Neutral Citation: [2024] EWFC 154 **Case No: LS 22 C 50687**

IN THE FAMILY COURT **Leeds Family Court**

SITTING AT LEEDS **Westgate, Leeds**

Date: 28 June 2024

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF: P and Q (Minors)

Before : **Mr. W. J. Tyler KC, sitting as a Deputy High Court Judge**

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RE P AND Q (MINORS) (NO. 3) (CARE ORDERS: PLACEMENT AT HOME)

Between :

KIRKLEES METROPOLITAN COUNCIL **Applicant**

- and -

(1) A MOTHER, M

(2) A FATHER, F

(3) P and (4) Q (Minors) **Respondents**

Hearing dates: 24 and 26 June 2024
Judgment handed down on 28 June 2024

JUDGMENT

Hannah Bramley of counsel (instructed by the legal department) for the local authority

Huw Lippiatt of counsel (instructed by JWP Solicitors) for the mother, M

Semaab Shaikh of counsel (instructed by Nadat Solicitors) for the father, F

Guy Swiffen of counsel (instructed by Wilkinson Woodward Bearders) for the children, P and Q, through their Children's Guardian

Parties, Applications, Representation & the Purpose of this Hearing

1. I continue to be concerned with the interests of two children, P, born in 2020, so four years old, and Q, born in 2022, so two years old. The children are represented at this hearing, through their Children's Guardian (hereinafter "the CG"), by Guy Swiffen of Counsel.

2. P and Q are the children of M, their mother, born in 1998, so 25 years old, and F, their father, born in 1996, so 27 years old. M is represented by Huw Lippiatt of Counsel; F by Semaab Shaikh of Counsel.

3. The applicant local authority is Kirklees Metropolitan Borough Council ("the LA"), which applied as long ago as 3 November 2022 for orders pursuant to Part IV of the Children Act 1989 ("the CA 1989") in relation to these children and, in proceedings which were initially consolidated but which have since come to an end, in relation to P and Q's three cousins. The LA is represented at this hearing by Hannah Bramley of Counsel.

4. This judgment should be read alongside my two other judgments in this case, the fact-finding judgment of 18 August 2023 (published in anonymized format as *Re P and Q And Others (Minors) (Number 1) (Skull Fracture: Fact-Finding)* [2023] EWFC 319) and the judgment of 16 February 2024 at the conclusion of what had been supposed to be the final hearing (published in anonymized format as *Re P and Q (Minors) (Number 2) (Inadequate Local Authority Assessment)* [2024] EWFC 153).

5. It should be noted that these proceedings are at the end of their 85th week. The reasons for this depressing amount of delay in concluding the case are numerous, but can be summarised as emanating from a combination of the scarcity of court time and, rather more significant as a contributory factor, a serious of missteps and failures by the LA. At this hearing, the LA urges me to adjourn the case so that the delivery of various therapeutic and other interventions and the assessment of their efficacy can take place under the scrutiny of the ongoing proceedings. To accede to this application would be to see the case concluding probably some time in 2025, so in its fourth calendar year.

Precipitating Event

6. During the afternoon of Saturday 8 October 2022, M presented Q, then aged 9 months old, at A and E. The boggy swelling on the left-hand side of his head, which had led to his being taken, was found to be a subgaleal haematoma, and beneath it were a branching left parietal skull fracture and underlying subdural haematoma.

7. No explanation was given at the point of presentation which would plausibly explain the findings. The LA intervened and issued Part IV CA 1989 proceedings. As P and Q's maternal aunt and her husband had looked after P and Q for a few hours the evening before Q's presentation at hospital, the proceedings involved P and Q's three cousins as well, the five children being removed and placed with extended family.

Summary of the Proceedings

8. I set out a fairly full summary of the proceedings in my judgment in February 2024. For that reason, I do so no more than very concisely in this judgment:

   a. Proceedings were issued on 3 November 2022.

   b. Expert medical evidence was authorized and obtained.

   c. The initial LA parenting assessment, dated 10 March 2023, drew a contrast between the generally positive parenting and family lives of the two families, and the fact that there was a very serious injury to a small child, with no plausible explanation; while recognizing the 'single-issue' nature of the case, the assessment concluded with a recommendation that a fact-finding hearing take place.

   d. By 13 April 2023, a month after the parenting assessment, the LA had changed its mind. Based on what I considered in my last judgment to have been a misreading or misunderstanding of Lieven J's judgment in *Derbyshire CC v AA, BA, X and others* [2022] EWHC 3404 (Fam), the LA decided that, notwithstanding that it was no closer to knowing which one or more of the four adults had seriously injured Q, and for what reason and in what circumstances, the children should all return to their homes as long as *'parents continue to willingly engage with professionals and support'*.

   e. This was coupled with an application to withdraw the proceedings on the basis that any risk to any of the five children could appropriately be managed under a Child in Need ("CIN") Plan.

f. Having faced some judicial questioning (by HHJ Hillier) as to *'the robustness and adequacy of the local authority's risk assessment'*, by the point of the hearing on 7 June 2023 to consider the LA's application for permission to withdraw, it had again changed its mind, reverting back to an acknowledgement of the need for fact-finding in relation to the skull fracture. However, it proceeded to return the five children to their respective families.

g. It was possible for the necessary hearing to be listed in fairly short order: in the hope of saving time, a composite final hearing was listed before me for five days beginning on 7 August 2023.

h. At the pre-hearing review, and given the range both of possible perpetrators but also of possible findings (from accident, through negligent supervision, to deliberate infliction), I directed the LA to provide a full written opening, setting out with particularity how it put its case and how it would assess risk differently depending on the actual findings (if any) made.

i. That particularised analysis was never forthcoming. Instead, I was told, in the updating social work statement and in the social worker's evidence, that, regardless of what finding was made, the LA did not consider risk assessment necessary. (There had been, by that point, nothing remotely resembling a robust or coherent risk assessment.)

j. At the conclusion of the evidence and submissions, on 18 August 2023, I was able to make fairly precise findings. These were that M had inflicted Q's injuries (as opposed to her having been responsible by dint of inadequate supervision, or the injuries having been caused by an accident which had been concealed). I

found, as corollaries to this, that M had deliberately and culpably failed to seek medical attention for Q and that she had withheld the truth, despite the catastrophic consequences for her and her family (which included her sister's family, which had also been fragmented).

k. While the proceedings in relation to the children's aunt and cousins were dismissed, the current case was listed for CMH a few weeks later, with parental responses and a LA assessment plan directed.

l. I heard the resultant IRH / Early Final Hearing on 5 January 2024. The LA had completed an updated parenting assessment. This, again, proposed the case conclude then and there, with no orders and a CIN plan. This was the third time the LA had proposed that there need be no order and that a CIN plan could adequately protect the children. While the CG (and, less surprisingly, the parents) supported the LA position, I could not yield to the unanimity with which I was presented. The risk assessment, such as it was, was of the very lowest quality. I made clear my misgivings and listed the case for a final hearing, before me, to take place on 29 January and 5 and 6 February 2024.

m. By the point of that hearing, the CG had instructed her Counsel, Mr Swiffen, to test the evidence, including, critically, the risk assessment. That process was instructive, if profoundly depressing. As seemed to be the case from the written report, the updating assessments were characterized by the complete absence of either rigour or logic. Although the parents both continued entirely to deny any wrongdoing, except, possibly, a very minor lapse in supervision on M's part (which I had expressly found not to have been the cause of the injuries), and

notwithstanding that not a single member of the extended family, on whom any protection plan would need to rely, accepted even the remotest possibility of any abusive act on M's part, the LA continued to contend that the children would be more than adequately protected by a CIN plan. (My judgment of 6 February 2024 contains a far fuller critique of the LA witnesses' written assessment and oral evidence at paragraphs 30 – 46 and 60 – 75.)

n. My conclusion was that I could not rely in any way on the LA assessment. Nor was I in a position to substitute my own assessment. With the greatest reluctance, in a case already 15 months old, I directed the Part 25 FPR 2010 instruction of Sandra Roberts, an Independent Social Worker with expertise in Resolutions-style assessment, and of Dr Laura Thomson, an HPC-registered Counselling Psychologist.

The Expert Assessments

9. In the event, none of the parties has required the attendance of the two experts, Dr Thomas and Ms Roberts, at this hearing, as their comprehensive and thorough written reports and answers to written questions were accepted by all. I summarise these below. It is instructive to recall, when reading the summaries, the starkness of their juxtaposition with the LA's long-held and repeated risk assessment in this case, both before and after my findings, which effectively concluded that any ongoing risk was all but absent.

Psychological assessment, Dr Thomson

10. Dr Laura Thomson is an HPC-registered Counselling Psychologist, who works as an independent practitioner carrying out assessments of children and their parents in family law proceedings. Dr Thomson has significant relevant experience, including having worked as a psychologist within the NHS Child and Adolescent Mental Health Service (CAMHS). Pursuant to my Part 25 direction, Dr Thomson was instructed to undertake a psychological assessment of the parents in these proceedings.

11. Dr Thomson undertook psychometric testing and conducted semi-structured interviews with the parents.

12. Notably, in relation to M, the account given in relation to the injuries to Q continued to maintain a complete denial of any wrongdoing, instead focussing on an account of a fall from a bed, the details of which, on the basis of a friend's poor advice, M did not pass on to medics (or, indeed, social workers, her legal team, or the court, leading up to and during the fact-finding hearing).

13. As for F, his non-acceptance of my findings had not in any way shifted by the point of being interviewed by Dr Thomson. Knowing his wife as *'a good mother'*, he does *'not think she would have done it'*. While claiming to respect the court and its judgment, he pointed out that I do not know M as a person, whereas he does.

14. In relation to M, Dr Thomson wrote this:

> *'9.1.2 All indicators fell within the normal range aside from positive impression management. [M] tends to portray herself as being relatively free of common shortcomings to which most individuals will admit, and she appears reluctant to recognise faults or problems in herself. This*

tendency to repress undesirable characteristics is likely to have an impact on the scores on the Personality Index and may underrepresent the extent and degree of any significant findings in some areas due to [M]'s difficulties in acknowledging negative or unpleasant aspects of herself. [M]'s results show that she tends to have very high levels of inflated self-esteem, expansiveness and grandiosity. Her evaluation of self concept involves a generally positive, and, at times, perhaps uncritical self-evaluation. There may be some variability and uncertainty associated with this self-concept, particularly in the face of scrutiny or criticism from others. Nonetheless, self-esteem is likely to be maintained in such situations through attributing responsibility for setbacks to some external cause rather than to personal failings.

9.1.3 Results suggest that [M]'s interpersonal style is best characterised as generally submissive and conforming. She likely has difficulty asserting herself or effectively displaying anger in relationships; past experiences in this regard have probably led to conflicts that she appears motivated to avoid. She describes herself as a very meek and unassertive person who has difficulty standing up for herself, even when assertiveness is warranted. Therefore, she may have some difficulty in the appropriate expression of anger. This submissive style is probably driven by anxiety about potential rejection or abandonment by others. She will tend to feel helpless and overwhelmed under relatively mild pressure and will dependently seek the assistance of others. Her motivation to maintain relationships may potentially provide situations where others are taking advantage of or exploiting her.

9.1.4 [M] also completed the MCMI inventory which is a useful tool as it is a measure that maintains a distinction between personality disorders and clinical symptoms. Scores on this inventory show [M] to have a dependent personality indicating that she tends to withdraw from adult responsibility and will seek nurturing from others, needing excessive advice and reassurance. She probably has an excessively cheerful and optimistic attitude towards interpersonal difficulties as a way of

> *maintaining relationships in the face of difficulties. Alongside this dependency she exhibits avoidant characteristics tending to withdraw as an emotional protection. She is probably hypersensitive to criticism and disapproval and will anxiously look to others for any form of negativity towards her. [M] is likely to overreact to innocuous comments or behaviour towards her, viewing this as a criticism and a possible attack on her fragile self-esteem. She will vacillate between a desire for affection and fear of being rebuffed. [M] showed elevations on the paranoid personality scale, indicating that she has heightened defences and may project her poor self-esteem onto others. She is probably suspicious, guarded and mistrustful and likely to read hidden meaning into benign matters.'*

15. M told Dr Thomson that she was anxious most days, the discrepancy with her non-reporting of this in the psychometric testing being put down by Dr Thomson to M's tendency towards positive impression management. M described a very difficult childhood:

> *'9.1.6 […] [H]er father and mother had a poor relationship and eventually separated. She said that she did not have a bond with her father and that he had a new family. She was sexually abused from the ages of eight to eleven whilst staying over at her cousin's house. She was told by her grandmother not to speak of the abuse, and she felt blamed for it happening. She felt let down that her mother did not speak up for her and said, "it's hard for me to tell people certain things and trust people".'*

16. Secondary to M's experiences of childhood sexual abuse and the lack of support, indeed the blame and expectation to cover it up she received from those who should have protected her, Dr Thomson considered that *'she developed the view that there is no point in telling people about her feelings because no one will listen.'* Dr Thomson wrote:

> *'Her clinical profile indicates that her dependent and avoidant personality is likely to underpin her fear of rejection and criticism and so will avoid sharing her feelings or inadequacies with others for fear of being judged or rejected as was her experience when disclosing sexual abuse to her family. Her dependency to others means that she relies heavily on others for validation and support. However, this fear of abandonment can also inhibit her ability to share feelings and vulnerabilities. Ultimately [M]'s ability to trust her close relationships is impaired and she has had a lived experience of speaking about her vulnerabilities and being wrongly judged and blamed. She is likely to fear a similar response were she to open up about her vulnerabilities in the future. She said, "I want someone to open up to without being scared".'*

In consequence of this, M's *'ability to function independently is not fully developed and therefore she is more vulnerable to the opinions of others within her support network.'*

17. Dr Thomson assessed F as someone who may be hesitant to admit to negative consequences that might be associated with his behaviour. His personality profile suggests an individual experiencing high levels of anxiety. This, in conjunction with high levels of stimulus-seeking behaviour makes it likely he will be impulsive in his nature and engage in risky behaviours without considering the consequences. F can also be passive aggressive, meaning that his relational style often involves indirect or ambiguous communication. When the underlying feelings of resentment, anger or hostility, which typically fuel passive aggressive behaviour, are not addressed openly, they can worsen and cause relational difficulties. F has a particular difficulty processing his emotions and speaking to others about his feelings. Hence, he and M have never addressed his extra-marital affairs or spoken about them face-to-face; nor had he and M, at the point of F's interviews with Dr Thomson, spoken about what

had happened when Q received his injuries. Dr Thomson considers that F's unprocessed feelings are likely to be the source of his angry, passive aggressive and stimulus-seeking behaviour.

18. M's description of her relationship with F was that it was initially positive. However, once the children arrived, *'she was aware that he was having affairs'*. The relationship, then, was difficult at that stage, i.e. before Q's injuries. Difficulties have continued, M portraying the following as current issues (although M has subsequently sought to dissociate herself from the portrayal to Dr Thomson of these as ongoing difficulties):

> *'Currently, she is extremely unhappy in her relationship with [F]. She reports that he "will always call me a bitch, bastard and mother fucker". She said that he frequently raises his voice, and she feels small when he shouts. The atmosphere in the family home appears to be tense and [M] describes her behaviour when he returns home from work as being "a bit off with him, I don't want to speak or associate with him or talk to him, he acts like another child and wants everything in front of him".'*

19. Dr Thomson pointed to the dissonance between M's reports of frequent arguments, name-calling and a strained atmosphere and F's description of the nuclear family as *'a bunch of happy bunnies'*, he claiming that he offers M love and kindness. He told Dr Thomson that while it may have crossed his mind that M had hurt Q, he was unable to speak to her about it, despite knowing that this is what she wants from him. M appeared, Dr Thomson thought, to be grieving the loss of time and attention from F, speaking of the happiness in the relationship before the children's arrival, whereas F's affairs then followed their births, and F's attention focussed more on his relationship with the children than with M.

20. This, then, plays into the risk to the children in M's care, according to Dr Thomson:

> *'Her ability to cope with the children when feeling alone and isolated is likely to increase her stress level and place more strain on her ability to parent the children, particularly considering her high level of need for dependency towards [F] and the psychological implications for her if those needs are not being met. It is likely in my view that the relationship difficulties are a source of increased levels of stress and decreased coping and ability to parent the children effectively and safely.'*

21. Asked about likely triggers for M, Dr Thomson, who was, of course, not assisted by the fact of M's ongoing total denial of having caused harm, said this:

> *'It is my view that [M] was dependent on [F] when she first met with him. The relationship was meeting her needs, however when the children came along and [F] began having affairs and prioritising the children over her, this would have impacted on her emotional and psychological wellbeing. The relationship difficulties would have affected her in two ways, firstly in terms of feelings of hurt and anger but also it will have left her vulnerable to poor coping of everyday parenting of the children due to her elementary system of independent functioning, high dependency needs and the likelihood of her being overwhelmed with mild pressure. She said herself that she was finding it difficult to cope on her own prior to [Q] being hurt. Her psychological profile suggests that she is less likely to be consistently angry and externalise her feelings and more likely to placate and be optimistic about interpersonal difficulties, however this may lead to the inappropriate expression of anger. <u>The suppression of anger can lead to internalised stress and tension and over time the unexpressed strong feelings can build, increasing the likelihood of explosive outbursts when the emotions become too overwhelming to contain.</u> It is common in this cycle for the person to afterwards feel guilt, regret, or shame for their behaviour.'* [emphasis added]

22. As to ongoing risk, Dr Thomson said this:

> *'There are a number of risk factors such as the difficulties in the parents' relationship, [M]'s inability to share her vulnerabilities with others and work openly with the Local Authority and her need for support in parenting [Q] to enable her to place boundaries and meet his emotional needs. [Q] is a child who has experienced childhood trauma, his behaviour appears dysregulated at times, he lacks appropriate containment, and it is likely that he and his sister are being exposed to the difficulties in their parents' relationship.'*

And this:

> *'In terms of risk of future harm to [Q], I have mentioned in the sections above that there continues to be some quite problematic relationship difficulties which are likely to be a risk factor for increasing [M]'s stress and lowering her ability to cope. She has therapeutic needs for increasing independence, processing her previous abuse, her parenting of the children and marital relationship difficulties.'*

In consequence, Dr Thomson expressed the view that supervision should remain <u>at all times</u> when M is parenting the children.

23. Dr Thomson was asked to address the question of F's ability to protect the children, particularly in light of my expressed concerns in my last judgment about his pronounced and, to my mind, inexplicable lack of curiosity as to the cause of the injury which could well have killed his son. Dr Thomson highlighted that F, while he has entertained the idea that M may have harmed Q, has been unable to think this through or to speak to M about it. While this is likely to be secondary to F's assessed difficulty in processing emotions and his avoidance in seeking support to do so, Dr Thomson also wrote of his *'heightened defences'*, his being *'emotionally*

guarded', and it being her impression that *'he was not entirely open and honest and [is] more likely to protect his family rather than be truly reflective about the possibility that harm was inflicted by [M]'.* The inevitable conclusion which Dr Thomson drew from this was that F is *'unlikely to be a protective factor in facilitating safe care by [M] to the children'.*

24. In relation to motivation for treatment, Dr Thomson considered M to be *'somewhat below average in comparison to adults who are not being seen in a therapeutic setting and her level of treatment motivation is substantially lower than is typical of individuals being seen in treatment settings'.* F's interest in and motivation for treatment is comparable to that of adults not being seen in, but is lower than that of adults who are being seen in, a therapeutic setting.

25. As to treatment and therapeutic intervention, Dr Thomson wrote:

> *'9.3.2 […] The key task is to help [M] to develop her own independence skills, for her to address her underlying issues of self-esteem, childhood trauma, dependency and avoidance in relationships so that she can operate independently from her family and allow herself to be vulnerable, seek support prior to any escalation in her inability to cope. This is unlikely to be straightforward and will require a high level of commitment from her.'*

26. M will require eight to twelve sessions of interpersonal counselling in the first instance, *'where she is able to build trust in the treating professional and explore the childhood trauma, self esteem, issues of dependence / independence.'* F, too, would benefit from eight sessions of interpersonal counselling, this, for him, *'to explore his issues of grief, emotional regulation and difficulties managing boundaries and committing to longer term relationships.'* After these courses of individual,

interpersonal counselling, Dr Thomson considers that M and F would benefit from eight sessions of couples counselling. If these were all successfully undertaken, and if the parents also attend and complete a parenting group, *'then there may be some optimism that progress could be made. Both [F] and [M] show some favourable characteristics to achieving a good outcome were they to commit to the therapeutic endeavour.'*

27. Dr Thomson, however, sounded the cautionary note that she worried about the children remaining in the care of the parents *'considering the relationship difficulties raised in this report, [M]'s vulnerability and the lack of transparency between the family and professional services'*. For this to be safe in the interim, the LA would need *'to provide a robust interim care plan that includes more support for [M] and continued supervision by [MGM] whilst treatment was to take place'*. MGM should also attend the parenting group, Dr Thomson thought, so that she does not undermine M's progress. Finally: *'If the family did not engage in treatment this would be problematic for the future safety of the children.'*

28. Dr Thomson was asked some further written questions, yielding the following clarifications:

- supervision of M with the children, pending successful treatment, should be *'at all times'*; if this had already been relaxed, the safety plan should be *'revised and restored to full supervision'*; someone other than F should be supervising in the interim, although *'a sensible approach'* should be taken in order to allow M some space when in the flat with the children;

- the frequency of individual, then couples, therapy should be weekly, suggesting at least a four-month period;

- while M was loving and attentive to both children, Q is the more challenging, in relation to the correction of whose behaviour M struggled at times;

- despite M's resiling from her description of the difficulties in the relationship, Dr Thomson was clear that M had been recounting to her current and ongoing problems.

Independent social work assessment, Sandra Roberts

29. Sandra Roberts is an Independent Social Worker, who also works as a Deputy Team Manager in the Duty and Assessment Service of another local authority. Ms Roberts has extensive experience of providing assessments for and giving oral evidence in the Family Court. Ms Roberts is experienced in applying a Resolutions-based approach in cases in which there is no express acknowledgment by the perpetrator of court findings of abusive behaviour to a child. (See, for description of this model, the judgment of HHJ Clive Baker in *Re J (A Child) (Resolutions Model)* [2021] EWFC 58 at paragraphs 15-17 and 42-43.)

30. Ms Roberts's assessment highlighted a number of positive features, including the clear love displayed by the parents to the children, the quality of care provided, the ability to meet and promote basic, educational and health needs, and the parents' engagement and cooperation with the assessment process.

31. However, Ms Roberts pointed out that, while both parents claim to *'respect'* my findings, neither of them in any way accepts the adverse findings made against M.

With Ms Roberts, M continued to cling to the late-adopted narrative of a fall off a bed, notwithstanding that, in my last judgment, I described this as a *'fictional'* account. Ms Roberts considered both parents to be *'guarded in their reporting to professionals, likely impacting their ability to work openly with professionals'*. In light of Q's occasional challenging behaviours, M's difficulty in managing these, the fact that *'caring for [any] two children can be tiring and testing'*, and in relation to my findings, Ms Roberts considered that, in the absence of change, *'the children are likely to be at risk of physical harm'*.

32. Ms Roberts noted the longstanding difficulties in the parents' relationship but considered that, with her, they minimised the concerns as expressed by Dr Thomson. The parents demonstrated, Ms Roberts thought, *'a lack of insight into the risk to which the children have been exposed'*.

33. Ms Roberts considered that M *'has unresolved trauma from her childhood, by way of alleged sexual abuse,'* and *'several unresolved issues, which she has not addressed, likely impacting upon her ability to be emotionally available to the children'*.

34. In relation to the wider family, Ms Roberts highlighted concerns that:

    a. there had been (on M's reporting) a failure to safeguard and support M at the point that she, as a child, had reported sexual abuse to members of her family;

    b. whether or not born of cultural issues, family members indicated that they *'would not know about the relationship difficulties'*;

c. not a single member of the extended family accepts that M did or may have caused serious injury to Q.

In consequence, Ms Roberts, while she *'do[es] not doubt [the extended family's] motivation to support the family,'* was of the view that this was driven by a desire *'to ensure that the children remain in the care of their parents, rather than an ability to promote the children's safety and wellbeing'*.

35. Ms Roberts considered what support, therapy and teaching would be needed in order to ensure the children's safety. Her nine recommendations were as follows:

a. increased professional visits / oversight; social work announced and unannounced visits at a frequency of no less than three times per week;

b. four-weekly multi-agency review meetings.

c. the parents' engagement in

i. support / teaching to understand trauma, the impact upon attachments and appropriate parental responses to behaviours;

ii. support / teaching to understand the different ages and stages of development and parenting responses to each of the children;

iii. the therapeutic interventions outlined in the Psychological Assessment of Dr Thomson;

iv. marriage counselling;

d. M and F demonstrating an ability to work openly with the Local Authority (Ms Roberts being *'concerned at present that engagement is not meaningful, and should the children remain in their care, without professional oversight, that engagement may decline'*);

e. the parents being given support / teaching *'to recognise and respond to risk in real time and weighing up the pros and cons of decision-making to ensure the children are safeguarded from risk of harm'*;

f. the wider support network engaging in support / teaching *'to recognise and respond to risk, above their cultural norms, to ensure that [P] and [Q] are safe in the care of their parents. I would suggest a bespoke safeguarding children course / intervention delivered to the group, with reflective discussions around key elements of the Court Judgment (with the Court's permission)'*.

36. Ms Roberts's ultimate view was that a resolutions-based approach *'does not currently reduce the risk of harm to the children in the care of [M] and [F]'*. While Ms Roberts noted that the children have been in the care of the parents for over a year (that is, since their return, in accordance with the LA's change of plan and (swiftly withdrawn) application to withdraw the Part IV CA 1989 application), and there have been no concerns raised, she was of the view that the level of supervision and support had been inadequate to meet the risks identified. She recommended the robust delivery of the above teaching and support, while the children remain with their parents. This could take place either under a final care order, thought Ms Roberts, or during further extended care proceedings.

37. Answering further written questions, Ms Roberts conceded the intrusive effect that live-in family supervision will have on M, but also sounded concerns in relation to various family members being unaware of the detail of risks and concerns such that they could effectively mitigate risk. Ms Roberts expressed concerns for the children's welfare in the event that the parents do not meaningfully engage with a robustly delivered package of work, and pointed out that, while there have been no reports of issues in the last twelve months, it seems as though the parents have not openly and contemporaneously reported ongoing marital discord.

The Local Authority: Reaction to Expert Evidence and Current Planning

38. There has been a change of LA social work team. This, in conjunction with the comprehensive expert reports and their somewhat sobering conclusions, has led to a radical reappraisal by the LA of its reaction to this case and to this family.

39. The LA accepts the assessments of Dr Thomson and Ms Roberts, and the underlying analysis and evaluation of risk of each. The LA also accepts that the therapeutic intervention and other training and support, as identified by the experts and outlined above, must be provided. The LA has committed to funding Dr Thomson to provide the therapy recommended and has identified a family support worker to undertake the work proposed by Ms Roberts (indeed, this FSW has already begun her work with the family). The LA is also committed to commissioning updating assessments from both Dr Thomson and Ms Roberts to assess the success of the delivery of the programme of interventions. The family has just suffered a bereavement in the form of the death of M's grandmother, and it may be that a couple of weeks are needed to allow for the initial grieving to take place before the therapy begins. With this slight

delay built in, then, with eight to twelve individual weekly sessions for the parents, followed by eight weekly couples' sessions, the assessments which follow will presumably be prepared some time in November or December of this year (i.e. some five or six months hence).

40. Since receipt of the expert evidence and the answers to the written questions, there has been a professionals meeting attended by the social worker and her team manager, by the experts, Ms Roberts and Dr Thomson, and by the children's guardian, chaired by the solicitor for the children, with the local authority solicitor attending as minute-taker. The upshot of that meeting was that the level of supervision has been increased to take account of the experts' concerns, such that virtually all of M's time with her children is now supervised by a member of the family.

41. The LA's position in relation to this hearing is that *'there are too many loose ends to conclude'* the case with final orders. The death of the maternal great-grandmother, the fact and uncertainty of therapy, the very high levels of supervision which will be necessary in order to ensure the children's safety until the assessment of successful therapeutic intervention suggests otherwise all militate, Ms Bramley says, on behalf of the LA, in favour of adjournment of the proceedings. An additional benefit of adjournment, the LA asserts, is that ongoing court scrutiny will improve the chances of the parents meaningfully engaging with professionals.

42. The LA accepts that the court will not be instinctively attracted to the further significant adjournment of 86-week-old Part IV CA 1989 proceedings. In the event that the proceedings are to end, the LA contends that the appropriate orders are Care

Orders, with the placement of the children at home, and that this case is of a sufficiently exceptional nature to justify this course, notwithstanding the restrictive effect on the making of such an order of the judgment of Sir Andrew McFarlane PFD in *Re JW (Children at Home under Care Order)* [2024] 1 FLR 409.

43. The care plans, then, are entitled *'Interim/Final'* care plans and provide for the children to remain at home with their parents under interim or final care orders. The plans envisage virtually full supervision of M's care, this provided by a combination of the maternal grandmother, a maternal aunt and a paternal aunt, until 9 pm each day, when F is to be entrusted overnight. In fact, as currently formulated, the plan allows for just six minutes each day (the trip from nursery back home) during which M will be unsupervised with the children.

44. On the LA plan, there will also be thrice-weekly social work visits and regular (probably monthly) reviews, with Dr Thomson and Ms Roberts and other professionals, which will feed in to safety planning and any reconsideration of the levels of supervision. All of this is to run alongside the provision of therapy by Dr Thomson and the implementation of Ms Roberts's regime of education and support by the family support worker, which, as above, will then be the subject of assessment by the experts on completion.

45. The express contingency in the care plans is that, *'in the event that the parents are unable to care for the children'*, *'[w]hether this is due to the therapy undertaken and the parents requiring emotional space, or because the risks to the children [being] too high for the parents to care for them'*, then the children will be placed with the MGM *'as a Regulation 24 carer'*.

46. Parenthetically, I observe that this level of support, therapy and supervision underpinning a placement at home is at the very highest level imaginable. The hugely intense and intensive package stands in stark contrast to that which the LA had previously thought appropriate. I remind myself that at paragraph 56 of my judgment of 6 February 2024, I recorded the LA's final position, after the evidence had been heard and tested thus:

> *'[56] Ms Bramley for the LA urges me to conclude these proceedings now, with no statutory order, placing confidence in the LA's ability to protect these children through the Child in Need process. The assessments proposed by the CG, she said, were not necessary in light of the fact that the social worker would be conducting a Child and Family Assessment under the CIN process. The social worker, I was told, even after the evidence had been heard 'considers that the chances of [M] injuring [Q] again are remote', and, as this is a single-issue case, with no other features of concern, such as substance misuse or neglect, it can and should conclude now without orders.'*

47. I raise this, not to repeat my earlier criticisms of the LA, but to flag up what a huge difference it has made to have a new social work team, reading, with fresh eyes, high quality expert assessments, to which they are responding with appropriate vim and diligence.

The Respondents' Positions

The mother's position

48. Mr Lippiatt reminded me of my words in my last judgment, in February:

> *'Mindful of the dangers of judicial attempts at assessment of a person's mental state from their demeanour in the witness box, everything I saw confirmed the descriptions elsewhere in the evidence, that M is finding these proceedings, the ongoing scrutiny and the current high-level supervision of her time with her children hugely stressful.'*

That was four or five months ago. And whilst, on the current agreed plans, M will have to endure a further period of *'ongoing scrutiny'* and *'high-level supervision'*, and noting that she is about to embark on a sustained period of intensive therapy which is likely to be stressful and mentally exhausting at times, Mr Lippiatt urges me to bear prominently in mind that the cessation of these proceedings, which have hung over M for nearly 20 months, is M's highest priority.

49. On M's behalf, Mr Lippiatt has been at pains to assure me of M's continued cooperation with whatever is required of her by the court. While she had initially questioned whether an alternative therapist to Dr Thomson could be sourced, M having some residual reservations that she feels already judged by her, M has withdrawn the objection. She will work, I am told, with real engagement with Dr Thomson.

50. While M's opening position was that she would gladly consent to a final care order (with the children remaining at home), albeit with characteristic restraint, Mr Lippiatt questioned in his submissions whether, in fact, the same could be achieved by the making, instead, of a final supervision order.

51. Underpinning Mr Lippiatt's submissions on M's behalf was his reminding me to balance, on the one hand, the prominent fact that Q has been found to have suffered a very serious injury, from which obvious and grave risks flow, with, on the other, the

very important facts that, for more than a year, P and Q have been living with their parents, without any concern expressed as to the quality of the care given to them, and that the door has always been opened, the telephone always answered and every appointment, with many professionals, taken up by these wholly cooperative parents.

52. M's position is encapsulated in the final sentence of Mr Lippiatt's Position Statement:

> *'Ultimately the mother will do whatever work is felt necessary to ensure her children can remain in her care, but she would very much hope these court proceedings can now to come to an end.'*

The father's position

53. F, through Ms Shaikh, shares the position expressed on M's behalf. He, too, assures me that he will do whatever is asked of him, and that that includes working with, and fully engaging with, the therapy and other work proposed.

54. F too wants the proceedings to conclude, warning of the dangers of overloading the parents, M in particular.

55. Ms Shaikh describes his position as to the type of final order as one of neutrality, although she points me, wholly appropriately, to various relevant extracts of the President's judgment in *Re JW* which emphasise the exceptionality of a final care order with children at home.

The children's guardian's position

56. The children's guardian was present at and participated in the recent professionals' meeting and has reviewed the care plans and safety plan finalised a few short days

ago. Importantly, from my point of view, the guardian is impressed with the relatively newly appointed social work team, and is confident in the workers' ability and resolve to deliver this complicated and intensive plan with the appropriate robustness.

57. The guardian does not consider that proceedings need to continue in order to provide a forensic structure within which the package of therapy, training and support can be delivered, nor, given the clearly expressed contingency plan in the event of non-engagement, does she consider that ongoing court oversight is required as a means of encouraging or compelling optimal parental engagement.

58. Mr Swiffen urges on me the bringing of these proceedings to a close, and to do so by the making of a final care order. Posing the question, is a care order needed for the protection of the child, Mr Swiffen suggests an answer in the affirmative. He points to the combination of the life-threatening nature of the index injuries and the fact that we are no closer to understanding the triggers for the infliction of these, and to the high levels of professional and expert concern, as represented by the unusually intrusive supervision and intensive therapeutic regime. In the unusual circumstances of this case, Mr Swiffen submits, a final care order is the necessary and proportionate response to the risk as it stands.

The Law

59. Section 1 of the Children Act 1989 variously requires me:

a. to have the children's welfare as my paramount consideration (s.1(1));

b. to have regard to the general principle that delay in determining a question in respect of a child is likely to prejudice the welfare of that child (s.1(2));

c. to have regard to the non-exhaustive list of considerations in the so-called 'welfare checklist' (s.1(3));

d. to make an order, or any particular order, only if doing so is better for the child than not doing so (s.1(5)).

60. Section 31 of the CA 1989 permits me to make either of the two Part IV orders, a care order or a supervision order, if the jurisdictional criteria of s.31(2) are made out, that is if the child is (or was, at the relevant date) suffering or is (or was, at the relevant date) likely to suffer significant harm, and that harm, or its likelihood, is (or was, at the relevant date) attributable to the care given or likely to be given to the child not being what it would be reasonable to expect a parent to give.

61. At any point at which Part IV proceedings are adjourned, the court may make an interim care or an interim supervision order (s.38(1)), provided that there are reasonable grounds for considering the s.31 criteria satisfied (s.38(2)).

62. An application for a Part IV order should be concluded, from beginning to end, within 26 weeks (s.32(1)(a)), save only that the continuous extension of this period is permissible to the extent that such extension *'is necessary in order to enable the court to resolve the proceedings justly'* (s.32(5)).

63. Noting that any Part IV order will almost inevitably interfere with a family's Article 8 ECHR rights, the order made, and the plan underpinning it, must be both necessary

in the circumstances and proportionate to the harm against which the order and plan are designed to protect.

64. Sir Andrew McFarlane PFD, giving the judgment of the Court of Appeal in *Re JW (Child at Home under Care Order)* [2024] 1 FLR 409, considered and gave guidance in relation to the circumstances in which it will be permissible for the Family Court to make a final care order to give effect to the placement of a child at home with his or her parents. I must consider that judgment in some detail before I decide what conclusions to reach in this case.

65. In his lengthy judgment, the President noted, as I must, the differences in legal effect between a care order and a supervision order pursuant to their statutory definition in CA 1989.

66. The former not only effects the sharing by the local authority with the parents of parental responsibility but also empowers that local authority to determine how other holders may exercise their parental responsibility:

> *33.— Effect of care order.*
>
> *(3) While a care order is in force with respect to a child, the local authority designated by the order shall—*
>
> *(a) have parental responsibility for the child; and*
>
> *(b) have the power (subject to the following provisions of this section) to determine the extent to which*
>
> *(i) a parent, guardian or special guardian of the child; or*

(ii) a person who by virtue of section 4A has parental responsibility for the child, may meet his parental responsibility for the child.

(4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

67. The effect of the latter, however, at least in statutory terms, is entirely different:

35.— Supervision orders.

(1) While a supervision order is in force it shall be the duty of the supervisor—

(a) to advise, assist and befriend the supervised child;

(b) to take such steps as are reasonably necessary to give effect to the order; and

(c) where—

(i) the order is not wholly complied with; or

(ii) the supervisor considers that the order may no longer be necessary,

to consider whether or not to apply to the court for its variation or discharge.

68. The President noted, then, that a supervision order gives the local authority neither parental responsibility, nor the power to direct how those who do have parental responsibility may exercise it, save to the limited extent of the powers (in part contingent on parental consent) contained in Sch. 3 of the CA 1989.

69. The President went on to chart the evolution of the higher court jurisprudence in relation to the use of care orders to underpin the placement of children at home.

70. The President noted the centrality of the notion of protection to the process of choosing between the two orders:

> *'[23] In care proceedings, the protection of the child is the decisive factor when the court is deciding whether to make a care order or a supervision order. The court should first make a careful assessment of the likelihood of future harm to the child, and must then weigh that harm against the harm that would follow from the child being removed from his parents under a care order. 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 (A Minor) (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).'*

71. The President went on to note the real change to the landscape occasioned by the line of cases beginning with Baker J's judgment in *Re DE (Child under Care Order: Injunction under Human Rights Act 1998)* [2015] 1 FLR 1001. While building on previous authority, that case crystalized the rule that, save in a true emergency, a local authority considering removal from parents of a child placed in their care pursuant to a care order must give prior notice in order to allow the matter to come back to court, whether on an application to discharge the care order or for a freestanding injunction under HRA 1998. The advent of this procedural safeguard and the good practice guidance (which received the subsequent imprimatur of Sir James Munby PFD) had the effect of the practical removal in large part of the import of one of the differences between placement with parents under a care as opposed to a supervision order, i.e., in both cases, absent emergency circumstances, a return to

court would be likely as a prelude to the removal of the subject child from the parents with whom it is placed.

72. The President considered the statutory scheme in conjunction with the case-law as a whole and distilled from them the following nine principles:

> *'(i) making a care order with a subject child placed at home in the care of their parent(s) is plainly permissible within the statutory scheme and express provision is made for such circumstances in CA 1989, s 22C and in the placement regulations;*
>
> *(ii) the early post-CA 1989 authorities established that a care plan for placement at home was an appropriate outcome where the facts justified it, without the need for exceptional circumstances;*
>
> *(iii) the analysis of Hale J/LJ in Oxfordshire and in Re O laid particular weight upon the need for the authority to have power to remove the child instantly if circumstances required it, or to plan for the child to be placed outside the family;*
>
> *(iv) since Oxfordshire and Re O, the High Court decision in Re DE, containing guidance endorsed by the President, has been widely accepted so that, in all but a true emergency, the local authority power to remove a child from their home under a care order should not be exercised without giving parents an opportunity to bring the issue before a court;*
>
> *(v) the difference concerning removal of a child from home either under a care order or where there is no care order is now largely procedural. In all but the most urgent cases, the decision on removal will ultimately be taken within the umbrella of court proceedings, rather than administratively within a local authority;*

(vi) sharing of parental responsibility by the local authority with parents is an important element, but, as Hale J/LJ stressed, the fact that considerable help and advice may be needed over a prolonged period is not a reason, in itself, for making a care order;

(vii) it is wrong to make a care order in order to impose duties on a local authority or use it to encourage them to perform the duties that they have to a child in need;

(viii) the protection of the child is the decisive factor, but proportionality is key when making the choice between a care and supervision order for a child who is placed at home;

(ix) supervision orders should be made to work, where that is the proportionate form of order to make.'

73. The President then set out various extracts from the body of the President's Public Law Working Group ("PLWG") report and from Appendix F thereto (the 'Best Practice Guidance') as follows:

'Care order with child at home

158. There is an increased/significant regional variation in the number of children returning home under a full care order, which is of very real concern. There is as yet a lack of clarity as to why, in some areas, this practice is so common and elsewhere so rare. There is a risk that the making of a care order at home provides false assurances to partner agencies because the local authority is neither involved in, nor has a thorough oversight of, the child's day-to-day care.

159. 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. This will include

clarity as to the legal status of the child following the proceedings, in terms of whether they will be the subject of a child protection plan, or treated as a child in need, with accompanying reviews and services. In Wales, the current statutory guidance is set out in para 116 of the Code to Part 6 of the SSW-b(W)A 2014.

160. The making instead of a supervision order to support reunification of the family may be appropriate. However, there are many concerning issues regarding their use. They have the highest (20%) risk of breakdown and return to court for further care proceedings within five years and there are widespread professional concerns that supervision orders "lack teeth" as well as significant regional variation in their use and variability in the provision of support services.

161. A final care order should also not be used as a method prematurely to end proceedings within 26 weeks artificially to alleviate concerns that the children will be at continuing risk of harm. Any such order should only be made where the local authority can demonstrate that the assessment of any carer of a looked after child meets the criteria of the Care Planning Placement and Care Reviews (Wales) Regulations 2015 or the Care Planning, Placement and Case Review (England) Regulations 2010. This provides that any such placement has to be approved by a senior nominated officer, and can only be approved if, in all the circumstances, and taking into account the services to be provided by the responsible authority, the placement will safeguard and promote the child's welfare and meet their needs.

162. 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 parents, 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.'

74. From Appendix F:

'34. The making of a care order on the basis of a plan for the child to remain in the care of her parents/carers is a different matter. There should be exceptional reasons for a court to make a care order on the basis of such a plan.

35. If the making of a care order is intended to be used [as] a vehicle for the provision of support and services, that is wrong. A means/route should be devised to provide these necessary support and services without the need to make a care order. Consideration should be given to the making of a supervision order, which may be an appropriate order to support the reunification of the family.

36. The risks of significant harm to the child are either adjudged to be such that the child should be removed from the care of her parents/carers or some lesser legal order and regime is required. Any placement with parents under an interim or final order should be evidenced to comply with the statutory regulations for placement at home.

37. It should be considered to be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers. A care order represents a serious intervention by the state in the life of the child and in the lives of the parents in terms of their respective ECHR, article 8 rights. This can only

be justified if it is necessary and proportionate to the risks of harm of the child.'

75. The President summarised the PLWG guidance in this way:

[32] In contrast to the case-law dating from the first decade following the implementation of CA 1989, it can be seen that the PLWG recommendations and best practice guidance places greater emphasis upon the need for proportionality in the face of significantly greater power afforded to a local authority under a care order. The PLWG therefore identifies the need for 'exceptional reasons' to justify the making of a care order with a plan for the child to be living at home, and states that it will:

> *'be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a care order but, nevertheless, the risks can be managed with a care order being made in favour of the local authority with the child remaining in the care of the parents/carers.'*

76. The President's conclusions, then, as to the question of whether and in what circumstances it is permissible to make a care order in relation to a child who is placed at home, were as follows:

'[65] The present situation, in which the law is applied in a markedly different manner in two halves of England and Wales, cannot continue. There needs to be a common approach throughout England and throughout Wales. What that common approach should be has been determined through consultation and discussion by the multidisciplinary membership of the PLWG. The recommendations at paras 158–162, and the Best Practice Guidance at paras 34–37, of the PLWG March 2021 report, and Appendix C of the April 2023 report on supervision orders, which have already had extra-curial endorsement, I now formally endorse in a judgment of this court. They must be applied in all cases. The

approach taken by the PLWG is no more than the logical development of the earlier case-law, once account is taken of the need for proportionality and once it is understood that, following Re DE, there are only procedural differences between the power of removal where there is a care order or where there is none. As Hale J/LJ made plain, it has never been the case that a care order should be used as a means to ensure that a local authority meets the duties that it has with respect to children in need in its area, nor should it be used to influence the deployment of resources.

[66] The PLWG recommendations and guidance can be reduced to the following short points:

(a) a care order should not be used solely as a vehicle to achieve the provision of support and services after the conclusion of proceedings;

(b) 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, as risks that can be managed with the child remaining in the care of parents;

(c) 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;

(d) where a child is to be placed at home, the making of a supervision order to support reunification may be proportionate;

(e) where a supervision order is being considered, the best practice guidance in the PLWG April 2023 report must be applied. In particular the court should require the local authority to have a Supervision Support Plan in place.

[67] The impact of the requirement for a 26-week timetable and adherence to the PLO mean that the decision as to what final order to make may

> *occur at a comparatively early stage where a child has been removed from home, but a rehabilitation plan is being implemented. In such cases, there may be grounds for extending the 26-week deadline to some extent, but where, as in the present case, the children are settled at home and what is taking place is the reinforcement and further development of protective measures over an extended period, the court should make a final order rather than contemplating extending the proceedings over an extended or indeterminate period.'*

77. In the substantive appeal in *Re JW*, the overarching rationale given for allowing the appeal on Ground 1 was that, *'In in all the circumstances, the judge was in error in holding that this case was exceptional and that a care order was the proportionate and necessary order to be made.'*

78. As I have come to apply the dicta to be drawn from *Re JW* to the case before me, it has been a useful exercise to bear in mind the differences between the two Part IV orders, the impermissible reasons which might drive a judge to consider a care order instead of a supervision order, and the fact that the rationale for making a care order in relation to a child placed with parents must derive from the true necessity of such an order for the protection of the child.

79. Self-evidently, on a purely predictive level, it is likely to be rare that any particular individual case meets those criteria; such cases will – descriptively – be exceptions to the normal run of cases. I have considered, however, whether *Re JW* goes further than this and creates an additional, extra-statutory but mandatory test of 'exceptionality'.

80. On many occasions, higher courts have either cautioned against or have removed from the prevailing jurisprudence judicially created 'tests' of 'exceptionality'.

81. I note, for example, albeit on a different legal issue, Wilson LJ's description in *Re F (Internal Relocation)* [2010] EWCA Civ 1428, [2011] 1 FLR 1382 of the *'insinuation into the principles governing internal relocation of a test of exceptionality'*:

> *'The development of the case law in this regard offers an interesting insight into the way in which law is made, perhaps not always satisfactorily. No one could quarrel with a proposition that it would rarely be in the interests of a child for the residential parent to be prevented from moving home with the child within the UK. The way in which, in Re E above, Butler-Sloss LJ chose to express that proposition was to turn it round and to say, at 642D, that "there may be exceptional cases" which justified refusal. Thus were the seeds of a new test sown. In the first of the decisions in Re S above, Thorpe LJ, at [24], described the cases in which refusal would be legitimate as "highly exceptional" and Clarke LJ, at [35], described them as "genuinely exceptional". By the time of this court's second decision in relation to S, namely Re S (A Child) (Residence Order: Condition) (No 2) [2002] EWCA Civ 1795, [2003] 1 FCR 138, exceptionality had become part of "the principle". For Butler-Sloss LJ, at [9][ii], referred to: "... the principle enunciated in Re E ... that the court ought not in other than exceptional circumstances to impose a condition on a residence order to a primary carer who is providing entirely appropriate care for the child".*
>
> *[26] In two entirely different contexts I have previously had occasion to refer to the danger that a decision-maker's attempt to explain his decision in terms which include reference to exceptionality gives rise to the subsequent elevation of a concept of exceptionality as the governing criterion: see Currey v Currey (No 2) [2006] EWCA Civ 1338, [2007] 1 FLR 946, at [19], and Haringey Independent Appeal Panel v R (M) [2010] EWCA Civ 1103, at [29].'*

82. Another example is found in the comments of Black LJ in the Court of Appeal judgment (overturned in the UKSC for reasons unrelated to this passage) in *Re B (A Child) (Habitual Residence: Inherent Jurisdiction)* [2016] 2 WLR 487, again on an unrelated legal issue:

> *'[29] […] As to the first proposition, it may be that there will turn out to be relatively few cases in which the habitual residence of a child does not transfer seamlessly from one country to another, but if so, that will be because the facts tend to be that way and not because the courts impose upon themselves the artificial discipline of only finding it otherwise in exceptional circumstances.'*

83. The point being made by both Wilson LJ (as he then was) in *Re F* and the other two cases referred to, and by Black LJ (as she then was) in *Re B*, is simply this: to describe the circumstances in which any particular statutory test is likely to be satisfied as (for example) *'likely to be exceptional'* is no more than descriptive or predictive; whereas, to augment the same words to some manner of test is both likely to impose an impermissible gloss on a statutory test, which should be the subject of judicial judgment or discretion, and is prone to lead to satellite litigation (i.e. as to the meaning of the otherwise undefined criterion of *'exceptionality'*.)

84. While the words and phrases *'exceptionally'*, *'in an exception case'*, *'when there are exceptional reasons for doing so'*, etc. feature extensively in the PLWG report and Appendix and in the analysis and guidance in *Re JW*, I do not consider that the case creates a separate (and undefined) test of exceptionality, simply that the cases in which the various criteria identified are satisfied will be so few, and thus so rare, that they can properly, if imprecisely, be described as exceptions to the normal run of

Part IV cases in which children end up placed with parents in circumstances where there remains some level of risk from which they must be protected.

85. If I am wrong about this, then clearly the notion of *'exceptionality'* would require calibration with reference to a particular principle or principles. Central to the reasoning running through the judgment in *Re JW* are the associated concepts of protection and proportionality. For example:

> *'[23] In care proceedings, the protection of the child is the decisive factor when the court is deciding whether to make a care order or a supervision order. The court should first make a careful assessment of the likelihood of future harm to the child, and must then weigh that harm against the harm that would follow from the child being removed from his parents under a care order. A care order rather than a supervision order should be made only if the stronger order is necessary for the protection of the child […].'*

And:

> *'[66] The PLWG recommendations and guidance can be reduced to the following short points:*
>
> *[…]*
>
> *(c) 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;*
>
> *(d) where a child is to be placed at home, the making of a supervision order to support reunification may be proportionate; […].'*

86. At the risk of circularity, I take it from the above that (a) a care order will be justified, and (b) the case will thus be *'exceptional'* (properly so defined), if the

Judge reaches the conclusion that it is necessary and proportionate for the protection of the child, bearing in mind the different legal consequences which flow from the two different orders, for there to be a care order, notwithstanding the child's placement at home.

Discussion

General

87. This has been a most unusual case.

88. Thirteen months ago, based on a misreading of Lieven J's *Derbyshire* case, the LA fundamentally changed its care plan and its approach to this case: it decided to return the children of the two affected families; and it sought to withdraw its Part IV CA 1989 proceedings. HHJ Hillier was not in a position to prevent the former. She had only to hint at her likely disagreement with the notion of the proceedings coming to an end to cause the LA to change its mind in relation to the latter. Thus, the case continued, the children being back at home with their parents, with a very light-touch protective plan in place.

89. There followed a sustained period leading up to and during what ended up being a fact-finding hearing only, and, following that hearing at an IRH, and, following that IRH a supposedly 'final' hearing, during which the LA, fuelled by wholly inadequate assessments and incomprehensible decision-making (it seems signed off at a high level), stuck firm to the notion that this was a case in which the two (by then) subject children were at virtually no risk of harm. This, though, was in the context of a finding of the violent infliction of life-threatening injuries to a small child, the

complete denial of the same by the perpetrator and the absolute refusal to countenance even the possibility of wrongdoing on her part by the perpetrator's husband and all other members of the supposed support network.

90. With hindsight, five months or so were wasted after the fact-finding, by my allowing the LA to continue with its inadequate assessments: as it turned out, these were so flawed as to be entirely useless. When this fact was eventually demonstrated and judicially found, an expert psychologist and a very experienced independent social worker were instructed. Thus it was, thanks to the assessments which flowed from that instruction and due in no small part to the replacement of the previous social work team, that the LA eventually came to appreciate that this is not a case of low risk, but a case in which there is a very significant risk of potentially extremely grave physical harm. By that stage, the index children had been back home – with inadequate protective measures in place – for over a year. That said, all evidence suggests that the quality of the care they had received had been high, they were loved and thriving in the care of their parents, and no further harm had befallen either of them and nor had any further significant issue arisen. In many ways, this has been a case of contradictions; and it is no simpler by virtue of this fact.

91. The expert evidence, unchallenged, and which I accept, is summarised at some length above. It paints a concerning picture.

92. M, who perpetrated a serious injury on a small child, continues entirely to deny the same. In consequence, the reasons for her losing control and acting, by all accounts, completely outwith her normal character can only be surmised. The expert assessment considers that a significant ongoing risk remains. I agree with that

assessment of risk and take the view that it must be considered to attach to both children, given their similar ages and the absence of any explanation for M's actions which suggest otherwise.

93. The parental relationship is, at least at times, dysfunctional. This has not been addressed as between the parents. F does not accept even the possibility that M caused the life-threatening injuries to his son. Nor does F seem to have the ability or makeup to demonstrate any, let alone adequate, curiosity as to what befell his son. F, in light of the above and compounded by his other personality traits and flaws, cannot be counted on to provide adequate protection against the risks posed by M. In fact, in light of the nature of the relationship and its difficulties, F is perhaps more likely to increase rather than decrease the risk of deterioration in M's presenting mental state and functioning.

94. The family network on whose support and engagement the protection of the children currently relies does not accept – any of them – the possibility that the children are at risk of harm from their mother or by dint of the parental relationship.

95. In these circumstances, it must be concluded that there is an ongoing, significant, but not accurately quantifiable risk of harm, including a risk of very serious physical harm or worse.

96. On the other hand, these children have been back in the care of their parents for more than a year, this after a prolonged and traumatic separation from their parents into kinship care in response to the initial injuries. The children are loved and thriving. Their parents are desperate beyond words to retain their children and – at least at a superficial door-opening, appointment-keeping level – cooperate fully with the LA

and all professionals. No harm has befallen either child in the year since they were returned to their parents' care. Notwithstanding the risk, no party is suggesting, currently, that the children should be removed for a second time, now that the risk has been more competently assessed.

97. Albeit inexcusably belatedly, the LA now appreciates the situation as it is; it understands the risk as it is; it accepts the experts' recommendations in their entirety; and it has given assurances that it will fund all of the work which flows from those recommendations.

98. Those recommendations, which will now be put into effect, include a significant period of therapeutic intervention. When this starts, allowing as seems likely and humane, a couple of weeks for M to adjust to the recent loss of her grandmother, it may be as long as twelve weeks for her individual therapy (mirrored by a partially concurrent eight-week course of therapy for F), followed by another eight weeks of couples' work. There may or may not be a separate parenting programme, and, if so, whether this overlaps or is consecutive to the other work remains to be seen. There will then follow assessments of progress by Dr Thomson and Ms Roberts. On any view, then, all of this will take the family towards or to the very point of the end of the year.

Whether to adjourn or to conclude the proceedings

99. If the proceedings were to continue, with the LA filing final evidence, statements from the parents and a report from the guardian to come in at the usual increments, it is likely that the IRH / EFH would be in 2025, the fourth calendar year of these proceedings.

100. I can quite understand why the LA asks for the case to continue, so that the work can take place under the so-called *'scrutiny of the court'*. I also fully accept that there are some *'loose ends*'. Among these is the current unknown extent to which the parents are truly able to engage – in the sense of putting themselves in a position in which genuine progress and growth is possible – in the therapeutic work and, separately, in the couples' work: both will be challenging, in particular given M's early life experiences, F's difficulty in processing loss and grief, the historical difficulty the spouses have had in meaningful communication, and the elephantine presence in the corner of the therapeutic room, *viz.* that I have made an explicit finding against M in relation to the infliction of Q's injuries.

101. There is some potency in the suggestion that ongoing care proceedings might encourage an enhanced parental preparedness to comply and to engage. Conversely, however, it could be argued that that freeing the parents of the intensity of the spotlight of the proceedings and the constant need to confer with their legal teams will be to increase the prospects of their meaningful engagement in the very different discipline of genuine therapeutic engagement.

102. There are three factors, when I contemplate what to do with these proceedings, which are of particular significance, especially when considered in combination:

    a. these proceedings are in their 85th week; that is more than three times the default statutory maximum; in terms, first, of allocating resources appropriately as between cases and families, and secondly, of the deleterious and chronic impact on litigants and children of never-ending proceedings, it is shocking that it has taken this long to bring the case to where it is;

b. the realistic period of adjournment, if the LA proposal is accepted that the final hearing should follow the completion of all work, assessment of its success, and the usual filing of final evidence, is – it seems likely to me – at least six months, probably a little more; and

c. there is an appropriate plan, agreed between all parties, as to what should happen next; while its success cannot be guaranteed, it is not inchoate; its component parts are clear; and in the event of its failure, the LA's contingency plan, whether or not it will require a return to court in fresh proceedings, is starkly set out, which, in itself, ought to provide incentive to the parents to engage at a meaningful level.

103. Recognizing as I do the genuine reasons set out by the LA in its proposal to adjourn, and the good intentions underlying it, I am clear that this case needs to finish now. Accordingly, I will proceed to make final orders.

Final Order: Care or Supervision?

104. The plan, clear though it is, is highly unusual.

105. The risks, as assessed by the experts, and, as above, found be me, are significant, in the sense that there is an unquantifiable but very real risk to both children of potentially extreme physical harm.

106. The supervision regime, by which there are currently only six minutes in any day when M is not supervised (by a family member of by F) in her care of the children, is at the very most extreme end. I am not sure that I can recall in many years of

practice a more intensive (or intrusive) regime on which final orders are made with placement at home.

107. The reason for these facts coexisting with the fact of placement at home lies in this juxtaposition: on the one hand, the children were placed back with their parents a year ago, and they have thrived and come to no further harm in their parents' care; on the other hand, recently assessed, for the reasons set out above, that placement is one which poses real and potentially dire risks, certainly until a prolonged series of therapeutic interventions, with necessarily unpredictable success, has taken place.

108. Further informing my internal deliberation in relation to the appropriate type of order are the following factors:

a. parental cooperation has been significant and continuous; but genuine engagement at a meaningful level remains elusive;

b. the children's safety relies on the ongoing provision, necessarily, given my earlier decision, outside proceedings, of effective and entirely consistent supervision;

c. the safety of the children over the next several to many months relies on professionals being able to assess, and then to impose, necessarily restrictive measures on the parents; the risks are such, in my judgment, that this, while it should involve proper consultation, cannot risk becoming a transactional process;

d. unlike the *'slow-burn'* risk in *Re JW*, where the insidious nature of the possible insinuation into a household of a sexual predator, with the subsequent well-

known grooming behaviours, would allow for a prolonged period for professionals to spot and to act on warning signs, the opportunity to act to prevent an *'explosive outburst'* (per Dr Thomson) may be extremely limited in time; there can, in my view, be no room for ambiguity as to the limit of the power of professionals to act in such an eventuality; and

e. in the current case, the proposed contingency is less extreme than in many others: it would entail the children moving to their maternal grandmother's; depending on the reasons for this, such a move might be short-term and simply reactive to a particular bump in the therapeutic road; however, in my view, decisions in relation to this might have to take place at very short notice, and should not, given the underlying risks, necessarily require prior court application (or other emergency remedies).

109. In the context of this analysis, the ability of a local authority under a care order to dictate the manner in which parental responsibility is to be exercised is, it seems to me, a highly relevant distinction between care and supervision orders.

110. My conclusion, by a clear margin, is that, in this unusual case, the children's safety and protection requires the final order, by which these hugely protracted proceedings will eventually come to an end to be a care order. The risk against which my order is designed to protect these children is of very serious physical harm, possibly worse. While the LA plan, crafted as it has been in the image of the expert recommendations, is appropriate and sufficiently robust, the care orders which I propose to make are, in my judgment, proportionate to the risks to which the children will be exposed if matters were to take a certain course. It is a very significant

complicating feature of this case that, although it is nearly 20 months old, the therapy, so urgently required by the parents, and the robust family group meeting, so very necessary from a child protection point of view, have yet to begin or take place.

111. For the avoidance of any doubt, my decision that final care orders are required:

a. is not in any way predicated on a hope that by making the more 'extreme' order, I will obtain for the children or the family greater resources or more assiduous social work attention than would otherwise be the case;

b. is not made in order to find a way to bring proceedings to a premature conclusion;

c. is reached fully aware that non-emergency removal by the LA will require compliance with the *Re DE* 'checklist';

d. follows my express consideration of the proportionality of the orders, and their hugely intrusive impact on these parents and children (which I have weighed against the risk of harm to the children);

e. represents, within the parameters permitted to me by *Re JW*, the exercise of a carefully considered judicial discretion, placing the children's welfare (and, in particular, their safety) at the forefront of my considerations.

112. As above, having reached the conclusion I have, I do not consider that the current law requires me also or additionally to find that this case satisfies some (unspecified, undefined) *'exceptionality'* requirement. It is plainly a very unusual case, for any number of reasons. Ultimately, fully aware of the differences (and lack of them) between the two types of order, I have reached the view that care orders are both

necessary and proportionate. If I am correct so to have decided, the case is necessarily *'exceptional'* compared to the vast majority of its type.

Decision

113. I decline to adjourn this case, as the LA has asked me to do.

114. I make final care orders in relation to P and Q, on the basis of the care plans that they continue to live with their parents.

115. The advocates, please, will agree (if possible) and send through a draft final order, which should reserve any further applications in relation to the children in the next 24 months to me, if available, to be case managed by the Designated Family Judge for West Yorkshire in the first instance or in my absence.

Postscript

116. A few final thoughts are merited.

117. First, I mention this: I have been very critical throughout three judgments of the LA for its behaviour, actions, inaction, and at times appalling assessments and flawed decision-making, at a social work, managerial and corporate level. However, all I have heard and read suggests that the current social work team and those others now responsible for care-planning, decision-making and ensuring the provision for this family of very scarce resources have reacted wholly appropriately to the current

situation, informed as it is by the court-appointed experts. None of my various criticisms should be considered to be directed at the current incumbents.

118. Secondly, and not for the first time, I record my gratitude to the advocates, whose expertise and realistic and measured approaches have made a difficult case the more manageable; and to those who sit behind and instruct them; in particular to the solicitors for the LA and the children's guardian, for conspicuously assiduous management of, variously, bundles, documents and 'the portal', and experts; and to the current social work team and the children's guardian, whose intensive work, often under significant pressure of time, has been very helpful.

119. Finally, I note that at the very end of my judgment of 6 February 2024, I wrote this:

> *'[80] I am conscious that my decision will represent a very real disappointment to the parents, and I note that they are not responsible for the quality of the LA's assessments in this case. I very much hope that the case will conclude with the children remaining in their parents' care. It stands to reason from all I have said above that risks can far more accurately be assessed and so more safely be protected against if M finds herself able to tell the court what actually happened to Q and why. Equally, if F – albeit belatedly – is able to adopt an appropriately questioning stance, he is likely to be better able to protect his children from future harm.'*

120. As it turned out, neither parent took up the challenge I set them. It is not too late. In light of the fact that the legal proceedings are now concluded, I urge both parents to consider very carefully whether they are able to take up my suggestions. Whether as part of that, or separately, their genuine engagement with the therapeutic and teaching work is key to their children's happiness, possibly to their children's

remaining in their care. This will not be an easy process for either parent, but I exhort both M and F to take advantage of the vast and expensive resources which are currently, but for a necessarily time-limited period, available to them.