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Case Numbers: BH24C50039 and BH24C50159

Neutral Citation Number: [2025] EWFC 17 (B)

IN THE FAMILY COURT SITTING AT BOURNEMOUTH AND POOLE

Courts of Justice, Deansleigh Road, Bournemouth, BH7 7DS

Date: 22 January 2025

BEFORE:

DISTRICT JUDGE VEAL

Re E, F, G and H (Children) (Fostering or Adoption)

B E T W E E N:

BCP Council	<u>Applicant</u>
- and -	
Ms M, Mother	<u>1st Respondent</u>
-and-	
Mr A, Father	<u>2nd Respondent</u>
-and-	
Mr B, Father	<u>3rd Respondent</u>
-and-	
The Children	<u>4th – 7th</u>
(by their children’s guardian)	<u>Respondents</u>

Fiona McCreath (instructed by **BCP Council**) for the **Applicant**

Emma Southern (instructed by **Preston Redman LLP**) for the **1st Respondent**

Natalie Wood (instructed by **Jacobs & Reeves Solicitors**) for the **2nd Respondent**

Omar Malik (instructed by **Aldridge Brownlee LLP**) for the **3rd Respondent**

Gareth Bishop of **Battens Solicitors Limited**, separately representing **EA**

Adam Langrish (instructed by **Abels Solicitors**) for the **children’s guardian**

Hearing dates: 20 – 22 January 2025

JUDGMENT

District Judge Veal:**Introduction**

- 1) The court is concerned with E, who... is 13 years old; F, who... is 12 years old; G, who... is 6 years old; and H, who... is 2 years old. The children's mother is Ms M. The father of E, F and G is Mr A, and the father of H is Mr B.
- 2) The local authority commenced proceedings under case number BH24C50039 in respect of all four children on 5 March 2024, at which time it had concerns about the drug and / or alcohol use of Mr A and Mr B; domestic abuse in the relationships between the mother and each of the fathers, some of which the children were exposed to, as well as harm caused directly to the children; the children's needs being neglected; and the poor mental health of Mr B.
- 3) On 15 March 2024, an interim supervision order was made on the application of the local authority in respect of E and H, who were living with the mother. Mr B gave an undertaking not to enter the block of flats where the mother lives or to loiter outside. The local authority sought a child arrangements order that F and G live with Mr A, which order was made.
- 4) In fact, a final child arrangements order was made for F and G to live with Mr A on 15 July 2024. There was an outstanding issue in respect of Mr A's housing situation, in that he was living in shared accommodation with the two boys, but it was thought that he had taken steps to address the local authority's concerns or that the risks were suitably managed. Mr A remained a party to the proceedings as the father of E, of course.
- 5) As a result of a hair strand test of the mother in September 2024 suggesting use of cocaine, including crack cocaine, and chronic excessive alcohol consumption, the local authority applied for interim separation of E and H from the mother. On 2 October 2024, I sanctioned the revised interim care plan for H, but not E. That decision was fairly finely balanced in respect of E, and the position in relation to the two children was distinguished, in part, based on their ages. E was able to express herself and was being seen at school, for example. The result is that, since then, H has been in a local authority foster placement.
- 6) On 8 November 2024, the local authority issued new proceedings in respect of F and G under case number BH24C50159. The local authority's concerns were that not only had the mother tested positive for substance use but also that Mr A had. The issues in relation to domestic abuse between the parents were re-pleaded.
- 7) On 13 November 2024, I made an interim care order in relation to F and G, but I did not agree that they should be removed from Mr A's care in the interim. At that stage, the final hearing was due to be heard fairly imminently, starting on 2 December 2024. Mr A conceded that, if he were to test positive for drug use again, the local authority would be permitted to remove the children to foster care under the interim care order.
- 8) On 25 November 2024, an application having been made on behalf of the original Guardian, due to her having become unwell, I adjourned the final hearing to this hearing.

- 9) On or before 2 December 2024, Mr A tested positive for cocaine use, and F and G were placed by the local authority in an emergency foster placement.
- 10) On 3 December 2024, the local authority applied for interim removal of E after the mother was assaulted by Mr B at her home. On 6 December 2024, I made an interim care order and sanctioned the interim removal of E to foster care, which is where she currently continues to live.
- 11) On 20 December 2024, the court heard an application brought by Mr A. The local authority wanted to move F and G to a longer term foster placement in another county, which Mr A resisted. Much of the hearing was spent debating what I could require of the local authority and, although I did not think it in the interests of F and G to be moved to that other county based on timing, the local authority declined to amend its interim care plan and the children were moved.
- 12) This case has been listed this week for a final hearing of both of the live applications. I have read the evidence in the bundles of documents produced for the cases. I have been assisted during the course of the hearing by the legal representatives of the parties and, it having been ultimately agreed that I did not need to hear live evidence from any of the witnesses, the hearing proceeded on the basis of submissions.
- 13) The fact that I do not mention something in this judgment does not mean that I have not fully considered it, but it is impossible to refer in this judgment to absolutely everything I have heard and read.
- 14) The parties' positions are, in summary, as follows:
 - a) The local authority seeks care orders in respect of all of the children. The final care plans are that the older three children remain in foster care. The local authority issued a placement application in respect of H on 14 November 2024 and its final care plan is for adoption.
 - b) The new Guardian supports the local authority's applications.
 - c) The mother had opposed the local authority's applications and sought to have all four children returned to her care. However, at the start of this hearing, I was told that the mother had taken the very difficult decision not to oppose the making of care orders for all four children. She did, however, continue to oppose the making of a placement order in respect of H.
 - d) Mr B opposed the local authority's final care plan for H in his statement of 25 November 2024 and supported H being returned to the mother's care. At the start of the hearing, he indicated that he was not seeking that H be returned to his care, and in effect that his position was aligned with that of the mother.
 - e) Mr A did not oppose the making of care orders in respect of his children, again after careful deliberation.
 - f) E, who was separately represented, wishes in due course to be returned to the care of the mother. Although she would like that to happen soon, she was realistic in her expectations that it would be unlikely to be at the end of this

hearing. She wishes to have regular contact with the mother, Mr A and her siblings including H, with whom she has a strong bond.

- 15) I do wish to give credit to the parents for having reached difficult decisions about their respective positions for this hearing. I know that they love their children deeply, and I cannot begin to imagine how difficult the process of reaching conclusions that they cannot care for them at this stage must have been.
- 16) This is not a case in which there are potential alternative carers. The realistic options advanced for the court's consideration are therefore limited to those which I have just set out.
- 17) There is no dispute in relation to the jurisdiction of this court. I am satisfied that, because the children are habitually resident in England and Wales, this court has jurisdiction to deal with the issues in this case.

Legal framework

- 18) The issues for this court focus primarily on the children and their needs. I keep firmly in mind that, in determining questions about their upbringing, it is the children's welfare that is of paramount consideration. When considering the applications for care orders, it is their welfare throughout their childhood that is relevant, but when considering the local authority's application for a placement order, it is H's welfare throughout her life that I have in mind.
- 19) I also remind myself of a number of other fundamental principles, which come from Section 1 of the Children Act 1989 and Section 1 of the Adoption and Children Act 2002.
- 20) Any questions about the children's upbringing are ones that the court should try to resolve without delay, because delay is likely to prejudice their welfare.
- 21) I should not make any order unless I conclude that it would be better for the children than not making an order.
- 22) Subject to any questions about risk of harm, the presumption is that the involvement of their parents in the children's lives will further their welfare.
- 23) When coming to the conclusions in this judgment, I have had regard to the welfare considerations referred to in Section 1(3) of the Children Act 1989, and, in respect of the application for a placement order, in Section 1(4) of the Adoption and Children Act 2002.
- 24) Article 8 of the European Convention on Human Rights is engaged, and so any order I make is weighed against the right of those affected to respect for their private and family life, and their home.
- 25) I may only make a care order under Section 31 of the Children Act 1989 if I am satisfied that the children are suffering, or likely to suffer, significant harm and that the harm is attributable, either to the care given to them, or likely to be given to them if I do not make the order, that not being the care reasonable to expect a parent to give to them. That is usually referred to as "threshold."

- 26) Here, “harm” means ill-treatment or impairment of health or development (which may include impairment suffered from seeing or hearing the ill-treatment of someone else). Ill-treatment includes physical or mental abuse. If the question is about impairment of health or development, whether or not such harm is “significant” turns on a comparison with the health or development to be reasonably expected of a similar child.
- 27) Although this is therefore a fact-specific exercise, significant harm contemplates something more than commonplace failure or human inadequacy; rather, it requires something considerable, noteworthy or important, but need not be intentional or deliberate, leading to a deficiency in parental care: *Re B (Care Proceedings: Appeal)* [2013] 2 FLR 1075 (SC).
- 28) The Adoption and Children Act 2002 addresses placement orders from Section 21. Because a placement order is one of the most serious types of order that any judge can make, I am to consider the whole range of powers available to me, and that includes a holistic assessment of all of the realistic alternatives.
- 29) My order must be proportionate to the welfare issues. I am guided by the decision of the Supreme Court in *Re B (Care Proceedings: Appeal)* [2013] UKSC 33 and subsequent Court of Appeal decisions including *Re B-S* [2013] EWCA Civ 1146, which talk of placement orders being a “last resort” where “nothing else will do.”
- 30) In my analysis, I consider, having identified the risks, the questions posed by the Court of Appeal in *Re F (A Child) (Placement Order: Proportionality)* [2018] EWCA Civ 2761.
- 31) The provisions relevant to contact on making a placement order are contained in Sections 26, 27 and 51A of the 2002 Act. As the Court of Appeal said in *Re R and C (Adoption or Fostering)* [2024] EWCA Civ 1302, the court has a responsibility to set the template for contact if a placement order is made.
- 32) In this case, neither the mother nor Mr B consent to the local authority’s placement application. If an order is to be made, I must first decide whether their consent can be dispensed with on grounds of H’s welfare needs: Section 52(1) of the Adoption and Children Act 2002.

Evidence

- 33) As I have said, the parties agreed that I did not need to hear live evidence. I can take these issues relatively shortly, therefore.
- 34) In resolving disputed issues of evidence in this court, where a person asserts a particular fact, it is that person who must prove it. The burden of proving an allegation in relation to its applications therefore lies with the local authority.
- 35) The standard of proof is the balance of probabilities. In other words, if it is shown that any particular fact is more likely than not to be true, then it is treated as having happened; if it is not proved, then the fact is treated as not having happened. This is sometimes referred to as the binary effect. The court is entitled to take into account inherent probabilities and improbabilities in deciding whether a fact is proved, but

must base its findings on evidence, including reasonable inferences, and not speculation: *Re B* [2008] UKHL 35. The court has regard to the totality of the evidence and does not compartmentalise it.

- 36) This is a case in which the mother and Mr A have at different times admitted lying. It is common for witnesses to lie in the course of an investigation or a hearing. They may do so for a variety of reasons, for example, shame, misplaced loyalty, fear or distress. It does not follow that, because they have lied about one thing, they have lied about everything: *R v Lucas* [1981] QB 720.
- 37) Witnesses may also be fallible, which goes to the reliability of their testimony rather than their credibility. I have in mind that a witness' recollection of events is a process of fallible reconstruction which may be affected by external influences and supervening events, moulded perhaps also by the process of litigation, with past beliefs being reconstructed to make them more consistent with present beliefs and motivated by a desire to give a good impression: *Gestmin SGPS SA v Credit Suisse (UK) Limited & another* [2013] EWHC 3560 (Comm); *Lancashire County Council v C, M & F (Children – fact finding)* [2014] EWFC 3.
- 38) Opinion evidence is to be considered in the context of all of the other evidence: *A County Council v K, D & L* [2005] EWHC 144 (Fam); *Tower Hamlets v MK* [2012] EWHC 426 (Fam). I also have firmly in mind the bounds of the expertise of those experts and professional witnesses who have given evidence in this case: *Re S* [2009] EWHC 2115 (Fam).

The evidence

- 39) Although I have not heard live evidence, I do think that I need to address two of the topics which come out of the written evidence because they are of particular relevance to my welfare analysis.

Domestic abuse

- 40) The concerns which led to proceedings being issued included domestic abuse. On or about 19 February 2024, both F and G separately reported an incident perpetrated by Mr B. F said that Mr B had grabbed his shoulder and pinched him. G said that Mr B had squeezed F's hand very hard, and pulled and pushed F into his room, and made F cry.
- 41) On 21 February 2024, F was seen by a paediatrician. The notes were that F had various marks and scars all over his body, none of which were typical of abusive injury and could have been caused by day to activities and interaction with his brother. The concern about the possibility of abuse was recorded because of what F had said. He had been reported to have shown staff at the school a mark on his shoulder on 19 February 2024.
- 42) Mr B's response to threshold denied the abuse. He said that the marks were caused by his brother. The mother said in her response to threshold that she did not know where the allegation had come from, but that Mr B had a strict parenting style which F did not like.

- 43) It is perhaps relevant to this issue that F has a diagnosis of Down Syndrome and has speech and language difficulties. The social worker considered it significant that, in that context, F had made his allegation twice on separate occasions.
- 44) I have noted that F had made a number of other allegations at school about domestic abuse in the relationship between Mr B and the mother.
- 45) In terms of those pleaded in the local authority's threshold document, I understand that the mother and Mr B agree that the final version of the document accurately reflects their positions. Mr B had denied in his response to threshold much of what was alleged against him.
- 46) The relationship between the mother and Mr A pre-dates that between the mother and Mr B. The threshold allegations around domestic abuse in their relationship are therefore older, for the most part. Although there were arguments, these allegations see the mother, generally speaking, as being the more dominant of the two and Mr A as the victim of her abuse. Again, the threshold document is agreed.
- 47) I have noted that many of the matters alleged were witnessed by one or more of the children.
- 48) There is an email in the bundle from Up2U dated 29 July 2024. That sets out that the service tried to engage the mother in June and July 2024, but it never heard back from her. The local authority's evidence includes that the mother had failed, as at the end of October 2024, to engage with work that another organisation, Safempowerment, had been trying to undertake. I understand that that organisation focuses on work around domestic abuse and healthy relationships.
- 49) However, I was told in submissions yesterday that the mother has engaged with Safempowerment (although I was not clear when), is currently undertaking work with Steps2Wellbeing, she started work with Paragon last week, and would like to undertake the Freedom Programme. I do not have evidence of the stage which the mother has reached in relation to any of that work.
- 50) I have seen that Mr B has engaged with Up2U, at least in July and August 2024, as a perpetrator of abusive behaviour. The reports from Up2U suggest concerns with Mr B's insight. I have not seen any subsequent reports but, in his statement of 17 September 2024, Mr B said that he was still working with Up2U.
- 51) Since the start of proceedings, there have been two incidents of particular note.
- 52) The first is that, on 31 July 2024, the mother attended at hospital during the evening. The notes completed by the hospital state that the mother presented at Accident & Emergency with injuries, saying that she had been assaulted by her ex partner on a train, and had been struck on the back of her head by an unknown object. She was reluctant to divulge more detail, was briefly assessed and then discharged herself.
- 53) An out of hours social worker telephoned her, and the mother told her that she had been assaulted by an ex partner, whose name she refused to provide. The social worker was keen to know where the children were, but the mother was recorded as having said that the call was "*ridiculous.*"

- 54) It is relevant that, on the morning of 31 July 2024, the mother had not attended the Parental Substance Misuse Court (“PSMC”) hearing, saying that H was unwell.
- 55) On the following day, another social worker visited the mother to check on the welfare of the children. At that visit, the mother said that she did not know where the idea that she had been assaulted had come from, and that she had fallen on her face after her flip flop had got caught between the train door and platform edge.
- 56) That was an account repeated on 9 August 2024 to a third social worker. She said that she had gone to deliver a present to a friend at about 7pm, having left H in the care of a friend, and returned straight away afterwards.
- 57) In a statement on 5 September 2024, the mother said that she had taken E to Mr A’s home on 31 July 2024, as he was taking the children to [a theme park] the following day. She said she had caught the train home and fell off the train at the station when her flip flop broke, and as a result she hit the platform, resulting in a split lip, bruising to her left eye and a mark on her cheek. She said that Mr B was working away at the time, and she did not know where the suggestion came from that he had assaulted her. The mother went to the hospital emergency department, and left when she was told that she was safe to leave, because she was due to pick up H.
- 58) The mother denied changing her story. She said she had never alleged an assault, and had always explained that she had fallen from the train. She said, “*I have never been assaulted by [Mr B].*”
- 59) At a hearing on 19 September 2024, I directed evidence from the mother and Mr B in relation to the incident, as well as third party disclosure.
- 60) I should say that it was always Mr B’s position that he was not in the local area at the time of the alleged assault, and so it could not have been perpetrated by him. That was not something which he ever put in a witness statement.
- 61) On 4 November 2024, the mother stated that, on 31 July 2024, E went to [a theme park] with Mr A, and H was with a friend of the mother. The mother went to [another part of town] at about 5pm and bumped into an old male friend, unnamed, whom she had not seen for ten years. They went for a drink and a catch up. They then caught the train back to [her local station], arriving at about 9pm. During the journey, the male friend became overly friendly with the mother and she pushed him away. He then hit her in the face. She then went to hospital. The mother said that she was sorry that she had not been truthful previously. She was concerned that Mr B would retaliate, and things would become worse.
- 62) It appears that the mother and Mr B had continued to be in a relationship even though they were living apart. Mr B said in his statement of 25 November 2024 that they had separated, whereas he had articulated that they were still in a relationship at the time of his statement of 17 September 2024. On his account, at least, the mother and he must have separated at some point in between.
- 63) On 21 November 2024, the mother stated that she did not accept that domestic abuse had been a factor in her relationships and that the incident on 31 July 2024 had no bearing on the local authority’s care plan for the children.

- 64) In my judgment, there are at least four concerns about the incident on 31 July 2024.
- 65) Firstly, the incident took place not too far from where the mother lives, after the man concerned had, on the face of it, accompanied her on the train journey towards her home.
- 66) Secondly, even if the perpetrator were not Mr B or an ex partner, the mother had found herself in a situation in which she was involved in an abusive incident. Although she says, in effect, that this is an incident which happened to her, we only have her side of the story. What is of some significant concern is that she has refused the name the perpetrator, as if she is trying to protect him for some reason.
- 67) Thirdly, that reason may be the reason she gave, which is that she was concerned about Mr B's reaction, which I suppose might have put the third party at risk from Mr B. However, that also begs a question as to the apparent disconnect with the mother's own previous assertion that she had never been assaulted by Mr B and her non acceptance in November 2024 that domestic abuse was a factor in her relationships. As I understand it, the mother now accepts that the relationship between her and Mr B had featured domestic abuse, but her articulated insight in that respect has come relatively recently.
- 68) Fourthly, the mother only made the statement she did after the court directed third party disclosure. It is completely at odds with her earlier statement. Her other accounts were plagued with inconsistency as well. She was not honest with the social workers who were trying to support the family in the immediate aftermath of the incident; she told them that their involvement was ridiculous.
- 69) On 25 November 2024, the court adjourned the final hearing. During the hearing, the mother and Mr B confirmed that they were not in a relationship but were working together with a view to co-parenting H.
- 70) That evening, however, the mother alleges that Mr B walked into her flat uninvited and, I note, in breach of his undertaking, and perpetrated a significant assault against her. Mr B has not given his own account, and so the court only has the mother's accounts, provided to the police at the time and in her statement of 3 December 2024, which are broadly consistent with one another. E also gave an account to the police, which is consistent with her mother's insofar as she was present.
- 71) I was told yesterday in submissions that Mr B denies assaulting the mother. He has not provided evidence as to what he says happened, if anything, however. The Public Protection Notice does set out that he told the police that he was the victim of abuse. Mr B did not come to court on the second day of this hearing and, as I understood his counsel, had made it clear that he did not intend to come.
- 72) On balance, given that the only evidence I have is that of the mother and E's account, I work on the basis that the assault happened. I dealt with the evidence that I did have in a judgment I gave on 6 December 2024. There are two particular points of further significance. The first is that the mother reported as being scared not only of Mr B but also of his family, whom she considered may attack her. The second is that it was a matter of chance that E was not involved to a greater extent than she was: she was not at home when Mr B arrived (although I note that the call to the police was made at

2210 hours on what was a Monday), but she arrived home either during or shortly after the assault, and was harmed emotionally as a result of having seen it or the aftermath of it.

- 73) A third point which is also important is that E's school attendance had dropped between the hearings on 2 October 2024 and 6 December 2024. That is not of direct relevance to the incident, but I do not want that point to be lost, in that E being seen at school was one of the protective factors which I had identified for her at the earlier hearing.
- 74) The undertaking from Mr B was not enough to keep the mother and E safe. It was not the mother's position at the hearing on 6 December 2024 that she would move somewhere else. On 20 December 2024, the mother told me at PSMC that she was planning to move to a refuge which could also accommodate E, and was due to have an assessment on the same day. She had been working with the police to achieve a safer home environment in the meantime.
- 75) As I understand the current position, the mother is not in a refuge but is still considering such a move. She seemed to be critical of the local authority for not having confirmed certain details to have enabled her to have moved to a refuge already.
- 76) Throughout proceedings, the mother's contact with F and G has been supervised by the local authority. That appears to have been understood by both her and Mr A. Against the backdrop of the incident on 25 November 2024, I have even greater concern that, on 30 November 2024, F and G were left in the unsupervised care of the mother by Mr A.
- 77) The mother denied knowing where the children were when asked by a duty social worker on 30 November 2024. I was told at the hearing on 6 December 2024 that the mother did not know who was calling her on that day, but she told another duty social worker on 1 December 2024 that G and F had been with her, but she says that the maternal uncle had also been present. The local authority told the court at the hearing that it was not aware of the maternal uncle and had not assessed his potential to supervise contact. Mr A had confirmed on 2 December 2024 to a social worker that he had left G and F in the mother's care.
- 78) The reasons why my concerns are heightened are twofold. Firstly, it calls into question the ability of the mother and Mr A to reliably assess risks to the welfare of the children and to respond appropriately. Secondly, it is another example of the parents being somewhat cagey about what was really going on behind the scenes.

Substance / alcohol use

- 79) The other topic that I want to explore is about the parents' substance or alcohol use.
- 80) On 19 April 2024, a hair strand test for the mother showed use of cocaine in the period from 10 January 2024 to 9 April 2024, at decreasing levels across the three segments. Alcohol consumption was identified, but not at a chronic excessive level. She had declared use of no illicit drugs and consumption of less than ten units of alcohol per week.

- 81) The parents have been admitted to the PSMC during proceedings. At her initial assessment on 10 May 2024, the mother had said that she used cocaine when with friends but not when she had care of the children, and declared having last used cocaine in March 2024.
- 82) The mother did not attend PSMC on 31 July 2024, and previous PSMCs for her had been cancelled due to her health issues. The mother is recorded as having last used cocaine at the start of May 2024. When I asked at the hearing on 2 October 2024 why that was not mentioned at the PSMC assessment on 10 May 2024, I was told it was in fact at the end of May 2024 that she had last used.
- 83) On 7 August 2024, the mother was discharged from PSMC because she had not committed to it. The assessment from the external local support service, We Are With You, had not been completed by that time either.
- 84) A hair strand test for the mother dated 24 September 2024 covered five months from 15 April 2024 to 12 September 2024. The mother declared use of cocaine in May 2024, but the results were consistent with use of cocaine, including crack cocaine, in the overall time period covered by the test. There was a decrease, but the concentrations did not support abstinence since May 2024. There was also chronic excessive alcohol use for same period, whereas the mother's declared consumption was two ciders per week.
- 85) I understand that the mother disputed those results. She asked Rule 25.10 questions of the laboratory. I have seen a response dated 30 September 2024, which states that the samples were not of matted hair, the contents of vapes would not account for the chronic excessive alcohol use, it was unlikely that vapes containing illicit drugs would be used unknowingly, and that medication referred to would not contain crack cocaine or its marker, AEME.
- 86) Another Rule 25.10 question was asked and, on 9 October 2024, the laboratory confirmed that the use of thermal tools had not influenced the results and that it was more likely than not that crack cocaine had been used by the mother.
- 87) There has been no application for the expert to give oral evidence pursuant to Rule 25.9, and so I have worked on the basis that this evidence is not now contested.
- 88) At or after the hearing on 2 October 2024, the mother indicated that she wanted to re-engage with PSMC, and that was agreed on the basis that she would also engage with We Are With You. The mother declared, in advance of PSMC on 15 October 2024, using cocaine after the hearing on 2 October 2024, and appeared to be starting to show some insight into her use. She was due to complete her initial assessment with We Are With You on the same day.
- 89) During submissions yesterday, it remained the mother's position that she has not used since October 2024.
- 90) On 1 November 2024, the mother underwent a saliva test at PSMC and tested negative for substance use.

- 91) On 12 November 2024, however, the mother tested positive for cocaine use at PSMC. She was adamant that she had not used since early October 2024, however. She had been engaging with We Are With You.
- 92) On 25 November 2024, the mother tested positive at PSMC for opiates, which was consistent with her prescribed medication, but the test was negative for other substances, including cocaine.
- 93) The mother did not attend PSMC on 16 December 2024 due to ill health. At a rearranged appointment on 20 December 2024, she reported having remained abstinent for the previous two months, and the saliva test undertaken was positive for opiates, again consistent with prescribed medication, but negative for other substances. On the face of it, she was expressing that she was engaging with support services, was looking to move to a refuge, and she appeared to have a positive sense of direction.
- 94) The mother did not attend PSMC on 7 January 2025, and her engagement with We Are With You had been inconsistent. She has not complied with the direction to file and serve further hair strand testing, which was due by 10 January 2025. I was told that a sample was collected last Friday, which was 17 January 2025, so a week after the filing date, but the results have not yet arrived. I will come back to this issue in a moment.
- 95) On 5 February 2024, a hair strand test for Mr A was consistent with use of cocaine in the 165 days prior to 26 March 2024, but low alcohol consumption. Both were inconsistent with his declarations in this sense: he had said that he had not used substances but that he did consume alcohol.
- 96) On 2 May 2024, Mr A told the local authority in his initial PSMC assessment that he had not used cocaine since he was 22 years old. He wondered, at PSMC on 22 May 2024, whether the positive result had come about from spiking. He had had an initial assessment with We Are With You by that time.
- 97) By the time of the PSMC on 17 June 2024, Mr A had started to engage with We Are With You but had not been attending the group sessions. He referred to a lack of time to do so.
- 98) Mr A's test on 26 June 2024 detected cocaine in the period from 16 March 2024 to 15 April 2024, but was negative in the subsequent segments up until 14 June 2024. The alcohol use detected was low, although Mr A was still saying he would drink up to 20 units per week. He did not attend all subsequent PSMC hearings, but things appeared to be progressing in the right direction.
- 99) On 8 October 2024, Mr A hypothesised at PSMC that saliva tests undertaken on 19 and 26 September 2024, and again in the week before the PSMC, which were all positive for cocaine use, were rogue results which had arisen as a result of cross contamination. He was living in shared accommodation, and wondered whether cocaine had entered his system as a result of others in the house using it. Logically, if that were right of course, F and G would have been exposed to the same risk, and I would wonder why Mr A did not do more to guard against it.

- 100) In any event, on 18 October 2024, a hair strand test for Mr A was consistent with cocaine having been ingested in the period of 156 days before 4 October 2024. I put it in that way, because the expert specifically considered Mr A's suggestion that there was cross contamination of cocaine in his shared accommodation. A Peth test was consistent with Mr A's declaration of occasional consumption of alcohol. I am not aware of any Rule 25.10 questions of the expert and, in any case, the idea that there may be cocaine drifting about in shared accommodation seems to me to be inherently unlikely.
- 101) The saliva test at PSMC on 1 November 2024 was also positive for cocaine use, and Mr A had not been engaging consistently with We Are With You either.
- 102) On 8 November 2024, the local authority commenced the new application in relation to F and G. It was concerned for the children based on Mr A's drug test results and his dishonesty about it, and its threshold pleads the three positive tests for cocaine use since 19 September 2024 amongst other things.
- 103) At the hearing on 13 November 2024, an interim care order was made but the children remained in Mr A's care. He conceded that, if he were to test positive for cocaine use again, the local authority would be entitled to remove them from his care.
- 104) Mr A had eventually explained at PSMC on 13 November 2024 that he had lied, and that he had used cocaine. He gave an explanation about his thinking which was remarkable, in the sense that he had recognised that he had been caught out, but then tried to effect a complex cover up, in a way which had involved F and G. He did not accept everything which had been reported by G at school, including about the children having been taken to drug deals.
- 105) On 27 November 2024, Mr A attended PSMC and had been engaging with We Are With You and other support services. His saliva test that day was negative. The question which was highlighted then was whether the tools in his armoury, or the techniques which he had learnt, in order to maintain abstinence were being effectively deployed, in other words whether his resilience was robust enough.
- 106) It appears that those tools or techniques were put to the test again very shortly afterwards, in that Mr A tested positive for cocaine use on 1 December 2024. He confirmed, after initially saying that he did not understand the result, that he had been using cocaine over the weekend. He also said that he used cocaine with the mother and with her encouragement. Similarly, at PSMC on 19 December 2024, Mr A said that he had lent money to the mother, who used it to buy drugs, as a result of which he used.
- 107) The clear impression I had from him was that Ms M and Mr A had used together. However, I was told yesterday that the mother denies obtaining the drugs or using them with Mr A over that weekend.
- 108) I am bound to say that I did not understand why Mr A might have made this up; it was not in his interests to point the finger at the mother. She has not given evidence in any form about this. However, I do note that Mr A's evidence is not inconsistent with the mother's saliva test earlier in November 2024, which suggests that she was using cocaine at that time, or with her own account that there was a link between the stress

of H being removed from her care and her use in October 2024. I would have thought that the assault on 25 November 2024 would also have been a stressful life event for her. The mother has not attended PSMC since, and she has failed to comply with the requirement for subsequent hair strand testing. On the current evidence, on balance and in my judgment, Mr A's account is entirely plausible.

- 109) F and G were removed from Mr A's care on 2 December 2024. Aside from the issues around substance use, the other issue which had by then arisen was that around F and G having been left in the unsupervised and unauthorised care of the mother.
- 110) Mr A did not attend PSMC on 9 January 2025.
- 111) On 15 January 2025, a hair strand test for Mr A was consistent with use of cocaine throughout the period from 5 October 2024 to 3 January 2025. Mr A had declared cocaine use in October and November 2024. Mr A's alcohol consumption results remained at relatively low levels.
- 112) Although I need only address his results more briefly, on 10 April 2024, a hair strand test for Mr B was consistent with use of cocaine, albeit decreasing, in the period from 29 December 2023 to 28 March 2024, as well as chronic excessive alcohol consumption. He had declared that he had used no illicit drugs and drank only very occasionally.
- 113) At his initial PSMC assessment on 8 May 2024, Mr B appeared to recognise that he had an issue with alcohol consumption.
- 114) On 26 June 2024, a hair strand test for Mr B was consistent with use of cocaine in the period from 16 April 2024 to 15 June 2024. He had said that he had used cocaine at the end of May 2024. Alcohol consumption remained at chronic excessive levels.
- 115) On 5 September 2024, a hair strand test for Mr B contained his declaration that he had not used substances since the end of July 2024, and that he drank socially at weekends. The results detected cocaine in the period from 27 June 2024 to 26 August 2024 as well as levels of alcohol consumption well above the cut offs.
- 116) On 23 October 2024, a hair strand test for Mr B records that he declared using cocaine in mid-September 2024 and consuming alcohol heavily. The results were consistent with his declaration: they showed cocaine in all three segments from 13 July 2024 to 11 October 2024 at slightly decreasing levels, as well as significant levels of alcohol consumption.
- 117) Mr B also attended PSMC. On the face of it, he accepted using cocaine after the hearing on 2 October 2024 and showed some motivation to engage with support services. The evidence around the incident on 25 November 2024 suggests that at alcohol consumption, at the least, was a factor which influenced his behaviour. He has not attended PSMC since then.

Analysis and conclusions

- 118) In relation to the issue of threshold, the parties have agreed separate final threshold documents in relation to each of the applications, for which I am grateful.

- 119) Although not every aspect of threshold is accepted by the parents, I am in any event satisfied from the admissions made and the evidence that I have read that threshold is crossed in respect of all four children.
- 120) I have set out some of the important aspects of the evidence since the relevant dates for the purposes of threshold already.
- 121) When considering the welfare considerations, including those in Section 1(3) of the 1989 Act and Section 1(4) of the 2002 Act, there are a number of matters which are relevant for the purposes of all of the realistic options that I need to consider.
- 122) The first is that there is very clear evidence that the parents love their children dearly. Nothing that I say is intended to diminish that very deep love that they have for them.
- 123) The second is the ascertainable wishes and feelings of the children. E's clearly expressed wishes and feeling are that she would like to live with her mother, although she seems to accept that both of her parents have work that they need to do. G wishes to live with his parents, and F has expressed missing friends in the area local to his parents. I will come back to the sibling assessments, which also provide more information about the children's wishes and feelings.
- 124) It is reasonable to assume also, given the law that I have set out, that, provided it is safe, all of the children would wish to live with, or have the involvement in their lives, of their parents. They would want to live with their siblings or to have regular contact with them if they could not.
- 125) Thirdly, at two years old, H is reliant on her primary caregivers to meet most of her day to day needs, whether those be physical, emotional or developmental. At the other end of the age range, E is probably more self-sufficient. However, she, too, remains a child. What follows from that is that all of the children would want to receive care which is both safe and predictable, and the need for that is likely to be highest for H. All of the children would want to live in a home where they were loved, well cared for and felt secure.
- 126) Fourthly, the position is further informed by F's additional needs. He has Down Syndrome and an Education, Health and Care Plan. He is a child who, at the age of twelve, needs in my judgment to receive better than good enough care.

Placement with the parents

- 127) It seems to me that, when looking at the alternatives, I do need to consider the ability of the parents to provide good enough care to the children, based on the evidence as it stands. That is because, although they do not oppose the making of care orders today, the position of the mother (and Mr B) is, essentially, that Ms M should be given more time, and a placement order not made, so that H can be returned to her care, with her other children, once she has addressed the areas of risk.
- 128) When social workers talk of children's timescales, it is often unclear what they mean in terms of precise deadlines or cut offs. However, what we do know, because it is enshrined in law, is that delay is prejudicial to children's welfare. The mother urges the court to conclude that she is able to bring about and sustain change within the

children's timescales, and that there are green shoots. That was not the view of the local authority or the Guardian.

129) In terms of the parents' capacity to meet their children's physical, emotional and educational needs, in this case, the evidence is that the mother and Mr A are able to meet the children's day to day basic needs at times. The issue is whether that is safe and attuned care which is provided consistently, such that it can be considered good enough. I understood from their positions at this hearing that they accepted on some level that, at the moment, it was not.

130) A parenting assessment of the mother was completed on 5 July 2024. It concluded negatively, saying that the mother had been unable to engage with the assessment, partly due to her ill health and subsequent hospital admissions, but also because she was unable to prioritise the assessment when she was not in hospital. The mother stopped engaging with the assessor, suggesting bias. The assessor said this within her conclusions:

"I remain really worried that [the mother] has shared information that suggests domestic abuse is a feature in her relationship with [Mr B], and then has retracted the evidence the following day and reverted back to a communication style of hostility and non-engagement with myself, the assessor."

131) What is of significance about that conclusion, in my judgment, is that it pre-dated the incidents on 31 July 2024 and 25 November 2024 which I have explored. Some of my concerns chime with those of the assessor.

132) Having said that, an updating assessment dated 15 August 2024 concluded more positively, saying:

"To date [the mother] has been living with and managing E and H in the home alone and has demonstrated her ability to do this well. The mother has shown insight into the worries held by Children's Services and has addressed their concerns by making changes to her lifestyle and parenting as instructed. The risks for the Local Authority were physical assault by [Mr B] towards F, the children not attending school on a regular basis and domestic abuse between [Ms M and Mr B]."

133) Parenting assessments were undertaken of Mr A which are dated 28 February 2024 and 8 July 2024. Both were positive assessments. The assessors considered that he presented as open, honest and accountable, and the only real issue identified was a need for the local authority to make *"significant and immediate efforts"* to help with securing appropriate housing for Mr A, F and G. It was on that basis that the final child arrangements order was made on 15 July 2024.

134) After that, there was a further assessment of Mr A with the idea that he may be able to care for H. He withdrew from the assessment but the report, dated 15 August 2024, was generally positive about the sort of support he might be able to offer to the mother.

135) The subsequent concerns for Mr A's care of the children were to do with his substance use and his honesty around that. He cannot, in my judgment, be said to have

engaged with support services with any real vigour. As I have said, there was also an issue with him leaving the children unsupervised in the mother's care.

- 136) On 8 July 2024, Mr B's parenting assessment concluded negatively. The assessor was concerned about his insight into or recognition of the harm which he has caused the children, which he downplayed. The concern was that he was not further along in his engagement with Up2U than he was.
- 137) What is clear from the background which I have described is that there is a great deal of admitted abuse between adults in the children's lives, as well as the incidents since proceedings started involving the mother. Those incidents highlight a root cause of potential danger. The responses of the parents to situations in which conflict arises inform the likelihood of harm resulting.
- 138) In some situations, children who are exposed to dysregulated behaviour of adults can find themselves at immediate risk of physical harm, simply by being caught in the crossfire. In my judgment, E's appearance at the home during the course of the incident on 25 November 2024 could properly be described as one example of a near miss for her in terms of physical harm.
- 139) In other circumstances, children exposed to abuse between adults are at risk of emotional harm. That is something set out in the local authority's evidence in spades, and in the Guardian's evidence, and I have previously found that E suffered actual psychological harm as a result of the incident on 25 November 2024.
- 140) The mother referred to an ongoing risk from Mr B and his family, and the outcome of the hearing on 6 December 2024 was fundamentally about that ongoing safety risk. Although the mother has talked about moving to a refuge, for example, she has not done so.
- 141) The mother did not engage with work with Up2U in June or July 2024, and Mr B's engagement was patchy on the evidence before the court. The relationship between the two of them only seems to have ended comparatively recently. The mother told the Guardian in the context of her producing her recent analysis that she is now engaging with courses to help her understand the impact of domestic abuse on her and her children, and I have outlined the work which I was told that the mother has started to engage in and which she plans to undertake.
- 142) Whilst I give her credit for taking that initiative, and I hope she does continue with the work, on the evidence before the court, The mother has struggled to accept throughout the proceedings as a whole that there is any risk to her children from her relationships. She has vacillated in the accounts given about the incident on 31 July 2024, and I have struggled to reconcile in my mind her denials that Mr B was abusive towards her and her apparent desire to protect, to an extent, the man who assaulted her on the train with the submission that she has now developed insight, and is ready to implement change.
- 143) The previous Guardian's final analysis dated 13 September 2024 was a finely balanced one. She considered that, if the incident on 31 July 2024 were an incident of domestic abuse, she would question the outcome of the parenting assessment and

would be saying that the children should all be placed outside of the mother's care, and that a placement order should be made in respect of H.

- 144) The issue is compounded by the fact that the mother was not honest about it. It makes understanding her insight, where she is in terms of an intrinsic understanding of the need to make changes, all the more difficult. In my judgment, there is likely to be more to both the incident on 31 July 2024 and that on 25 November 2024 than currently meets the eye. It is unlikely in my experience, as the mother urges the court to accept, that the incidents merely happened *to* her. However, even on the mother's own evidence, there is detail missing in relation to the context of both incidents and unanswered questions. I have not needed to resolve those during the hearing because the mother is not actively seeking the return of the children to her care today, but the very fact that she says that these were completely unprovoked attacks leads me to question what her insight is, even at this stage.
- 145) I would have thought that the incident on 25 November 2024 might have spurred the mother into action sooner, and perhaps it has. Although she identifies lots of useful work which she has now embarked upon or is about to start, that has come just before this hearing started. We are entering, by my calculation, week 47 of the proceedings for E and H, and proceedings have ended and started all over again for F and G.
- 146) In my judgment, taking the evidence together, I am bound to say that, in my judgment, the mother's insight into the issues around domestic abuse are little more developed now than they were when proceedings were first issued on 5 March 2024. However, even if I am wrong about that, the mother's approach to the issues throughout proceedings is likely to mean that the professionals and the court would want to see a longer period of sustained change from the mother than might otherwise have been the case, before being satisfied that she can safely care for her children and protect them from harm.
- 147) I have reached a similar conclusion in respect of the parents' substance use.
- 148) At one end of the scale, it might be said that the children of a parent who uses cocaine or drinks alcohol may not in fact experience a great deal of adverse impact to the care that they receive. However, at the other end of the spectrum is a lack of consistency in parenting, or an exposure of the children to criminality around what, in the case of drugs, is fundamentally an illegal activity, or exposure to poor behaviour or mental health of the adults in their lives.
- 149) Where E, F, G or H find themselves on this scale of risk is hard to pinpoint. That is mainly, I am bound to say, because the parents have not themselves been open or honest about their use.
- 150) In my judgment, though, a conclusion that the parents use cocaine and, in the case of Mr B, alcohol as an unhealthy coping mechanism can quite readily be justified on the evidence before the court. There is a clear correlation between the parents using substances or alcohol and times of stress, which each of them has in fact admitted at times.
- 151) That strongly suggests on balance that there is a link between the parents' mental wellbeing and their availability to meet the children's needs. If her needs are not being

met, the impact on H is likely to be the highest because of her age and need for consistency of care, and could in some circumstances be catastrophic. That was of course part of the rationale for the decision I made on 2 October 2024. The same principle applies to the other children too.

- 152) Although I did not need to hear submissions about this, set against that is that it is difficult to see how the risk can be guarded against on a long term basis. The local authority cannot be present all of the time. Testing, even if the mother were to comply with it, provides only a retrospective picture.
- 153) The engagement of the parents with support services has been patchy. Although I accept that there is plenty of evidence about, for example, the mother's health issues, they do not explain away why she did not engage consistently with We Are With You. I would have thought that the parents would have wanted to have been doing all they could in order to show that they could make and sustain changes, but that is not the evidence as it stands.
- 154) On balance, I have reached the conclusion that the parents do not yet have that intrinsic belief that they need to bring about change. They have not been open and honest with the professionals and the court about their substance use, and I doubt that they have been honest with themselves either. However, if I am wrong about that, in my judgment their resilience to the stresses and strains that life throws at them is not there at this stage. That is illustrated by the fact that they have all fallen back on drugs or alcohol in the recent past, when issues have been difficult for them.
- 155) The children have been in the care of their parents for the majority of their lives. If they are returned to the care of the mother or Mr A, I am sure that that is a change which each of the children would welcome and they would then continue to have all of the benefits associated with growing up within their birth family, whether in terms of the parents' love, the sense of belonging, or otherwise.
- 156) However, the downside is that the children would, on balance and in my judgment, be exposed to the risks of harm which I have set out on an ongoing basis. Even at week 47 of the proceedings for E and H, and within the second set of proceedings in that period for F and G, regrettably the evidence points towards the parents remaining close to the start of their own journeys.
- 157) In my judgment, there is no sound basis in evidence for a conclusion that, if there is further delay, the mother in particular will be likely to be able to achieve that which she has not achieved in the last 46 weeks, at least within the short term. She has been constantly pointed in the right direction by the professionals and the court. I agree with the evidence of the Guardian and social worker that neither the mother nor Mr A has properly prioritised the need to bring about changes, despite having the opportunities to do so, and that means in my judgment that their journeys are likely to be longer rather than shorter, and longer than the children's timescales allow.
- 158) In addition is my concern that, even considering measures which could be put in place to control risk, a number of those only work if the parents follow rules which are set, if they are open and honest with the professionals assisting the family, and if they consistently put the children's needs first. I am concerned that there is evidence that

similar safeguards have not been enough, and in consequence about the lack of evidence of the parents being able to reliably and consistently respond to risk.

Long term foster care

- 159) The key advantages of a foster placement in the context of this case, in my judgment, are primarily about protecting the children from the risks that I have outlined. What a foster placement would be significantly more likely to offer children is the safety which, regrettably, they have not consistently received from their parents.
- 160) Foster care would enable the children to receive high quality care, whilst not being exposed to the risks of significant harm, and whilst remaining members of their birth family. That will leave the door open to contact with their siblings and parents, perhaps in due course even to a greater degree than is currently contemplated in the care plans.
- 161) Long term foster care has been described by the court as an “*extraordinarily precarious legal framework for any child:*” *Re LRP (A Child) (Care Proceedings – Placement Order)* [2013] EWHC 3974 (Fam). That is due to the commitment of some foster carers, the higher risk of placement breakdown, and the high levels of local authority involvement when children are looked after children, which some find intrusive particularly as they get older.
- 162) In terms of the likely effect on the children, each of them is already in foster care. E appears to have a mature understanding of why she may need to remain there for the time being. The local authority has committed to including in my order a recital that E will not be moved to the placement with her brothers in [another county] if she is opposed to it.
- 163) F and G, looking at the Guardian’s analysis, had not appreciated that they may need to stay in their foster placement but appear to be settling well.
- 164) The local authority has made proposals for contact between E, F and G and their parents which, as I understand it, are agreed by the mother and Mr A, as well as the sibling contact.
- 165) F’s educational needs remain a work in progress, but the local authority has agreed a recital around providing him with education if a suitable school place is not found imminently: he does, after all, have an EHCP.
- 166) I should also say that H appears to have made significant progress whilst in her foster placement. For her, the issue in dispute is whether that is the right placement for her to remain in.

Placement for adoption

- 167) The advantage of adoption is that it offers permanence in a way that long term foster care cannot. The child becomes fully a part of her new family, and will be likely to prosper and have a sense of belonging which most, although not all, adopted children experience. There is no continued local authority involvement. Those are significant factors for a two year old child, who has the rest of her minority and her life ahead of her.

- 168) A move to an adoptive placement would, on any view, be a significant change of circumstances for H. I accept the Guardian's evidence that, on balance, if managed sensitively, and given her age now, H is likely to be able to manage the transition to an adoptive placement where she can be further supported to manage the effect throughout her life of becoming an adopted person.
- 169) It was submitted on behalf of the mother that H should not be set on a life path which is different from that of her siblings. However, in my judgment, if an adoptive placement achieves the best welfare outcomes for H, I do not consider that the fact that E, F and G may remain in foster care, of itself, means that the court should not sanction the care plan for their little sister.
- 170) The disadvantages of adoption include severing ties to birth family, at least to a degree. Whilst life story work can be undertaken with H, letterbox contact can take place, and therapeutic support provided to her, that is a poor substitute in terms of her understanding her identity, culture and birth family relationships to actually growing up living with her mother. She will be liable to suffer a sense of loss, not only now but also throughout her life, if ties to her birth family are severed. That may become more prominent in adolescence as H comes to understand more about her background and identity. That impact can be lessened through careful and sensitive support. It almost goes without saying that the care plan also impacts the parents significantly, because they will lose, in legal terms, their child.
- 171) That then brings me to the issue of contact, which would have the potential to mitigate some of the disadvantages of adoption which I have just referred to. The local authority's plan for contact is set out in the social worker's statement dated 21 January 2025, and proposes, in the event that a placement order is made, direct post adoption contact between H and the mother and her siblings, but indirect contact only for Mr B.
- 172) A sibling together or apart assessment dated 10 September 2024 highlights the strength of the relationship between all of the children. It is abundantly clear from the evidence that E and H have a particularly close relationship, and that F and G, who have continued to live with each other, also miss living with their sisters. The conclusions of that assessment were that contact between the siblings needs to be facilitated for the long term. If H is adopted, the adopters need to be asked to consider that and be willing to support it.
- 173) Because there were concerns about whether the author of that report was appropriately qualified to produce it, a further sibling assessment was undertaken and a new report produced dated 29 October 2024. That recommended that E be supported to be placed with F and G, so that the three siblings are together. However, if E, F and G were not placed together, I understood the assessment to promote a high level of contact between the three.
- 174) The assessment concluded that H's need for permanence outweighs the siblings remaining together. It seemed to say that E needs the relationship with H more than the other way around, and the author was concerned about the impact on E of H being placed for adoption.

- 175) I heard submissions from the parties about the position in relation to contact, were the court to make a placement order.
- 176) The local authority's care plan post adoption includes the promotion of a direct relationship between H and her siblings, as well as the mother, provided that it is safe and does not undermine the placement. To that end, it is proposed that contact be supervised. There is no evidence that I have seen that the mother, or indeed Mr B or Mr A, has sought to undermine any of the children's placements, even though I know that none of them wanted any of them to go into foster care.
- 177) In my judgment, the proposed contact will, firstly, assist H to maintain a sense of her identity whilst helping her to become an adopted person, and making sense of her past. Secondly, it will also be beneficial for her in any case by maintaining the bond which she clearly already has with her birth family, and E in particular.
- 178) The plan for there to be direct contact with the mother is also desirable to give H emotional permission to settle into her new family, but that depends on the mother being able to support the placement. There is a balance therefore between H's emotional welfare and placement stability, between risk of harm and the security of the environment in which H can thrive.
- 179) There are also practical reasons why post adoption contact might be desirable. In this day and age, a closed adoption is unlikely to be for all time given advances in technology, and the court is tasked with considering the lifelong impact on H. The general mood, including in the case law, including *Re R and C*, is a movement towards more open adoption.
- 180) There may be, in my judgment, unintended consequences in terms of H's welfare if she were to have contact with siblings, who were having contact with the mother, if the mother herself were not. That is a practical consideration which, in my view, points towards it being necessary for prospective adopters to commit, in this case, to there being direct post adoption contact between H and her mother as well as her siblings. However, if the mother is going to be having contact with E, F and G, what follows is that she also needs to commit to supporting, not undermining, their placements as well. In short, the mother's approach to contact with any of the children has the potential to impact her relationship with all of them.
- 181) That position is somewhat different in respect of Mr B because, of course, he is not the father of E, F and G. However, what I do not understand is why no post adoption direct contact has been proposed by the local authority for him. The local authority seemed to be trying to distinguish his contact from the mother's based on his commitment to contact. However, the height of that seemed to be that he had cancelled contact sessions on occasions, and had then disengaged somewhat since the events in November 2024. Mr B's position was that he had tried to set up contact but had been rebuffed by the local authority.
- 182) However, what is more to the point, in my judgment, is that, if one starts from the point of view that post adoption contact will help H make sense of her heritage and identity, then it seems to be that it will be just as beneficial for her to understand who her father is as it will be her mother. Mr B does not appear to have behaved poorly at

contact, contact supervision has managed any risks, and there is no evidence that he has undermined his daughter's foster placement either, as I have said.

- 183) In all the circumstances, I do not take the view that the potential risks around post adoption contact is a reason for the local authority's care plan for H not to be approved, given her need for safety, security and permanence. Nor is it a reason for sibling contact not to take place.
- 184) The sibling assessment recommends direct post adoption contact between H and her siblings four times per year. It says this:
- “If [H] is separated from her siblings and her care plan becomes adoption given her age and need for permanency) she should still have direct and indirect contact with her siblings. I would recommend this contact should be x4 a year. I have spoken to [...] adoption agency who report that sibling contact is achievable for adoptive carers, however, becomes more challenging when the other children remain in the care of their parents.”*
- 185) The social worker's statement of 21 January 2025 suggests sibling contact for H at least three or four times per year. The Guardian supports sibling contact at least three times per year, certainly in terms of contact with E. Although E seeks more contact with H than that, contact quarterly is, in my judgment, enough to give H the benefits of it in terms of maintaining her bond with E, and is consistent with the recommendations of the sibling assessment, bearing in mind also the aim of the mother and Mr A to have E, F and G returned to their care in the fullness of time and what is said in the quotation above.
- 186) If a placement order is made, the social worker proposes direct contact between the mother and H twice each year. That is consistent with the Guardian's views. H has benefited from and enjoyed contact with her parents since being in care. Although it would be of benefit to the H for that to continue, what is more important in my judgment is H's need for as secure a placement as possible. I agree that the level of contact proposed is likely to be enough contact for H in order to be able to make sense of her identity, in particular in the light of the plan that she see her siblings more regularly, whilst also balancing the need to secure permanence within her adoptive placement.
- 187) For the reasons I have already expressed, I do not agree that there is a sound basis upon which to conclude that it would not be in H's interests to have direct contact with Mr B as well. That is even though I understand the rationale that the mother's contact is interlinked with the fact that E, in particular, will also be having contact. The welfare advantages for H of post adoption contact are not all about maintaining her bond with E; they also include the others that I have mentioned.

Analysis of the options

- 188) Drawing those analyses of the realistic options together and comparing them against one another, the conclusions I have reached are that the children have experienced harm in their parents' care and that that is liable to continue for the reasons I have expressed unless and until the parents are able to bring about change. They have also experienced harm by having been removed from their family. The children's

experiences have left them more vulnerable and therefore in greater need of the stability of a secure placement.

- 189) The parents do not oppose the making of care orders for all of the children. I have already acknowledged that that is a significant conclusion for them to have reached in difficult circumstances. They deserve credit for that decision.
- 190) When faced with a choice between adoption and fostering, the court's primary task is to decide whether one or the other is right for H as a matter of principle.
- 191) The mother has stated her commitment to caring for H lifelong, as will prospective adopters, and so securing permanence is in one sense perhaps a fairly neutral consideration. Adoptive placements can and do break down. However, given their lifelong commitment, on balance that too is a relatively neutral consideration in all the circumstances because, for the reasons I have articulated, there is a risk of a placement with the mother also breaking down if she is unable to sustain the changes which she intends to bring about.
- 192) Based on the sibling assessment, this is not a case in which H needs to be placed with any of her siblings.
- 193) Taking those things together and considering the range of powers available to the court, I have on balance reached the decision that it is necessary and proportionate to make care orders for all four children. Furthermore, and although it will be difficult for the mother and Mr B to accept, in my judgment nothing else will do for H and I should make the placement order sought by the local authority.
- 194) I have set out my reasons already. I remain concerned about the ongoing risk of harm were the children to be returned to the care of the mother or Mr A now, and the lack of any clear picture as to when those risks will be addressed. I hope that the parents do continue with their work to address the areas of risk and that E, F and G can in due course be returned to the care of either Mr A or the mother.
- 195) Sadly, I am satisfied on the evidence that it is unlikely that the areas of risk will be addressed by her parents within H's timescales. As a matter of principle, an adoptive placement is more likely to secure permanence for her than long term foster care. Post adoption contact will to a degree mitigate the welfare risks to H of becoming an adopted person, and that has factored into my analysis.
- 196) When I consider the proportionality of that conclusion, in my judgment, the outcome is the same. The severance of legal ties between H and her birth family will represent a significant interference with her Article 8 rights and those of her parents. However, by her being returned to the care of the mother if she does not manage to address the welfare risks, or remaining in foster care for the remainder of her minority, the consequence will be to place the burden on H to address the shortcomings that I have identified in her parents' capacity to promote her welfare and to protect her from harm. She is just two years old now. She has borne that burden for some of her life already.
- 197) Placement outside of her birth family will, on balance, be more likely to remove that burden from H. It does have a huge impact on the parents' Article 8 rights, but the

court weighs in the balance that, because the particular concerns pivotal to my decision have been the same throughout all of the proceedings, it is then correct in my judgment to say that the parents have had a long period of time, and opportunity after opportunity, to demonstrate insight and to address those concerns. It cannot in my judgment be right to make H wait, and deny her the opportunity for permanence now, on the off chance that the mother might bring about change at some unidentifiable point in the future.

- 198) The interference with the Article 8 rights is also mitigated by the template for post adoption contact which I have referred to.
- 199) My proportionality analysis in relation to the making of the care orders is analogous for E, F and G, but not identical, given the differing care plans for them.
- 200) Although it will therefore be extremely difficult for the parents to hear, taking everything I have said together and considering the range of powers available to the court, on balance and in my judgment I have concluded that, sadly, the line of last resort is the one which now needs to be taken for H in that nothing else will do. She needs to be set on a different path to permanence to that which her parents had wanted, and which they have fought for. I understand why they have done so.
- 201) H needs permanence, stability and security now, as do her siblings. Adoption is, however, the right care plan for H to achieve that, in contrast to that of her siblings. I hope that all of the parents will continue to seek out the sort of support which they have identified for themselves, in order to improve their own wellbeing. For present purposes, however, I am satisfied that it is the applications of the local authority which are more likely to achieve the best welfare outcome for all of the children both now and throughout their minorities, and in H's case her life, and that it is both necessary and proportionate to grant them.
- 202) Neither the mother nor Mr B consent to the placement order being made for reasons which I understand. I consider that their consent should be dispensed with for the same reasons which I have already given, in that H's welfare demands it.
- 203) The final issue which I need to determine is whether I need to embody the post adoption contact in orders made under Section 26 of the 2002 Act. The local authority considers that that is not necessary: it says that the court can reflect its final care plan in this respect in recitals. The Guardian considers that only the post adoption contact for E should be ordered. The parents consider that orders should be made for all of the contact.
- 204) In my judgment, the purpose of making orders would be to give a clear directive to prospective adopters about what the court considers to be in the interests of H. It shapes the search for a suitable placement for H, as well as the template post adoption. What is set out in paragraph 39 of *Re R and C* is, according to paragraph 40, "*the approach to Section 26 mandated by case law.*"
- 205) I am bound to say that I was not particularly attracted by the submission made on behalf of the Guardian, which was that E's contact needs to be ordered in order to maintain the particular strength of that sibling relationship, but that the other contact does not, including the mother's contact, because hers flows from an "*on balance*"

decision and it is an opportunity. The reasons why I was not attracted by that submission were, firstly, that all of my decisions are on balance decisions and, secondly, because I have to look at the issue from the perspective of what is best for H.

- 206) As I have said, I think it is in H's interests to have a direct relationship, post adoption, with her siblings as well as both parents.
- 207) I have spent some time considering what should be done, in terms of setting the template, in respect of frequency. The post adoption contact proposals set out in the social worker's statement of 21 January 2025, coupled with my decision in respect of Mr B, involve quite a lot of contact which might only be workable if sessions are combined, and which may not endure for all sorts of reasons. That said, in my judgment, that is not an insurmountable issue of itself, in that the provisions of Sections 46(6) and 51A permit later revision.
- 208) However, I do need to be mindful that H needs to be able to settle into an adoptive placement on the one hand whilst also being supported to maintain her sense of identity on the other. In that sense, on balance and in my judgment, she would be unlikely to need to have a great deal of contact at all with birth family members to achieve the latter.
- 209) What increases the importance of post adoption contact are the advantages of maintaining current relationships. The relationship which shines through as being particularly strong is H's relationship with E. The submission made on behalf of the Guardian which I do accept is that, if E is having contact with H, then the mother also needs to have contact on balance, in order to help H make sense of the dynamics in the family unit as a whole.
- 210) Fundamentally, though, I cannot see the logic of ordering some of the contact which is agreed would assist H in welfare terms but not the rest of it. I have reached the conclusion, on balance, that because of the strength of the relationship with E, as well as the wider rationale for supporting H in making sense of her own identity, that I should make an order pursuant to Section 26, setting the template for post adoption contact based on the evidence as it stands now.
- 211) It will be an order that there be direct contact between H and:
- a) E at least four times each year;
 - b) F and G at least twice each year;
 - c) The mother and Mr B at least once each year.
- 212) That is not to water down the social worker's contact plan, which I also approve subject to my point about contact with Mr B. I also agree that the contact needs to be supervised based on the current assessment of risk. However, my order is enough to set the template and meet H's welfare needs at a minimum level. If the level of contact in the care plan is beneficial to her, no doubt all concerned will reflect on whether the balance suggests that those benefits can be further increased by there being more of it, or vice versa.

Orders

- 213) I therefore declare and order that:
- a) The Section 31 Children Act 1989 threshold has been met on both applications.
 - b) The local authority's applications for care orders for all four children be granted.
 - c) The local authority's care plans be approved, based on the information provided in the social worker's statement of 21 January 2025. I will record in recitals the matters in respect of E's placement and F's education which were articulated to me during submissions.
 - d) The consent of the mother and Mr B to the placement order be dispensed with on grounds that H's welfare requires it.
 - e) The local authority's application for a placement order be granted.
 - f) I make the contact order under Section 26 of the Adoption and Children Act 2002 which I have set out, whilst also approving the contact arrangements in the care plans as modified by the social worker's statement of 21 January 2025 and this judgment.
- 214) I have agreed to write a letter to E to explain the decisions I have made. I will do that today.
- 215) I invited submissions on behalf of the parties in respect of the publication of this judgment, in the interests of transparency, as an example of the typical sort of work undertaken in the Family Court. There were no objections to this anonymised version being published.
- 216) That concludes this judgment.