

IN THE MATTER OF THE CHILDREN ACT 1989
AND THE ADOPTION AND CHILDREN ACT 2002

In the matter of J, K and L (Children)

Before Recorder Jacklin QC

Hearing: 1 to 5 February 2016

Judgment: 4 March 2016

IMPORTANT NOTICE

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and members of his family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The names of solicitors and counsel have been excluded in order to protect the anonymity and privacy of the children in this case.

1. This case concerns three brothers aged 9, 7 and 5. I shall refer to them as J, K and L respectively. They have been in the care of the applicant local authority since 22 May 2015 when an emergency protection order was granted after a contested hearing. Subsequently the boys have remained in care pursuant to interim care orders made with the consent of their parents.

The applications and positions of the parties:

2. Between 1 and 5 February there took place before me the final hearing of the local authority's application for care orders in respect of all three children. The local authority had also made applications for placement orders authorising the placement of K and L for adoption. At the end of the hearing, by consent of all parties, I made a care order in respect of J. The applications in respect of K and L required careful consideration and I reserved judgment. On 26 February I made care orders in respect of K and L, dispensed with the consent of their parents to the making of placement

orders and authorised the local authority to place K and L for adoption. This is my judgment.

3. The final determination of the applications for care orders issued in May 2015 has extended beyond the statutory time limit imposed by s 32 of the Children Act 1989, as amended by s 14 of the Children and Families Act 2014. A final hearing was fixed for 16 November 2015 whereby the applications for care orders would have been resolved within twenty-six weeks. Unfortunately and unexpectedly, due to personal circumstances the Children's Guardian was unable to attend that hearing and hence it was refixed to be heard in February 2016, with time being extended under section 32.
4. The children's parents are married to each other but maintained that they are separated permanently and were represented separately by counsel.
5. Mother accepted that she cannot provide J with the care he needs but sought the return of K and L to her care as a single parent. If the court did not agree with her primary case she wished the children to remain living with the foster carers with whom they have been living since June 2015. She strongly resisted the care plan for adoption and the making of placement orders.
6. Father accepted that he cannot care for any of the children. He agreed that J should be the subject of a care order and placed in long-term foster care. In his sworn statement he supported Mother's primary case but in oral evidence this was placed as second choice to the children remaining with the current foster carers. He opposed the plan for adoption and the making of placement orders in respect of K and L.
7. The Children's Guardian (hereafter referred to as the Guardian) supported the final version of the local authority's care plans. I shall return to the issue of the care plans.

Summary of the background and proceedings to date:

8. Mother is in her early forties. She had her first child when she was 18 and 3 more children with a man with whom she had a volatile relationship. In 1997 she met the Father of J, K and L. He is in his mid forties. The parents were married to each other in 1998.

9. They had their first child together in 1999, a 2nd child in 2002 and a 3rd child in 2004, making a household of seven children. In her report the Guardian recounts that there was extensive social services involvement with the family dating back to 1994 culminating in care proceedings being issued in 2005 and concluded in 2006. The harm suffered by those children and the risks of remaining in the parents' care were the result of similar issues which arise in these proceedings: substance abuse, domestic violence and neglectful parenting.
10. Five of the children were placed in foster care or with family members. The other two, the full siblings of J, K and L were adopted in 2006. Sadly, one of the children who was fostered, a little girl who was a poorly child from birth, died in 2006, aged four. Mother told the court of an eleventh child, another boy, who was stillborn.
11. Mother discovered that she was expecting J during the currency of those previous care proceedings and an application was made for him to be made the subject of a care order. I have not seen those papers and I rely on the history provided by the Guardian. An assessment of the parents' care of J was carried out in a parent and child placement. Based on reports that the parents had developed insights into their past behaviours and were committed to change J was made the subject of a supervision order in 2007.
12. J, K and L were placed on the Child Protection Register in July 2014. It is apparent from the minutes and other materials filed in these proceedings that over the three previous years reports had been received from time to time from neighbours, the police and the school registering concerns for the children. Reports related to many arguments between the parents, the poor state of the home, use of cannabis in the presence of the children and anti-social behaviour. Other than a home visit by social services in July 2011 none of these referrals resulted in any assessment.
13. In January 2014 Mrs. A, the Head Teacher at the children's school, pressed for a professionals' meeting to discuss a wide range of issues regarding the children's presentation at school. She was unable to attend a child in need review meeting in March 2014 and did not agree with the decision to close the case to social services.

14. The decision to place the children on the CPR in July 2014 was under the category of neglect. The local authority had become involved again due to a referral from the police involving a possible injury inflicted on J. That turned out not to be the case but the referral did result in social services becoming involved in the family formally. Although there was a risk that the family would be evicted from their home the then allocated social worker was assured that the rent arrears would be dealt with. He considered that the home was 'habitable' and school attendance had improved, as had the children's appearance. In October 2014 he took the view that there was not sufficient cause for continuing involvement by the local authority. I intend no criticism of him. It must be difficult to assess where the balance of harm falls in cases such as this, especially with intelligent parents such as these who appeared to be engaging and addressing the areas of concern.

15. However, the current social worker took over in November 2014. She focussed on speaking to the children to assess how the home circumstances were impacting on them. After a short time she had difficulty getting access to them and the parents ceased to engage with her. Reports from other sources indicated that the home conditions once again deteriorated, as did the parents' substance or alcohol abuse, aggression to each other and anti-social behaviour to neighbours. The children were reported to be unhappy and unwell at school.

16. A Notice of Intention to Issue Proceedings was sent to the parents on 19 December 2014 listing all the issues, which I have briefly summarised. Only father attended the pre proceedings meeting. The parents would not agree to undertaking tests for drug or alcohol use and would not engage with the social worker to discuss the risks to the children and how they could be averted.

17. In April 2015, when the social worker went to the family home in an attempt to discuss with the parents the various issues about their care of the children, both parents were threatening towards her and she was prevented from leaving the home. This incident was frightening for the social worker who thereafter felt unable to visit the home alone.

18. A few weeks later the parents separated after an incident in the home when, as father alleged, mother assaulted him in front of the children. He decided to make a formal complaint to the police not just about that incident but also about what he described to the police as systematic abuse, “mentally and physically and verbally“ over the previous fifteen years.
19. Meanwhile the presentation of the children at school had deteriorated sharply since their father’s departure. All were stressed and unhappy and making no progress educationally. The elder two would not talk to the social worker about events at home. L said his mother had assaulted J but J denied this. He talked of keeping secrets and that he missed his father.
20. In these circumstances the local authority obtained an Emergency Protection Order on 22 May 2015 and the children were taken into foster care. On 28 May the parents consented to the making of interim care orders, which have been extended administratively and by consent.

The evidence

21. I have read all of the statements and reports in sections C and E of the bundle, the care plans in section D and such parts of sections F and G to which I have been referred during evidence and submissions. There was extensive material from the police in section F regarding incidents at the family home. Additional child protection meeting reports and minutes and records of the parenting assessment sessions were produced at the beginning of and during the hearing.
22. I heard oral evidence from:- the social worker; Mr. P, a Chartered Psychologist who assessed the children and each of the parents; Mrs. A, the Head Teacher at the school which the boys attended before they were received into foster care; Ms. B, one of two authors of the parenting assessments of the parents; Ms. C, an employee of the housing association which is the landlord of the family home; Ms D, social worker in the local authority’s adoption team; mother; father; the Guardian.

23. Mother did her best to be honest and was disarmingly frank at times. However, there were occasions when the strong desire to achieve the return of her children led her to be less than honest. I shall deal with the specifics below.

24. The father was thoughtful but guarded in the witness box. There were some parts of his evidence where I considered that he was not telling the truth. I formed this view irrespective of his convictions for benefit fraud, burglary and perverting the course of justice. Parts of what he said did not fit with other pieces of evidence which I preferred because, together, they presented a more convincing picture.

Threshold criteria

25. Before a court can consider making a care order the local authority must establish what are described by professionals involved in the care system as ‘the threshold criteria’ as set out in section 31(2) of the Children Act 1989, which reads as follows:

“A court may only make a care order ... if it is satisfied –

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to –

(i) the care given to the child, or likely to be given to him if the order were not

made, not being what it would be reasonable to expect a parent to give to him;

or

(ii) the child’s being beyond parental control.”

26. Insofar as alleged events are not accepted by the parents the local authority must prove all facts upon which they base their case on the balance of probability; in other words that it is more likely than not that the disputed events occurred.

27. The threshold criteria relied upon in the application for an EPO appears at B9 of the court bundle. It makes the global assertion contained in section 31(2)(i) and (ii)(a) above, followed by the assertion in paragraph 3 on B9 that:

“the significant harm or likelihood of significant harm is evidenced by the following:

Neglect – there have been concerns about the home conditions since the children were made subject of child protection plans on 21 July 2014. In November 2014 the parents and all three boys were living in one room the upstairs main bedroom was

uninhabitable and two walls were covered in grey mould. There was a large amount of rubbish in the back garden. While there have been some improvements in the home conditions there are concerns about this being maintained.

Drug use – Both parents have a history of drug misuse with the mother taking illegal drugs.

Domestic abuse – The on-going issues of anger between the parents. Since [father] left the family home he has made serious allegations to the police against the mother as follows:”

28. There were then set out five specific allegations made by the father, including one which dated back to the parents’ wedding night when none of the children had been born. Of the other four only one incident was said to be in circumstances which would have affected the children.
29. Paragraph 4 contained the allegation that the parents had failed to co-operate with Children’s Services. Paragraph 5 reads: “the children have suffered emotional and physical neglect due to the parents’ abusive and volatile relationship, their drug use and the condition of neglect within the household. It is submitted that by reason of the matters set out in 3 above the threshold criteria under section 31 of the Children Act 1989 is satisfied.”
30. Although paragraph 5 asserts the link between the parents’ behaviour and harm suffered by the children, there is insufficient substance or detail in the behaviours listed in paragraph 3 to support the conclusion that the children were suffering significant harm or were at risk of doing so at the date when the application was issued.
31. The judge heard evidence from the social worker on 22 May. She gave the judge sufficient detail so that the test in section 44 of the Act was satisfied. As an EPO is a short term order the court must be satisfied that “there is reasonable cause to believe that the child is likely to suffer significant harm.”
32. When the case came before the circuit judge on 28 May 2015, after the local authority had issued an application for full care orders, the parents agreed to the making of

interim care orders on the basis of what is set out on page B9. The threshold test for the making of an interim care order is that the court is satisfied that there are reasonable grounds for believing that the section 31(2) test is satisfied.

33. At the final hearing of an application for a care order the court cannot make such an order unless the section 31(2) criteria are actually satisfied.
34. This is another case where evidential problems have arisen from the structure and content of the original threshold statement.
35. In Re A (Applications for Care & Placement Orders) [2015] EWFC 11 Sir James Munby, the President of the Family Division, explained why it is of fundamental importance to demonstrate why the facts relied upon by the local authority justify the conclusion that the child has suffered, or is at risk of suffering, significant harm of specified types. The President drew attention to well-known dicta of Hedley J in Re L (Care: Threshold Criteria) [2007] 1 FLR 2050, of Lord Wilson and Baroness Hale in Re B (A Child) (Care Proceedings: Threshold Criteria) [2013] UKSC 33 and of His Honour Judge Jack in North East Lincolnshire Council v G and L [2014] EWCC B77 (Fam), (unreported) 5 June 2014, which exemplify the principle that the State cannot remove children from their parents on the basis of the parents' behaviour, even if it is criminal behaviour, unless that behaviour is such as to cause harm to the children or is likely to cause them harm, and harm which is significant.
36. The starting point should be to identify and specify the harm that is being suffered or that the child is at risk of suffering, then to describe what it is about the parenting that is being provided that is not reasonable and has caused significant harm or is likely to do so.
37. I acknowledge that the threshold at B9 was probably prepared in haste. The local authority reserved the right to amend the threshold but they did not do so. The deficiencies in it should have become apparent no later than June 2015 when the parents provided their responses to that threshold document. The mother accepted the global allegation that the children were suffering significant harm at the time of the application but made limited concessions regarding any link between that harm and

her behaviour. She said that the neglectful home circumstances had been rectified by January 2015. She accepted a “history” of drug abuse but such a vague assertion is of little probative value and she did not accept that it had caused harm to the children. As for domestic abuse she accepted “ongoing issues of anger between the parents” but denied the five allegations while alleging that the father had behaved violently towards her. She accepted non co-operation with Children’s Services. She accepted that the children had suffered emotional neglect due to the parental relationship, which she said was over, and physical neglect due to poor conditions in the household in the past which were the result of a leaking roof and not her fault. In short, the apparent concession regarding the threshold criteria was largely undermined by her non-acceptance of any unreasonable parenting on her part which was causing the children to suffer significant harm or likely to suffer significant harm at the time the application was issued.

38. The father’s response was similar, although he maintained the truth of his allegations of violence against mother, and he placed all blame for any harm to the children on the mother as a user of drugs and the perpetrator of abuse within the household.

39. By the time of the first Issues Resolution Hearing on 12 October there was extensive further evidence before the court: a record of events at and around the family home from 2011 to 2015 compiled by officers of the housing association; parenting assessments; psychological assessments, hair strand drug analyses; statements from both parents challenging parts of the evidence and setting out a case for the return of all three children to the mother’s care. The local authority provided no revised threshold in advance of the IRH and no schedule of other findings sought at the final hearing. The order made at the IRH contains a recital that there was no dispute that the threshold criteria were established but no agreement as to the basis upon which they were established, as the parents were blaming each other for the alleged deficiencies and problems in parenting.

40. If threshold is satisfied in all other respects it will still be crossed if the parents disagree on which of them is to blame. But the issue of personal culpability is important when it comes to considering welfare. It is a mistake to approach a case on the basis that as long as threshold is crossed or conceded, on whatever basis, the court

can move on to the welfare analysis without a backward look at the threshold document.

41. At the second IRH on 14 January 2016 the recital regarding threshold criteria was:
“The s. 31 threshold for the making of orders is in dispute. Attempts will be made at the advocates’ meeting to see if it can be agreed, following the local authority filing a schedule of revised findings sought.”
42. This schedule was directed to be filed by 4 pm on 22 January. What was produced was a document dated 25 January entitled “[Agreed?] Findings as to Threshold” which was not agreed as the final hearing commenced. Although that document adds some detail, such as the imminent loss of the family home and an asserted impact on the children of drug abuse and domestic violence, it follows the same format as the document at B9, and does not contain a schedule of findings sought to establish the threshold criteria or any other findings that may be pertinent to the court’s determination of what outcome is in the best interests of the children. For example the parents disputed what is to be concluded about their drug use from the hair strand analyses. It was not apparent to the court whether the parents’ position on this was accepted or challenged.
43. Counsel for the local authority did his best to rectify the threshold document overnight. The document produced on 2 February entitled “Schedule of findings sought in respect of threshold” identifies the persistence of the parents’ behaviour and asserts the link to significant harm or the risk of significant harm. By the end of the evidence both parents had conceded the content of this document to a large extent and were accepting personal responsibility for the conditions in which the children were living. I attach to this judgment the final threshold document amended to reflect what was accepted or proved. Thus the threshold criteria were satisfied but the process took up a disproportionate amount of court time.
44. Two other problems resulted from the lack of analysis of the threshold criteria by reference to the totality of the evidence, including that filed after May 2015. Firstly, the local authority did not appear to be seeking findings about the parents smacking and lashing out at the children, despite many comments made by the children to the

social worker and others that that is what occurred when they were at home. For the children this is an important issue which affects their feelings towards their parents and I will return to the general allegation below.

45. During the hearing counsel for the local authority led evidence from the social worker of much more detail regarding what L had said to her on an occasion which is referred to in her first statement. This extra detail placed the particular incident into a category of very serious, possibly life threatening, assault. I could not accept an invitation to make a finding about such a serious incident when the parents had no notice that it would be sought. I did not accept the assertion of counsel for the local authority that, as the conversation with L is referred to in the papers, it is for the parents to indicate whether they accept that it took place and the accuracy or otherwise of the assertions made. I do accept that the local authority is not expected to place in schedule form every detail of who said what about the parents, but it would be a breach of the parents' right to a fair trial under Article 6 of the European Convention on Human Rights to allow the pursuit of findings in respect of such serious behaviour, without prior notice. As counsel pointed out, directions would have been sought for the production of case recordings and evidence from other potential witnesses, if they had been on notice that such serious findings were sought.

46. As an extension of the statutory time limit was necessitated in November 2015, it would have been a particularly unjustifiable contravention of the principle enshrined in section 1(2)¹ of the Children Act to allow an adjournment for the local authority to get its house in order.

47. Secondly, the focus on the parents' behaviour rather than on specifying the harm caused or risk of harm to the children by that behaviour resulted in a lack of analysis of what harm was caused to the children. This left the court in the position of having to explore the issue in oral evidence.

¹ In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

48. There is evidence from the social worker about the behaviour of the children when placed in foster care, which might indicate that they had suffered significant harm but there was no discrete consideration of the issue. I am not suggesting that it is necessary to prove that the children are suffering continuing significant harm in order to cross threshold but there are broader considerations.
49. The judgment of Russell J in Re T (Application to Revoke Placement Orders: Change in Circumstances) [2014] EWCA Civ 1369 demonstrates why it is important for the court, in considering the making of such serious orders as are sought in this case, to make specific findings of harm rather than accept vague assertions in a threshold document. This case may return to a different judge if further applications are made in the future. Any judge dealing with this case in the future would need to understand the extent of harm to the children at the stage when final orders were made and the reasons for that harm. Findings made in this judgment are the reference point for future decisions.
50. Further, this court is being asked to make placement orders in respect of K and L, leading to adoption, whereby their relationship and contact with their parents, siblings and wider family would be severed. As the President observed in Re X (A Child) (Surrogacy: Time Limit) [2014] EWHC 3135 (Fam) the making of an adoption order “has the most profound personal, emotional, psychological, social and, it may be in some cases, cultural and religious consequences.” This court must not make any order which allows for the children to be adopted unless ‘nothing else will do’: see In re B (A Child) (Care Proceedings: Threshold Criteria) cited above. In making that decision the court needs detailed information about each child, including what harm he has suffered, if any, and what his needs are as a result.

The children’s experiences at home

51. The totality of the evidence, including the parents’ concessions in oral evidence, provides the picture of what life at home was like for these children.
52. Mother says that in 2011 drug abuse became a problem for her again, after a break of four years. She was smoking cannabis every night, sometimes in its illegal form, sometimes synthetic cannabis, referred to as a ‘legal high’. She said she used cannabis

in order to help her sleep. Looking back she feels that she was suffering with untreated depression brought on by grief at the loss of four children.

53. But drug abuse was not the only cause of the aggression that went on in the household. Mother volunteered in her oral evidence that she does not need to be under the influence of drugs to be volatile.
54. In the detailed statement which the father gave to the police in May 2015 he described how mother would fly off the handle at the slightest provocation and she would attack him physically on a regular basis and in front of the children. In her oral evidence mother said that the altercations between them were the result of father's mood and he was the aggressor. There is an abundance of evidence in the police and housing association records to show that the parents were as bad as each other and both must, and at times in the witness box did, take responsibility for what went on in front of the children. Mother said that when things were bad she and the father would fight or argue every day; the children were there and "they were frightened and wondering why we were doing it."
55. The fight which resulted in father leaving in May 2015 was witnessed by the children. Father says mother hit him in the face and she accepts that she probably did threaten to punch him in the teeth, by putting her fist up. She said that she would hit him wherever she could get to, usually on the side of his head, other times in the genitals. An indication of the loss of self-control was when she said in oral evidence: "I cannot honestly tell you what I was doing in the heat of the moment when we were arguing and fighting." She said the father would punch, grab and slap her too.
56. An indicator of how loud and aggressive these fights were are the reports in the housing association records of many occasions going back to August 2013 of neighbours complaining of fights at "unearthly times of day and night."
57. The aggression was also directed at neighbours. They made complaints regularly to the housing association from the Summer of 2013, when there is a record of mother screaming and shouting at a neighbour. In April 2014 an injunction with a power of arrest was granted by the local county court against mother, restraining her from threatening the neighbours. Despite this the anti-social behaviour continued and a

suspended possession order was granted in relation to the family home in December 2014.

58. Another reason for possession proceedings was the continuing build-up of rent arrears. This is probably due to mother spending £23 per day on her drug abuse. That sum was a considerable proportion of the family budget, which she controlled.
59. Mother said that she was not coping with her own feelings but claimed that she was coping with the children. The evidence from school shows otherwise. She denied hitting the children but at another point in her evidence accepted that she smacked them “on occasion.” She claimed that she was always up in the mornings to attend to the children. I do not accept that. It runs counter to the evidence that the father took the children to school. The children have referred to their mother staying in bed all day.
60. I mention here the dynamics between the parents during the hearing. Despite all the appalling things they have said and done to each other and the allegations made by father to the police they were plainly close and supportive of each other. However, when mother asserted in the witness box that she was always up in the morning for the children the father spontaneously raised his eyes in disbelief and looked away. She was not being truthful on that point.
61. The school recorded that at least twice per week father was not in a fit state to collect and care for the children. There was no smell of alcohol but he would be unsteady on his feet and would have to rest against a wall. The father says that his unsteadiness is the result of having fits during which his speech is slurred and he has no memory of what occurred during the fit. According to Mr. P, who saw the father’s medical records, the consensus of medical opinion is that father suffers from what is called a conversion disorder whereby he reports neurological symptoms, such as fits, which do not have a definable organic cause.
62. He claims that he has not taken any illegal drugs since 2007. That is contradicted by the hair strand test carried out in August 2015 which found low concentrations of THC, the principal psychotic constituent of cannabis, throughout the six month period going back to January 2015. Father sought to explain this away on the basis that he

went to a party where cannabis was being smoked. No detail was provided about this party. I reject that explanation. It would not explain the presence of cannabis in each of the previous six months. Also, he told Ms. B during the parenting assessment that he coped with the stresses in his life by resorting to alcohol and drugs. There was no indication that the drug taking was in the distant past. The father said in oral evidence that alcohol was the bigger issue for him.

63. Whatever the cause, the father was often looking after the children when he was not in a fit condition to do so. This placed them at risk of physical harm.
64. I am satisfied that father did his best to attend to the children's needs. But his way of boundary setting is to shout at the children. He says that he happens to have a loud voice and does not mean to shout. That may be so but he does shout and the children find it frightening. All of them have talked about this in the foster homes and said that he has smacked them. There are examples of father losing his temper with the children during the parenting assessment when he knew that professional eyes were upon him. He was observed to become angry suddenly and would shout in the children's faces, which they found shocking and upsetting. The anger would be disproportionate to the behaviour of the children. For example, shouting at K for calling J an idiot in a playful manner, being "furious" when L soiled himself.
65. This independent evidence of father's sudden loss of control coupled with what is now known about this behaviour on 14 September 2015 (see below) leads me to conclude that the many comments of the children to the social worker and others that their father hit them should be accepted as truthful.
66. In addition to living with the constant potential for aggression and violence the children lived in poor home conditions. The mother's eldest four children were all living in the home intermittently from 2011. The overcrowded conditions produced condensation which contributed to a damp problem resulting in extensive mould in many rooms. For about a year the boys were living and sleeping in one room with their parents, exposed even more starkly to substance abuse and aggression. Piles of rubbish bags were piled up in the garden and assistance was provided to clear these. The children presented at school hungry and grubby from time to time.

67. Of course, life at home was not bad all the time. There were periods when the parents were not arguing and fighting. The social worker spoke of occasions when she made a home visit when mother was receptive and would get out lego to play with the boys. Father would take the children out for activities such as archery and to visit interesting places. Both parents are intelligent people who love their children and show them affection but they were overwhelmed by their personal issues which result from their own past experiences.

Significant harm:

68. Mr. P was provided with material from the foster carers regarding how the boys were functioning and behaving. Mr. P did not address significant harm in his reports. In oral evidence he described how repeated exposure to parental volatility and domestic violence causes children to regard it as normal behaviour. He said that all the children have exhibited poor control of their emotions and resort to violence at times. It has also affected their attachment to their parents due to the lack of consistent and predictable parenting. These children lived in fear and anticipation of violence erupting, making them anxious and insecure. When it did erupt they would either shut down emotionally or go and hide. All the children exhibited developmental delay caused by neglectful parenting.

69. J was diagnosed with Attention Deficit Hyperactivity Disorder early in 2013 and his dysfunctional behaviour has been attributed in the main to that condition. Dr. Q, Consultant Child and Adolescent Psychiatrist, carried out a psychiatric assessment of J. He was asked to consider whether ADHD can be falsely diagnosed due to presenting behaviours that could be caused by family circumstances. J was born prematurely at 32 weeks. Dr. Q's opinion is that prematurity and early adversity in the first three years of life are both factors which predispose children to developing ADHD symptoms.

70. There is no evidence before the court that the behaviour of the parents in the first three years of J's life was such as to cause or contribute to his ADHD. But Dr. Q also said this:

“Affected children do need parenting capacities above the norm, particularly around the setting of boundaries, close supervision and working in with other (sic) to optimise a child’s treatment gains. If not provided with these, they can be the more affected, undermining for example their social integration, school engagement and achievement. Hence family circumstances do make a significant difference, both in terms of contributing to it emerging and to its severity over time.”

71. J’s condition must have been exacerbated by the parenting he received prior to May 2015.

72. In her oral evidence the social worker said that the boys have low self-esteem due to lack of consistent and predictable parenting. Due to the tendency to dissociate from the aggression and violence they had poor concentration and were making poor progress at school, this being particularly pronounced with J in May 2015.

73. All are more than normally adult dependent and attention seeking. For example, when first in care, J wanted an adult with him at all times, including standing outside the toilet door. All the children are quick to anger and have a tendency to fight.

74. More detail about how damaged the children were on receipt into foster care is set out in the next section of this judgment.

75. In her oral evidence the Guardian endorsed all that had been said by the social worker and Mr. P that the children had suffered significant harm.

Separation of the boys

76. When first separated from their parents the three children were placed together. They did not appear distressed at being separated from their parents and seemed to understand that they were in foster care due to their parents fighting and their father leaving home. All three boys described foster care as “happy land.”

77. Unfortunately the first foster placement broke down because of the difficulties in managing the behaviour of all three boys together. They were not used to routines in the home and bedtime routines were very difficult to implement. They had no sense of

road safety and were not safe on car journeys as they kept undoing their seatbelts and trying to get out of the car. There were many difficult behaviours including fighting. The foster carers said that K and L copied J's behaviour and when they were out and about they pushed over smaller children.

78. After careful consideration the decision was made to separate J from K and L, mainly because of J's aggressive behaviour towards K. Also, J often separated himself from the younger two as he likes to do his own thing and disappears into his own little world.
79. The view of the local authority was that K and L have a closer relationship with each other than with J, and the younger two were used to sharing a bedroom in the short period when they had their own bedroom at home. None of them appeared to be distressed by this separation.
80. In September 2015 the social worker carried out a detailed and careful assessment of whether it is in the interests of these three siblings to live in separate placements. Her starting point was the legal obligation on local authorities to place siblings together when they are unable to remain with their birth family.
81. When the three boys meet at contact sessions they always appear pleased to see each other although there is no affection, and no distress on separating. They play mainly in isolation to each other. J can still attack K without warning or reason and appears to have no empathy with K when he hurts him. K and L sometimes hit out at J too.
82. J does not ask for his siblings or talk about them to his foster carers. He will mention them when arguing with another child saying such things as "me and my brother will gang up on you" and he refers to K and L as his beautiful brothers. But he does not ask to see them.
83. K continues to speak of J in a negative way and demonstrates anger towards him when he is mentioned. K has told the social worker that he does not want J to be at any meetings. L has voiced similar views and has described J as nasty and hurting him, saying he does not like to be with J. Over Christmas 2015 when there was no

contact with their parents, they were given the opportunity of seeing each other but did not wish to do so.

84. They have all thrived in their separate placements since 8 June 2015 when they were separated.
85. The social worker's conclusion is that it is highly unlikely that the considerable needs of the three children could be met if placed together in one placement.
86. Mr. P's view was that the relationships between J and his younger brothers are dysfunctional.

Welfare analysis regarding J

87. In determining any question with respect to the upbringing of a child the court must place that child's welfare as its paramount consideration.² Although the making of a care order in respect of J was agreed, the court must still consider whether that is the order which meets his welfare and whether the care plan should be approved. In reaching the decision I must have regard to the welfare checklist in section 1(3) of the Children Act 1989.
88. Both the social worker and the Guardian describe J's conflicting feelings about where he wishes to live. He has told his parents during contact sessions that he wants to return home. However, a few minutes later he approached the local authority supervisor or assessor to tell them that he does not really want to return home. When asked directly by the social worker what he would like to happen he asks to go home please but a few minutes later asks to be placed with his brothers as they have an X-box in their placement. The social worker described how J will tell the person he is with what he thinks they want to hear.
89. I am satisfied that J has no real desire to go home. He is described as worrying about his parents, particularly his father, as if they are his responsibility. It may be that this anxiety and sense of responsibility is behind his statements to his parents and others that he wants to go home.

² Children Act 1989 section 1(1)(a)

90. J is prescribed the highest dosage of Ritalin to treat ADHD. Dr. Q considered this to be appropriate but the medication level is kept under review. J has a poor attention span and is hyperactive and easily bored, going from one activity to another within a few minutes. When at home with his parents he was allowed to spend most of his time on his X-box and would disappear into a computer world, expressing love for the X-box. In foster care he has demonstrated some highly challenging behaviour such as throwing a knife at the foster carers' son. He can become angry quickly, which he attributes to being like his mother. His self-care skills were limited. He will slip into regressive behaviours, wanting to be treated like a baby. He is overly affectionate to adults he has just met, complementing them and wanting to give them hugs.
91. Dr. Q advised that J needs skilled parenting with firm boundaries and close supervision. He has responded well to positive and consistent parenting provided by his foster carers. He gradually settled into a bedtime routine, now sleeps well and his relationships with the foster carers' children have improved. He recognises the changes in himself and is enjoying learning new things such as how to ride a bicycle. He presents with more confidence and self-esteem.
92. J thrives on adult attention and is very well behaved on a one to one basis. He can be polite, caring, charming and amusing. J is settled and progressing well at school and he receives one to one support at all times due to his diagnosis of ADHD
93. The social worker is confident that a long-term placement will be found for J because he is so endearing.
94. The care plan is that J will be placed with long-term foster carers who can continue the high quality of restorative parenting provided by his current carers. The plan is that his contact with his parents will be reduced from once per week with each parent separately, to a maximum of once per month with each parent separately. Contact may be reduced if monitoring shows that this is in his best interests. J has a much stronger connection with his father than with his mother. Father's attendance on contact has been erratic and his behaviour has also been aggressive and upsetting from time to time. Contact levels will have to be adapted to ensure that J is protected from

inconsistency and damaging behaviour by his father. J, like his brothers, seems keen for contact sessions to end and is always happy and ready to go when the foster carers arrive to collect him. In her statement dated 21 January 2016 the social worker recorded that J has recently presented as distressed following contact with each parent.

95. If K and L were adopted J would have a reducing level of direct contact with them until their placement. Thereafter the hope is that there may be some indirect contact but the level of this will depend on the adopters and the circumstances of the boys' placements. Modern forms of communication present advantages and disadvantages which need to be balanced carefully in order to protect whatever placements the children are in.
96. Both parents accept that they are not capable of meeting J's needs. I am satisfied on the evidence that they are not capable of doing so. I deal below with the evidence regarding their capability as parents.
97. It is unlikely that either of them will be able to meet J's needs during the remainder of his childhood. Both parents need to carry out significant work to address their own personal needs in order to make contact sessions with their son more enjoyable and beneficial for him.
98. In a moment of insight the mother said that if she continues with past behaviours J will in due course be appearing as defendant in a criminal court.

Welfare analysis regarding K and L

99. Because the care plan for K and L is adoption and the court is asked to make placement orders I must have regard not only to the welfare checklist in s 1(3) of the Children Act but also the different welfare checklist in s 1(4) of the Adoption and Children Act 2002: see Re C (A Child) (Placement for Adoption: Judicial Approach) Practice Note [2013] EWCA Civ 1257. This means that, in addition to having regard to their ascertainable wishes and feelings, their needs, the effect of any change in circumstances, the harm they have suffered and the capability of their parents to care for them, I must also have regard to s 1(4)(c) of the 2002 Act:

“the likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person”

and s 1(4)(f) of the 2002 Act:

“the relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including –

- (i) The likelihood of any such relationship continuing and the value to the child of its doing so,
- (ii) The ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,
- (iii) The wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.”

100. In accordance with s 1(2) of the 2002 Act I must treat the welfare of K and L throughout their lives as my paramount consideration.

101. In deciding whether or not to dispense with the parents’ consent I must apply section 52(1)(b) of the 2002 Act as explained in Re P (Placement Orders: Parental Consent) [2008] EWCA Civ 515. I must ask myself the question: does the welfare of each child require parental consent to be dispensed with? The word ‘requires’ in s 52(1)(b) carries a connotation of the imperative, meaning what is demanded rather than what is merely optional or reasonable or desirable. I must be satisfied that the child’s welfare throughout his life requires adoption as opposed to something short of adoption.

102. K has told the social worker and the Guardian that he is happy where he is and all is going well; he would like to remain in foster care where he is until he is aged 12 or 13. He says he does not think about going home very much. He told the social worker that he does not want to see J as he always hurts him and he is glad that J is not with him and L. He was less certain about these negative feelings when the Guardian spoke to him and he thought he may include J living with him and L. Only when prompted about his mother by the Guardian did K, as an afterthought, consider that she may also live with him and L. But he was clear that his father should only visit and not live with them.

103. During contact K sometimes seeks affection from his mother but at times appears keen for contact with each parent to end and is ready and happy to go when the foster carers come to collect him.
104. L sometimes refers to going home but told the social worker that he does not really think about going home. He said that he is “happy, happy, and happy” in his foster placement but he does love his mummy. He told the Guardian that he is very happy in the placement and wants to stay there with K. He enjoys the affection given by his mother especially since she has been calmer (as explained below) but he is frightened of his father who he says used to smack him.
105. I have set out above the harm that the children have suffered. Although K and L have made huge progress since being received into care, both continue to need reparative parenting. At times they attack each other for no apparent reason. K is more damaged than L and requires more repetition and reminding of expected behaviour. Recently K has started to present much more challenging behaviour such as untruthfulness and urinating on his toys and on the carpet. The social worker is of the view that this is because he is well settled and is testing boundaries more than previously. The foster carers are highly capable and there is no suggestion that they cannot cope or that K and L should not remain together.
106. In the sibling assessment the social worker concluded that K and L have a mainly good sibling relationship, they bring each other comfort and are mutually supportive. K looks out for and speaks for L but K also seeks reassurance from L. In her opinion separating K and L from each other would cause them further emotional trauma. They need to be together.
107. Mother asserts that she is capable of caring for K and L. She says that she has separated permanently from the father, she is free of psychotic drugs and is taking medication prescribed by her GP for depression and to help her sleep.
108. In May 2015 and for months thereafter mother insisted that there was no risk of her and the father living together again. However, they did reconcile in August and within days there were complaints from neighbours to the housing association about the

“horrendous arguments” between the parents with them shouting and screaming at each other.

109. In the middle of September 2015 there was a horrific incident over two days and nights during which each attacked the other. Father left the home again. Mother sustained injuries all over her body and a head injury. Father says he has no recollection of the incident but I formed the view that this was another example of him being in denial regarding his behaviour and the effects of it.

110. I accept that both parents are sincere in their belief that they should not get back together because the relationship is so volatile. The incident in September frightened both of them. Father said that he only goes to the house to be collected for contact visits on Fridays or to ‘dog sit’ and he always goes with a friend to make sure they are all safe.

111. The local authority does not accept that the parents have not or will not get back together. There is much to support that view. The parents admit that they love each other and that was patent from their interactions in court. They have a long shared history having had seven children together, and despite the long history of violence father admitted that he does want to try again.

112. Other evidence supports the local authority position. On 22 December 2015 a police officer visited father who was at the family home. Mother was out. Father withdrew the allegations he had made against mother in May 2015, not because they were untrue, he said, but because “things are much more amicable between us nowadays, we have a good arrangement through social services whereby we all ([mother], me, our 3 children and another friend of ours) stay at [home address] and I have time with the children after school on Friday. Therefore if I pursue a criminal complaint against [mother] I fear it would damage or destroy our arrangements.”

113. The police attended the home in the middle of December 2015 looking for father. A neighbour reported to the housing association that he was hiding in the garden and

mother let him know when the police had gone. Mother herself told the social worker than he was at the home on Christmas Eve.

114. I am satisfied that she and the father will continue to spend time together, if not live together full time, and the children would be at risk of further harm from their volatile relationship.

115. I am unable to make a finding that mother was or is using heroin. Although this was detected in the hair strand test in July 2015 DNA Legal have accepted that the concentration was very low such that the toxicologist could accept passive exposure to heroin. Mother said that she has been in the company of a friend who regularly uses heroin and there is no other reliable indication in the evidence that she was a user of heroin.

116. The mother's second hair strand test which is said to cover the period from April 2015 until early January 2016 does not show positive readings for any psychotic drugs in this period. However, this does not fit with the other evidence. The first test indicated drug use into July 2015 and mother subsequently admitted this, having previously told the District Judge in May 2015 that she was completely drug free.

117. Further, in her statement given to the police after the awful violence between her and father in September 2015 she said that she and father went into town to the museum because if they stay at home "we tend to get bored and smoke legal highs." Mother denied that she meant by this that they were actually using drugs at that stage. I reject that. She has lied before about this issue and the housing association notes record a neighbour's complaint about the September 2015 incident, including a reference to mother being under the influence of illegal drugs.

118. I do accept that mother has tried to cease her dependency on psychotic drugs and she deserves credit for her efforts. But she was abusing drugs for many, many years until 2007 and then relapsed after a four year break. Even if she is free of drugs at this time the evidence shows that it is more likely than not that she will relapse.

119. Mother recognises that she needs support to address her depression and unresolved grief. There is scant evidence to support her case regarding steps taken to obtain and maintain support. She spoke of attending Narcotics Anonymous once per month for four months but this ceased when she reconciled with father in August 2015. She said that since October 2015 whenever she feels tempted to take drugs she will call whoever is available to her for support. In that connection she gave the first name only of a person who works at a drug abuse support project some distance away. She said that she has support from an unnamed church minister who is a recovered drug addict. She provided no detail, no statement or letter from any of these people. She had not contacted the social worker to discuss with her the efforts she was making and to ask her to contact these sources of support. Between September 2015 and January 2016 mother made no contact with the social worker.

120. The assessment of mother's parenting took place over five sessions during July and August 2015. On the mother's case she was not using cannabis at this stage. The sessions took place in the child friendly environment of various children's centres.

121. There was a dramatic change in mother's parenting style during the assessment. In the early stages she was unresponsive and indifferent towards the children, preferring to spend a significant amount of time on her mobile phone. As time progressed she began to engage more and was less volatile in her responses to the children. Mother felt that it was her medication which helped her to be calmer and she acknowledged that her angry responses had been inappropriate. Unfortunately she then presented as emotionally flat and missed behaviours by the children which she should have addressed.

122. Mother's attention to the physical safety of the children was generally good but she was easily distracted and occasionally unaware of some risky behaviours by the children. She tended to shout at them and could become angry suddenly. Her use of 'time-out' as a means of controlling unacceptable behaviour was inconsistent and confusing for the children. On one occasion she grabbed J by the arm and began to drag him to the time-out chair when he was resistant. Other times she would give up on trying to manage their behaviour.

123. She did show capacity to play well with the children but lacked the ability to involve them all, preferring to concentrate on the child who was most willing. She had a tendency to favour L who received the most attention. Her emotional availability and demonstration of affection varied with her mood.
124. An incident during the session at the end of July 2015 highlights the concern about the care that K and L would receive from their mother even if she were drug free and not living with the father. She and the children were in the garden blowing up balloons. One was sent up into the sky and as L watched mother remarked that it was “going up to heaven to see granddad”. She started to write messages on balloons for the boys to release. K and L were enjoying this but J was inside creating a den for himself. They then all climbed into the den with J which was a squeeze and which the children found very funny. All were relaxed and having fun. Mother’s mood changed abruptly when the boys mentioned that they had been to the seaside with their father and had a good time. Ms B described the sudden change in mother’s mood as like ‘flicking a switch’. She was very angry and went over to Ms. B demanding to know why father was allowed to have such trips and she was not. Her anger and attitude were witnessed by the children who started to play in a rowdy, destructive manner, as a way of coping with the situation. They were visibly distressed.
125. Mother claims that her volatility was due to her relationship with the father. At this stage she and father had been separated for about ten weeks and she was (supposedly) drug free. Yet she could not control herself.
126. After years of court proceedings with suspended orders and suspended warrants of possession mother was about to lose her home finally on 9 February. This is another manifestation of mother’s inability to sort out her life in order to demonstrate that she can meet the children’s needs and keep them safe from further harm.
127. During contact sessions since the parenting assessment was completed mother still struggles to manage the children. The social worker, Ms. B and the Guardian are firmly of the view that mother could not manage the care of K and L because she cannot be consistent in any aspect of parenting. Although this was not specifically dealt with in the evidence, because there is no question of K and L being separated from each other,

for completeness I make it clear that due to the mother's volatility and chaotic lifestyle even just one of the children would be at risk of further harm in her care.

128. Mother's counsel sought to explore what support could and should be provided to her client in order to assist her to meet the needs of K and L. All professional witnesses made the same point: there is no support that can keep the children safe from harm in their mother's care due to her volatility. Only she can resolve her underlying psychological problems and there is little evidence that she has even started on that road.

129. Although the father does not at this stage put himself forward as a carer for any of the children I must record that I am satisfied on the evidence that he is not able to care for any of them. He cannot provide calm and consistent parenting and K and L are frightened of him. During Mr. P's assessment father spoke of deeply damaging events in his own childhood. He also is on medication for depression and takes an anti-spasmodic, Diazepam. What is known of father indicates that he needs intensive psychological work and support to address why he has relied on drugs and alcohol to relieve the pain of his past. I do not accept that his relationship with mother is the main cause of his behaviour.

130. Mother put forward her own mother as a carer for the children. However the maternal grandmother is elderly and has serious health problems. She admitted that she could not possibly cope with the children. Mother had put forward the former girlfriend of her eldest son to support the maternal grandmother. This person withdrew as she has only bed and breakfast accommodation with her baby. Mother was heard shouting, swearing and arguing with her on 7 June 2015. Both of them were drunk at the time. In the witness box mother said that she named this young woman as potential carer as "I just wanted to keep my children out of the care system – not my best decision." This poor judgment with its lack of focus on the children's best interests is most concerning.

131. Father put forward as potential carers of the children a married couple, friends with whom he was living after leaving the family home. There was no evidence of any close relationship between the boys and this couple. Furthermore the couple had four children

in their household already. The husband has a criminal record and a history of alcohol abuse. The wife has suffered with some mental health difficulties following alcohol abuse.

132. There are no other family members who have put themselves forward as potential carers of any of the children.

133. The range of orders available to the court is (i) no order, whereby the children would live with their mother, (ii) a care order under which the children would live in foster care or (iii) adoption whereby the children would acquire a permanent home with new legal parents.

134. The Guardian carried out a comparative evaluation of these options in accordance with the guidance in Re B-S (Adoption: Application of s 47(5)) [2014] EWCA Civ 1146. The social worker considered and agreed with the Guardian's evaluation. Both of them are of the firm view that adoption is the only option which meets the needs of the children.

The care plans for K and L

135. Mother's counsel criticised the local authority for its changing care plans which she said reflected badly on the quality and therefore reliability of the social worker's judgment. The care plans for the expected final hearing in November were formulated in September after the parenting and psychological assessments and the hair strand test results had been filed. The local authority was not able until September to form a final view on whether any of the children could be returned safely to one of their parents or to another family member or family friend.

136. The social worker said in oral evidence that initially the care plan was for long-term fostering. She was aware that K might be regarded as too old to be adopted and she was clear that he and L must stay together. The children were happy where they were at that time but she was not sure that the placement could be long-term. What changed her view regarding adoption was the message received from the local authority Adoption Team that there is a good chance of both K and L being adopted together.

137. The September care plan stated that a decision was awaited on the possibility of the boys being placed for adoption. Having formed its view that the care plan for K and L should be adoption the local authority was required to seek the view of the Agency Decision Maker on the possibility of any of the children being placed for adoption. The ADM must consider whether there are any suitable family placements for the children. Only if the answer to that question is in the negative could the ADM agree that an adoptive placement can be sought. The local authority was not able to issue applications for placement orders until the ADM approved the children for adoption. .
138. The applications for placement orders were issued on 3 November. Shortly after that date the final hearing was adjourned until February.
139. The care plans for K and L dated 21 January 2016 provided that if a search for prospective adopters for K and L together were unsuccessful after three months, the local authority would commence a search for two separate families, an adoptive placement for L alone and a long-term foster placement for K alone. This was said to be with the expectation that the two sets of carers would understand the need for direct contact between the boys and would support and facilitate it.
140. In her final report the Guardian was not prepared to endorse that care plan without an assessment of the effect on K and L of being separated. Given what the social worker had concluded in the existing sibling separation assessment I was surprised to see this care plan and indicated at the commencement of the hearing that the local authority may have an uphill struggle in convincing the court that this would be in the best interests of K and L.
141. On the second day the local authority changed its care plan to a commitment to keep K and L together. The plan is now that there will be a focussed search for three months for an adoptive placement together. If that search does not yield an adoptive placement for K and L together, the search will be broadened to include a concurrent search for a long term fostering placement for K and L together.
142. The social worker was frank in admitting that the January care plan was formulated against her better judgment and under pressure from management. In her oral evidence

she was adamant that the damage to K and L of losing each other outweighs the possible benefit of adoption and she would not be deflected from her position again.

143. Whatever order I make these two boys will remain together. That is an issue upon which all are agreed. Despite this wobble in her commitment to keeping K and L together I do not consider that the social worker's judgment on what is best for the children was compromised. I was impressed with her; she has taken great care to talk to the children and develop a good understanding of them and their wishes, feelings and needs.

Comparative welfare analysis

144. The advantage of living with their mother is that K and L would retain their relationships with her, their father and their wider birth family. They would retain a strong sense of their identity as members of that family. They would receive love, affection and attention from their parents, siblings and wider family as they grow up.

145. However, the love, affection and attention would be dependent on the mother's mood and volatility within the family and therefore would be inconsistent. On the evidence of what they have said to the social worker and to the Guardian I am satisfied that K and L would not wish to go home. Living with their mother would cause them further significant emotional, psychological and physical harm as well as impairment of their educational development. This is because of the harm that they have already suffered and the likelihood that they would suffer further significant harm due to the risks presented by their parents as set out earlier in this judgment.

146. Long-term foster care would provide K and L with the reparative parenting they need and would protect them from further harm in their day to day lives. They would be able to realise their potential educationally.

147. If K and L do not return to live with their mother both parents wish for them to remain living with the current foster carers, who are respected and admired by the parents. They chat to the foster father when he collects the children after contact sessions and they find him easy and pleasant to communicate with. There was much exploration at the hearing of the possibility of this becoming a permanent placement for the children.

148. These foster carers are agency foster carers and are therefore expensive for the local authority to maintain in the long term. They do not wish to become local authority foster carers as they would suffer a cut in their income. Nor do they wish to become Special Guardians for K and L. They foster another child and becoming Special Guardians for K and L would be inconsistent with the nature of their commitment to that child. The foster mother is approaching sixty years of age and would probably not be approved as an adopter for such young boys even if she wished to be so, which she does not.
149. The social worker said that if no adoptive placement were identified by the end of three months, at the permanency planning meeting she would press for further consideration of the boys remaining at the current placement. She sees that as the best option for the boys after adoption.
150. I cannot determine placement for the children. I can only determine the issue of which of the three stated options is best for the children.
151. Counsel for the mother submitted that I should refuse the application for placement orders in order to force the local authority to examine the possibility of the boys remaining in this placement more thoroughly. I would be overstepping the powers provided by statute if I were to accede to that suggestion. In any event I do not consider that it would promote the welfare of the children.
152. Even if the children could remain with the current foster carers they would not achieve a placement that brings real permanence because foster carers do not make the lifelong commitment that adopters make and therefore foster placements are not as secure as adoptive placements. A placement breakdown would be highly destabilising for K and L. They need to make only one move of placement.
153. As fostered children they would grow up in the care system, subject to periodic reviews of placement and contact and with the stigma of being 'looked after children'.
154. As fostered children K and L would retain their family names and identity and would have direct contact with their parents at least several times per year, and with other

members of their birth family from time to time as they grow up. Direct contact with their parents would promote their sense of identity. They would be able to have direct contact with J, their only surviving full sibling who has not been adopted.

155. Continuing contact with their parents would expose K and L to the chaotic lifestyle of their parents and could cause them anxiety. The quality of contact is variable and father does not attend consistently. Nor can he be relied upon to remain calm. There is significant potential for contact with their parents to have a destabilising effect on the children's placement.

156. Mother's counsel explored in evidence the issue of contact between J, K and L and their four half siblings, now aged 22, 21, 20 and 18. In her first report the Guardian had said that promoting contact with the children's older siblings needs to have ongoing consideration. She suggested that they could occasionally join mother's contacts.

157. The social worker said that contact with the older siblings would be acceptable if relations were good between them and their mother. When mother had asked the social worker about the children having contact with their older siblings family relationships were difficult. There is no evidence that the request was repeated by mother, or that any of the older siblings or other family members have asked to see the children.

158. The references in the housing association notes to mother's eldest son, now aged 22, indicate that his lifestyle is also bound up with substance abuse and violence. On 21 January 2016 a neighbour called the housing association in a distressed state to report that there was shouting and screaming at mother's home. The police were called to the property on two consecutive nights. The suspicion is that it was father but in her oral evidence the mother said that her eldest son turned up, he was drunk and she would not let him in; it was she who had called the police to get him to leave. In oral evidence, when asked about incidents of anti-social behaviour in 2013, mother said that sometimes her eldest son was involved.

159. The social worker asks the boys whom they would like to see and they do not mention any of their older siblings.

160. Ms. B said in her oral evidence that the children were not particularly interested in talking to or about the wider family. K would ask his mother about his pet dog but not about the older siblings or the wider family. Ms. B observed a telephone call from the children's maternal grandmother on J's birthday. J preferred to go and play.
161. The mother provided no evidence, in writing or orally, to support a case that her four adult children are important to J, K and L such that contact with them would promote the welfare of the children.
162. Mother's counsel asked father about this issue and his response was that the older siblings are upset that they are not seeing J, K and L. This is the only evidence of these relatives expressing any wishes and feelings regarding the children. Father said that J, K and L do talk about their older siblings but it is "not a big issue", they are more focussed on what their father has brought them.
163. This court has no evidence that the children's relationships with any of their older siblings are important to them or that there is a benefit in having contact with them beyond promoting a sense of identity. The same applies to any other members of the maternal and paternal families.
164. As far as the children's eldest half sibling is concerned there is evidence that contact with him would be harmful to their welfare as he appears to live a similar lifestyle to that of his mother.
165. Adoption would provide security and stability for the remainder of K and L's childhood. The children would be matched with appropriate carers who have the maturity and life skills to provide the parenting that K and L need and give them the opportunity to develop their full potential. Foster carers may have similar skills but the crucial difference is that adopters make a lifelong commitment and are likely to cope with much more challenging behaviour from children whom they love as their own.
166. Adoption would provide much greater protection from harm as there would be no direct contact and no exposure to whatever is going on in their parents' lives.

167. If adopted the children would no longer have such a high level of professional involvement in their lives, with meetings and reviews of their wishes, feelings and circumstances. They could have a more 'normal' life.
168. The disadvantage of adoption is the severance of legal ties and the cessation of direct contact with birth family. The Guardian pointed out that this can leave a child with a sense of loss and uncertainty regarding their identity and origins. Adoptive parents receive less support than do foster carers to address the children's emotional and behavioural difficulties. The Guardian's view is that life story work and clear information about their parents and their personal history helps to ameliorate some of those feelings. Suitable adopters for these children would have the skills needed to identify and deal with emotional and behavioural difficulties.
169. The boys have thrived since removal from their parents' care. K and L have some negative views about their parents, particularly their father. They are always ready and happy to leave contact. These facts support a conclusion that the distress caused to the children by the cessation of contact with their parents would not outweigh the advantages to them of adoption. The cessation of contact would be achieved over time and the children's questions could be dealt with within life story work. There is no evidence that severance of links with the wider family would cause distress to the children.
170. Cessation of contact with J has caused me much concern. Although it is hoped that contact might be possible using Skype for example, the chances of that being feasible are unknown. I therefore approach this question on the assumption that all contact would cease. Mother's view is that this would be particularly harmful to J and would affect him for the rest of his life, just as her older four children have been affected by the two children being adopted in 2007. She said that it would be harmful to K and L not to see J again as "they are a close knit little unit at home."
171. The sibling separation assessment demonstrates the problems in the children's relationships, which Mr. P described as dysfunctional. That is not to say that they would not miss each other. The Guardian's view that J would miss K and L more than they would miss him is fully supported by the evidence. I cannot ignore the effect on J but

the decision has to be based on the best interests of K and L. While recognising that it would be a loss to them the Guardian was of the view that the strength and quality of the relationships with J were not such as to outweigh the benefits of adoption. I agree.

172. K and L are strongly attached to the foster carers and are not aware of the likelihood that they will have to move. Their reaction to a move from them is unknown. The Guardian's response to this point was that it does not alter her opinion that permanence through adoption is what the children need, and as soon as possible. She said that she has faith in adoption workers to effect the transition in a manner that is considerate to the boys' needs. The foster carers will provide a home for the boys for as long as is needed. It can be inferred that they would play their part in engendering a successful transition from their care to that of adopters.

173. Having weighed and balanced all the evidence and considered the advantages and disadvantages of the three options it is clear to me that the option which is in the best interests of the children is adoption. This is the option which will promote their welfare throughout their lives and I am satisfied that nothing else will do.

174. At age 7 K is in the top end of the range for success in finding a suitable adoptive placement. L is only just 5 and his prospects are much better not only due to his age but also because he has sustained less harm than K. The commitment to keeping the children together means that the prospects of achieving an adoptive placement for both together are lower than achieving a placement for L alone. The evidence from Ms. D was that her role in the local authority Adoption Team is to place children who are difficult to place. She was fairly confident that a number of potentially suitable carers would be interested in K and L together.

175. In recognition of the possibility that no suitable adoptive placement would be found the local authority's care plan proposes dual tracking as outlined above. This approach is not inconsistent with a finding that nothing but adoption will do: see CM v Blackburn with Darwen Borough Council [2014] EWCA Civ 1479. The delayed dual tracking plan is a matter for the local authority in exercise of its duty to avoid undue delay in achieving security and stability for the children.

176. I am satisfied that the effect on K and L of ceasing to be members of their birth family and become adopted children would be more beneficial than harmful to them throughout their lives.

177. For these children, with their history, and the needs they have arising from that history, adoption is a proportionate interference with their right to family life with their birth family and with the rights of the birth family to a family life with K and L. Adoption is necessary in order to meet the needs of the children and to promote their welfare throughout their lives.

178. Having given careful consideration to all the evidence I have come to the conclusion that the welfare of K and L throughout their lives requires adoption as opposed to something short of adoption and that their welfare requires parental consent to be dispensed with.

Recorder Jacklin QC

IN THE BOURNEMOUTH & POOLE FAMILY COURT

IN THE MATTER OF THE CHILDREN ACT 1989

AND IN THE MATTER OF J, K AND L (MINORS)

SCHEDULE OF FINDINGS SOUGHT IN RESPECT OF THRESHOLD

1. The relevant date is the date of the Local Authority's application to the Court for protective measures, namely 21 May 2015. As at the relevant date, the children were suffering or were likely to suffer significant harm and the harm or likelihood of harm was attributable to the care given to the children or likely to be given to them if the order is not made, not being what it would be reasonable to expect the parents to give them.
2. The significant harm and/or likelihood of significant harm is evidenced by the following:
 - i. The parents have historically struggled to meet the needs of their children, with seven children having been removed from their care at the conclusion of previous proceedings (2006) and further care proceedings concluding by way of a Supervision Order subsequently. Concerns in both sets of proceedings have related to drug misuse, neglect, and domestic abuse. These areas of concern have prevailed and have exposed the children subject of these proceedings to emotional and physical significant harm.
 - ii. There have been long-standing concerns about the family home conditions since the children were made subject to Child Protection Plans on 21 July 2014. The parents and all three boys were living in one room and the main bedroom was uninhabitable [C6] and covered in mould. This has caused the boys to be directly exposed to the parents' aggression and substance misuse, causing them significant emotional harm. Despite an improvement in home conditions in 2015, concerns have continued, including the police noting the kitchen and lounge to contain dog

vomit [F112]. The boys would therefore be at risk of further physical harm in such conditions.

- iii. The parents have struggled to maintain appropriate housing for the children and a Warrant of Eviction has recently been issued in respect of the family home and a date of 9 February confirmed for mother's eviction [F188]. As at date of threshold there was therefore a risk of significant harm arising from the parents' inability to maintain appropriate accommodation.
- iv. Both parents have a history of alcohol and substance misuse and the mother accepts having regularly used legal highs at the family home during and prior to proceedings [F115] and to smoking cannabis daily up until September 2015 [C93]. Father has tested positive for cannabis during proceedings [E2] and mother has tested positive for cannabis and heroin use [E136] although the positive test for Heroin use may be the result of passive intake when in the company of a heroin user. The parents' substance misuse has impacted on their ability to consistently meet the needs of their children and has exposed the children to emotional and physical harm.
- v. Substance abuse will have exacerbated the parents' volatility and instability as evidenced repeatedly whilst the children were in their care [e.g. C67-75];
- vi. There is a history of domestic abuse and significant violence and volatility between the parents that the children have witnessed and been exposed to. This has caused the children significant emotional harm. Abuse has continued to occur between the parents during proceedings, such that there is a likelihood of the children being exposed to further significant harm if returned to the parents' care:
 - a. Whilst the children were in the parents' care at the family home there were regular reports of loud and volatile aggressive episodes late at night that were reported by neighbours and, on occasions, required police attendance [C71, 72, 74, 75];
 - b. The father accepts that the all of his children witnessed regular violence between the parents from a very young age [F152, F154];
 - c. The mother accepts that there was volatility, arguments and violence between the parents, necessitating the attendance of the police, that the children were aware of [C92];

- d. Most recently, the emergency services were called to the family home on consecutive nights (13 and 14 September 2015) and found the mother to have sustained a number of different head and body injuries [F120-132]. The mother accepts that during the course of the altercation she hit the father on the head three times with a TV remote [F118].
 - e. L reported to Mr P, chartered psychologist, seeing the parents being violent towards one another [E68]. L is reported as showing a 'frozen watchful expression' when he observes his parents to be angry [E76];
 - f. Although he may not intend to the father comes across as intimidating and angry towards the children and repeatedly shouts at them even when in assessed and supervised contact [E100];
 - g. Neither parent has been able to prioritise the needs of their children and have instead chosen to endure physical violence that the children were exposed to [E29].
- vii. The parents have failed to cooperate with Children's Services and other professionals involved in the care of the children, to the children's direct detriment:
- a. The parents have not engaged or complied with the Child Protection Plans;
 - b. The mother failed to attend the Legal Meeting and refused to discuss issues of concern with the Social Worker on 20 May 2015;
 - c. On 24 April 2015 the parents prevented the Social Worker from leaving their home;
 - d. The staff at the children's school report that the mother has been aggressive and abusive towards staff members when attempts are made to raise concerns about the children with, on one occasion, the mother refusing to allow the school to speak with J's paediatrician and doctor [C19].
- viii. As a consequence of the above, the children have suffered emotional and physical neglect and significant harm.
3. It is contended that the threshold criteria are therefore satisfied in this case.

drafted 2 February 2016
amended to reflect concessions of the parents 5 February 2016