This judgment was delivered in private. The Judge has given leave for this judgment to be published. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.

IN THE FAMILY COURT

WZ (Placement with Grandparents)
Neutral Citation Number: [2024] EWFC 357 (B)

27 August 2024

Before His Honour Judge Middleton-Roy

Between:

The Local Authority Applicant

-and –

The Mother First Respondent
The Father Second Respondent

The Children 'W' and 'Z'

through their Guardian Third and Fourth Respondents

The Paternal Grandparents Fifth and Sixth Respondents

Ms Williams, Counsel for the Applicant
Mr Roscoe, Counsel for the First Respondent
Ms Baruah, Counsel for the Second Respondent
Mr Kerr, Counsel for the Third and Fourth Respondents
Ms Choudhury, Counsel for the Fifth and Six Respondents

APPROVED JUDGMENT

This judgment was handed down remotely at 15:30 on 27 August 2024 by circulation to the parties' representatives by email.

His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018 and June 2024, the names of the children and the adult parties in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain. Further, the Local Authority has not been named. Whilst the identity of the arm of the State bringing the application is generally in the public interest, the Court determines on the specific facts of this case that identity of the Local Authority is more likely in turn to lead to the identification of the children. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

The Application and background

2. The children with whom this Court is concerned are of dual European and African heritage. The oldest child is under 5 years old. They will be referred to in this judgment as 'W'. The youngest child, who is under 3 years old, will be referred to as 'Z'. The children are living in interim Local Authority foster care presently under an Interim Care Order made in October 2022.

3. The primary applications before the Court are the Local Authority's applications for a Care Order and a Placement Order with the care plan that both children are adopted. The Local Authority's applications are made against a background of concerns of neglect, physical and emotional harm of the children arising from domestic abuse between the parents, parental substance misuse, alcohol misuse and poor parental mental health. The family has been known to the Local Authority since October 2020, after the birth of the first child, following a police referral around domestic abuse. The Local Authority received several high-risk referrals from partnership agencies (NSPCC, police, Families First, and health visiting services) regarding increasing incidents of severe physical domestic abuse between the parents witnessed in the period from January 2022 to August 2022. The parents and the children were at all times living in the home of the Paternal Grandparents. The parents have been the subject of Local Authority intervention, which has included 'early help' through the local family centre, a package of individual domestic abuse intervention, intensive parenting support and a Child and Family Assessment. The Health Visitor raised concerns in respect of poor home conditions, the absence of a safe place to sleep for 'Z' and a lack of parental engagement. The mother was observed by the Social Worker to have bruising to her neck. The Social Worker was refused entry into the family home when an unannounced visit was attempted in July 2022. The precipitating event took place on 15 July 2022 when the police received four separate calls of domestic abuse incidents in the family home. The father was noted by the police to have two lacerations on his lip, leading to the arrest of the mother. The home conditions were described by the police to be "messy, dirty and not in a fit state to house children." The children were removed from the home by the police exercising powers of protection and placed in Local Authority foster care. A further police referral was received following a domestic abuse incident on 5 August 2022 when it was reported that the father punched the mother in the eye. The children remained in Local Authority foster care under a section 20 voluntary arrangements until the Local Authority issued its application on 2 September 2022, leading to Interim Care Orders being made by the Court for both children on 21 September 2022.

4. The disputed issue for the Court to resolve is whether the children should be removed from their birth family permanently, without the consent of their parents or whether the children should remain within their birth family, living in the care of their Paternal Grandparents.

5. The mother does not seek the return of the children to her care. The mother's position until the first day of this Final Hearing had been that she did not oppose the Local Authority's

applications for Care and Placement Orders and she did not oppose the care plan of adoption. The mother had opposed the children moving to the care of the Paternal Grandparents. On the first day of the Final Hearing the Court was informed that the mother's position had changed significantly. The mother now opposes the Local Authority's applications. She now supports the children moving to live with their Paternal Grandparents. The mother maintains the position she has held since August 2023, that does not seek the return of the children to her care, recognising she is not in a position to care for them safely.

6. The father does not seek the return of the children to his care. He too recognises he is not in a position to care for the children safely. He opposes the Local Authority's applications for Care and Placement Orders. He supports the children moving to live with his parents, either under a Special Guardianship Order, a Care Order or a Child Arrangements Order with a Supervision Order.

7. The Paternal Grandparents are parties to the proceedings. They oppose the Local Authority's applications and final care plan. They seek an Order endorsing the children moving to their care, either under a Special Guardianship Order or under any other legal framework.

8. The children are parties to the case through their Children's Guardian. The Guardian supports the Local Authority's applications for Care and Placement Orders for both children. The Guardian supports the Local Authority's care plan of adoption.

9. This case has a lengthy and exceptional litigation history. The case is approaching its second anniversary against the statutory time limit of 26 weeks stipulated by s.32(1)(a)(ii) Children Act 1989. The Court at all times had firmly in mind the provisions of section 1(2) of the Children Act 1989 which commands the Court, as a matter of law, to have regard to the general principle that delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of that child. Prompt determination of care proceedings under Part IV of the Children Act 1989 is not a mere aspiration. Section 32(1)(a) of the 1989 Act requires the Court, as a matter of law, to draw up a timetable with a view to determining public law proceedings without delay and, in any event, within 26 weeks. Section 32(1)(a)(ii) defines, subject only to the qualification in section 32(5) and compliance with the requirements of sections 32(6)(7), a mandatory time limit which applies to all cases. The extent to which the 26-week period can be extended is strictly circumscribed by reference to the child's welfare and the impact on the duration and conduct of the proceedings. Pursuant to s.32(5) Children Act 1989, the Court may only extend the 26-week period if it considers an extension necessary to enable the Court to resolve the proceedings justly. On the specific facts of this case, extensions to the statutory time limit were necessary in the interests of the children, striking a balance between the need for further information and the presumptive prejudice to the children of delay as enshrined in s.1(2) of the Act. In considering the justice of this case, the legal requirement in s.1(2) to have regard to the prejudicial effect on the children of delay weighed heavily in the balance. However, in the specific circumstances of this case, extensions were exceptionally required with *specific* justification, in the best interests of both children.

10. The Local Authority began these proceedings on 21 September 2022 with concerns about the children suffering significant harm in the form of emotional harm, physical harm and neglect arising from parental domestic abuse, poor home conditions, concerns about the mother's unmet mental health needs, parental substance misuse and alcohol misuse and the parents' lack of engagement with professionals. On 15 July 2022, the children were removed to a temporary Local Authority foster care placement by police exercising powers of police protection.

11. On 12 October 2024, the Court made an Interim Care Order in respect of both children. Notwithstanding his entitlement to free, independent specialist legal advice, the father attended that hearing as a litigant in person. All other parties were legally represented. At a Case Management Hearing on 31 October 2022, at which the father was legally represented,

directions were given by the Court to obtain expert evidence in the form of alcohol and drug testing and for cognitive testing of the mother. Parenting assessments were directed to be completed by the Local Authority. An Issues Resolution Hearing was fixed for March 2023 with a Final Hearing fixed for 3 April 2023, within the 26-week timetable. No alternative carers were advanced by either parent to care for the children, the Maternal Grandparents having informed the Local Authority that they did not wish to be assessed. The children moved to a second interim foster care placement and were reported to have settled well, it being noted that the child 'W' was not displaying the same concerning behaviours as had been displayed in the previous emergency foster care placement. The Case Management Order records, "The Local Authority and Children's Guardian will continue to keep under review whether a paediatric assessment is necessary."

12. There followed a series of litigation failures and a consistent lack of engagement on the part of the mother and father. The parents failed to engage with parenting assessments and expert assessments directed by the Court. The parents were reported not to have engaged consistently with their solicitors. Notwithstanding warnings set out clearly on the face of each Court Order, the Court was not informed timeously of the parents' non-compliance with the Court's Orders. The Local Authority drew the Court's attention to the parents' non-compliance by application dated 20 January 2023 and the matter was restored to Court. The case was then re-timetabled, retaining the Final Hearing dates.

13. By way of an exceptionally late application dated 6 March 2023 the father, having failed to engage at all with the Local Authority's parenting assessment, applied for permission to obtain expert evidence by way of a parenting assessment by an Independent Social Worker. Further, having failed to file a statement in the proceedings, the father applied for an Order extending time for him to do so. He applied for permission to attend the Issues Resolution Hearing remotely by video, due to "work commitments." The application for an Independent Social Worker and the application to attend the hearing remotely were both refused. An extension of time was granted for the father to file his statement.

The First Final Hearing

14. On 3 April 2023, being the first day of the Final Hearing, the Guardian applied for an adjournment. The Maternal Grandmother had informed the Guardian shortly before the hearing commencing on the morning of 3 April 2023 that she wished to be assessed as a Special Guardian for the children, having previously informed the Local Authority that she did not wish to be assessed. The care plan advanced by the Local Authority was one of adoption of both children. The Guardian's application to adjourn the Final Hearing was supported by both parents. The Second Respondent father did not attend the Final Hearing. He had informed his Counsel that he did not intend to attend. The Guardian's application to adjourn the Final Hearing was granted, the Court determining that an assessment of the Maternal Grandparents and the consequent delay was necessary and in the best interests of the children to ensure that the Court had the information necessary to make informed welfare decisions for the children. The Local Authority was directed to prepare a Special Guardianship assessment of the Maternal Grandparents with consequent directions for filing updated evidence. The proceedings were extended, as a necessary measure consistent with the welfare of the children, to facilitate that assessment. A repeat Issues Resolution Hearing was listed to take place in August 2023 with a Final Hearing rescheduled to begin in September 2023.

15. The father was subsequently convicted for an offence of common assault. He was sentenced to 24 weeks imprisonment.

16. The Local Authority did not file a Special Guardianship assessment of the Maternal Grandparents in accordance with the Court's Order. A short extension of time was granted. The Local Authority's Special Guardianship assessment of the Maternal Grandparents ultimately concluded negatively, in that it did not recommend that the children be placed in the Maternal Grandparents' care. At the repeat Issues Resolution Hearing on 21 August 2023,

the father chose not to speak to his Counsel by video link from prison, notwithstanding the Court having made a Production Order to facilitate his remote attendance. The mother informed the Court that she did not seek to challenge the Local Authority's evidence against her or the Local Authority's final care plans for a Care Order and Placement Order. The outcome of the assessment was not challenged.

17. The Paternal Grandparents had, in the meantime, put themselves forward to care for the children at a very late stage in the proceedings. The Local Authority took upon itself the task of undertaking a viability assessment of the Paternal Grandparents, without first seeking any Order from the Court. The Local Authority's viability assessment concluded negatively, in that it did not recommend that the children be placed in their care. The viability assessment was hand-delivered to the Paternal Grandparents on 16 August 2023 by the Local Authority with a letter telling them how they may challenge the assessment. The written assessment and covering letter were written in English. The assessment process was conducted in English. The Paternal Grandparents were critical of the viability assessment, asserting that the assessment was inaccurate, largely due to no interpreter having been used and English not being their first language.

18. At the repeat Issues Resolution Hearing on 21 August 2023, the Paternal Grandparents attended Court. They expressed their intention to challenge the outcome of the Local Authority's viability assessment. They represented themselves. The Court explained the process to the Paternal Grandparents and encouraged them to seek legal advice. They did so in a timely way. They made a formal application to the Court on 8 September 2023, being the last working day before the adjourned Final Hearing. In that application they sought to be joined as parties. Further, they sought an Order extending the time to file statements and they made an application for permission to obtain expert evidence by way of a Special Guardianship assessment from a culturally specific Independent Social Worker.

The Second Final Hearing

19. At Final Hearing on 11 September 2023, the Paternal Grandparents' applications for party status, for an adjournment of the proceedings and for permission to obtain evidence from an Independent Social Worker by way of a Special Guardianship assessment, fell to be determined after the Court heard evidence from the Local Authority, from the Paternal Grandparents and from the Guardian. The Paternal Grandparents were joined as intervenors on the first day of the Final Hearing. They were legally represented by Miss Choudhury of Counsel.

20. The mother continued to support the Local Authority's applications for Care and Placement Orders. The Local Authority's applications were opposed by the father. The father did not attend the first five days of the six-day Final Hearing, notwithstanding a Production Order having been made for his remote attendance by video. The Court proceeded in his absence. The father opposed the Local Authority's applications for Care and Placement Orders. He advanced a position that he sought the children to return to his care. In the alternative, he sought placement of the children with his parents. His third position was that he would support the Maternal Grandmother in caring for the children, if she was putting herself forward. The father had failed to engage with the proceedings in any effective manner. He did not comply with Orders for expert assessment or parenting assessment and he had not filed his own statement. The father attended the last day of the Final Hearing. He had been released from custody on 14 September 2023 on licence.

21. The Maternal Grandparents did not seek to challenge the outcome of the Local Authority's Special Guardianship assessment of them.

22. The Court proceeded to hear oral evidence from the Local Authority Social Worker, the Local Authority Team Manager, from the Paternal Grandmother, the Paternal Grandfather and from the Children's Guardian. The Paternal Grandparents were both assisted throughout the hearing by an interpreter. The Guardian informed the Court in her oral evidence that, whilst she

remained very concerned about delay for the children, she acknowledged the limitations of the viability assessment of the Paternal Grandparents. The Guardian expressed being troubled by the oral evidence of the Paternal Grandparents in respect of their insight. The Guardian did not, at that stage, support the Paternal Grandparents' application for a full Special Guardianship assessment by an Independent Social Worker. However, taking into consideration the task of the Court to assess the realistic welfare options for the children and the need to balance the positives and negatives of each option, taking into consideration the draconian nature of the Orders sought by the Local Authority and the need for the Court to be satisfied that nothing else will do before a Placement Order is justified, the Guardian recommended a specific, time-limited piece of work for the Paternal Grandparents. The Guardian recommended an adjournment of the Final Hearing for ten weeks to afford the Paternal Grandparents an opportunity to engage in the work proposed, such work to be completed by the Local Authority with the Paternal Grandparents, with a short, updated report from the Local Authority setting out the Paternal Grandparents' progress and for the application for an Independent Social Worker to be adjourned until after that work was carried out.

23. The Court expressed very real concerns about delay, acknowledging the impact on the children as to their ability to achieve permanence. The delay by the Paternal Grandparents in coming forward and seeking assessment was not adequately explained in their evidence. Nevertheless, having come forward at a late stage, and the Local Authority having taken upon itself the task of completing a viability assessment without first referring the matter to the Court, the Court acknowledged that the Paternal Grandparents had done everything reasonable to challenge the assessment, in time. The Court acknowledged that the prospects of grandparents taking over a child's care must always be looked into carefully because it can greatly benefit a child to be kept in the family. Further, the Court acknowledged that these Paternal Grandparents have a strong connection with the children. The children lived in their household from birth until their removal. The viability assessment identified some positives. Since the children were removed, the parents had separated and moved out of the Paternal Grandparents' home. The Paternal Grandparents were clear in their oral evidence that they would not allow their son back into their home and they would contact the police if he tried to do so. The Court acknowledged that the risks to the children from the parents if placed in the Paternal Grandparents' care could be reduced by the making of protective orders. There was no suggestion that the Paternal Grandparents used alcohol or substances, there was no evidence they were violent to the parents or to each other and there was no evidence of domestic abuse in the Paternal Grandparents' relationship. The Paternal Grandparents provided financially for the children. They are financially secure and in good health. The Paternal Grandfather was available to look after the children. They appeared to have support from family members, including an adult daughter and niece. They had cared for their own children and niece without involving Childrens Services. The Paternal Grandparents stepped in to ensure these children's care needs were met when the parents were not available due, to the parents' alcohol abuse and domestic abuse. Further, in their oral evidence, the Paternal Grandparents acknowledged some understanding of domestic abuse and the impact on children. They accepted that their understanding could be developed further. They indicated a willingness to understand. They were committed to the children. They were willing to undertake the work recommended by the Guardian and to receive visits from professionals. The Paternal Grandfather's evidence was that, at the time of the Social Worker's visits to the home, the Social Worker barely acknowledged the grandparents and no advice was given. The Local Authority evidence records that during one Social Work visit to home, the Social Worker noted that when she tried to engage the Paternal Grandmother, her son, the father of the children, shouted at the Paternal Grandmother. It did not appear that the Social Worker explored matters further with the Paternal Grandparents.

24. The Court noted that the Paternal Grandparents had limited education and limited literacy skills. They struggled to understand documents without support and they struggled to read English, as English is not their first language. Although the viability assessment concluded negatively, it was plain to the Court that the two meetings between the Social Worker and the

Paternal Grandparents were conducted in English. Although the grandparents declined an interpreter in those meetings, it was clear there were areas of the assessment where they would have benefited from an interpreter, particularly when discussing complex issues around the impact of domestic violence and what steps they could have taken to protect the children.

25. Social Workers, like Judges, need to ensure there is no reduction in a party or family member's ability to participate in an assessment, taking into consideration the person's willingness to speak in a language that is not their first language, their understanding of questions and their overall ability to put their case. People who are bi-lingual regularly switch from one language to another, expressing themselves in terms which most readily come to mind. That code switching is quite normal. However, languages do not operate in ways that match each other identically. They can differ in grammatical structure, vocabulary, the meaning of abstract concepts and how much is directly spoken as opposed to understood between the lines. An interpreter's role is to transfer, as nearly as possible, the meaning of what is said, not merely to translate words and phrases literally, which can create a false impression. English, like other languages, is not a neutral or culture-free language. It is freighted with embedded cultural assumptions. Many words in English do not have exact single-term equivalents in many other languages. It is difficult to interpret fine distinctions and these may be hard for people to understand.

26. The Court agreed with the Guardian's conclusion that the viability assessment undertaken by the Local Authority of the Paternal Grandparents was tainted by the absence of an interpreter, notwithstanding the efforts of the Social Worker in checking the Paternal Grandparents' understanding. The assessments were not invalidated by the lack of interpreter but there was a high likelihood of misunderstanding.

27. The Guardian was of the view that certain areas of work should precede further assessment of the Paternal Grandparents to assess insight and the development of insight. The Guardian was of the view that the conditions of the Paternal Grandparents' home internally had improved and those conditions appeared to be good enough. The question was whether the home conditions could be maintained in the long term and whether the dangerous conditions in the garden could be improved upon, noting that the number of occupants in the home had reduced considerably. At the time of removal of the children by the police, the Paternal Grandfather was out of the country and remained out of the country for a longer period than expected, as the family had experienced a double bereavement. Further, the Paternal Grandparents' wide support network had not been explored.

28. Taking into consideration the possibility of the children remaining in their birth family, in the home of the Paternal Grandparents where they had lived since birth, the ability of the children to understand their dual cultural heritage, the opportunity to maintain contact with their wider family members, balancing that against the impact on the children of further delay and all the negatives that go with delay, noting that the children would be able to remain in the same foster care placement pending further hearing, the Court agreed with the Guardian's professional conclusion that the balance fell in favour of adjourning the Final Hearing. An adjournment, the Court concluded, would best meet the welfare needs of the children by keeping open the prospect of them remaining in the family. As the Guardian said in her oral evidence, the work envisaged with the Paternal Grandparents was necessary: the Court could not properly make final orders, as the Court did not have all the information necessary to carry out an informed, comparative welfare analysis.

29. The Guardian set out recommendations for educative work to take place with the Paternal Grandparents before a decision was taken about whether they should be fully assessed. The Local Authority agreed to provide the work through a consultant Social Worker, with the benefit of an interpreter, to deliver the programme of work to the Paternal Grandparents, covering the issue of the impact on the children of living with parents with substance misuse, exposure to domestic abuse, how childhood trauma affects development and how to care for a child with developmental trauma. The Local Authority envisaged that such work could be

delivered over six sessions of 1 hour each, concluding on 1 December 2023. In addition, a Child Practitioner would be available to cover the issue of the basic care needs of the children, home conditions, safety in the home, health and hygiene and the role of safeguarding professionals. That work, with an interpreter, was envisaged to begin in the week following the Final Hearing, over four sessions of 1 hour per session.

30. The Guardian acknowledged that there remained several significant gaps in the evidence, namely, the dynamics of the relationship between the Paternal Grandparents, the dynamics of relationship between the Paternal Grandparents and their son, the Paternal Grandparents' understanding of the impact of domestic abuse, the impact of alcohol misuse, their ability to maintain home conditions, their ability to maintain boundaries with their son and the mother of the children, the support available from their family network, professional support from the Local Authority and the Paternal Grandparents' ability to work effectively with professionals. The Court agreed with the Guardian's professional conclusion that the viability assessment did not give answers to those important questions. Having regard to those significant gaps, the Guardian informed the Court that, when considering whether to make a Placement Order, a ten-week delay to allow the work to take place before considering whether a further assessment was required was a purposeful delay in the best interests of the children.

31. This Court found real weight in the Guardian's carefully considered proposals. The Court agreed with the Guardian's professional recommendation that work needed to be completed with the Paternal Grandparents to inform the Court as to whether full Special Guardianship assessment was necessary and that educative work with the Paternal Grandparents needed to take place before full assessment commenced. Having regard to the issue of delay, the Court noted that, if following the educative work proposed, a Special Guardianship report was ordered, this would necessitate at least a further three-month delay for assessment, in addition to further time thereafter for final evidence. The Court had regard to risk that any further adjournment might disrupt the children's lives to such an extent that they might be harmed by the delay. As the Guardian observed, the Paternal Grandparents' understanding of their role in safeguarding the children was partly impacted by the Local Authority professionals keeping them at arm's length, that treatment being evidenced also by the refusal of the Local Authority to allow the Paternal Grandparents to have contact with the children in their own right, despite the Paternal Grandparents requesting contact. The Paternal Grandparents' understanding was further compounded by the viability assessments being conducted without an interpreter, discussing complex issues, that resulted in the Local Authority reaching a negative conclusion. This Court agreed with the Guardian that the Local Authority should have insisted on an interpreter being used. Had the Local Authority applied to Court seeking directions prior to undertaking the assessment, that error might have been avoided. That opportunity was lost. The Guardian concluded from the Paternal Grandparents' evidence that the Paternal Grandparents did not know where to take their concerns, they did not know who to contact and they had an overall lack of understanding and awareness.

32. The Guardian told the Court of her professional view that, if positive change could be effected in a limited period of time, that needed to be explored. The Court concluded that these were Paternal Grandparents who had shown commitment, they challenged the assessment in a timely manner, they attended the repeat Issues Resolution Hearing and attended throughout the Final Hearing and they fully engaged when the opportunity was given to them. The Court agreed with the Guardian's professional, independent conclusion that the Court did not have all the evidence necessary to make final informed welfare decisions. Further, the Court agreed with the Guardian's professional opinion that educative work was necessary, in best interests of the children, to enable the Paternal Grandparents to engage, to take on board professional recommendations, to implement strategies, to work transparently with the Local Authority and that ten weeks to complete that educative work was fair and just. The Court found no reason to depart from the careful, considered, balanced and child-focused opinions of the Guardian. The Court concluded that there was solid, evidence-based reason to believe the Paternal Grandparents were committed to make the necessary changes. Further, the Court concluded there was solid, evidence-based reason to believe that Paternal Grandparents would maintain

that commitment. Whether there was reason to believe that the Paternal Grandparents could make the necessary changes would require further consideration once the Paternal Grandparents had completed the educative work proposed.

33. The Court concluded it was necessary, in the best interests of the children and consistent with the interests of justice to adjourn the Local Authority's applications for Care and Placement Orders, to allow the Paternal Grandparents to complete the preparatory educative work. The Court endorsed the schedule of work proposed by the Local Authority. Further, having regard to s10(9) Children Act 1989, the Court was satisfied that the Paternal Grandparents should be joined as parties and given access to the full bundle to give them the best opportunity to benefit from the work proposed.

34. The Final Hearing was adjourned part-heard to 4 December 2023. At that hearing, the Paternal Grandparents' application was granted for permission to instruct a culturally specific Independent Social Worker to complete a Special Guardianship report by 15 March 2024, with a further direction for key documents to be translated into the Paternal Grandparents' first language. A further Final Hearing was timetabled for May 2024.

35. The Independent Social Worker's report was not completed on time. The parties applied to further extend the timetable in the proceedings. A repeat Issues Resolution Hearing was fixed for 11 June 2024. The adjourned part-heard Final Hearing was listed to begin on 31 July 2024 for 3 days.

36. The Independent Social Worker's report concluded positively. The report recommended that the Paternal Grandparents be made Special Guardians for the children. The report included some gaps. It appears, however, that following further communication with the Social Worker and with the Children's Guardian, the Independent Social Worker changed his view. A supplementary report was prepared, in which the Independent Social Worker concluded that the Paternal Grandparents were *not* capable of caring for the children, the supplementary report concluding negatively.

The Part-Heard Final Hearing

37. At Final Hearing, the Local Authority continues to pursue its applications for Care and Placement Orders. The applications are supported by the Guardian. The applications are opposed by the mother, the father and by the Paternal Grandparents. The Paternal Grandparents were assisted throughout the Final Hearing by an interpreter.

38. During the course of the part-heard Final Hearing, the Court heard from the Allocated Social Worker, from the Independent Social Worker, from the father, the Paternal Grandmother and the Paternal Grandfather and from the Guardian. At the conclusion of the hearing the Court received helpful written submissions on behalf of all parties, for which the Court is particularly grateful. This reserved written judgment is handed down after consideration of all the evidence, whether or not referred to specifically in this judgment, including a bundle of documents exceeding 2,830 pages and additional evidence filed during the Final Hearing. It is not possible nor necessary to address every piece of evidence nor every submission made on behalf of each party. Nevertheless, the Court has given all the evidence careful consideration and anxious scrutiny.

The issues that must be decided

39. There being no agreement between the parties, the issues for the Court to adjudicate upon are:
    a. Whether the children should be placed in the care of their Paternal Grandparents;
    b. If the children are placed in the care of their Paternal Grandparents, what legal framework best meets the needs of the children;
    c. Whether the children should be made subject to a final Care Order;
    d. Whether the children should be made subject to a Placement Order.

The Relevant Law

40. Local Authorities owe a duty in law to safeguard and promote the welfare of all children within their area who are in need. In carrying out that duty in law, Local Authorities must promote the upbringing of children by their families and must provide services appropriate to the needs of children who are in need.

41. Before the Court has jurisdiction to make an Order with respect to a child's welfare in proceedings under Part IV of the Children Act 1989, the Court must be satisfied that the threshold criteria pursuant to s.31(2) of the Children Act 1989 are made out. Section 31(2) provides that a Court may only make a Care Order if it is satisfied that the child concerned is suffering or is likely to suffer significant harm and that the harm or likelihood of harm is attributable to the care given to the child or likely to be given to the child if the Order were not made, not being what it would be reasonable to expect a parent to give. These provisions are commonly called the threshold criteria.

42. If the threshold criteria are met, the choice of whether to make any Order, and if so which, is to be determined by affording paramount consideration to the child's welfare: s.1(1) Children Act 1989.

43. Under s. 14A Children Act 1989 the Court may make a Special Guardianship Order appointing one or more individuals to be a child's Special Guardian. Pursuant to s.14C Children Act 1989, the effect of a Special Guardianship Order is to permit the Special Guardian to exercise parental responsibility for the subject child to the exclusion of all other persons holding parental responsibility. Pursuant to s.14D a Special Guardianship Order lasts until the subject child is 18 years of age, although it can be varied or discharged before that point.

44. Pursuant to s.1(4)(b) Children Act 1989, in determining whether to make a Special Guardianship Order, the legal framework governing the Court's approach is provided by s.1 Children Act 1989, the child's welfare being the Court's paramount consideration.

45. When considering whether or not to make a Placement Order, the Court's paramount consideration under section 1(2), Adoption and Children Act 2002 is the welfare of the child throughout their life. The Court must at all times bear in mind, pursuant to section 1(3) of the 2002 Act that any delay in coming to the decision is likely to prejudice the child's welfare. The Court must take into account all the matters set out in the welfare checklist at section 1(4) of the 2002 Act and consider the whole range of powers under that Act and the Children Act 1989. Section 1(4) of the 2002 Act provides that the Court must have regard to the following matters (among others):
    (a) the child's ascertainable wishes and feelings regarding the decision (considered in the light of the child's age and understanding);
    (b) the child's particular needs;
    (c) the likely effect on the child (throughout their life) of having ceased to be a member of the original family and become an adopted person;
    (d) the child's age, sex, background and any of the child's characteristics which the court or agency considers relevant;
    (e) any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering;
    (f) the relationship which the child has with relatives, with any person who is a prospective adopter with whom the child is placed, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including:
        (i) the likelihood of any such relationship continuing and the value to the child of its doing so;
        (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs;

(iii) the wishes and feelings of any of the child's relatives, or of any such person, regarding the child.

46. In cases where a Placement Order is sought, the following sequence of questions must be addressed:
    (1) Are the threshold conditions under s.31(2) Children Act 1989 satisfied, and if so, in what specific respects?
    (2) What are the realistic options for the child's future?
    (3) Evaluating the whole of the evidence by reference to the checklist under s.1(4) ACA 2002, what are the advantages and disadvantages of each realistic option?
    (4) Treating the child's welfare as paramount and comparing each option against the other, is the Court driven to the conclusion that a Placement Order is the only order that can meet the child's immediate and lifelong welfare needs?

47. Where there is an application for a Placement Order for a child, that becomes the primary application. It is unnecessary to consider the care application on its own before then turning to the Placement Order application. It is right, however, when a Court concludes that a child should be placed for adoption, to make a Care Order as well as the Placement Order, albeit the Care Order will be 'dormant' unless the Placement Order is subsequently revoked.

48. In *Re F (A Child: Placement Order: Proportionality) [2018] EWCA Civ 2761* the Court of Appeal set out the questions that the Court should ask itself when assessing risk of future harm and setting it in context:
    (1) What is the type of harm that might arise?
    (2) What is the likelihood of it arising?
    (3) What consequences would there be for the child if it arose?
    (4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?
    (5) The answers are then placed alongside other factors in the welfare equation so that the court can ask itself, how do the overall welfare advantages and disadvantages of the realistic options compare, one with another?
    (6) Ultimately, is the welfare option necessary and proportionate – are the risks bad enough to justify the remedy?

49. Section 52(1)(b) of the 2002 Act makes clear that the Court cannot dispense with the consent of any parent of a child to the child being placed for adoption or to the making of an Adoption Order in respect of the child unless the Court is satisfied that the welfare of the child requires the consent to be dispensed with.

50. A core principle of the Children Act 1989 is the 'no Order' principle. This means that the Court must only make an Order for a child if this is better than not making an Order. The principle is predicated upon the view that children are best brought up by their families, unless they are at risk of significant harm. When drafting the Children Act 1989, the legislators specifically rejected the prospect of removing children from their family whenever it would be better for them than not doing so. Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family (*YC v United Kingdom 92120 55 EHRR 967)*.

51. Where the Court is required to decide at final hearing between two or more placement options for meeting the child's welfare needs, the court must undertake a process of comparative welfare analysis of the competing options (see *Re G (A Child) [2013] EWCA Civ 965* at [49]-[50] and *Re B-S (Children) [2013] EWCA Civ 1146 at [44]).* Within this context, in determining which of the competing options in respect of the child's care is in their best interests, having identified the child's welfare needs, it is then necessary then to undertake an evaluation of each of the options available for the child's future upbringing before deciding which of those options best discharges the duty to afford paramount consideration the child's welfare, having regard to the principle of proportionality under Art 8(2) of the Human Rights Act 1998. Under Article 8,

everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society. Each individual family member in this case has that right, including the children, the mother, the father and the Paternal Grandparents. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks.

Threshold

52. The relevant date for determining the threshold criteria in respect of the child is 21 September 2022 when the Local Authority issued proceedings.

53. The Local Authority asserts that the children were suffering and were at risk of suffering significant harm in the form of emotional harm, physical harm and neglect, attributable to the care given or likely to be given to them if the Order were not made, not being what it would be reasonable to expect a parent to give a child. The Local Authority asserts the following:

    1. The children have been known to Local Authority Children's Services since October 2020 following police referrals of concerns of domestic abuse and the father's alcohol misuse.

    2. The children have suffered significant emotional harm and are at risk of further emotional harm and physical harm as a result of exposure to domestic violence between the parents and family members. In particular:
        a) There was a violent incident on 15 July 2022 during which the mother threw a China bowl at the father and this hit him on the hip and caused a laceration. The police exercised their powers of protection in relation to the children in response to this incident;
        b) On 5 August 2022 the father punched the mother in the face.

    3. The children have suffered neglect and are at risk of suffering further neglect, physical harm and emotional harm in their parents' care as a result of the home conditions which are poor and are cluttered, unsafe and not sufficiently clean for a child. In particular:
        a) On 15 July 2022 the home conditions were messy and dirty with flies everywhere, mouldy food and empty beer cans lying around;
        b) The sleeping arrangements for 'Z' were inadequate.

    4. The parents' lack of engagement with professionals including the Families First Assessment, Health Visitor and the police have resulted in the children having suffered emotional harm and neglect and places them at further risk of suffering emotional harm and neglect and physical harm. The mother accepts that she tried to put her head in the sand to avoid dealing with matters.

    5. The children are at risk of suffering from emotional harm and having their physical needs unmet as a result of concerns around the mother's mental health, which has been affected by the domestic abuse she has suffered.

    6. The children are at risk of neglect and impairment of their physical, emotional and behavioural development as a result of exposure to the father's alcohol misuse:
        (a) The father's hair strand test results covering the period start of September to start of November 2002 conclude that it is more likely than not that he has consumed alcohol chronically and excessively.

54. There is no dispute that the threshold criteria in this case are met. There are three elements to the harm required by the threshold conditions in s.31(2), Children Act 1989. The harm must be actual or likely; it must be significant; and it must be due to parenting that is not reasonable. The

totality of the evidence in the case leads the Court to the conclusion that all three of these elements are satisfied. The Court makes findings in accordance with the Local Authority's threshold statement. The Court turns to consider the question of welfare.

Welfare

55. It is not in dispute that the mother and father have separated. They are no longer in a relationship. The mother moved out of the home of the Paternal Grandparents and has resumed living with the Maternal Grandparents. In October 2022 she was diagnosed with depression and was prescribed medication. Alcohol testing completed in November 2022 was not suggestive of alcohol consumption at chronic excessive levels in the approximate time period from the end of April 2022 to the end of October 2022. There was no biochemical evidence of recent excessive alcohol intake, however, the analysis suggested evidence of abnormal liver function, "which could be due to alcohol consumption."

56. The Local Authority completed a parenting assessment of the mother in a report dated 27 January 2023. The assessment concluded negatively in that it did not recommend that the children could be cared for safely by the mother. The mother attended only half the sessions offered to her for the purposes of assessment.

57. At this Final Hearing, the mother tells the Court she has made the brave, child focused decision not to seek the return of the children to her care. She tells the Court that she loves both children dearly. She expresses remorse regarding her lack of full engagement with professionals and support services, which she asserts was due to a decline in her mental health. The mother has continued to spend time with the children on a regular basis at weekly supervised contact sessions throughout the duration of these proceedings, having attended the majority of the sessions offered. It is clear that the children enjoy spending time with their mother and with the maternal family. The extensive contact notes evidence an overall positive experience during contact. Further, to her credit, she has attended Court diligently throughout this Final Hearing.

58. The mother, having reflected on her position, tells the Court she would support the children living with their Paternal Grandparents.

59. In respect of the father, alcohol testing completed in November 2022 by way of testing of hair samples suggested excessive consumption of alcohol. Blood alcohol markers did not suggest excessive consumption. The results suggest a decrease in alcohol consumption during the weeks prior to sampling. The father was fined by Magistrates for failing to comply with a drug test on 26 December 2023. He received an additional fine for possession of amphetamines on the same date. He has a background of convictions for driving with excess alcohol (2007), two charges of being the owner/in charge of dog dangerously out of control causing injury (2017) and a caution for possession of cannabis (2022). The father has not engaged with support services to address his alcohol and substance misuse.

60. The Local Authority completed a parenting assessment of the father on 25 January 2023. The father attended only two of the scheduled sessions. The assessment concluded negatively in that it does not recommend that the children could be placed in his care safely. At Final Hearing, the father told the Court he acknowledges his own inability to care for the children. He does not put himself forward to care for them.

61. The father was observed to display emotional warmth with the children during supervised contact sessions. He spoke with the children in a child friendly manner and was observed to pre-empt 'W's "tantrums." He was noted to change their nappies when required and provided them with snacks.

62. The extensive police disclosure details verbal arguments between the parents requiring police call outs, allegations of physical domestic abuse and threats of absconding with the children. Both parents failed to engage consistently with these Court proceedings. Both parents failed to comply with assessments directed by the Court to consider their cognitive ability and parenting

capacity. There is unanimity of professional opinion that the risks concerning the parents' mental health, domestic abuse and substance and alcohol misuse remain unaddressed by the parents. There has been a lack of meaningful engagement by both parents with professionals. The combination of the identified risks is such that both children would be highly likely to suffer significant physical harm, emotional harm and neglect if placed in the care of either parent. The assessments throughout the proceedings concluded that neither parent has been able to bring about sufficient change to provide good enough parenting to a consistent level that would allow either parent to care safely for either child. The unchallenged evidence before the Court leads to the conclusion that the children would be at continuing risk of significant harm in the care of either parent and that no amount of professional support would adequately mitigate those risks. The Court must conclude on all the evidence that reunification of either child to the care of either parent is not a realistic option. Neither parent challenges the limitations in their parenting capacity. Neither parent put themselves forward to care for either child.

63. The Maternal Grandparents have not challenged the outcome of their assessment.

64. The Court turns to consider the Paternal Grandparents.

65. The Independent Social Worker completed a Special Guardianship report in respect of the Paternal Grandparents, dated 13 March 2024 ("the first report"). The report concluded positively in that it recommended the children be placed in the care of their Paternal Grandparents.

66. The Special Guardianship assessment included interviews with the Paternal Grandparents over eight separate days. Contact was observed between the children and the Paternal Grandparents on two separate locations. The Independent Social Worker recorded in his report:
"*I am conscious of the fact that at the time of concluding this report there are outstanding issues with regard to the Local Authority in relation to DBS checks and medical information. Alongside this, I am aware that there are also outstanding issues with regard to health and safety within the home, and changes and adaptations that are required to take place. Aside from these issues, which will clearly need to be addressed, my overall assessment of the applicants as special Guardians has been positive, and it is recommended here in this report that the applicants are approved as special guardians for [the children]…*

By approving the applicants as special guardians for [the children], the children would be afforded the opportunity of being brought up in a family of [their paternal cultural] origin but assimilated into the British society. It would represent both of their parents' heritage. Additionally, being brought up within the family of origin further reinforces the children's growing sense of identity which inevitably will positively impact their self-confidence and self-belief."

67. The Independent Social Worker continued:
"It has already been established that the parents are incapable of understanding and meeting their children's needs safely and that risk of harm is imminent should they be entrusted with the children's care. The applicants [Paternal Grandparents] understand that both parents lack the capacity to provide safe care for the children. In caring for their grandchildren [they] need to ensure that neither parent would interfere with the applicant's [Paternal Grandparents] continuity of providing a safe family home for the children to live in. They understand fully that the main reasons why their grandchildren are not in the care of their parents are that the parents' lack the understanding of what constitutes good parenting and how they failed their children by putting their own needs over and above their children's. The applicants fully understand that neither parent is considered to be safe or responsible in meeting their children's basic needs."

68. In respect of the children's individual needs, the Independent Social Worker noted in respect of the child 'W':
"*According to the notes she generally sleeps well and likes (or liked) a milk bottle at night to comfort her. Her diet is quite selective, and she is being encouraged to widen her diet to include*

more fruit and vegetables by her foster carers. I understand that ['W'] need lots of supervision but her behaviour is less challenging since moving to live with her current foster carers and they are trying to implement consistent boundaries and strategies to manage these behaviours. I understand that there is some sibling rivalry with ['Z'] whom she sometimes pushes or is rough with, but this is gradually improving…

The Health Visitor is providing advice/strategies re managing her behaviours. Carers consider ['W'] displays some signs of ASD as she has poor eye contact and often seems in her own world. This may be due to her early year's experiences and requires further assessment. ASD assessment of 'W' is to be considered. 'W' attended dental appointment since becoming looked after, her front teeth are turning black, possibly due to diet. This needs to be monitored by a dentist. This specific health issue was discussed with the applicants, who initially perceived homemade food items containing sugar to be safe for the children and their health. On further discussion and elaboration they acknowledged the effect of any items containing sugar on their dental health. It also appeared that they thought they may gain credibility with me seeing the children receiving treats. Although they acknowledged that they had been misguided in this, and affirmed that they would follow guidance and dental health advice, I do feel that they would require further support in this area, should the children be placed with them. This a common misconception in cultures such as theirs…

There have been ongoing concerns about her ['W's] behaviour. It is clear that ['W'] struggles to regulate her emotions and this can lead her to become distressed and defiant at times, and spiteful towards ['Z']. She lacks a sense of 'stranger danger'. It is thought that this may be a survival mechanism to ensure her needs are met by anyone as she was unable to rely on her birth parents to keep her safe. ['W'] also presents as having a constant need for adult attention which may stem from her emotional needs not having been met while in her parents' care, or from having little interaction or stimulation from her birth parents from a very young age…

Both children have been placed together in 2 subsequent foster parents. They have been placed with the current foster carer for the past 18 months and each have made relatively good progress. From the information available in the Court bundle and from my observations of 2 contact sessions, I can confirm that ['Z'] shares many of the features and characteristics that ['W'] displays..."

69. The Independent Social Worker recorded:
"*I observed 2 contact sessions with the Grandparents, and in my view, the only area of concern was the disproportionate number of…sweet items that they brought in for the children. Later, I raised this issue with them, making specific reference to the children's reported dental problems. However, I note from the foster carer records that the children have presented with dysregulated behaviour in relation to contact with the parents. The applicants acknowledge that there have historically been issues with regard to this. However, they may require some support to prepare them better in helping the children to settle in relation to any further contact with their parents."*

70. In respect of the Paternal Grandfather, the Independent Social Worker recorded a history of the Paternal Grandfather having moved to the United Kingdom as a teenager. He has lived in the United Kingdom for more than 50 years: "*He has always taken a lead in family affairs as is expected in their culture. Whether funerals or disputes, or otherwise, the wider family have always looked up to him for solutions. This throughout his life has shaped his personality as a solution finder in fulfilment of cultural expectations. Whilst he remains fully committed to his culture of origin, he has also gone to a significant length to assimilate and seamlessly lead an integrated lifestyle. He has a warm and welcoming personality and deeply cares for his family. He showed much warmth and affection towards the grandchildren during the contacts I observed, this is also confirmed in the notes contained within the bundle who have seen him in contact with the grandchildren. He relates to adults with respect and care and this was evident in his relationship and interactions with his elderly mother and his wife in addition to outside of the family during the contact sessions. He related well to the foster mother and they engaged*

mutually on matters relating to the children during the children's arrival as well as their departure. I also observed him relating well and respectfully interacting with members of the staff in the two contact centres."

71. The Independent Social Worker noted that the Paternal Grandfather obtained qualifications in the United Kingdom and worked for many years assimilating and integrating well into the British way of life, "*and will continue to extend those values into their parenting styles…It is also an important consideration that the children's upbringing will ultimately be subjected to the parallel influence of other friends and the school playground scene which in turn and back at home is likely to have its own influence on the applicants parenting styles closer to the newer generational trends."*

72. The Independent Social Worker continued, "*There is of course always a concern that a generational gap between incoming care givers and the very young children can have its own draw backs later in life, approaching teenage years. However, it is worth allaying concerns here because in ever-evolving generational differences, the influence of children on their care givers at home in terms of parenting styles is more powerful than ever and influential compared with previous decades."*

73. In respect of the Paternal Grandmother, the Independent Social Worker noted she is, "*a quietly spoken gentle individual with a very friendly approach to others. She has a calm manner and gives the impression that she lacks confidence. However, this was not my experience of her. She asserts herself well but takes her time in doing so. She is a logically minded individual, but very pragmatic and socially adept woman. I think this is because as soon as she could begin work following the birth of her children, she has continued to work in settings where she has had to make her own decisions and to relate to others within the mainstream culture involving language. She has far more command of the English language than the first applicant [Paternal Grandfather]. This is truly amazing because the children in [her country of origin] and small towns hardly have the opportunity for proper schooling but [the Paternal Grandmother] seems to have made up for it here, I guess driven by high motivation for success. She hardly needed any dependency on the interpreter compared with the first applicant [Paternal Grandfather]."*

74. The Independent Social Worker noted that the Paternal Grandparents, "*enjoy good health and are both physically and mentally fit. They attend to their own health needs well and promptly and as needed, ensure they engage with health professionals…It is therefore evident they would equally ensure that the children will receive the same standards of healthcare and treatment for both regular child health clinics as well as when illness occurs."*

75. Further, the Independent Social Worker observed, *"[The Paternal Grandparents] had and raised their own children in the UK substantially in a mainstream culture style. Undoubtedly the second applicant [Paternal Grandmother] and her husband have both assimilated and integrated well into the British way of life…the couple have been married for 46 years and have a tested and tried stable relationship."*

76. The report noted that the Paternal Grandfather's mother (the Paternal Great Grandmother) aged in her mid-90's, lives in the same household as the Paternal Grandparents: "*She recalls how sweet they were and how much joy they brought to her as a great grandmother. She was saddened that the children's parents failed them and did not respond adequately and promptly to her demands to attend to their children."*

77. Wider family members include the paternal aunt (the father's sister) ['PA']. She is described as having a close relationship with her parents, the Paternal Grandparents. The Independent Social Worker recorded, "*I understand that she will prove to be an asset for the children, reinforcing a greater sense of heritage and identity for them. [She] has a long history of being there for her parents throughout life when the [Paternal Grandfather's] father was ill and in and out of hospital some 2 years ago. She relentlessly offered support and help to her parents. The applicants [Paternal Grandparents] are very confident that continued support from [their*

daughter] is in waiting for them in every respect, should the children be placed with them...Additionally, the first applicant's [Paternal Grandfather's] other family members which includes 3 younger siblings…with their families are of huge support to the family and would have no hesitation to offer support."

78. In respect of the Paternal Grandparents' parenting capacity, the Independent Social Worker noted what was known about the developmental needs of the children:
"*It is suspected that both children's development process was undermined in early life whilst in the care of their parents. It is inevitable that when a child in early developmental stages of life is exposed to adverse parenting experiences, she cannot escape the consequences. A combination of parental discord, domestic violence, behaviours affected by excess alcohol use, over-crowding chaos and disorder individually or in combination can take their toll on a growing child's development and deprive the child of the developmental foundations for a healthy future. There are already some indications of those consequences in the children, noted since placed in foster care. Whilst there is hope that with continuing good care, a damage limitation process will help them."*

79. The Independent Social Worker further observed in his report in respect of the children's developmental needs, "*We remain unsure how their future developmental will unfold with regard to improvements. All we can best hope for now is to continue to provide professional observation of their progress and ensure a good quality of care for them. So far, they have been thriving well in the current foster care of an 18 months' duration."*

80. Further, the Independent Social Worker identified in his report the family and environmental factors that have shaped the life of the child: "*The children were exposed to adverse life experiences whilst in the care of their parents that in turn has affected their development. They lived in a home environment that amounted to neglect as a result of domestic violence, relationship discord, alcohol abuse, chaos and disorder...It is hoped and expected that in the care of their paternal grandparents, the children would thrive well within a family environment that they can relate to from a heritage point of view. The grandparents were observed during two separate contact sessions to be capable of offering love, patience, energy and skills to engage with the children. They are motivated in ensuring that their grandchildren would do better in life with them than with others."*

81. In respect of his observations of the Paternal Grandparents with the children, the Independent Social Worker informed the Court, "*the children on arrival happily went to the grandparents… Both children are very active and age-appropriately moved from one thing to another. The grandparents continued to engage and accommodate them, allowing them scope to use their own initiative as well as providing guidance and support that prevented risky consequences for them during the play. They engaged collectively as well as on a one-to-one basis and alternated involvement as each child changed preferences of play material and engagement…I was happy with both Applicants' [Paternal Grandparents'] sense of engagement, the emotional warmth and the physical interaction which was quite demanding. They coped well and sat on the floor at the children's level and when needed were up and about to protect the children from heading for the door and wanting to climb the low windowsill in the contact room. The grandmother took ['Z'] to the toilet on 3 occasions at each contact session…On leaving, they met the foster mother who has had the children for one and a half years and is the second foster carer for the children. Both the foster carer and the grandparents engaged well with each other in the lobby and that helped the children to smoothly and seamlessly depart…My observations of the two contact sessions led me to form the view that even at the age the grandparents are, in their 60's, they are still physically energetic and capable as well as willing to relate and care well with their grandchildren…Observing in practice, the contact session was a good informative opportunity as to the Applicant's awareness and proactivity in preventing accidents and harm to the children."*

82. Further, the Court was informed by the Independent Social Worker, "*Observation of two contact sessions was a testimony to the Applicants' [Paternal Grandparents'] ability to distinguish*

between the emotional and behavioural needs of their two grandchildren. They responded appropriately to the older child ['W'] and equally responded and met the younger child ['Z's] needs. In the early years of children's development, there are always significantly evident differences between 2 and 3 years of age. Both Applicants demonstrated the ability to meet and respond appropriately to the two children with different ages…They provided appropriate guidance for them during contact, ensuring that the children developed a good sense of safety whilst continuing to encourage emotionally gratifying experiences in their relationship with them."

83. The Independent Social Worker made recommendations in respect of adjustments to the Paternal Grandparents' family home, after the Independent Social Worker conducted, "*an audit of the interior and exterior of the family home…To make the family home safer for the children they will require the fitting of a chain to the front door, a child gate to the main sitting room and securing the gate to the shed in the back garden. The grandparents have already begun to carry out the work. Overall, the family home is safe and child friendly, the kitchen cupboards however will require child locks but I understand that the social housing landlords are in the process of replacing all the kitchen units soon and that will enable the grandparents to have the child locks fitted on all the new cupboards…The action points for the Health & Safety Assessment are as follows: Padlocks to be removed from the outside doors of the Paternal Grandparents' bedroom and [the paternal great grandmother's] bedroom; electrical sockets in [the great grandmother's] bedroom to be made safe, as they are a trip hazard as well as an electrical concern; the outside buildings to be made safe and secure and weed killer to be put away in a locked box; stair gate to be bought and fitted for the stairs; safety lock to be put on the cupboard under the sink in the kitchen where cleaning products and hazardous substances are stored; there is an oval cot in the children' room which would need to be replaced for ['Z'], given her age.*" Other recommendations included repairs to the kitchen cupboards and work surfaces and securing the shed in the back garden.

84. The Independent Social Worker informed the Court:
"*If it is decided that the paternal grandparents are approved as special guardians and assume responsibility for their care, it is hoped that with the loving care they would provide for their grandchildren in the years to come, will help them to develop in a more satisfactory way…They accept that the children's behaviour is of concern and is related to the poor care they received from their parents…The grandparents have acknowledged their observations of the children's behaviours during contact, and they have particularly noted the unusual lack of focus and attention that they have. They now recognise that such behaviours are well related and linked to the children's poor experience of parenting in the past. The assessment tools that I have already referred to assisted them in leading them to their acknowledgment of this link. They appreciate the challenge and are confident that they are capable of doing their utmost to compensate and correct the past failures of the parents, and its impact on the children. However, they also confirmed that they are willing and prepared to seek professional help and assistance from children's services, should the need arise."*

85. The Independent Social Worker described his assessment of the Paternal Grandparents as a "*lengthy and exhausting one."* The Independent Social Worker noted that the Paternal Grandparents, "*have been very pleased about this opportunity of becoming more enlightened with the issues surrounding the children's developmental needs and especially how the poor parenting on the part of both parents right under their nose may have compromised the children's development. The assessment process began with dealing with areas of serious concern before the Court. It was necessary to ensure that the paternal grandparents were ready and prepared to accept the shortcomings of the children's father (their son) in the discharge of his responsibilities in caring for his children. Priority was given to ensure that the grandparents not only can understand and accept the link and the consequences of parenting behaviour on the children's development but also were able to take on board the need to take steps to help the children overcome the impact as far as possible.*"

86. The Independent Social Worker described the steps taken in the assessment of the Paternal Grandparents to, "*increase their awareness and understanding of what has happened to the children and how, and, why so many concerns exist about the children's future…The following areas were covered in the first 3 days of the work: Domestic Violence, exacerbated by drugs & alcohol misuse, with traumatising consequences for the children exposed to it; exploring the level and depth of understanding of the core concerns before the Family Court in relation to the children's welfare and the trauma they may have endured as a consequence of exposures to the violence; developing the conversation further to gauge the level of understanding, recognition/acknowledgment and acceptance of the concerns. The aim is to achieve the understanding that these three factors: alcohol/drug abuse, domestic violence and child trauma are interlinked, intertwined and interact in sequence and are consequential. Discussions were taken further to cultural norms and the traditions that uphold and confirm harmful practices in any culture/society, the impact on the developing mind."*

87. Having regard to the Local Authority's concerns regarding the Paternal Grandparents, the Independent Social Worker recorded in his report, "*I was obviously aware of the concerns before the court on all sides of the debate, especially those raised in the viability assessment as well regarding the Social Worker's intervention sessions and subsequent report. Well prior to my appointment to this case, I was asked to prepare a programme of intervention with the grandparents on issues of concern before the court, arising from their lack of engagement with the local authority staff and their inability to recognise any link between the impact of adverse experiences on the children. The court approved my proposal for intervention as a primary assessment work, in evaluating whether the grandparents' views have remained since the previous assessment, or not*."

88. The Independent Social Worker noted, in respect of the Paternal Grandparents' perception of the professional involvement with the family by the Local Authority:
"It is often my experience in similar cases involving various ethnic groups, that civil proceedings are equated to criminal proceedings. This in turn can lead to suspicion and defensiveness with visiting professionals, and therefore a lack of engagement. The first step that I take when completing assessments such as these with differing cultural groups is to give clarity to the differences between Western society and that of their own origin with regard to child protection laws and values. It is important to attempt to overcome the myth that any official visiting them to discuss a 'court' issue is assisting the 'prosecutor' to seek punishment."

89. The Independent Social Worker continued, "*The very fact that the court allowed and approved this preliminary piece of work in advance, followed by a joint letter of instruction as part of the assessment was indicative of the acceptance that individuals can and may change as time goes on, depending on the consequences they face as a result of their behaviours. As indicated below, my assessment confirmed that the grandparents have grasped the realisation that they need to come to terms with the fact that the children's parents were firmly implicated in the guilt of failing the children as a result of the domestic abuse substance and alcohol abuse. We know about shame and honour, two opposite values that are strongly held, believed and practised in certain cultures, including those associated with the Islamic faith. We know about honour violence as one extreme example of this. Is it important to recognise that for a father and a mother to acknowledge and admit their son's faults particularly associated with alcohol (banned in Islam) and the shame that it brings to their family. My view is that they were naïve to think that by denying past experiences in order to save their family honour, they probably hoped that it would be swept under the carpet. However, it is also my view that with a realisation of the consequences for their grandchildren, they would need to redress the balance between the need for the children to grow up within their care, and the need to protect their family honour and reputation. It is my view that they have moved on from the time they resisted accepting the reality of events and hiding behind cultural influences, to the reality of the need to assimilate into the mainstream culture and its values that places the children's welfare and wellbeing above everything else in our lives."*

90. Having regard to the circumstances in the Paternal Grandparents' home at the time when the children were removed from the care of the parents, the Independent Social Worker noted: *"When ['Z'] (2) and ['W'] (3) were removed from the care of their parents…they and their parents were living in the same household as the Applicant grandparents. At the time the Applicants also had their hands full with his elderly father's ill health, in and out of clinics and hospitals, who passed away and brought another set of complications and pre-occupations for them relating to the arrangements to take the remains to [their country of origin] or a traditional send-off and burial. The male Applicant [Paternal Grandfather] took responsibility for all of that, being the eldest male in the family with cultural/traditional expectations of full presence during such events for families. He was therefore absent from the scene, in [their country of origin] for some good length of time when the children's care was so compromised by their parents, and they were removed into care…Both Applicants [Paternal Grandparents] feel that it was a series of misfortunes they faced at the time that prevented them from taking over the care of the two children involved in this case. It seems that at the time the children's parents were temporarily residing with the Applicants and whilst the Applicants were very frustrated by the overcrowding then, and were aware of the relationship difficulties the children's parents were facing and its impact on the children, they felt that any intervention would make matters worse and hoped that the children's parents would move out to a more comfortable form of accommodation and manage their family better. Events at the time did not go in that direction and with the Applicants' own set of challenges they were facing, they did not end up with the opportunity of taking more proactive action to prevent their grandchildren from ending up in care…Both Applicants expressed feelings of guilt and regret for the situation they found themselves in at the time and for not having been pro-active in preventing their grandchildren from ending up in care. Like many others in their position cultural ties and traditions demand maintaining the highest level of respect for your elders. With the children's great grandfather's ill health and later his death, the Applicants could not abandon cultural expectations of spending their time to attend to the needs arising from the challenges relating to their own elders. The children and their parents resided in the same household that the Applicants live. The children primarily and wholly were in the care of their parents; however the grandparents did baby sit and fed the children on occasions when they felt that the children's parents had failed."*

91. The Independent Social Worker described the process of educative work with the Paternal Grandparents undertaken as part of his assessment of them as potential Special Guardians: "*I have used illustrative tools from other assessment formats with them to powerfully drive home the message of concerns relating to the impact of domestic abuse, alcohol and substance abuse, chaos and disorder and discourse in relationships…The applicants [Paternal Grandparents] recognise the potential for interference and other inappropriate behaviours during and after contact, and how detrimental this could be to the children. Both applicants are firmly determined to ensure that neither parent would undermine their efforts to protect the children from further abuse.*"

92. Further, the Independent Social Worker noted the Local Authority's concerns, "*about the children's disproportionate level of sweet treats that the children were presented with, and whether this represents something that may continue,*", adding, "*Although I do think that they acknowledged that this was inappropriate, when further discussions were held, they have promised that every effort needs to be made to put right these issues with the children's dental health. This issue may need further support and reinforcement should the children be placed with them. From my observations and discussions with the applicants [Paternal Grandparents] I feel that they would be open to accepting support and advice from other agencies. Their determination to improve the future of the children would reinforce their ability to implement this advice effectively…Throughout the assessment process I found the applicants to be willing and open to new learning, and I have witnessed their recognition of the impact of the children's experiences on their development and behaviours…the applicants' priority remains the children's wellbeing and happiness."*

93. In respect of contact between the children and the parents, if the children were placed in the care of the Paternal Grandparents, the Independent Social Worker informed the Court, *"[The Paternal Grandparents] both made it clear that the children's wellbeing and safety would remain priority at all times and this also includes when considering contact arrangements. They are both aware that the children's father (their son) and the children's mother failed to provide good care of their children. They acknowledge that whilst they recognise the need for the children to grow up knowing their own parents, and the need for them to see them, their safety remains a priority at all times…They are aware that…there should be openness in communicating information to the children about their parentage. They will be happy to offer supervised direct contact as directed and advised by the authorities or the Court, but that [the Paternal Grandparents] will have to have priority consideration for their [the children's] safety and physical as well emotional wellbeing. They will have no hesitation to accept professional advice in this respect as long as it is aligned with the children's welfare."*

94. Taking into consideration all the risks and having regard to the children's specific needs, the Independent Social Worker concluded:
"The grandparents are quite capable, experienced adults and it is not thought that they necessarily have any needs with which they need assistance in order to look after the children… [the Paternal Grandparents]had already reflected on the issues involved in the early stages of seeking legal assistance with the proceedings. Currently, they know the shortcomings of their son but they also are well capable of withstanding any pressures from him that is likely to adversely affect the care they will give to the children. They do not expect that the children's father (their son) would ever challenge them in any way that could undermine the care they provide for the children. As for the mother of the children, they have no contact with her and are not concerned that anything untoward may occur from her corner." The Independent Social Worker observed that when the children were previously living in the Paternal Grandparents' home, *"at that time the household was full of tensions arising from overcrowding conditions, along with incompetent parents who resorted to alcohol rather than caring for their children."*

95. In conclusion, the Independent Social Worker informed the Court that in his professional opinion, although, "*it would appear that it has taken the applicants [Paternal Grandparents] some time to understand and realise the concerns of the local authority, surrounding the issues of the parents' failures…in reality they themselves have had their own concerns about the parents difficulties in caring for their children. I feel that the children being placed in [Local Authority] care has led to a realisation of the reality of the situation…There may well be concerns regarding the father having influence over the grandparents, should the children be placed with them. However, the grandparents are steadfast in their view that the children's wellbeing is their top priority, and that their son is an adult who is capable of looking after himself, and not needing them to look after him. Besides this, they are already well aware that their son, the children's father is more often than not failing to confirm his attendance for contact. For them this is a firm confirmation of their view that their son lacks interest in the children, which in turn consolidates their motivation and drive to intensify their care and protection of the children, from either parent."*

96. The Independent Social Worker concluded his independent professional recommendation to the Court thus:
"*This assessment took place with the aim of seeking suitability for special guardianship. This assessment has proved positive and it is my view that the Applicants [Paternal Grandparents] be approved as the special guardians for the 2 children involved here. The grandparents are driven and motivated by positive intentions and are full of compassion and care for their grandchildren. Their assessment has shown them to have all the positive attributes required as care givers. A positive SGO assessment in this case allows the children to grow up within a birth parents family and driven by motivations arising from heritage and identity. It would also ensure that contact at safe levels are maintained with the birth parents…"*

97. Following the positively concluded Special Guardianship report by the Independent Social Worker, the Local Authority and the Guardian separately communicated with the Independent Social Worker. The Children's Guardian records in her final analysis:
"I spoke with Independent Social Worker: I had a telephone consultation with [the Independent Social Worker]…The ISW advised that he had been provided with several updated documents (contact reports and nursery reports) and had completed updated enquiries with the allocated social worker and foster carers, which have highlighted the significant impact on the children's behavioural and emotional presentation particularly following contact with the paternal network. I advised the ISW I had recently completed an observation of supervised contact between the paternal grandparents, [the father] and the children on 21.03.2024…I observed that the children were extremely active, including climbing on furniture (including chairs, the table, and windowsill). The paternal grandparents and [the father] were not on each occasion proactive in taking the children down from the furniture often resorting to standing in front of them (to prevent injury from falling), rather than establishing appropriate boundaries by informing the children that it's not allowed, they could hurt themselves and physically taking them down from the furniture. I informed the ISW during feedback discussions following the contact session, when discussing day to day care arrangements of the children, [the father] stated that he has moved closer to his parents to be able to support his parents and assist with the care of the children, such as collecting them from school, if unwell. The paternal grandparents did not challenge their son at all, giving him the impression that such an arrangement would be suitable. The ISW asked about any concerns I had or had been raised regarding the children suffering with either additional needs or developmental trauma, which impact on their holistic development. I advised that both children were extremely young for any formal diagnosis, but ['W'] was displaying challenging behaviours (tantrums, throwing, hitting, targeting ['Z'] when upset), which resulted in the previous foster care placement, of two very experienced foster carers having broken down, with the carers reporting feeling unable to keep both children safe, during these incidents. The ISW advised the potential of the children having additional needs and suffering developmental damage could cause these children to require more specialist care than the paternal grandparents were able to provide."

98. Following his discussion with the Local Authority and the Children's Guardian, the Independent Social Worker prepared an "addendum" Special Guardianship report dated 25 April 2024, revising his recommendation. Having concluded his first Special Guardianship assessment wholly positively with a glowing recommendation of the Paternal Grandparents, the Independent Social Worker's addendum assessment concluded negatively. The Independent Social Worker recorded in his addendum report, "*In light of new information added to this document, my recommendations have changed to take those into account."*

99. The Independent Social Worker had sight of a note of a contact session which took place on 25 January 2024 involving the children, the Paternal Grandparents and the father. The contact session took place prior to the date the first Special Guardianship report was concluded. The contact supervisor recorded that the Paternal Grandmother constantly apologised to the supervisor for her son's "*stroppiness."*

100. The Independent Social Worker went on to tell the Court, "*It speaks for itself with regards to forming a view that the grandparents, almost certainly never curbed their son's challenging behaviours in his growing years, nor would they have the courage to do that or to criticise him now. Perhaps this is at the core of their consistent reluctance to accept the social workers' assertion of the damage to the children, as a result of their parent's lifestyles in the past. There is therefore a big gap between the Local Authority's view of concerns and that of the grandparents'. The grandparents have only seen the children in contact, describing them as highly active, but due to being so young, like many other children of their age. They are of the view that if placed with them, within a short period of time, they will settle down and stabilise in their care. The grandparents feel that they will give them every attention needed until they settle down. They feel that their contact sessions have shown their ability to cope well with them and to manage their highly active behaviour. Having recently seen the reports of the staff from the Nursery where the children attend, it is of serious concern that after contact sessions, the*

children's behaviour is very unsettled, demanding and agitated so that the professional carers deploy much energy to settle them down. I am of the view that this is more likely to be connected to the consequences of the children's developmental damage, rendering them hypersensitive to out-of-routine changes/events, causing them agitation and a disruption in their senses of security and certainty. Additionally, the 'correcting' exchanges necessary from the contact supervisor needed to put the father in his place when he falters the rules, may also be picked up by the children as a 'threat' to their sense of security. After contact, would be the time for them to consolidate, by reacting freely in unsettled manners that would need specialist care and input to stabilise them. In discussions with the Children's Guardian on this issue, she also added another possible explanation, connected with the children's possible memories of the family members before removal into care."

101. The Independent Social Worker expressed the view, "*Children, who have experienced and sustained developmental damage, generally tend to react with agitation and disruption when faced with change. Facing a new situation is challenging and can often evoke a very unsettled and reactionary chain of behaviour which is not understood and difficult to deal with. It must be acknowledged therefore that the developmental damage has significantly 'robbed' both children from developing resilience, coping mechanisms and adaptability we expect and see in children of similar chronological age. They must lack the capacity to feel secure and resourceful to cope with change and challenge which is essential processes expected of normally developed children to be resourced and equipped with as they grow. These are very complex issues to think about, to reflect upon and to grasp. Even many skilled carers may struggle to understand and to deal with such concepts. These are well-meaning and well-motivated and brave grandparents, driven by their desire and a sense of family honour to step in and offer their grandchildren the lifetime chance of growing up within the bosom of the family. However, their grandchildren need far more than that in caring for them. These children need far more than 'good enough' parenting skills. They need sustained and durable presence, drive and vitality, in every hour of every day of their lives from very dedicated carers. This is not just for the next few years but well into adult years, if not the whole life. We just do not know how and if, there will be a reasonable pace of progress when a child's development is hampered through 'damage' (as different from 'delay'). All this is beyond the grandparents' capacity to grasp, holding unrealistic views of how well they think they can manage successful care of these difficult and hard-to-manage damaged children. A belief in the trauma the children have suffered is outside the grandparents' understanding."*

102. The Independent Social Worker went on to tell the Court in his addendum report, "*It is good that these children have grandparents willing and wanting to care for them. The authorities, in order to approve them, will have to give serious thought to health and vitality factors that are fundamental to their long term developmental years. If these children continue to remain affected and be held back as a result of their developmental damage, then a greater emphasis would be needed to be placed on highly skilled and far more energetic knowledgeable carers. I would even go further by adding here that, in the children's best interests, they may even need to be placed separately. Whilst identity and origins are important factors when making every effort to find a suitable carer within the family, the children's welfare and their future chances are always paramount for the Court. We just have no idea how these two children's lives will pan out developmentally, knowing as much as we currently know about the min terms of the developmental damage, developmentally [sic]. It is too early to know how concerns about them would unfold. It is far too early for any diagnosis at this very young age now until indicators for diagnosticians become clearer. This is not just about caring for them but substantially a potentially lifelong dedicated care, perhaps throughout adult years too."*

103. The Court was further told of the Independent Social Worker's opinion that, "*it is just not fair to dwell on the grandparents 'capacity and ability' but the severity of the children's state of damage. Report from the foster parent and the nursery are quite alarming. Do we really want to unfairly have high unrealistic expectations from the grandparents and judge them and their capacity for a task that can fail both them and their grandchildren? The care of these two children, separately or together is in my view, beyond the capacity of any ordinary well-*

meaning care-giver. To meet these children's needs, the grandparents would need to be far more resourceful and with far more insight into what developmental damage means and what skills are needed to settle down a child, affected by each and every challenge arising from change and disruptions in daily life. Whilst the grandparents dedicated and deployed the very best of their resources during the contact sessions, looking after such children with such difficulties on a whole time basis and for years to come, is a different world to master. As for safeguarding the children from risks from their parents, I am no longer convinced that they would have the resolve or the motivation to stand up to their son's challenges that might pose a risk to the children, nor do I believe that they understand the concept behind it. From the contact sheets I have read (mentioned above), the children's father is in control of any dynamics involving the children, whilst the grandparents remain apologetic for his damaging stance and in firm control of his parents. The father has no respect or regard for his elderly parents, he is very erratic in his dealings with issues to do with the arrangements, disrespectful of the authorities and is 'a law to himself'. He is uncontrollable and can cause much damage to his children and potentially to his own parents if it comes to it. Contact records should be taken very seriously in putting together the unspoken state of relationships and the historical background…The children's father has grown up to be unruly and disrespectful of anyone's authority. Attraction and a taste for substances and possible alcohol misuse also exacerbate these attributes of disregard for rules and for others. The children's father has no inhibitions in the presence of anyone, from his own parents to others in authority over issues that should matter to him. It is inescapable that something seriously went wrong in his parenting when he was in the care of his parents and that raises questions about the grandparents' capacity for good care and to safeguard the grandchildren from anyone, specially their father. Besides all that, the grandparents will have their hands full with the competing sets of loyalties, driven by love and a sense of duty. The children need resourcefulness in the care they will receive, in addition to a sense of duty…Their long term (possibly lifelong) care will not be easy to secure without much thought and consideration and I guess, this will be a huge challenge for the Local Authority to surmount. On one hand, we know that when the children and their parents lived with these grandparents, neither grandparents were available for their grandchildren as explained earlier here:

(a) Grandfather busy with his own father's ill-health, followed by two funerals in [his country of origin] whilst the grandmother needed to be at work, and,

(b) They would not interfere in their son's family life, or better summed up, they just were not available to prioritise their grandchildren's needs within a household that at the time had other pressing needs competing with the children's needs, or,

(c) The grandchildren's needs did not even occur to them as 'needs' and potentially;

(d) A multiple of all these factors.

Cultural traditions tie every one of us down firmly to loyally abide and fulfil. In migrating to a host culture, where traditions, law, beliefs and mind-sets have significant differences, conflict and breaches of values and standards may follow, with consequences that are now and here are subjected to examination and analysis…[the Paternal Grandmother]…seems, in my view, to have 'burn-out, and resigned to full time work until entitled to receive her state pension. On the other hand, I think that going out to work has also been an opportunity to be out of the way in a household where she would have been the main housekeeper. This situation will continue and be maintained, should even the children be placed with the grandparents. Should then, the need arises for the grandfather to go to [their country of origin] I think that out of convenience, he will take the children with him and let others there to look after them for his duration of stay. Although he told me that should the need arise, their daughter…will help them out, I am not convinced that this is a durable or sensible option. It remains a concern as to how this issue would be addressed or what the 'costs' would be to the children should other matters arise that need priority attention. This is because one knows that one is being watched and measured up to the standards of cultural fulfilment where shame and honour compete with each other when one is weighed up with their public image/actions and the rewards it offers. In short, we cannot/should not 'bank' on that. It is always the 'young who give to the elders'…The rhetoric in some cultures is to claim a 'child-loving' tradition. In practice, elders, sick and fit, are more often than not, prioritised as a mark of respect and honour."

104. The Independent Social Worker recorded in his addendum report, "*The grandparents have had difficulties to follow [advice]. They showed adequate awareness in the assessment module I administered with them, when we discussed health risks from sugary and salty foods/drinks. However, they have had considerable difficulties in putting it into practice during contact sessions. They clearly, have 'soft' hearts for their grandchildren and would like to 'sweeten' them, perhaps to gain inroads into their hearts. Perhaps they see the advice rather cruel and unkind in that case. Whilst we come across parents from many traditional backgrounds of favouring sweet items, [the culture of the Paternal Grandparents' country of origin] certainly has an unbreakable love for sweets, and the dental damage the children have at such a young age is testimony to this. To follow, or not to follow: tradition or advice remains a concern when generalising the issues wider and beyond that of sugar and salt."*

105. Further, the Independent Social Worker told the Court in his addendum assessment that the Paternal Grandparents, "*remain very suspicious of the authorities whom they feel have blamed them, their son and their elderly mother. They appeared willing to seek support and advice should the need arise. However, given their fear and concerns of any issues 'backfiring' on them is likely to inhibit them than persuade them to seek support from the social workers. The burden of the 'baggages' of the past and their experience of the 'oppositions' they experienced may weigh in, depending on the issues they might need assistance or support with…I am not convinced that leaving the grandparents to it to manage contact smoothly is a realistic and safe option. It would potentially be damaging to the children, to say the least. Their boundaries and their relationships with their son are far from firm and perhaps also bound by some elements of avoidance, fear and inhibition. I remain uncertain as to how and in what form, if any support could uphold and maintain safe contact."*

106. The Independent Social Worker concluded his addendum assessment by telling the Court, "*The grandparents' assessment did show a 'good enough' parenting capacity. However, it is postulated that these children need far more than 'good enough' care and may in fact need separate therapeutic care placements to enable them to survive life's challenges, arising from the fundamental damage they have sustained as a result of the parents' lifestyles and behaviours. I do not recommend any training programme for the grandparents that would be of eventual benefit to these children. Meeting these children's needs require carers who are 'available' to be engaged with them therapeutically and tactically every hour of the day and as they become older, the task of care giving is highly likely to change and to become more demanding and complex. In line with their age-related changing needs, their placement(s) may even need to be reviewed. It is very important to understand that we are still in the very early stages of learning about developmental damage, where as early as foetal development, brain and neurological system are affected and damaged when exposed to the damaging chemicals consumed by the expectant mother. Whilst we wish and hope the best for the children, it remains to be seen as to how their neurological resources they are left with, would fall in line with their social learning and behavioural norms formation. In some children with similar backgrounds, we have seen behaviour formations such as Oppositional Defiant Disorder as a child physically becomes older and stronger. Special care giving would go to some length to reduce the chances of this sort of situation. We owe it to both the children as well as the grandparents, to approach issues surrounding this case with head than with heart [sic]."*

107. It is difficult to identify from the addendum report of the Independent Social Worker the reasons for his volte-face, reversing the positive conclusions set out in his first report and aligning himself with the position of the Local Authority. The Independent Social Worker was directed to attend Court to give oral evidence. In oral evidence, the Independent Social Worker told the Court, "My first recommendation was heavily orientated and based on information about the Paternal Grandparents and the children's situation. I had asked before I began may I please have some reports about past contact sessions. These are usually the best indicators to guide us to assessment. They were not forthcoming until after I completed my first assessment, which was favourable towards the Paternal Grandparents, in a vacuum. I was more orientated in the direction of good enough parenting. I was not provided with the updated version of the bundle.

As soon as I concluded my favourable approach to the Paternal Grandparents' assessment, a plethora of information began to come in, pointing in a different direction, that alerted me and worried me. I was quite concerned to find myself in that position. It was not fair to me or the Paternal Grandparents' either…In the absence of information, I had no option but to conclude the Paternal Grandparents have skills for good enough parenting. I was unaware of the extent of damage to the children and the consequences of that for them day to day."

108. The Independent Social Worker told the Court that subsequent to the conclusion of the first report, the additional documents he received that resulted in the complete reversal in his recommendation to the Court included information from the foster carer, from the nursery from the Social Worker and from the Children's Guardian following the Guardian's observation of contact: "Effectively, all these began to take shape about the state the children were in and guided me to change my opinion. It would have been a mismatch. That is why I changed my views…the children have consistently from the foster carer's reports and from the day nursery, pointed us to the direction that we ought to be concerned seriously about the children's behaviour and skills to match them…the foster care notes show how difficult the children can be and how much there is a need for input from skilled individuals is needed to calm them down… high skills in understanding why children behave in that manner, without agitating them further requires specialist experience. Not every foster carer can manage that…they may have sustained neurological damage. They have a dysregulated state of emotion. These children need much, much more than basic good enough care from ordinary parents. The foster care is already struggling…[it is] not sustainable. We cannot experiment with that…the children should not be guinea pigs in that. We cannot take risks. The Paternal Grandparents are novices in this situation. We are fantasising about that…we have to be very realistic. We cannot gamble and must not gamble. The lives of these children are precious…it's a wishful idea. It's a dreadful idea actually. I would not want to be a party to that…there is no reason to believe they would not do their best but their best may be well short of what we may wish for…the children need well above average, highly skilled carers. We are expecting too much of these grandparents."

109. The Independent Social Worker told the Court that the Paternal Grandparents had developed insight in respect of the harm caused to the children by the parents' behaviour, following the educative work he completed with them. The Independent Social Worker told the Court, "They did move on. I was convinced in the first assessment...They were awakening…the realisation was cumulative." Further, the Independent Social Worker told the Court that his own observations of the Paternal Grandparents' contact with the children was, "sufficiently satisfactory. They did their best…they did remarkably well to cope with that…I was quite happy with them to cope with the challenges. The children were noisy and demanding. The grandparents coped well. The children never wanted to stop in the 1 hour session. The grandparents did well...they did very well in the circumstances. I was happy with that. I was cautious about concerns about eating sweets. I did not allow that to become an obstacle…[the Paternal Grandfather] explained that the sweets were souvenirs from [his country of origin]. I took the view it was an exceptional situation. The grandfather wanted to make the point they were the kind of things you won't find here."

110. The Independent Social Worker told the Court in oral evidence that the Paternal Grandparents are, "quite capable of providing good enough parenting." The Independent Social Worker went on to tell the Court, "These proceedings partly arose from conditions that took place right under their nose. As much as we want to be kind and put that to one side, it was a small household. That was the only place the children were. We cannot ignore where they were when all this was happing."

111. The Independent Social Worker acknowledged that his first assessment provided a clear, positive recommendation in respect of the Paternal Grandparents as Special Guardians for the children. The Independent Social Worker accepted that at the time of his first assessment, he was aware that the child 'W' was displaying difficulties in regulating her emotions, including behaviour that was considered to be challenging, defiant and spiteful. The Independent Social Worker acknowledged in his first report that 'W' was considered to be showing some signs of

autism. The Independent Social Worker acknowledged that his positive assessment of the Paternal Grandparents in his first report was made in the knowledge of those factors. The Independent Social Worker told the Court that he had not asked the Local Authority for additional information, prior to concluding his first report. The information that changed his recommendation included details of the children reacting badly to contact on 15 March 2024. The Independent Social Worker told the Court, "The information came through very last minute. I was disappointed we were not informed at a much earlier time. It was quite alarming what I read. It changed my focus of this case at the time. I had to relate the aftermath of contact to the contact…it crossed my mind that much earlier memories of being at home with their grandparents' voices might be associated with difficult times at a very young age. I asked many questions, why should that be. I sided with a view that the children are more reacting to change and uncertainty rather than memories of individuals. I can't say with certainty. It is a hypothesis." When put to the Social Worker in cross-examination that the Local Authority did not place reliance on the statement from the nursery, the Independent Social Worker told the Court, "I was asked to take that on board in forming my views but there were many, many other concerns expressed." When asked to identify the "many other concerns", the Independent Social Worker told the Court, "The Guardian was keen I take on board her experience of contact. I formed the view these things are destructive."

112. The Independent Social Worker told the Court of a ten-minute conversation he had with the Local Authority Social Worker on 23 April 2024, in the period after completing his positive first report, prior to changing his recommendation in his addendum report. The Independent Social Worker produced a note of that conversation. The note is dated 10 April 2024. The Independent Social Worker told the Court, "I may have erred on that. I put the date on later on. I may have lost count in the diary." The Independent Social Worker told the Court that the Local Authority informed him that the behaviour of the children was, "markedly worse" after contact with the Paternal Grandparents. The Independent Social Worker told the Court, "That was the view that was formed. I was not sure whether it was due to the grandparents. My observations showed nothing wrong with their [Paternal Grandparents'] consistent efforts to manage contact. It would not have been fair to take a view and go along with that view. Its easy to form the view that contact and a deterioration in behaviour after contact is related. I can only speak from my observations. It would not be fair to blame the grandparents' ability or inability but the children need much more skilled and energetic people to take care of them. It is very concerning that the foster carers had to call on extra support to calm the children down…I am not of the view the grandparents can meet that challenge. It would not be just or fair to the children…to burden the grandparents with such a huge, enormous burden in caring for such difficult children…the current situation is, these are not two ordinary children. Their over hectic behaviours are out of line for their age and development…we are very much uncertain about what is going on in their heads and it would keep us busy for a long, long time to work out how to manage them. It's a very skilful job."

113. The Independent Social Worker accepted that during contact, the Paternal Grandparents responded appropriately to the children and managed their behaviour. Further, the Independent Social Worker acknowledged that during the Guardian's observation of contact on 20 June 2024 between the children and the Paternal Grandparents, the children thoroughly enjoyed themselves, the Guardian too recognising the Paternal Grandparents to have managed the children well during contact. The Independent Social Worker told the Court, "I commend them for that. I have no issue with that. There is a picture of uncertainty. They are playing well one day and demand extra help to manage them the next. That makes me more convinced there is neurobiological damage to them. I am not a scientist but I have done much reading…good days can be misleading. They give us a false hope."

114. The Independent Social Worker told the Court in his oral evidence his opinion that, "there are three stages for any of us in a situation: (1) Intention/Recognition; (2) Skills to do something about it; and (3) Motivation and drive to execute that. The grandparents have a good level of insight. They declared a good level of skill to put that into action. But it is for a future date to see if they are up to execute that and put it into action. They are intelligent people. They have

worked hard to succeed…They brought up a family. They know being grandparents they can do a lot of things they never had a chance to do as parents. They have a good understanding how to do things differently. To put all that into practice and to take it all on board, as we put on years, the learning curve begins to descend and the pace of it slows down…to deal with that at a pace the children need, right now, today, not next year, the level of support needed, its not practicable without the oversight of a Social Worker…the foster carer with all her experience is still learning how to manage the children. The pace of learning has to be much, much faster. The grandparents have managed well on their own in contact. I have not been critical of the grandparents. I have praised them. It is commendable the way they have coped well."

115. The Independent Social Worker accepted that he had changed his recommendation from a positive one to a negative one, "based on a perceived higher level of need" the children may have, telling the Court, "mismanaged children may well end up being beyond the management of any well-intentioned adult." The Independent Social Worker accepted he had not assessed the needs of the children, telling the Court "Time is not on the side of the children. Delay would cause disruption. Foster care is a middle ground, a holding space, like a remand home. The children need certainty. They need to have a secure plan. They have got an uncertain life." The Independent Social Worker went on to tell the Court, "I'm still of the view they [the Paternal Grandparents] are capable of providing good enough care. They can do far better than they did with their own children. Its matching the children's needs that concerns me…my view is, it is well beyond good enough parenting…they are well capable of meeting good enough parenting. It's about managing these difficult children…they [the Paternal Grandparents] have every intention. They have the skills. …The final stage is executing that. The drive and motivation to execute it is the stage they have problems with."

116. The Independent Social Worker did not consider there was a gap in the evidence in terms of expert assessment of the children, telling the Court, "The children's needs at a clinical level cannot be established until much later in life when they can be assessed for ADHD and other disorders. I think they're still too young for that…it's just not possible to have it."

117. The Independent Social Worker told the Court in his oral evidence of his belief that the mother used substances and alcohol when pregnant. This was not an assertion made by the Local Authority and no evidence was adduced by the Local Authority to suggest the children have foetal alcohol syndrome. The Independent Social Worker told the Court, "Whether suspicion or fact, it does happen. It is highly likely that affected the development of the foetus…I don't accuse anyone. Its guess work. There is evidence she engaged with those substances. It's a reality in society."

118. It is plain the Independent Social Worker formed a wholly positive view about the Paternal Grandparents when completing his first Special Guardianship assessment leading to a positive recommendation that the Paternal Grandparents be made Special Guardians for both children. Whilst asserting in his oral evidence that he concluded his first, positive report, "in a vacuum," there was no suggestion in his first report that there was any further information the Independent Social Worker required to complete his recommendation beyond simple medical checks and DBS checks. The remaining gaps in the assessment related largely to information about the parents. It is plain the Independent Social Worker reversed his recommendation, after concluding his first report, only after speaking with the Allocated Social Worker and Children's Guardian. The change from a positive recommendation to a negative one was based exclusively on what the Independent Social Worker was told about the behaviour of the children in the care of the foster carer, following successful contact with the Paternal Grandparents. The Independent Social Worker did not seek to make direct enquiries with the foster carers. He did not seek to raise his concerns with the Paternal Grandparents. He formed views about the mother, suspecting use of substances and alcohol whilst pregnant, absent any evidence, based upon "guess work." In his oral evidence his answers to questions were unfocussed at times, He expressed some unusual views equating foster care with being "on remand" and his view that the Paternal Grandparents had wated their money in funding this litigation. Further, he expressed in oral evidence his view about the children being "difficult", at one point referring to them as

"demonic." He made a series of theoretical assumptions when reaching his amended, negative conclusions. Further, having concluded positively in his first report in the full knowledge of the family's circumstances living as part of an extended household at the time when the children suffered harm, the Independent Social Worker entirely changed his position, based on the same facts, when concluding, "these proceedings partly arose from conditions that took place right under their nose."

119. The Court, unlike the Independent Social Worker, had the unique benefit of hearing from both Paternal Grandparents, from the child's father and from the Paternal Grandparents' niece, who forms part of the Paternal Grandparents' support network. The Paternal Grandparents, who were assisted by an interpreter throughout, made plain to the Court that they would actively seek support from professionals and from their family support network when needed. The Paternal Grandparents were aware of the professional view that the children may have additional needs arising from trauma, ADHD or autism. They identified their daughter ('PA') and niece ('N') as part of their support network both of whom live very close by. Their daughter has a child with autism, their grandson, who is 6 years old and pre-verbal, whom they spend time with three times each week. The Paternal Grandfather told the Court that the Paternal Grandparents cared for 'N' when she was young, from the age of 2 years to 9 years, when her mother was unable to care for her on account of alcohol abuse. The Paternal Grandfather told the Court, "We lived with five people in the family: my two children and ['N']. We treated her like our daughter. She now visits our home each week."

120. The Paternal Grandmother told the Court, "We will do our utmost best to help and assist the wellbeing of the children. We believe we can manage that and we will do our best to ask for help if needed." Both grandparents told the Court that they worked with young children in their previous jobs. Further, both Paternal Grandparents told the Court they will prevent their son from entering their home: "He cannot turn up asking to see the children. We will have to be firm. If he doesn't leave, we will call the authorities." The Paternal Grandmother told the Court, "I've done it before. When they [the parents] were fighting, causing trouble, I called the police and the police attended." The Paternal Grandmother told the Court, "I'm not afraid of my son. I'm not afraid of challenging him…I am able to confront him and stop him."

121. Further the Court had the unique benefit of hearing from the Paternal Grandparents' niece, 'N'. 'N' told the Court that her father is the brother of the Paternal Grandfather. 'N' told the Court, "When I was 5 years old I came to live with my uncle and aunt [the Paternal Grandparents] because my mother was an alcoholic and not able to care for me. She was in and out of prison. I lived with them [the Paternal Grandparents] for around five or six years until my dad was able to secure accommodation. I'm [over 30] now. We were all living in same household, [with the Paternal Grandparents' two children, including the father of the subject children]. I have very fond memories [of them]…My mother was not well. It was not my choice she was not able to care for me. It was not a good relationship. I felt very saddened. I felt she turned her back against me and she did not love me and that I was not good enough. I found support from my uncle and aunt [the Paternal Grandparents]. I resumed a relationship with my mother many years later. My uncle [the Paternal Grandfather] was the peacemaker. He would take me to supervised visits to build a relationship with her. She was high risk, so that stopped. We got in contact again when I was 17 years old. She was still a risk. Now we've started a relationship again a few years ago. My mother is fond of all the [paternal] family and thanks my uncle [the Paternal Grandfather]. It's the best thing that could have happened." 'N' told the Court, "I attended school across the road from [the Paternal Grandparents]. We are a very close-knit family. I still visit three to four days each week with my son who is 21 months old…when I came to move with [the Paternal Grandparents] I was in a complete state. I'd had years of my mother not being nice to me, seeing stuff I should not have seen. I was isolated and had no confidence or trust. I was scared…they made me feel like their daughter. I was not different to their children. They gave me confidence in myself and I am forever grateful"

122. 'N' described working previously from 2019 for the NHS as a "rapid responder," supporting vulnerable patients in the community to prevent hospital admissions. She described also working

for three years with children with autism and learning difficulties, for an organisation providing speech and language therapy and counselling to address their behaviours and to provide support for families. 'N' told the Court of her confidence that the Paternal Grandparents would manage looking after 'W' and 'Z', "with the right support from professionals and support from me and [PA]. It will be challenging for any parent/guardian…with the right guidance and support it can be managed. I know from my previous work. I can help them understand any special needs and support them, including translating information, reading, filling out forms, scheduling appointments, doing the school run, babysitting, helping with homework, taking them out to playgroups and providing respite. I would love it and my son would love it. I can stay over or the children can come to me...spending long periods at each other's homes is normal."

123. In respect of the children's father, 'N' told the Court that they both grew up together. 'N' told the Court that since his release from prison, the father has not returned to the Paternal Grandparents' home. 'N' told the Court, "I helped him get supported living accommodation."

124. In respect of the period when the children were living with their parents in the same household as the Paternal Grandparents, 'N' told the Court, "There were times when the parents' relationship was good. There were some lovely times. The bad times outweighed the good…I was not happy about the conditions of the house. It was definitely not child friendly: the cleanliness, the garden was full of stuff that was possibly a danger to the children…it was not up to the best standards…That is no longer the case."

125. Further, 'N' told the Court that knowing the children's father well and knowing the Paternal Grandparents well, she is confident the Paternal Grandparents would be likely to stand up to him. She told the Court that the father, "could be a risk. I do not know what is in his mind. We can control him and not allow him into the property. We will stand up to him. I can't say whole heartedly he would comply with a Court Order. We were very, very close. I lived with him as a brother. I will continue to tell hm to do the right thing. I will keep convincing him. I've got the upper hand. He has listened to me when he was reluctant to get support. I arranged a link worker for him to get 1:1 support worker. I'm in a good position to help him. All the support he has now was all my doing. I have the experience from my jobs and he is grateful…My connection working with support organisations and in the NHS as a rapid responder means I can signpost [the Paternal Grandparents] to resources for additional support for the children, specific to the needs of the children as they arise. ['PA's son] has high needs. He is autistic. I knew the pathway and where the referral routes needed to be. I know how it works and the pathway needed. It's a difficult process. I know the starting points."

126. 'N' was frank in telling the Court that the Paternal Grandparents, "do not have a full understanding of people with learning difficulties but they do have experience of me as a child with trauma. I was very disruptive, longing for attention, in the wrong ways. I was very challenging. With the right counselling, therapy, love and care, [the Paternal Grandparents] helped me to overcome my trauma. I will not forget that trauma but I have learned to deal with my emotions and to express myself in right way. [The Paternal Grandparents] were willing to take part and accept the help out there. They want to learn. I was not a nice child. I used to hit and be spiteful…['W'] can behave like that to her younger sister. I was so scared of my situation. I needed constant reassurance from [the Paternal Grandparents]…it was hard and draining for them. I would cry and be very clingy and destructive. I would lie and try to get the attention I craved. I used to push and slap and pinch for no reason. It was just something I did. I would not sleep on own. I was a nightmare at bedtime….[The Paternal Grandparents] were very supportive of counselling at school. I felt ashamed. They taught me to be honest and to express my feelings. They talked to the teachers and the counsellor because my behaviour was out of the norm. [The Paternal Grandparents] took a coordinated approach to my care, working with professionals."

127. 'N' presented to this Court as a very impressive witness and a caring, resourceful and genuine individual. She answered questions in cross-examination in a direct manner. She presented as very open and honest. She gave a good account of her own experience in the care of the Paternal

Grandparents and the challenges they helped her overcome when she lived with them during her difficult formative years. Her own experiences, trauma and behaviours as a child were remarkably similar to those of the children 'W' and 'Z'. It is reasonable for the Court to infer that the Paternal Grandparents made a hugely positive contribution to 'N' being the impressive person she is today and why she speaks so positively about them now. 'N' was frank in her view that the Paternal Grandparents did not do enough to protect 'W' and 'Z' from their parents' domestic abuse and alcohol misuse. In this Court's judgement, 'N's own experience of being cared for by the Paternal Grandparents as a child for an extensive period was compelling. Furthermore, her knowledge of the father and the challenges he faces was insightful. Yet further, her background employment experience would inevitably place her in a strong position to provide hands-on practical support, guidance and respite to the Paternal Grandparents if the children were placed in their care. In this Court's judgement, 'N's direct experience of being cared for by the Paternal Grandparents, her subsequent professional experience and her ongoing commitment to support the Paternal Grandparents in caring for the children places her in an extraordinary position to provide direct, targeted, robust support and advice to the Paternal Grandparents as an integral and vital part of their support network. This is evidence was not available to the Independent Social Worker and was not explored by the Independent Social Worker when he reached is negative conclusion regarding the Paternal Grandparents' ability to care for the children.

128. The Guardian told the Court in her oral evidence that the Paternal Grandparents are experienced carers, who have raised their own children: "I observed in contact they were able to meet the basic needs of the children." The Guardian told the Court her view that the children have, "an extremely high level of need that is not fully understood. The Paternal Grandparents struggle with their understanding of the children's previous lived experiences and exposure to frightening adult behaviour, including domestic abuse, substance and alcohol misuse, living in a household where the conditions were not conducive to their development. Despite three sessions of educative work to develop insight, knowledge and awareness of risk, there is still some way to go to consolidate that knowledge and apply it to strategies in their parenting of the children. They are still at the very early stages of recognising and understanding the children's needs. They may struggle to implement the strategies they have learned on a consistent basis. It takes time and practice and a real consistency for it to be effective. I accept they are genuine in terms of their willingness to learn, attend training and in putting themselves forward. The progress they are able to make somewhat slowed down. Work will probably need to be repeated to ensure it is embedded, to show how to apply strategies learned consistently towards the children. It may be a slower rate of change than we would want for the children."

129. The Guardian told the Court, "The children have been receiving safe, consistent care [in foster care]. I would not want to risk undoing that important work for the children…the children need more specialist care. The Paternal Grandparents, even with support, cannot offer that care. The Paternal Grandparents' care will be on a basic level. They will try their best to ensure the children don't come to harm…it's an understanding around why the children behave like this and why they react, because of their experiences. These are very complex issues that require a lot of training and time to understand and respond. The children could regress in terms of their behaviour and that would present a larger challenge. There is a risk of placement breakdown because of the gaps around the grandparents' level of insight into the risk of their son and the mother. They struggle to fully understand the children's presentation and behaviours. There is a risk they will struggle to manage the emerging challenging behaviours of the children by not offering consistency in their parenting approach. They are doing their best but there are still some quite significant gaps in their parenting capacity. Their ability to understand, reflect and apply strategies for parenting of the children is where they may have difficulties. A further programme of work would not assist in this case. There have been three quite intense parenting strategies provided to the grandparents. I think unfortunately they have not made the desired level of progress within the timescales provided…breakdown of the family placement would be absolutely devastating for the children to find themselves in similar circumstances with further instability. That would be extremely harmful for their development with the risk of future court proceedings."

130. The Guardian did not consider there was a gap in the evidence in terms of assessment of the children. The Guardian told the Court, 3-4 years old is extremely young to consider a psychological assessment of the children: Neurodiversity and diagnosis should await school age to see how the children develop meeting their key developmental milestones before formal assessment of their needs. Further delay in the proceedings would significantly impact the children's need for permanence and finality.

131. The Guardian described the decision as, "difficult and finely balanced: We've had an assessment that is very positive on the ground and then a negative assessment that followed." The Guardian told the Court it has been, "difficult to assess what is in the best interests of these two children."

132. The Guardian told the Court that, if at the conclusion of the proceedings, the Court determined that the children should be placed with their Paternal Grandparents, the Guardian considered such placement should be under Care Order: "That would provide the Paternal Grandparents with hands on support, training, monitoring and guidance for the foreseeable future with an Allocated Social Worker, the provision of support, services and training. It should not be for the Paternal Grandparents to understand their own gaps in learning and seek out training. That should be professionally led. A Care Order would provide an extra layer of support and safety… the children would need a wide range of support, professional and family support and clear strategies to employ with a clear direction as to what to do if things go wrong. In the early stages, this should be daily support to ensure the safety and welfare of these children. It would be a huge task for them to take on board care of these two children without a real network of support around them and a real understanding of where the behaviours come from, not just naughtiness but life experiences and to have to understand a consistency of approach. That would be key to moulding and shaping the children's behaviour in the future." The Guardian accepted that the option of a Care Order with the children in the care of their Paternal Grandparents was not considered in her written analysis: "I accept there is a gap there. It was an oversight."

133. Regarding the Guardian's conversation with the Independent Social Worker following the completion of his first, positive report, prior to filing his addendum negative report, the Guardian told the Court, "I told him about contact on 21 March 2023 where the children's behaviour was beyond the grandparents' ability to manage, the children displaying challenging behaviours including tantrums and hitting. Similar behaviour had resulted in the breakdown of the placement with the second foster carers, who were highly experienced. The foster carer did not feel able to protect both children at times of tantrums, with ['W'] throwing toys. The focus of ['W's] aggression was on ['Z'] who was a very young baby. The current foster carers are not therapeutic foster carers. They have support from other foster carers regularly." The Guardian accepted that she had observed another supervised contact session between the children and the Paternal Grandparents in June 2024 which was positive but she had not relayed that information to the Independent Social Worker. Further, the Children's Guardian told the Court that during this contact session, "the Paternal Grandparents showed a good understanding of what trauma can entail for children, more than a basic understanding." Further, the Guardian accepted that, by reference to the foster care logs, 'W's behaviour is not challenging all the time. The Guardian accepted in respect of the recent contact between the children and the Paternal Grandparents, when the father was not present, "when it is just the two of them, the Paternal Grandparents managed the needs of the children very well and the Paternal Grandparents demonstrated they had followed advice."

134. The Guardian accepted in her oral evidence that the Paternal Grandparents have experience of children with autism, particularly their grandson and that they adapt their approach towards him. The Guardian accepted it was significant that the Paternal Grandparents have an understanding of his needs and how he views the world. The Guardian accepted the Paternal Grandparents are capable of understanding and responding to his additional needs and that they have an open and receptive mind. The Guardian told the Court, "I was very pleased with their responses around children with additional needs and the potential for emerging additional needs. I was pleased

with their thinking and how they would adapt their approach. They are a very committed family unit. They did not want to see their niece placed outside the family. They were willing to make the sacrifice to make sure she was safe and well cared for in the family. That demonstrated a real commitment to her future wellbeing. They did a good job with ['N'] given her experiences and challenges." The Guardian accepted the type of behaviour 'N' displayed as a child, such as slapping, spiteful behaviour and seeking out her carer, is behaviour mirrored by 'W' in the foster care logs. The Guardian accepted the proposition that the Paternal Grandparents must have demonstrated more than basic good enough care to 'N'.

135. Moreover, the Guardian told the Court, "Whilst the family, particularly ['PA'] and ['N'] are committed and make themselves available and would be very impressive in providing practical and emotional support, I feel that placement within the family would be very vulnerable to future breakdown, particularly if the behaviour of the children continues on the current trajectory and interventions do not reduce the current behaviours. A significant package of support is needed. There is no guarantee it would have the desired effect on the children's behaviour."

136. The Local Authority identifies three primary risks associated with the Paternal Grandparents caring for the children, namely:
    (a) the Paternal Grandparents' understanding of the impact on the children of their experiences in the care of the parents;
    (b) the dynamics of the relationship between the paternal grandparents and the father; and
    (c) the ability of the Paternal Grandparents to respond appropriately to the needs of the children.

137. Dealing with the first of those identified risks, the Independent Social Worker considered that the Paternal Grandparents had developed insight in respect of the harm caused to the children by the parents' behaviour, following the educative work he completed with them. The Independent Social Worker told the Court that the Paternal Grandparents had "moved on" in their understanding of the impact of domestic abuse and had developed a good level of insight. The professional opinion of the Independent Social Worker was not shared by the Local Authority Social Worker, who considered that the grandparents continue to have a limited understanding of domestic abuse and its impact. In this Court's judgement, the Independent Social Worker was well placed to assess the Paternal Grandparents' level of insight, having undertaken educative work with them, in their first language. Further, the Court accepts the submission made by Miss Choudhury on behalf of the Paternal Grandparents that it is not necessary for the Paternal Grandparents to demonstrate a sophisticated or complete understanding of the impact of domestic abuse in order to safeguard the children. There is no reported domestic abuse between the Paternal Grandparents or anyone else in their household. The children's exposure to domestic abuse was through their parents. The parents have now separated. Moreover, neither parent is living in the Paternal Grandparents' household. There is no reliable evidence that either parent would return to the Paternal Grandparents' address. The father has his own accommodation and the mother lives with the Maternal Grandmother. The conflict that existed in the family home is no longer present and there is no real risk of it returning. The risk of the children being further exposed to parental conflict or domestic abuse is minimal. The Paternal Grandparents were clear in their oral evidence that they recognise that domestic abuse is very harmful for the children. The Paternal Grandparents' description to the Guardian demonstrates that they have learned from all the work completed: "We discussed the impact the parents' lifestyles would have on the children. The grandparents advised the children will have suffered trauma that can be expressed as tantrums, not listening to instructions, hyperactivity, having physical and emotional outbursts." Furthermore, the compelling evidence from 'N' was of these Paternal Grandparents having a clear understanding of the impact on her of her experiences as a child arising from the negative experiences in her mother's care, including alcohol misuse and volatile behaviour. In this Court's judgement, the Paternal Grandparents' understanding of the harmful impact on the children of domestic abuse is good enough.

138. Turning to address the dynamics between the Paternal Grandparents and the father, the Paternal Grandparents gave clear, compelling evidence under proper cross-examination that their son is no longer welcome at their home. The Independent Social Worker formed the professional

opinion that the Paternal Grandparents were steadfast in prioritising their grandchildren. The evidence before the Court is of the Paternal Grandmother having called upon the assistance of the police when their son lived in the family home at a time when his behaviour was unacceptable. The father told the Court that he would not return to his parents' property uninvited. Since his release from prison, he has not done so. Further, since his release from prison, the Paternal Grandparents told the Court frankly that they have been to check upon their son four months ago by visiting but not entering his new accommodation. There is no evidence of the father returning to the Paternal Grandparents' home since his release from prison. The Paternal Grandfather was clear in his evidence that he would not allow his son to attend the family home: "It's not possible. I don't want to risk losing the children because of his visits." The Paternal Grandmother told the Court that if her son turned up unannounced, under the influence of drugs or alcohol, "I will be firm with him and if he doesn't listen or leave, I call the authorities." She told the Court that she would stand up to him and she is not frightened of him. The Paternal Grandmother was criticised for apologising for her son's behaviour during contact on 25 January 2024. As Miss Choudhury noted, the contact supervisor was already challenging the father and the children were being quite boisterous. The Paternal Grandmother was clear in her oral evidence that she did not wish to create more conflict with the children present in the contact centre. The Court accepts that it is difficult to see what more the Paternal Grandmother could have done in that context, that would not have created more conflict to which the children would have been exposed. This Court finds weight in the submission made by Miss Choudhury that there is a distinct lack of realism by professionals in respect of what was expected of the Paternal Grandmother during this contact session, this being an example of the Paternal Grandparents being expected to meet an unrealistic standard.

139. Much emphasis was placed by the Local Authority on the father stating during a contact session on 21 March 2024 that he would move close to his parents to help take the children to school. The grandparents say they did not hear their son mention this. The Paternal Grandparents made clear in their oral evidence that they would not permit him to take the children to school. The intended primary school for the children is directly opposite the Paternal Grandparents' home. Assistance with school runs is not needed. If the Paternal Grandparents are unwell and unable to take the children to school, the Paternal Grandparents have a wide network of family support to help.

140. Further, the Independent Social Worker identified that the Paternal Grandparents recognised the potential for interference from the father and other inappropriate behaviours during and after contact and how detrimental that this could be to the children. Both Paternal Grandparents were noted to be firmly determined to ensure that neither parent would undermine their efforts to protect the children from further abuse. There is no evidence to suggest that the mother would seek to interfere with the Paternal Grandparents' care of the children or attend the property uninvited.

141. The Court finds that the risk to the children associated with the dynamics between the Paternal Grandparents and the father is low. The risk can be mitigated further by both parents entering a written agreement for their contact with the children to be supervised by the Local Authority in the first instance. The Paternal Grandparents wish for the children's contact with the parents to be professionally managed for the foreseeable future. In this regard the Paternal Grandparents acknowledge the risk. The Court accepts the submission from Miss Choudhury that this would be an essential ingredient of any support plan if the children are placed in their Paternal Grandparents' care.

142. The risk could be further mitigated through announced and unannounced Social Work visits to ensure that "unsanctioned" contact is not taking place. Protective injunctive Orders can be made, excluding both parents from any address they know the children will be living at. The Paternal Grandparents told the Court they would support the making of any such Orders. The Paternal Grandmother's evidence to the Court was that she had called the police previously when the situation required it, when her son and the mother were fighting. Her evidence was supported by the Paternal Grandfather and by 'N', who described the police being called a number of times

when her mother attended the Paternal Grandparents' home drunk. The Court is satisfied that a protective Order in the form of a Non-Molestation Order, a Prohibited Steps Order or an Exclusion Order under a Care Order could provide an effective method of protection for the children specific to this identified risk.

143. The more significant risk to the children is the Paternal Grandparents' ability to respond to the children's needs. The evidence of the Independent Social Worker and the Children's Guardian was that the Paternal Grandparents can meet the basic care needs of the children and provide good enough parenting.

144. The Independent Social Worker formed a positive conclusion in respect of recommending the Paternal Grandparents as Special Guardians for the children in his initial assessment. That assessment was informed by the Independent Social Worker's observations of contact between the children and their Paternal Grandparents and eight meetings which took place in the family home. In his oral evidence the Independent Social Worker described the Paternal Grandparents as coping well. The Independent Social Worker remarked that he was, "quite happy" and that the Paternal Grandparents did "remarkably well." The Paternal Grandparents' home conditions were noted to have improved greatly and were good enough. The social landlord has installed a new bathroom. New beds have been purchased for the children and stair gates installed. Significant improvements have been made to remove hazardous items from the garden.

145. The Local Authority placed great weight on the Paternal Grandparents providing food with high sugar content during some contact sessions. The Paternal Grandparents told the Court that they acknowledge the advice and, during contact on 20 June 2024, the Guardian observed that appropriate food was brought. Further contact sessions on 4 July and 18 July 2024 demonstrate that the Paternal Grandparents have taken on board advice and provided healthy food for the children. The Guardian accepted in her oral evidence that this concern does not rule out the Paternal Grandparents as carers for the children. The Court accepts the Guardian's analysis of the risk associated with providing food with a high sugar content.

146. The Local Authority expressed concern about the Paternal Grandparents being able to establish appropriate boundaries for the children. She gave an example of "mixed messages" about the children accessing the garden shed during contact on 18 July 2024 and another example of one of the children climbing up the slide in the contact centre. In neither example were the children unsafe. Both Paternal Grandparents were supervising both children at all times. Moreover, the Court accepts the submission from Miss Choudhury that during the July 2024 contact sessions, where the Paternal Grandparents and the children spent time together without the father being present, the Paternal Grandparents demonstrated that they responded well to the children, setting boundaries and ensuring their safety.

147. The Local Authority expressed concern about a comment the Paternal Grandfather is purported to have made following a contact session on 4 April 2024, that the children "will have a large room to play in, we will just leave them and let them do their own thing." The Local Authority expressed concern that the Paternal Grandfather was proposing to leave the children to play unsupervised. The Paternal Grandfather's evidence was that he mentioned the children would have a large room to play in in the Paternal Grandparents' home. He denies stating he would leave them unsupervised. He was clear in his oral evidence that the children would not be left alone unsupervised. It was submitted that there was a misunderstanding in respect of this. It is plain that the Paternal Grandfather was not asked at the relevant time to clarify what he meant. The Court accepts the evidence that the Paternal Grandparents are capable of setting boundaries and supervising the children so as to ensure their safety.

148. The primary issue of concern which developed over the most recent few months of the litigation is in respect of the extent of the children's needs. The Independent Social Worker did not consider this to be a concern at the time of concluding his first Special Guardianship report in respect of the Paternal Grandparents.

149. In his second report, which reversed his recommendation, the Independent Social Worker relied on a report from the nursery. This is not a report the Local Authority relies on. That report is no longer part of the evidence base the Local Authority relies upon.

150. The Local Authority formed the view, expressed by the Social Worker, that the impact of the children, "spending time with their father is catastrophic and can result in ['W'] experiencing trauma responses when she returns to her foster carer, and in nursery the following day, including dissociative behaviours and heightened behaviours and emotional responses." The Local Authority evidence records that 'W', "is noted to be particularly difficult to connect with and shows signs of dissociation for many hours following contact with her father and paternal grandparents."

151. The Independent Social Worker noted the Guardian's concern expressed following her observation of contact between the children, their father and the Paternal Grandparents in March 2024. However, the Independent Social Worker was not informed about the Guardian's observation of positive contact between the Paternal Grandparents and the children in June 2024, when the father was not present, which is said to have progressed well.

152. The foster logs identify many days when no issues of concern arise in respect of the children's behaviour.

153. The Local Authority's initial final evidence in July 2023 in support of a Care Order and Placement Order identified no concern about the health or development of the children, save for tooth decay. The suggestion that the children have developmental trauma disorder and require therapeutic parenting appears to have been introduced by the Local Authority in the Consultant Social Worker's evidence of 9 May 2024, where the child 'W' was, "noted to be particularly difficult to connect with and shows signs of dissociation for many hours following contact with her father and paternal grandparents." No clinical assessment of the children has been undertaken. No diagnosis of either child has been made by any clinician. No party sought to apply for expert evidence until the father filed an application on the final day of the Final Hearing in August 2024. The Local Authority has not sought to have the children assessed.

154. The children are not in a therapeutic foster care placement. The children experienced neglectful, harmful parenting in their early years, where they were exposed to parental domestic abuse and parental alcohol and substance misuse. They have experienced three different foster care placements, including an emergency placement after the police exercised powers of protection. The children have also experienced respite carers during their foster care placements. The second foster care placement broke down as the foster carers were not able to manage 'W's behaviour. As Miss Choudhury observes, the background and profile of those foster carers and their circumstances at the relevant time have not been shared. The foster carer logs for that placement have never been provided to the Court. There is no primary evidence before the Court in respect of that placement. The children have not been the subject of any referral to CAMHS nor are they receiving any play therapy or other therapy.

155. Miss Choudhury submits on behalf of the Paternal Grandparents that the current foster carers' reports of the children's behaviour deteriorating after contact with their grandparents is not supported by sufficient reliable evidence. There is weight in that submission. An email from the foster care noted, "the contact worker did say their behaviour was a little better than usual, however the [children] haven't seen dad or grandparents for a few weeks & their behaviour has been so much better at home. Now though ['W'] is being absolutely manic, just ramming her little bike into everything & will not leave ['Z'] alone, hitting her, poking her & just really spiteful but laughing uncontrollably."

156. As Miss Choudhury noted, 'W' displayed challenging behaviour long before the children began having contact with their Paternal Grandparents. On 20 October 2022, it was noted that 'W', "was quite spiteful towards ['Z'] this afternoon, she kept taking everything away from her & pushing her over when she was pulling herself up trying to stand."

157. In November 2022 it was recorded that 'W', "was happy coming out from nursery but was very spiteful towards ['Z'] for the rest of the day. She kept pushing her over every time ['Z'] would pull her herself up, holding on to furniture & kept taking toys away & putting them out of ['Z's] reach." A further contact note from November 2022 records that 'W', "wouldn't leave ['Z'] alone this afternoon, she seems to become almost hysterical from crying because we would pick her up & make her sit with us for a few minutes after hurting ['Z'] to then laughing as she went straight back after ['Z'] pushing her & trying to cover [Z's] ace with her hand." In January 2023, it was noted that ['W'], "was very hyperactive this afternoon, she has hurt herself three times from jumping & running around. The first time she was just running around in a circle quite maniacally & slipped landing straight down on her face making her mouth bleed." In March 2023 it was recorded that 'W', "was quite demanding when she came out of nursery & quite hyperactive at home, she kept throwing toys across the room & then had a massive meltdown." There followed reports in April 2023 that 'W' had been, "very up & down & been saying No a lot. This afternoon ['W'] was very hyperactive again & jumped onto ['Z'] from the sofa kneeing ['Z'] right in the face." On 27 April 2023 'Z' was noted to play happily but 'W', "was very manic just running backwards & forwards bashing into everything & kicking toys around, she messed around with her dinner, spitting & throwing food."

158. The Paternal Grandparents had contact on 7 December 2023. The Paternal Grandparents are described as being very affectionate towards both children throughout the session and when saying goodbye gave them a kiss and cuddle. The Paternal Grandfather thanked the foster carer for looking after the children. The foster carer log mentions the children were, "very hyperactive" in the evening, including running, climbing and pulling each other around. The foster carer does not elaborate on her description of the children as being "hyperactive." The description in the foster care log may be described alternatively as, "energetic." As Miss Choudhury noted, the evidence is in any event, not very concerning.

159. Further, as Miss Choudhury observed, there are many more days recorded in the contact notes where no difficult behaviours are mentioned at all. The children are noted to eat well, sleep well, and play well with each other. Further, as Miss Choudhury identified, in December 2023 when the Paternal Grandparents had two contacts jointly with their son, foster care logs over the following days identified no concerns following this re-introduction of the Paternal Grandparents' contact. The foster care logs noted, "['W'] came out happy from nursery & had had a good day, she'd enjoyed singing lots of xmas songs. They ate well at dinner & settled well at bedtime…['Z'] was very happy when she woke from her nap…She was very smiley & giggly & chatty in her little way. ['W'] had a good day at nursery & kept talking about two of her friends saying she likes them…Both ate lunch & this afternoon ['Z'] seems much better, she's wandering around playing with ['W'] & chatting & singing...Both have played happily this morning …they both really enjoyed the train ride. They slept on the way home. This afternoon they both played well...They both played really nicely this morning. They ate well at lunch and then ['Z'] went for her nap. ['W'] was very good & let me just rest on the sofa as I'm not feeling well, she seemed to understand & played happily with her toys. Both ate well at dinner & both settled well at bedtime."

160. On 28 December 2023 a joint contact took place between the children, their father and the Paternal Grandparents. The foster carer log records, "They both went into contact with paternal GP fine. They came out smiling and apparently have been really well behaved and everything was very calm. At home they have played nicely but ['W'] has also been quite defiant. On the whole though they both seem fine & have played happily. They ate well at lunch & dinner & settled well at bedtime." No significant concerns were identified.

161. Contact between the children, their father and the Paternal Grandparents took place on 11 January 2024. The note records much warmth and affection: "['W'] kissed [the Paternal Grandmother] and then ['Z'] ran to [the Paternal Grandfather] and put her arms around him and cuddled him. [The Paternal Grandfather] smiled and kissed ['Z'] on her head...[the Paternal Grandfather] put ['W'] on his lap and kissed her head. [He] showed both children physical and

emotional warmth." The note records that the father was challenged by the contact supervisor for taking a phone call. The Paternal Grandfather was noted to say, "ok I will speak to him." The note refers to the children being extremely challenging. They had received advent calendars and bags of sweets at this Christmas contact.

162. On 20 June 2024 the Guardian observed contact between the children and the Paternal Grandparents. The evidence demonstrates the Paternal Grandparents' affection towards the children. The Paternal Grandparents responded to the children's needs, playing with them and setting some boundaries. The Guardian considered that the session had progressed well. The children were noted by the Guardian to have, "thoroughly enjoyed themselves."

163. Miss Choudhury points to a contact note dated 4 July 2024 as evidence that the Paternal Grandparents had responded to advice about food with a high sugar content. Only savoury foods were provided. Further, the note evidences the Paternal Grandparents setting boundaries. 'Z' was noted to start climbing. The Paternal Grandmother noticed and jumped up to get 'Z' down. The Paternal Grandparents encouraged 'W' to stop when she was running around over chairs. The note records, "The children were relaxed and showed no signs of being anxious or worried. They all said goodbye, gave hugs." In contrast, the foster carer log for this day noted, "contact was as usual, chaotic with the grandparents struggling to manage the children and refers to the children being "quite manic."

164. The note for contact between the children and the Paternal Grandparents on 18 July 2024 is positive on the whole. The children were noted to enjoy playing in the garden and the Paternal Grandparents were noted to make sure the children were safe. The contact centre note records, "We left happily and returned to foster carer with smiles and giggles." The foster carer log for this day mentions defiant and rude behaviour.

165. As Miss Choudhury submitted correctly, it is not possible to assess whether the children have any additional needs through a review of contact notes and foster carer logs. What is clear, however, is that the children do not display any fear of their Paternal Grandparents, the children have a warm and affectionate relationship with them and the Paternal Grandparents have been able to demonstrate implementing advice around healthy food and setting boundaries. What is also clear is that the children can display challenging behaviour when in the foster care placement at times. At other times, there is nothing in their behaviour that gives cause for concern.

166. The father applied on the final day of the Final Hearing, by way of an exceptionally late application, for permission to obtain expert evidence by way of assessment of the children's needs. In this Court's judgement, having regard to each of the factors under s13(7) Children and Families Act 2014, such expert evidence is not necessary to resolve these proceedings justly. Such evidence is not demanded by the contested issues. The delay consequent upon an order permitting such expert evidence is entirely contrary to the welfare of the children who have already been the subject of extended proceedings. The Local Authority, Independent Social Worker and the Guardian are united in their opinion that it would be too early for any diagnosis to be made having regard to the children's ages. In this Court's judgement, the right time for assessment of the needs of the children would be after they have started school, when they are in a settled home environment. That assessment is best undertaken outside the scope of this litigation, to assess the needs of the children as they develop.

167. The Paternal Grandparents are committed to seeking support for the children, whatever their needs. They have experience of a grandson with autism who is non-verbal. Their evidence to the Court was compelling when telling the Court that they have needed to adapt their approach towards their grandson and they are more understanding of his needs and how he views the world. Further, these Paternal Grandparents had experience of raising their own children into adulthood without Children's Services intervention, in addition to raising their niece who had experienced traumatic early years being cared for by a mother who misused alcohol. Their niece displayed challenging behaviour, on her own account, yet these Paternal Grandparents

successfully nurtured her without professional support beyond the counselling services provided by 'N's school. The Paternal Grandparents in turn now have the clear, committed support of 'N' as part of their close-knit family support network, along with their adult daughter, who bring with them all the skills they have acquired through experience in caring for children with autism and professional experience in working with vulnerable people. The Independent Social Worker described both grandparents as, "adaptable, adept, and positively smart. They demonstrated the willingness and ability to learn during the process of assessment."

168. The family support network was not scrutinised by the Local Authority or the Guardian despite being identified by the Paternal Grandparents at the outset of their involvement in these proceedings and notwithstanding their attendance at the Family Group Conference in March 2024. The social worker who formulated the plan for adoption did not consider it necessary to speak to either of them nor did the Guardian, who supports the care plan of adoption. It is difficult to understand why the Social Worker considered that, "assessment of that support would not change the Local Authority's position," unless this was evidence of the Local Authority having closed its mind to the option of the Paternal Grandparents caring for the children. Absent consideration of this skilled, close-knit support network, neither the Local Authority nor the Guardian, in this Court's judgement, could properly reach the conclusion that nothing else will do for these children other than adoption.

169. The Guardian, properly and fairly, on two occasions throughout these proceedings, recommended an adjournment to enable further assessment to be undertaken of family members, including the Paternal Grandparents, and for educative work to be completed, with significant reservation due to concerns about delay for the children. In March 2023, the Guardian opposed the Local Authority's application for final Care Orders and Placement Orders. The Guardian has throughout the proceedings sought to ensure that the family and the children are treated fairly and that all options to keep the children within the family are fully explored. At Final Hearing, the Guardian described this case as 'finely balanced.' This is a highly experienced Guardian whose professional opinion this Court respects. Regrettably, in this Court's judgement, it is apparent that the Guardian did not place into the balance the support available to these Paternal Grandparents from wider family members or alternatively did not place sufficient weight to it. Moreover, the option of a Care Order at home was not considered at all.

170. The Local Authority having made an application for a Placement Order, the paramount consideration of the Court must be the welfare of the children throughout their lives. Under s 1(4), Adoption and Children Act 2002, the Court has regard in summary to the following matters under the welfare checklist.

171. *The ascertainable wishes and feelings of the child regarding the decision relating to adoption (considered in the light of his or her understanding):* The children have no real understanding of their situation, in light of their young ages. It is likely that any child would wish to remain with their birth parent or extended birth family if it was safe to do so and where all their welfare needs were met.

172. *The child's particular needs:* Both children need a loving, nurturing, environment free from substance abuse and domestic abuse, with a carer or carers who can provide permanence, security, stability and consistent, safe parenting, where they can flourish and reach their full potential.

173. There is some speculation in respect of whether either child, 'W' in particular, has any developmental needs above that of any child of their age and stage of development, for the reasons articulated earlier. In her final analysis of 9 July 2024, the Guardian considered that both children have thrived in foster care and are both developing well in all areas, making outstanding progress. 'W' is considered by the Guardian to be a highly resilient child and the close sibling relationship has contributed to the resilience of both children. The Guardian considered that 'Z' has continued to develop her independence and is making outstanding progress at nursery, meeting her developmental milestones.

174. In his first report, the Independent Social Worker identified concerns in respect of the children's needs but assessed the Paternal Grandparents as being capable of parenting the children.

175. The children have been observed to display some challenging behaviour in the foster care placement at times, whereas, at other times, their behaviour gives no cause for concern: "They are playing well one day and demand extra help to manage them the next." The Local Authority speculates the children may have 'developmental trauma disorder' and may require therapeutic parenting, although no such diagnosis has been made by any clinician. The Independent Social Worker too speculates the children may have 'neurobiological damage'. There is professional consensus that it would be too early for any formal assessment of the needs of the children.

176. *The likely effect on the child throughout their life of having ceased to be a member of the original family and become an adopted person*: Both children have been in foster care for an extended period of time, since July 2022. 'W' was two years old when placed in foster care. 'Z' was less than one year old. The children have been placed with their current foster carer for ten months. The Guardian considers that the children's main attachment is to their foster carer. Further, the Guardian considers that the attachment the children have with their mother and father has been disrupted during their early developmental years. Prior to entering interim foster care, the children lived consistently with their mother and father in the home of the Paternal Grandparents. The parents' contact with the children since the children were placed in foster care has been inconsistent. The children have a warm, affectionate relationship with their Paternal Grandparents who have attended contact consistently. The relationships the children have with their birth family are unique, irreplaceable and wholly significant. The children also have a relationship with the Maternal Grandparents who attend contact with the mother. The children have a large extended family, including aunts and cousins.

177. The children are of dual heritage. That heritage will form an important part of their identity, particularly when they become old enough to understand it.

178. In light of their respective ages, the children are likely to have an understanding of their relationships with their mother, father, Paternal Grandparents and Maternal Grandparents. 'W' in particular, at four years old, is likely to have a real understanding of those birth family relationships. Both children are likely to experience feelings of loss if separated permanently from their birth family. The impact of such loss will likely affect both children in different ways at different stages of their development, across the whole of their lives. As they grow older and become more aware of their adoption, their observations about families may trigger a sense of being different and an awareness of their loss. Some children feel the loss most keenly in adolescence when they are striking out for independence and trying to determine an identity which is in some way different and separate to that of their parents.

179. Placing the children in an adoptive family will mean they are each denied permanently the opportunity of being cared for by their Paternal Grandparents, enjoying a range of birth family relationships, including with their mother, father, Maternal Grandparents, aunts and cousins. This is a very significant loss indeed, the extent of which will only be realised and felt as the children become aware of and understand the enormity of their adoption. The children may develop an adoptive identity, which may become their primary identity.

180. *The child's age, sex, background and any of the child's characteristics which the Court or Agency considers relevant:* The children are of dual heritage. The paternal side of the family practises Islam. The father wishes for the children to be raised in his Faith. The maternal side of the family practise no religion. The linguistic background of the children is Arabic and English. No concerns have been identified regarding the physical health of either child, beyond the need for dental treatment. 'W' is noted to have emerging needs which may possibly be the result of developmental trauma or potentially autism or ADHD. No assessment has been undertaken and no diagnosis made. This will be the subject of ongoing close monitoring. There is concern that 'Z' is copying the behaviour of 'W'. As the Guardian observed, both children will require high

levels of nurturing, emotional warmth and consistency to support their emotional and developmental needs.

181. A sibling assessment was completed by the Local Authority early in the proceedings in June 2023. The assessment concluded that the children were likely to have been confused and frightened by their experiences in the care of their parents, which would lead them to feel unsure of who to trust and to what might happen next. Both children were considered to lack a sense of 'stranger danger', which it was considered, may be a survival mechanism to ensure their needs are met as they were unable to rely on their birth parents to keep them safe. 'W' was noted to have periods of hyperactivity, during which she would not listen to adult instruction and would climb on furniture. 'W' was reported to have scored on the Strengths and Difficulties Questionnaires for emotional problems, close to "average." Her scores for conduct problems and prosocial (behaviour that benefit others) problems in June 2023 were "very high." Her scores for hyperactivity and peer problems in June 2023 were "high." The score for the impact this has was also noted in June 2023 to be "very high." The sibling assessment concluded that 'W' is at risk of a behavioural or hyperactivity/concentration disorder, or any disorder overall." 'W' was noted in June 2023 to show traits of a child who is traumatised, "often being unable to regulate her emotions and energy and being spiteful and rough with ['Z']."

182. The Local Authority team leader, also observed in June 2024 that 'W', "appears to be negatively affected by her experiences and that it is likely she has suffered trauma, meaning that she was very frightened by her parents' behaviours and did not feel safe…this is now being seen in her behaviours in foster care…"

183. All this information was available at the time of the Independent Social Worker's first assessment, which concluded positively in respect of the Paternal Grandparents' being able to meet the needs of the children.

184. An updated sibling assessment was completed in March 2024, noting improvements in the children's behaviour and their relationship with each other. The assessment concluded that the children are now better able to tolerate individual attention being given to their sibling. 'W' was noted to be, "usually quite hyperactive" in the afternoons and evenings, and that 'Z', "follows suit." The assessment recorded that 'W' scored very highly for overall stress, emotional problems and hyperactivity, with high scores for behavioural difficulties. 'W' was scored, "close to average" for having difficulties getting along with other children. The Local Authority assessment concluded, "These scores would indicate that ['W'] is at risk of a behavioural or hyperactivity/concentration disorder, or any disorder overall, and that she will need a high level of attuned and responsive parenting in order to progress from the impact of these difficulties." 'Z' was noted to continue to demonstrate lack of stranger awareness.

185. The Local Authority considers that the children's behaviour, "may be linked to their adverse childhood experiences. In addition, or alternatively, there may be an undiagnosed neurodevelopmental condition. Or they may just be prone to bouts of extreme hyperactivity which they will grow out of."

186. *Any harm which the child has suffered or is at risk of suffering:* The children have both experienced significant emotional harm and neglect whilst in the care of their mother and father due to exposure to parental domestic abuse, substance and alcohol misuse and neglectful home conditions, resulting in interim separation for the birth family initially by police exercising powers of protection and subsequently in Local Authority foster care pending final welfare determinations of the Court. Both children would be highly likely to suffer further significant harm in the form of emotional harm, neglect and physical harm if placed in the care of their mother or father or both. No amount of support services could be put in place to mitigate the risk of harm.

187. If placed for adoption, the children are likely to experience harm in the form of feelings of loss and identity having ceased to be a member of the original family and become an adopted person

of the type described earlier. This could be mitigated by trained, nurturing adopters, with life story work and with direct contact with their mother annually as envisaged by the Local Authority in its care plan.

188. If the children were placed in the Paternal Grandparents' care, the risk of harm to the children from parental domestic abuse and parental substance and alcohol misuse must, in this Court's judgement, be assessed as being low. Neither parent would be living in the same household as the children. The Paternal Grandparents would prevent the mother and father from entering the home uninvited. The Paternal Grandparents would be likely to seek emergency support from the police. There is no evidence that the father has been back and forth to his parents' home, despite his vulnerability when he came out of prison and notwithstanding any drug/alcohol use. The Paternal Grandparents have shown they can prioritise the future of the children over him. They were brought together with the father for several contact sessions but that was not the Paternal Grandparents' preference and it was plainly awkward at times. The Paternal Grandparents coped with great adversity in caring for 'N, in circumstances where her experiences were hugely damaging, including evidence of her wanting to sleep with the dogs as a small child when her mother went out drinking, 'N' responding by striking out, both physically and emotionally, in a way that was strikingly similar to some of the instances of behaviour of the subject children.

189. Further, the making of protective Orders in the form of a Non-Molestation Order, Prohibited Steps Order or Exclusion Order could provide further protection for the benefit of the children. The risk to the children of harm through exposure to cluttered or dangerous home conditions must, in this Court's judgement, be low. The Paternal Grandparents have taken significant steps to improve the home environment, since their son moved out, to an acceptable level. Further, the Paternal Grandparents have been assessed as being able to provide a good enough standard of care to the children. There remains a risk of harm to both children if placed in the care of the Paternal Grandparents in the event that the behaviour of both children or one of them is such that the Paternal Grandparents are not able to cope, with the risk of placement breakdown and the emotional harm to the children consequent upon such breakdown. Those risks can be mitigated by the strong, committed, close-knit experienced support network available to the Paternal Grandparents. The risks can be mitigated further by support from universal services, including the children's school, nursery and GP, in the knowledge that assessment of the children's developmental needs will be necessary in the coming years. Further still, the risks can be mitigated by professional support being provided to the Paternal Grandparents by way of Social Work visits, professionally supervised contact between the children and their parents and written agreements setting out the expectations of the Local Authority in respect of the parents.

190. *The relationship which the child has with relatives, and with any other person in relation to whom the court considers the relationship to be relevant including, (i) the likelihood of any such relationship continuing and the value to the child of it doing so, (ii) the ability and willingness of any of the child's relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child's needs and (iii) the wishes and feelings of any child's relatives, or of any such person, regarding the child:* Both children continue to have a relationship with their mother and father, their Maternal Grandparents and Paternal Grandparents. There is a relevant, close wider family network of aunts and cousins. If adopted, the relationship the children would have with their parents would be severely curtailed, limited to contact once each year for the remainder of the children's minorities, subject to the agreement of the adopters. Such contact may be of value to the children in terms of their identity. Conversely, if the children were placed in the care of their Paternal Grandparents, contact between the children and their mother and father could potentially be at a much greater frequency of once each month, if it was safe and remained in the best interests of the children. The children would, if placed in the care of the Paternal Grandparents, be able to maintain the important relationships they have with their paternal and maternal grandparents and wider family members. The likelihood of such relationships continuing is inevitably improved if the children were placed in the care of the Paternal Grandparents, which must, in this Court's judgement, be of considerable value to the children, a value which cannot be overstated.

191. It was submitted by Mr Kerr on behalf of the Guardian that the Paternal Grandparents deserve huge credit for their commitment to the later stages of the Court proceedings, which necessitated funding their own legal costs, and for their genuine and heartfelt desire to care for their grandchildren. This Court endorses those submissions. The Paternal Grandparents are clearly devoted, wholly committed to and willing to provide both children with a secure, warm and loving family environment in which the children can develop and where their needs can be met. The Paternal Grandparents have been assessed as being capable of providing a good enough standard of care to the children. The Independent Social Worker considered the Paternal Grandparents to have a good level of insight into the risks associated by the parents, albeit the Children's Guardian considers their insight is still developing. There are fewer occupants in the Paternal Grandparents' home since the mother and father moved out, making it less crowded, increasing the prospect of the Paternal Grandparents being able to focus on their care of the children.

192. This Court must conclude on all the evidence that, with the correct professional support and wider family support, the Paternal Grandparents have the ability to meet the needs of the children. While there remain risks, as identified by the Local Authority, the Guardian and the Independent Social Worker, those risks are capable of being mitigated. In this Court's judgement, the Paternal Grandparents are likely to be able to provide the care required to meet the presenting needs of these children. Their contact with the children, without the father being present, has been good. The minor criticisms raised of those sessions do not bear objective scrutiny. As Mr Roscoe observed on behalf of the mother, these are not children who largely behave uncontrollably or act out constantly. The Court must conclude that the risks posed by placement with the Paternal Grandparents are manageable.

193. Each of the family members in this case opposes the making of a Placement Order with the plan of adoption. The mother, father, Paternal Grandparents and wider family members each oppose adoption. There is unanimity of family support for the children being placed with the Paternal Grandparents. That unanimity of support is a factor that bodes well for the success of the placement with the Paternal Grandparents. None of the family members will seek to disrupt the placement. On the contrary, each family member will support the placement and will, in the case of 'N' and 'PA', provide practical, hands-on support in addition to emotional support and advice.

194. The advantages of the children moving to the care of their Paternal Grandparents undoubtedly include the benefit for both children of being raised within their birth family network throughout their lives, into adulthood and having the opportunity of regular direct contact with extended family members. This would provide both children with the opportunity to have an irreplaceable awareness of their identity, dual heritage and culture, which could not be replicated in an adoptive placement. Placement of the children with their Paternal Grandparents within the birth family would mean they were placed in a family setting where they would be cherished and loved with the opportunity to thrive within a family unit, where they can be encouraged to achieve their full potential and where they could have their needs consistently prioritised. This would plainly be the best option for the children if it was achievable, whilst maintaining their safety. Such placement could be achieved without exposing the children to the type of significant harm they have experienced in the past through exposure to domestic abuse, substance misuse and alcohol abuse.

195. The disadvantages of placement of the children with their Paternal Grandparents are the risks of the Paternal Grandparents not being able to meet the needs of the children now and as they develop, when those needs will become clearer. With the right, targeted support, those risks can be mitigated. The children would inevitably require ongoing involvement by the Local Authority in some capacity for at least the first year, following transition into the care of their Paternal Grandparents. This would result in some interference with their family life. Such interference would be intended by way of support, providing a benefit to the children and is not likely to be restrictive or interventionist. Given their young ages, such ongoing professional involvement is not likely to impact negatively on them. Further, the Court recognises the risk of placement

breakdown, which would result in further distress for the children. Any further delay in securing finality for the children would lessen the chances of a suitable adoptive placement being found for both children.

196. The advantages of adoption for the children are that, given their ages, needs and profiles, adoption could provide both children with a stable, secure attachment relationship throughout their minority into adulthood. Adoption could offer both children a permanency option in a legally secure, permanent placement, without the Local Authority being involved throughout their childhood but with ongoing access to adoption support services, training and psychological consultation, if ever required. The children would no longer be subjected to the risks associated with their parents' care. The children may have the opportunity to feel a sense of belonging within an adoptive family unit and to feel safe and secure, physically and emotionally with the ability to develop a positive sense of identity. Adoption could provide a secure environment in which to grow up, where the children could potentially develop secure attachments with carers.

197. The plain disadvantages of adoption for both children include the significant curtailment and potential severing of the parental relationship, along with a significant curtailment and potential severance of all ties to the extended birth family, including with their Paternal Grandparents, Maternal Grandparents, aunts, cousins and all wider family members, the enormity of which cannot be understated. The Local Authority's plan of annual direct contact is subject to the agreement of any potential adopter and has the risk of not being sustained. Whilst adoption could offer both children a sense of belonging, this must be balanced against the very real and substantial negative impact of ceasing to be part of their birth-family and the loss of those unique, irreplaceable relationships, the erosion of their cultural heritage and the impact on the children's identity. Having regard to 'W's age in particular, she will retain memories of her birth family which may impact on emotionally and increase the risk of an adoptive placement breakdown, the consequences of which could be catastrophic for both children. Further, the children will in time come to know that the adoption was without the consent of their mother, father and family members. This may leave both children with questions when they are older about their birth family and the reasons for their adoption. Life story work and contact with the birth family might ensure that the children can be supported by their adoptive parents(s) with their identity needs. However, such would be a poor substitution for placement within the birth family where their understanding of their identity and culture would not be negatively affected.

198. The Court recognises the legal authorities which establish that there is no presumption in law in favour of the natural family in adoption cases *(Re N (A Child) (Care Order: Welfare Evaluation) 2 August 2024):* In public law proceedings, where the State, via a Local Authority seeks to intervene in the life of a child by obtaining a Care Order and a Placement Order for adoption against the consent of a parent, there is no authority to the effect that there is a 'presumption' in favour of a natural parent or family member. When a Court is considering what, if any, Order to make the only principle is that set out in s.1 the Adoption and Children Act 2002 requiring paramount consideration to be afforded to the welfare of the child throughout their lifetime. The only 'right' is for the arrangements for the child to be determined by affording paramount consideration to their welfare throughout their life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any European Convention Article 8 rights which are engaged.

199. A core principle of the Children Act 1989 is the 'no Order' principle. This means that the Court must only make an Order for a child if this is better than not making an Order. The principle is predicated upon the view that children are best brought up by their families, unless they are at risk of significant harm. When drafting the Children Act 1989, the legislators specifically rejected the prospect of removing children from their family whenever it would be better for them than not doing so. Family ties may only be severed in very exceptional circumstances and everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family (*YC v United Kingdom* 92120 55 EHRR 967*)*.

200. A care plan for the adoption of a child must be an option of last resort. Adoption will not be ordered unless it is demonstrated that nothing else will do, when having regard to the overriding requirements of the welfare of the child throughout their life. The Court must be satisfied that there is no practical way of the authorities providing requisite assistance and support. It is not enough to show that a child could be placed in a more beneficial environment for their upbringing. In deciding issues in respect of the welfare of both children, the task of this Court is not to improve on nature. The best person to bring up a child is the natural parent, provided the child's moral and physical health are not in danger.

201. The Court recognises also that there are very diverse standards of parenting. Children will inevitably have very different experiences of parenting and very unequal consequences flowing from it. Some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. The State does not take away the children of all the people who abuse alcohol or drugs or who suffer from physical or mental ill health. Nevertheless, where adoption is in a child's best interests, Local Authorities must not shy away from seeking, nor Courts from making, Care Orders with a plan for adoption, Placement Orders and Adoption Orders.

202. The decision of the Supreme Court in *H-W (Children) [2022] UKSC 17* underlines that a decision leading to adoption, or to an Order with similarly profound effects, requires the rigorous evaluation and comparison of all the realistic possibilities for a child's future in the light of the Court's factual findings. This Court having evaluated the potential family placement with the Paternal Grandparents and having assessed the nature and likelihood of the harm that the children would be likely to suffer in it, the consequences of the harm arising and the possibilities for reducing the risk of harm or for mitigating its effects, having compared the advantages and disadvantages for the children of that family placement with the Paternal Grandparents with the advantages and disadvantages of adoption, the comparison including consideration of any harm that the children would suffer in the family placement with the Paternal Grandparents and any harm arising from separation from their parents, siblings and other relatives, this Court must, through this process of evaluation and comparison, conclude that placement of both children with their Paternal Grandparents can provide for the children's lifelong welfare. This Court must conclude that placement of both children with the Paternal Grandparents is the option that best meets their welfare needs and is the proportionate response to the risks.

203. On the facts of this case, the Court considers it necessary to depart from the professional recommendations of the Local Authority, the Independent Social Worker and the Guardian. The Court does not do so lightly. Having had the unique opportunity to see and hear the evidence of each of the witnesses and consider the comprehensive volume of documentary evidence, in this Court's judgement each of the professionals placed insufficient weight on the Paternal Grandparents' ability to protect the children from their father. Further each of the professionals placed insufficient weight on the ability and willingness of the wider family support network to provide real, hands-on practical and emotional support to the Paternal Grandparents in caring for the children. Having had the unique benefit of hearing the witnesses, the Court must have confidence, that with appropriate help, the Paternal Grandparents will be able to care for the children safely. It would appear that none of the professional witnesses had the benefit of assessing the highly determined, credible and local support that 'N' and 'PA' would be able to provide. Further, each of the professionals placed too much weight on the unassessed behavioural needs of the children. Further, none of the professionals adequately took into consideration the range of powers available to the Court to support placement of the children with the Paternal Grandparents by way of injunctive Orders against the father. When placing proper weight to each of those factors and the factors identified in this judgment, the balance is not, respectfully, a fine one. When undertaking the balancing exercise, in this Court's judgement, each of the professionals placed the fulcrum incorrectly towards one end of that which is to be weighed, with adoption afforded undue weight. The balance did not reflect the weight necessarily afforded to a viable natural family placement with the Paternal Grandparents. For these reasons and those given by Counsel on behalf of the mother, father and Paternal

Grandparents, the Court is compelled to depart from the recommendations of each of the professionals.

204. As Mr Roscoe submitted on behalf of the mother, the Independent Social Worker's initial recommendation was positive in respect of the Paternal Grandparents and it was apparent from his oral evidence that there was little actual substance underlying the reasons given for the complete reversal in the Independent Social Worker's recommendation. Miss Choudhury submitted that the Independent Social Worker was correct in his original assessment, which was properly informed by his own interviews and contact observations. He was wrong to be persuaded to alter his recommendation based on the information provided by the Local Authority and the Guardian: the issues raised by the Local Authority and the Guardian do not justify the Paternal Grandparents being ruled out as suitable long-term carers. This Court finds considerable weight in that submission.

205. This Court is required to decide at this final hearing between two placement options for meeting the children's welfare needs. In reaching its decision, the Court has undertaken a process of comparative welfare analysis of the competing options consistent with the legal authorities (*Re G (A Child)* [2013] EWCA Civ 965 and *Re B-S (Children)* [2013] EWCA Civ 1146). Within this context, in determining which of the competing options in respect of the children's care is in their best interests, having identified the children's welfare needs and having then undertaken an evaluation of each of the options available for the children's future upbringing, the Court is compelled to conclude that placement of the children with their Paternal Grandparents is the option that best discharges the duty to afford paramount consideration the children's welfare, having regard to the principle of proportionality under Art 8(2) of the Human Rights Act 1998.

206. Under Article 8, everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society. Each individual family member in this case has that right, including the children, the mother, the father, the Paternal Grandparents and the wider family. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks.

207. Taking a child away from their family is a momentous step, not only for the child but for the whole family and for the Local Authority which does so: "Families in all their subversive variety are the breeding ground of diversity and individuality. In a free and democratic society we value diversity and individuality. Hence the family is given special protection in all the modern human rights instruments including the European Convention on Human Rights (Article 8), the International Covenant on Civil and Political Rights (art 23) and throughout the United Nations Convention on the Rights of the Child" (*Re B (Children) (FC)* [2008] UKHL 35 per Baroness Hale of Richmond).

208. In this Court's judgement, taking into account the practical assistance and support which the authorities and the family could offer, having regard to all the evidence, the Court is satisfied that this is a case where adoption is not the option that would best meet the children's needs. Having regard to the type of harm that might arise if placed in the care of the Paternal Grandparents, the likelihood of it arising, the likely severity of the harm to the children if the harm did arise and the support services that could be made available to the Paternal Grandparents sufficient to reduce the chances of harm happening, having undertaken the comparative evaluation of the welfare advantages and disadvantages of the children growing up with their Paternal Grandparents compared with those of adoption, having independently considered all the realistic competing options and having given them proper, focussed attention, on the facts of this case the Local Authority's application for a Placement Order must be dismissed.

209. The Court has considered the option of inviting the Local Authority to agree to placement with the Paternal Grandparents under a Care Order. This is the option preferred by the Children's

Guardian in the event that the Court dismissed the Placement Order application. The option would have advantages in terms of extended support and monitoring that could be offered to the children. The children would know where they will be living long-term and therapy could commence. The Order could be discharged and substituted with a private law Special Guardianship Order in due course.

210. The Court may, on an application for a Care Order, make a Supervision Order and, vice versa, on an application for a Supervision Order, make a Care Order: s.31(5) Children Act 1989. A Care Order places a child with respect to whom the Order is made in the care of a designated Local Authority. The Local Authority shares parental responsibility for the child but has the power to determine how any other holders may exercise parental responsibility: s.33 Children Act 1989. A child who is placed in the care of a designated Local Authority under s.31(1) Children Act 1989 is a child who is being 'looked after' by the Local Authority for the duration of the Care Order. Part 3 of the Children Act 1989 makes extensive provision describing the duties placed upon Local Authorities with respect to 'looked after' children.

211. S.22C Children Act 1989 establishes a default requirement for a looked after child to live with a parent or similar parental figure. A person falls within this subsection if they are a parent of the child, or if not a parent, has parental responsibility for the child or in a case where the child is in the care of the Local Authority and there was a Child Arrangements Order in force with respect to the child immediately before the Care Order was made, they were a person named in the Child Arrangements Order as a person with whom the child was to live. Subsection (2) does not require the Local Authority to make arrangements of the kind mentioned in that subsection if doing so would not be consistent with the child's welfare or would not be reasonably practicable.

212. A Court deciding whether to make a Care Order is required to consider the 'permanence provisions' of the Local Authority's care plan for the child. By s.31(3B) Children Act 1989 the permanence provisions are defined as including, "such of the plan's provisions setting out the long-term plan for the upbringing of the child concerned as provided for…the child to live with any parent of the child or with any other member of, or any friend of, the child's family…" The permanence provisions of the care plan for a child who is to be placed at home with his/her parent will include any provision for support services to the parent, together with provision for visiting and case review as provided for within the regulations.

213. The Court has no jurisdiction to compel a Local Authority to issue an application for a Care Order or a Supervision Order under s.31 but once the Local Authority has issued its application and is satisfied the Court that the threshold criteria under s.31(2) are met, it is for the Court to decide which, if any, is the more appropriate Order to make (*Nottinghamshire County Council v P* [1993] 2 FLR 134).

214. It is open to a Court to make an Order other than that for which a Local Authority has applied. There must be 'cogent and strong reasons' to force upon a Local Authority a more draconian Order than that requested (*Oxfordshire County Council v L* [1998] 1 FLR 70, per Hale J.): There may be three possible reasons for making a Care Order on the basis that the child was to remain at home. In summary these were:
    a) the Local Authority needing the power to remove the child instantly if circumstances required and also to plan for the child to be placed long- term outside the family;
    b) that it was necessary for the Local Authority to share parental responsibility with the parents but the fact that considerable help and advice may be needed over a prolonged period is not itself a reason for making a Care Order;
    c) that it was necessary to place duties upon the Local Authority but it would be wrong to impose an Order which was not in the interests of a child simply to encourage a Local Authority to perform its statutory duties towards a child in need.

215. In this Court's judgement, the reasons envisaged in the Oxfordshire case for making a Care Order with the children living in the care of the Local Authority are not present on the facts of

this case. On the specific facts of this case, it would not be necessary for the Local Authority to have the power to remove the children instantly, it would not be necessary for the Local Authority to share Parental Responsibility for the children with the parents nor would it be necessary to make such Order to place duties upon the Local Authority. The Paternal Grandparents do not share Parental Responsibility for the children. Under a Care Order, the Paternal Grandparents would not be granted Parental Responsibility. In this Court's judgement, a Care Order with the children placed in the care of the Paternal Grandparents is not proportionate to the risks.

216. Proportionality is the key. It will be the duty of everyone to ensure that in those cases where a Supervision Order is proportionate as a response to the risk presented, a Supervision Order can be made to work (*Re O (Supervision Order)* [2001] EWCA Civ 16; [2001] 1 FLR 923 per Hale LJ).

217. An essential difference between a Care Order and a Supervision Order is that under the latter, the Court's power to require a parent to discharge her/his parental responsibility in a particular manner is limited to the 'requirement' or 'direction' provisions in Children Act 1989, Sch 3. There is, as was confirmed in *Re V (Care or Supervision Order)* [1996] 1 FLR 776, no power to impose conditions upon a parent. Further, Waite LJ described an essential difficulty arising under a Care Order being, '... the fact that a Supervision Order rests primarily upon the consent of the parent affected by it. Any provisions incorporated into a Supervision Order, either by direction of the supervisor or by requirements directly stated by the Judge, are incapable of being enforced directly through any of the ordinary processes by which courts of law enforce obedience to their directions. The only sanction, when any infringement of the terms of a Supervision Order or of directions given under it, occurs is a return by the supervisor to Court. There the ultimate sanction will be the making of a Care Order under which the Local Authority will be given the necessary legal powers to enforce its will.' This is in contrast to the position under a Care Order, where, under s.33(3) Children Act 1989, the Local Authority not only has parental responsibility but may determine how others may discharge their parental responsibility.

218. In care proceedings, the welfare of the child is the decisive factor when the Court is deciding what Order to make. A Care Order rather than a Supervision Order should be made only if the stronger order is necessary for the protection of the child (*Re D (Care or Supervision Order)* [1993] 2 FLR 423; *Re S (Care or Supervision Order)* [1996] 1 FLR 753; and *Re B (Care Order or Supervision Order)* [1996] 2 FLR 693).

219. Making a Care Order with a subject child placed at home in the care of a parent is plainly permissible within the statutory scheme and express provision is made for such circumstances in s.22C Children Act 1989 and in the placement regulations but it would be wrong to make a Care Order to impose duties on a Local Authority or use it to encourage the Local Authority to perform the duties that it has to a child in need. A Care Order should not be used solely as a vehicle to achieve the provision of support and services after the conclusion of proceedings. A Care Order on the basis that the child will be living at home should only be made when there are exceptional reasons for doing so. It should be rare in the extreme that the risks of significant harm to a child are judged to be sufficient to merit the making of a Care Order but, nevertheless, risks that can be managed with the child remaining in the care of parents. Unless, in an exceptional case, a Care Order is necessary for the protection of the child, some other means of providing support and services must be used. Where a child is to be placed at home, the making of a Supervision Order to support reunification may be proportionate (*JW (Child at Home under Care Order)* [2023] EWCA Civ 944).

220. In this Court's judgement, the welfare of the children demands the making of a Special Guardianship Order. The advantages of a Special Guardianship Order for the children would be that their Paternal Grandparents would be granted Parental Responsibility which would reflect the reality of the situation on the ground and allow the Paternal Grandparents to make important decisions for the children in respect of health and education in particular.

221. These are children who have lived with their Paternal Grandparents in their early years. The Paternal Grandparents are more than familiar to them. Although the children have not lived in their care for some time, the children spend regular direct time with their Paternal Grandparents in contact sessions.

222. The Court is mindful of the June 2020 Family Justice Council Public Law Working Group recommendations to achieve best practice in the child protection and family justice systems (Special Guardianship Orders), emphasising that Special Guardianship Orders are private law orders which are not usually intended to be accompanied by Supervision Orders. The need for Special Guardianship Orders to be accompanied by a high level of assistance under a Supervision Order is a "red flag" to indicate that a Special Guardianship Order is not likely to be the appropriate Order. The greater the assistance required, the more likely it is that a Special Guardianship Order is not appropriate.

223. This Court also takes note of the March 2021 final report of the President of the Family Division's Public Law Working Group, entitled "Recommendations to achieve best practice in the child protection and family justice systems," the contents of which were welcomed and endorsed by the President of the Family Division. The report sets out best practice guidance, which at paragraphs 159-162 states:
"The making of a Care Order should not be used as a vehicle to achieve the provision of support and services after the conclusion of proceedings. Unless a final Care Order is necessary for the protection of the child, an alternative means/route should be made available to provide this support and these services without the need to make a Care Order…The making of a final Care Order must be a necessary and proportionate interference in the life of the family."

"A Care Order has a very intrusive effect of State intervention, with ongoing mandatory statutory interference not only in the lives of the carers but in the life of the child, who will have the status in law as a looked-after child and all that goes with this. It can only be justified if it is necessary and proportionate to the risk of harm to the child. Where such an order is made there will be a real prospect of further litigation in the future, because the responsible local authority should regularly review whether the care of the child is such that the Order is no longer necessary, and if so an application to discharge the Order should be made. In an appropriate case, consideration should be given to the making of a Supervision Order."

224. In *Re J, G and H (Children: Supervision Orders)* [2021] EWHC 884 (Fam), Pool J. sitting in the High Court endorsed the Guidance given in the President's Public Law Working Group report as being significant. The guidance set out in the March 2021 report is guidance only, albeit now with approval of the High Court. Each case, however, depends on its own facts and on the individual and unique needs of the children.

225. The Court is mindful of the vulnerabilities of placement of the children with their Paternal Grandparents arising from the children's developing needs. Further, the Court is mindful of the evidence that, at times, the behaviour of the children can be challenging. In this Court's judgement, placement of the children with their Paternal Grandparents, whilst consistent with their best interests, would require ongoing professional support in addition to support from the wider family. Support will be necessary particularly in the early weeks and months, to support transition of the children from foster care to their Paternal Grandparents' care and provide professional support in respect of contact between the children and each parent. Further professional support would be beneficial in respect of providing Social Work visits to the family home, coordinating family support, providing ongoing training to the Paternal Grandparents to meet the developing needs of the children and to set out a written working together agreement of expectations, endorsed by each relevant family member. In this Court's judgement, such support to underpin a Special Guardianship Order is best provided under a Supervision Order as a necessary measure to achieve the provision of support and services after the conclusion of proceedings. In this Court's judgement, a Supervision Order is in the best interests of the children and is the proportionate response to the risks presented. A Supervision Order does not

give the Local Authority parental responsibility. It is less restrictive than a Care Order and its essence is to advise, assist and befriend the children. It does not endure for the whole of the child's childhood, but lasts up to 12 months, with the power for the Court to extend it for a total of up to three years. The Supervision Order can and should be made to work. The Court invites the Local Authority to accept a Supervision Order for twelve months. The Court invites the Local Authority to prepare a Supervision Order support plan and a short transition plan, which is likely to include overnight stays at the Paternal Grandparents' home pending full transition.

226. Further, having regard to the risks presented, this Court is satisfied that a Prohibited Steps Order is necessary and in the best interests of the children by way of specific prohibition upon the exercise of the father's parental responsibility, such that the father will under the Order be prohibited from removing the children or either of them from the care and control of the Paternal Grandparents. On the evidence, no similar Order is necessary in respect of the mother. In this Court's judgement, such Order against the father is necessary, is in the best interests of the children and is the proportionate response to the risks.

227. In this Court's judgement, these Orders are each necessary, in the best interests of the children and the interference with the right to private and family life is proportionate to the risks.

Conclusion

228. For the reasons given, the Court makes the following Orders:
    (a) the Local Authority's application for a Placement Order is dismissed;
    (b) a Special Guardianship Order will be made in favour of the Paternal Grandparents;
    (c) the Court invites the Local Authority to accept a Supervision Order of 12 months;
    (d) a Prohibited Steps Order is made against the father;
    (e) the father's Part 25 application for expert assessment is dismissed;
    (f) the Local Authority shall file a supervision support plan and transition plan;
    (g) No Order as to costs save for detailed assessment of the legally aided parties' public funding certificates.

His Honour Judge Middleton-Roy
27 August 2024