr Marshall, and echoed by the Local Authority and Children's Guardian, I remind myself that this mother appears to have been able to adequately care for these children up until the incidents in May/June 2023. I am also reminded that this mother has successfully engaged with mental health services, both during her time in Roseberry Park and thereafter, without any concern being raised in respect of a significant deterioration in her mental health.

Conclusions

188. As I lay the realistic options for D side by side and consider their respective pros and cons in the context of the 2002 Act Welfare checklist, I am led to the conclusion that the local authority plan for D is neither necessary nor proportionate to meet the risk of harm associated with D remaining in the care of his mother.
189. As I weigh the risk of significant harm for D in respect of the Local Authority plan alongside a plan of rehabilitation to the mother's care, I have formed the clear view that this is not a case where nothing short of adoption will do to meet D's welfare needs. As I consider the option of an adjournment, alongside that analysis, I am not satisfied that the option of adjourning the proceedings for a period of time is either necessary or proportionate. In my view, an adjournment would achieve little when my

analysis concludes that D can be rehabilitated back into the care of his mother on the basis of the evidence already before the Court.

190. In respect of C, no party seeks to persuade me that the Local Authority plan is not the right one. Regardless as to the parties agreement, I confirm that I have undertaken my own welfare analysis, incorporating the 1989 Act Welfare Checklist, and am also satisfied that a plan of placement with B will meet C's welfare needs.

Issues of identifying support and contact

191. Acknowledging as I do, the risks associated with a plan of rehabilitation, it is my view that all must be done to ensure that a plan of rehabilitation is successful. In my view, a rehabilitation support plan ought to be prepared to identify how the mother will be supported, be it through professional support, agency support or family support. It should set out what referrals have been made and what referrals will be made including for CBT, parenting work and counselling.
192. I have carefully considered the role that maternal grandmother is able to play in supporting the mother. I have been told by the mother that she sees the maternal grandmother as a significant emotional support. Indeed, in my view it is likely that the absence of a significant deterioration in the mother's mental health has been positively impacted by the support provided by the maternal grandmother over the last year. I can see how the maternal grandmother may be in a position to provide not only that emotional support, but also practical support moving forward.
193. However, I am very alive to the findings made by DJ L alas earlier this year and the fact that the maternal grandmother's contact with her younger child, J, remains supervised. Despite the arguments put forward on her behalf by counsel, highlighting

the positive progress the maternal grandmother has made to address the risk of harm to J, as identified by DJ Lallas, I am not persuaded that the maternal grandmother's contact with either D or C ought to move to unsupervised contact. It is my view that there will need to be an assessment undertaken by the local authority to ensure that it is safe to progress in that way.

194. But that does not mean that the risks identified by the Court in respect of J, mean that the maternal grandmother cannot play a practical support role for the mother. For example, I have asked myself what the risk would be to D of the maternal grandmother attending at the mother's home to practically assist her or to let the mother have rest, whilst maternal grandmother looks after D. In my view, the risk of D being exposed to the type of harm identified by exposure to the maternal grandmother's inappropriate relationship, and dishonesty about that relationship, is low. In my view, it is that type of support which ought to be clearly set out within a support plan.
195. I have considered the frequency of the mother's contact with C and whether it ought to remain supervised. On the basis of the decision I have made in respect of D, and the findings I have made in respect of issues within contact, I consider:
- a) A plan of rehabilitation for D is not without risk. The mother has not cared full time for a child since early June 2013. The success of that rehabilitation must not be jeopardised by setting the mother up to fail.
 - b) In my determination a reduction in contact between the mother and C to 1 x per week, is therefore in D's best interests.

- c) A reduction of contact to 1 x week allows C to understand that she is going to be in B's long-term care, whilst ensuring that the relationship with her mother is maintained through a fairly high level of contact.
- d) In my view a reduction of contact between the mother and C to 1 x per week, is in C's best interests.

196. On that basis I approve a plan whereby the mother's contact with C is reduced to a frequency of 1 x per week.

197. I have then considered whether the mother's contact with C ought to remain supervised. In doing so, I am mindful that I have determined that D can be returned to the mother's care, which of course clearly indicates the absence of any need for supervision as between D and the mother.

198. However, I must look at each child's individual welfare and the risk of harm relevant to each specific child. In my assessment of risk of harm, I have identified the continuing risk of harm, specific to C, as a result of inappropriate conversations and comments being made in contact. Much is about to change for this mother. I have already set out my concerns in respect of her ability to understand and reflect upon how things said in contact may negatively impact upon C. There will need to be a plan as to how news of D's rehabilitation to the mother's care will be managed with C. Great care will need to be taken in contact between the mother and C to ensure that C is not negatively impacted by that news. Until the mother has been able to complete parenting work around inappropriate comments/conversations, there is an immediate need for the mother's contact with C to remain supervised.

199. I invite the local authority to consider some specific work with the mother around how to deal with the issue of D's rehabilitation to the mother's care in her interactions with C.
200. Although I am satisfied in principle that the right plan for C is for her to remain in the care of C and the right plan for D is a plan of rehabilitation, I will not make any final Orders today. There needs to a period of reflection on my judgment before the matter returns back for conclusion. I invite the local authority to accept the Court's analysis of risk and formulate a support plan to include those elements I have set out above. Whilst there is agreement in respect of the final Orders for C, I invite the local authority to consider what legal framework ought to underpin D's rehabilitation to the mother's care. I will hear submissions on that issue in due course.
201. That ends my judgment.