



IN THE FAMILY COURT

Case Number: WD18C01313

24<sup>th</sup> May 2019

Before His Honour Judge Middleton-Roy

Between:

**HERTFORDSHIRE  
COUNTY COUNCIL**

Applicant

- and -

**‘M’**

1<sup>st</sup> Respondent

**‘F’**

2<sup>nd</sup> Respondent

**The Children ‘O’ and ‘Y’  
through their Children’s Guardian**

3<sup>rd</sup> and 4<sup>th</sup>  
Respondents

*Mr Matthew Fletcher*, Counsel, instructed by Hertfordshire County Council

*Mr Julien Foster*, Counsel for the First Respondent

*Miss Geraldine More O’Ferrall*, Counsel for the Second Respondent

*Miss Anne Oakes*, Solicitor for the Third and Fourth Respondents

Hearing dates: 7<sup>th</sup> May to 10<sup>th</sup> May 2019 and 24<sup>th</sup> May 2019

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**JUDGMENT**

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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 children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

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## SUMMARY OF CONCLUSIONS

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1. I will try to explain my decision by not using lawyers' language. I have given a more detailed decision in the written document which follows.
2. This case is about two children, a girl aged 13 and a boy age 9.
3. I have heard a lot of information about the children. I have heard a lot of information about their mother and father. I have also read a lot of paperwork about the family.
4. I have read the older child's very helpful letter to the Judge. The words were very powerful indeed. I have taken her important wishes and feelings into consideration.
5. I have listened very carefully to what has been said. I have given the matter a lot of very careful thought.
6. The law tells me that I must make a decision that is in the best interests of the children.
7. I have heard that the children are loved very much by their mother. That is very clear.
8. I am sure that the children love their mother in the same way.
9. I am sure also that Mum has tried her hardest. She has done many good things for the children.
10. Mum is a vulnerable person. She has a learning difficulty. She also has important life experiences and she does not want to be patronised or spoken down to.
11. I have heard that the children are also loved by their Dad. He knows he has not treated the children as well as he should have and he knows he has upset them a great deal.
12. In the past, the children have both been harmed.
13. Mum and Dad have not tried to harm the children. It has not been done on purpose. But the children have suffered a type of harm that is serious.
14. The efforts made by everyone to help the children to live at home with mum have not worked very well overall. In fact, things got worse over time.
15. Although the children are clean, they have clean clothes and food and they are loved, they have suffered.
16. I have found that Dad was harmful to the children by shouting at them and shouting at their mother and by harming them physically. I have found that the allegations Mum has made about Dad are true. Dad may not have meant to be harmful to the children but his behaviour was very much a worry. The children were harmed by him.
17. The children have important health needs. The people that are there to help the children have been pushed away by Mum. That has caused the children harm.

18. The people that are there to help Mum with her own health needs have been pushed away by Mum. That has not helped Mum to get the help the children need.
19. I have thought very hard about whether we should try again. The council and the Guardian think that we have tried everything, over quite a long period of time. They think that trying again will not be good for the children.
20. Everyone wants to try to keep families together. No one wants to split up families. Sometimes, Courts must make difficult decisions to make sure children are not harmed.
21. I agree that everything that could be tried to help the family stay together has been tried.
22. I agree with the council and the Guardian. There is nothing else that can be done that could help enough.
23. The council say the best thing for the children is to have a chance with new carers. The Guardian agrees with that.
24. The council say that the best thing for the children is for them to be with different carers. The Guardian agrees with that also.
25. I know it will make Mum very sad but I have reached the very firm decision that the council and the Guardian are right.
26. I know that will make the children sad also.
27. I agree that the best thing for the children, the right thing for them, is to make Care Orders and for them to have new, specialist, carers. This will help them to meet their needs and help them to reach their potential.
28. When the children are in their new homes, it is very important for the children to spend regular time with their mother. I agree that this should be every 2 months.
29. It is important also for the children to spend time with each other regularly. I agree this should be every 2 weeks.
30. The children do not want to see their father. I agree that the children should have time to settle after their big changes. Dad needs to do more work to help him understand why the children feel the way they do about him.
31. I hope in time that Mum will understand this is the best thing for the children. I hope also that Mum and Dad will both get the support they need to help themselves.
32. It will be the best thing for the children if Mum can help to support the children in their change of home, even though this will be very upsetting for her. She can help the children to understand that they will be getting the help they need and she will be getting the help she needs. If Mum can help to make the big changes less upsetting for the children, this will really help the children.

## **His Honour Judge Middleton-Roy:**

### Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children and the adult parties in this judgment have been anonymised, having regard to the implications for the children of placing personal details and information in the public domain.
2. The Local Authority is identified by name. The Local Authority is a public body with a statutory responsibility for the welfare and protection of children and support of families. Where that work has resulted in Court proceedings, the Local Authority is held accountable for its actions with families by the Court. The need for a public body to be identified when acting in respect of citizens is important. This Court concludes that naming the Local Authority would carry with it some risk of identifying the children. Having balanced the risks between transparency of justice on behalf of the State where life changing decisions are made for children, and ensuring their privacy, welfare and safeguarding needs are taken seriously and protected, this Court concludes that the public interest in identifying the applicant Local Authority is so important that it outweighs any risk of identification of the children.
3. The anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

### The Parties

4. The Court is concerned with two children. The oldest child is a girl, aged 13 years who I will refer to in the judgment as 'O'. The youngest child, her brother, is 9 years old. I will refer to him in this judgment as 'Y'.
5. The applicant Local Authority is Hertfordshire County Council.
6. I will refer in this judgment to the mother of the children as 'M' or as 'mother'.
7. I will refer in this judgment to the father of the children as 'F' or as 'father'.
8. The children are both parties to the proceedings through their Children's Guardian, Miss Chambers.
9. No disrespect is intended to the parents or the children by not using their names.
10. The Final Hearing took place over four days ending on 10<sup>th</sup> May 2019. Each of the parties in the case was legally represented at the Final Hearing.

### The Applications

11. Hertfordshire County Council applied on 21<sup>st</sup> November 2018 for Care Orders for both children. Hertfordshire County Council has presented to the Court a Care Plan for the children both to receive long term care, outside of the care of their parents. The Local Authority's plan is for the children to have separate placements with the aim of helping to meet the children's individual needs.
12. The mother and father are no longer in a relationship. They separated around three years ago.
13. The children's mother does not agree that the children should be placed in Local Authority care. She does not agree that the children should be separated from her or from each other as brother and sister. She very strongly opposes the Local Authority applications.
14. The father supports the Local Authority's application for Care Order and he supports the plans for the children.
15. The Children's Guardian also supports the Local Authority's applications and Care Plans for both children.
16. The father applied to the Court in October 2017 for a Child Arrangements Order under case number WD17P01124. He sought an Order to establish a pattern of time for the children to spend time with him. He tells the Court that no progress has been made to re-establish a relationship between him and the children since he left the family home three years ago. That application for a private law Order has been joined with these proceedings for public law Orders. However, although the father seeks to re-establish a relationship with his children, he told the Court at this Final Hearing that he understands that therapeutic intervention is needed to help this process. He does not now seek any specific relief from the Court.
17. In respect of the father's application for a Child Arrangements Order, the mother strongly opposes an Order being made. She tells the Court that the children do not want to see their father as he was physically and emotionally abusive to them. The mother raised several allegations of domestic abuse perpetrated by the father. In the course of these public law proceedings, the Court has considered those allegations and makes findings as detailed later in this judgment, as those findings are relevant to the issue of the welfare of the children.
18. The Local Authority does not support a Child Arrangements Order being made. The Local Authority tells the Court that it has been unable to access therapy for the children as their mother refused to provide consent for a professionals meeting. The Local Authority is concerned that the children have a negative view about their father because the mother shares her negative views of him with the children, causing the children to be hostile about their father.
19. The Children's Guardian does not support a Child Arrangements Order being made.

## Background

20. In short summary, the family has been known to the Local Authority for almost ten years, since October 2009. The Local Authority has provided support services, as well as having safeguarding concerns.
21. In July 2016, the Local Authority received information about domestic abuse between the mother and father. It was alleged that the child, O, had suffered an injury during an argument between her parents.
22. The children were both made the subject of Child Protection Plans on 4<sup>th</sup> January 2017 until 11<sup>th</sup> June 2018 under the category of neglect.
23. The Local Authority began the ‘Public Law Outline’ (‘PLO’) process to see if it was possible to reach agreement about what needed to happen to protect the children from harm, so that Court proceedings could be avoided. It was reported that the mother would not give permission for a psychological assessment or a parenting assessment to begin.
24. Court proceedings started on 13<sup>th</sup> November 2017 under case number WD17C0124.
25. On 15<sup>th</sup> May 2018 those Court proceedings ended when the Lay Justices made a Supervision Order for 12 months, with the aim of helping, advising and monitoring the children. The Lay Justices’ reasons record that the Supervision Order was made by agreement. Additionally, the mother signed at Court a Written Agreement which set out a list of things that were expected to happen to help the children and the mother get the support they needed.
26. The Lay Justices reasons record the following:

*“The welfare of the children has already been harmed and this has impacted on their behaviour, education and wellbeing. It is essential that steps are taken immediately to make appropriate changes. This will be achieved by complying with the written agreement. If it is not complied with, there will be little option other than for the local Authority to return the matter to Court so that other more interventionist options can be considered.”*
27. The children remained living with their mother at home throughout those original Court proceedings. The children have continued living with their mother throughout the period of the 12-month Supervision Order.
28. Following the conclusion of those Court proceedings, the Local Authority became concerned that the mother was not complying with the Written Agreement and was not engaging with the Local Authority, such that the children were not receiving the help needed. The children continued to be the subjects of Child in Need plans, reviewed on a monthly basis and the children were visited by their allocated social worker every four weeks. The Local Authority was concerned that a great deal of support was being offered to keep the children safe but the children were still suffering significant harm in their mother’s care. The Local Authority was concerned that the children were not receiving consistent, stable, safe and reliable care from their mother despite all the support.

29. The Local Authority issued a fresh application for Care Orders for both children on 20<sup>th</sup> November 2018, six months after the end of the last Court proceedings. It is this application that is the subject of these current Court proceedings.
30. The children's allocated social worker and Children's Guardian have both changed since the previous Court proceedings. This is said to have been with the aim of giving the mother confidence to engage with professionals and with the aim of enhancing her parenting capacity.
31. The Local Authority now invites the Court to make a Care Order for both children and invites the Court to approve plans for the children to be placed in separate care placements. The Local Authority proposes that the children have regular sibling contact to allow them to rebuild their sibling relationship.
32. The mother strongly opposes the Local Authority's Care Plans and wishes for the children to remain in her care. She denies that she has been resistant or obstructive with the Local Authority to affect positive changes for the children.
33. During these proceedings, the Court heard evidence from the mother and from the father. The Court heard evidence also from an independent Psychologist, Dr Phibbs, from the Allocated Social Worker Miss Fourie, from the previous Social Worker Miss Wood and from the Children's Guardian.
34. At the end of the hearing on 10<sup>th</sup> May 2019, the Court reserved its decision. This decision is handed down on 24<sup>th</sup> May 2019.
35. In reaching its decision, the Court has read all the evidence in the case, whether or not specifically referred to in this judgment and has considered carefully the submissions made on behalf of each party.

#### The Relevant Law

36. In any application for a Care Order or a Supervision Order, the Court must apply both section 31 and section 1 of the Children Act 1989, to each relevant child individually.
37. Section 31(2) of the Children Act 1989 provides that:  
"A Court may only make a Care Order or Supervision 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."
38. The category of a child being beyond parental control does not apply in this case.
39. These provisions are commonly called the threshold criteria.

#### Meaning of harm

40. Sections 31(9) and 105 of the Children Act 1989 provide that:

"*harm*" means ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;

“*development*” means physical, intellectual, emotional, social or behavioural development;

“*health*” means physical or mental health.

Welfare

41. If satisfied that the threshold criteria are made out in respect of the child, the Court must proceed to consider section 1 of the Children Act 1989. At this second stage, the welfare of the child is the Court’s paramount consideration.
42. Section 1(1) of the Children Act 1989 provides that when a court determines any question with respect to the upbringing of a child, the child’s welfare shall be the court’s paramount consideration.
43. Section 1(3) of the Children Act 1989, commonly referred to as the “welfare checklist,” provides that the Court shall have regard in particular to—
  - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding);
  - (b) the child’s physical, emotional and educational needs;
  - (c) the likely effect on the child of any change in her circumstances;
  - (d) the child’s age, sex, background and any characteristics of the child which the court considers relevant;
  - (e) any harm which the child has suffered or is at risk of suffering;
  - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child’s needs;
  - (g) the range of powers available to the court under this Act in the proceedings in question.
44. Practice Direction 12J sets out the following further helpful definitions:

*"domestic abuse"* includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment;

*"coercive behaviour"* means an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten the victim;

*"controlling behaviour"* means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
45. Under Section 1(5), the Court should not make any Order with regard to a child unless it is satisfied that it is better for the child to make that Order rather than to make no Order at all.
46. The Human Rights Act 1998 applies to these proceedings. Under Article 8, there is a right to private and family life. Each individual family member in this case has that right, including the children individually, the mother, the father and the wider family. These rights must be



balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks.

47. In reaching a decision in relation to each of the children, the Court has regard also to the following principles derived from the legal authorities. These principles have been applied in this Court's decision making, whether or not specifically referred to.
48. Intervention in the family may be appropriate but the aim should be to reunite the family when the circumstances enable that and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child.<sup>1</sup>
49. In exercising the jurisdiction to control or to ignore the parental right, the Court must act cautiously, not as if it were a private person acting with regard to his own child, and must act in opposition to the parent only when judicially satisfied that the welfare of the child requires that the parental right should be suspended or superseded.<sup>2</sup>
50. In deciding issues in respect of the child's welfare, the Court's task is not to improve on nature or even to secure that every child has a happy and fulfilled life but to be satisfied that the statutory threshold has been crossed.<sup>3</sup>
51. The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature.<sup>4</sup>
52. Society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the State to spare children all the consequences of defective parenting. In any event, it simply could not be done.<sup>5</sup>
53. We are all frail human beings, with our fair share of unattractive character traits, which sometimes manifest themselves in bad behaviours which may be copied by our children. But the State does not and cannot take away the children of all the people who commit crimes, who abuse alcohol or drugs, who suffer from physical or mental illnesses or disabilities or who espouse antisocial political or religious beliefs.<sup>6</sup>
54. The Court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the practical assistance and support which the authorities or others would offer.<sup>7</sup>
55. The Court's paramount consideration remains the child's welfare.

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<sup>1</sup> *Re C and B* [2001] 1 FLR 611, at para 34

<sup>2</sup> Fitzgibbon LJ in *Re O'Hara* [1900] 2IR 232

<sup>3</sup> *Re B (A Child)* [2013] UKSC 33

<sup>4</sup> Lord Templeman in *Re KD (A Minor) (Ward: Termination of Access)* [1988] 1AC 806

<sup>5</sup> Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050

<sup>6</sup> *Re B* [2013] UKSC 33, per Baroness Hale

<sup>7</sup> *Re B (A Child)* [2013] UKSC 33

### Threshold

56. In the previous Court proceedings, the Lay Justices made findings in accordance with the Local Authority threshold statement. This Court does not go behind those findings and the findings form a firm foundation when considering the issues in the current proceedings. In summary, the Lay Justices' findings included the following:
- (i) the children suffered emotional harm from witnessing domestic violence between their parents;
  - (ii) the children's education needs were not being met;
  - (iii) the mother did not accept her parenting had impacted on the children;
  - (iv) the child O had been excluded from school transport due to her and her mother's behaviour;
  - (v) the child O started the academic year later as the mother did not return a signed transportation agreement;
  - (vi) the mother did not accept the reasons for the child's exclusion from school and sought to blame other parties;
  - (vii) the child O was at risk of social isolation due to her behaviour and the mother had removed her or not brought her to groups or clubs;
  - (viii) the child Y has been exposed to frequent bad language and challenging behaviour from his sister which he had begun to imitate and was also at risk of social isolation;
  - (ix) the children were exposed to their mother's negative views, adult conversations and poor engagement with professionals;
  - (x) the mother's interaction with professionals had declined since May 2017;
  - (xi) the mother had been increasingly agitated and angry and was observed on several occasions using inappropriate language in the presence of the children or wishing to discuss adult topics in their presence;
  - (xii) the mother was discussing O's exclusion from school with the Social Worker in O's presence;
  - (xiii) the mother refused to join the Child Protection Conference in September 2017;
  - (xiv) the mother spoke with the children about the PLO meeting in September 2017 telling them, "they're not taking you away";
  - (xv) the children were exposed to the deficits in their mother's parenting which was having a significant effect on the children's development and welfare;
  - (xvi) the mother refused to participate in a psychological assessment;
  - (xvii) the mother refused to engage with Child and Adolescent Mental Health Services;
  - (xviii) the mother is unable to prioritise the children's needs and exposes them to her changing mood;
  - (xix) the mother's own traumatic childhood impacts on the parenting she provides the children.
57. In the current proceedings, the relevant date for determining the threshold criteria is 22<sup>nd</sup> November 2018, when the Local Authority commenced proceedings.
58. The Local Authority asserts that at the time protective measures were taken, the children had each suffered or were likely to suffer significant harm as a result of the care given to them by their parents, not being what it would be reasonable to expect a parent to give to a child.
59. The Local Authority relies upon the following assertions set out in its Final Threshold Statement:
1. On the relevant date, the mother failed to comply with the written agreement dated 15.05.2018 despite significant support and as a result there had been no meaningful change to the care given to O and Y, resulting in the children continuing to suffer significant emotional harm and neglect. In particular:

- a) The mother failed to access the therapeutic intervention needed to address her significant therapeutic needs and fails to appreciate the need for such work;
- b) The mother failed to engage with services to improve the children's functioning and presentation and to address their therapeutic needs. In particular, the mother failed to ensure the children received support from CAMHS and remained resistant to support;
- c) The children witness the mother's mood swings and unregulated emotional responses. The father has been present when the mother has displayed this behaviour in the presence of the children;
- d) The mother projects her negative views of both the father and professionals onto O. The father has been present with this has happened. In particular, the children's views about contact with their father have been significantly negatively influenced by the mother.

2. The mother continues to be obstructive and resistant to support services to ensure positive and meaningful change to the care given to O and Y resulting in the children continuing to suffer significant emotional harm and neglect.

60. The Local Authority is not seeking any findings in relation to the children being beyond parental control.

#### Evidence

##### *Psychological Assessment of the Mother*

61. Dr Phibbs, Chartered Clinical Psychologist completed a cognitive assessment of the mother in the previous Court proceedings, on 24<sup>th</sup> January 2018. Dr Phibbs concluded that the mother is within the Borderline Learning Disabilities Range:

*“Her cognitive profile would suggest that she struggles with all aspects of cognition that were tested...this is likely to impact on many areas of her functioning including verbal comprehension...she has needed support in learning for a considerable portion of her childhood and early adulthood...I also note that [M] may struggle with some aspects of social communication...it is highly likely that there is an interaction between [M's] cognitive difficulties and her psychological and emotional presentation.”*

62. Dr Phibbs noted that the mother has considerable life experience and does not want to be patronised or spoken down to.

63. A thorough and detailed psychological report of the mother was prepared by Dr Phibbs dated 6<sup>th</sup> April 2018. Dr Phibbs' many professional opinions and conclusions can be summarised as follows:

- a. the mother's cognitive difficulties impact on her ability to engage with support offered to her;
- b. she may become overwhelmed with information;
- c. she may struggle to process a lot of information quickly, which may make her anxious;
- d. her responses to anxiety seem to include avoidance and lashing out at individuals;
- e. she can manage aspects of the children's lives without consistent support;
- f. the stress she feels is likely to impact on her intellectual functioning;
- g. the more stress she is under the more difficulty she will have managing complex tasks like remembering appointments and managing on a day-to-day level. This may have an impact on the children but it may also have an impact on her engagement with services;

- h. at the current time the mother lacks trusting professionals because she sees that they have only caused her difficulties or fail to support her;
- i. it is highly likely that if the mother finds a task particularly difficult or overwhelming because aspects of it require understanding of complex information, she may become avoidant, as avoidance seems to part of her personality structure;
- j. those trying to help and support the mother may find that she appears to understand and agree with their input but not to manifest any change in behaviour over time;
- k. the mother has traits in her personality that tend towards avoidance and dependency. In general people with avoidant personality traits tend to distance themselves from painful or negative experiences and they adapt to doing this by fearing or mistrusting others. They tend to be quite vigilant anticipating bad things might happen. They may struggle to relate to others because they like to keep a distance and may lack trust;
- l. the impact of the mother's learning disability on her ability to parent the children is a complex issue;
- m. it is not solely her borderline learning disability that impacts on her managing routine tasks or caring for the children. It is also likely to be a combination of psychological factors including personality traits, layered upon cognitive difficulties;
- n. the mother may be developing a co-dependent relationship with her daughter, O;
- o. the mother may struggle to adopt a parental role with O especially when it comes to managing negative or difficult behaviours;
- p. the mother's scores during assessment indicated aspects of bipolar or manic episodes. These may be a result of her impulsivity and irritability. Further evidence for this can be seen in the mother's inappropriate language and presentation in meetings and her aggressive behaviour towards school staff;
- q. the mother scored at a significant level for delusional disorder: People who suffer with delusional states can be paranoid and can struggle with ideas of persecution. In these states their moods can be hostile and they may feel picked on and mistreated. People who suffer with these kinds of difficulties may be hyper vigilant, suspicious and alert to possible betrayal;
- r. there are aspects to the mother's presentation that are suggestive of a preoccupation with beliefs that all services are negative and may be out to cause her and her children harm. Her reactions to this level of anxiety may sometimes be to attack before she feels attacked;
- s. There is a clinical indication of PTSD. It is possible that some of the anxiety she suffers is related to trauma.

64. In conclusion, Dr Phibbs was of the opinion that, overall there is an interaction between the mother's personality, some clinical aspects of her presentation and her learning disability. This results in complex difficulties for the mother in relating to and trusting other people. At times she can struggle to accept responsibility for things, tending to apportion blame and responsibility for difficulties onto other people. The mother presents as a woman who is psychologically impacted by unresolved trauma. Although she has sought support and help on occasions her day-to-day presentation may well be impacted by the events she reports have occurred in her life.

65. Dr Phibbs recommended that the mother would benefit from a therapeutic programme that focused on increasing her ability to reflect on her own role in relationships with others. She will also need therapeutic techniques for managing her anxiety. Such treatment would be an intensive psychotherapeutic process and would need to be carried out by somebody who both understood the nature of her personality traits and also her learning disability. This would need to be specialist treatment and would need to be carried out by a suitably qualified psychotherapist or psychologist. It is likely to take place on a weekly basis. Such treatment would also support an investigation of the impact of trauma and interpersonal relationships on her functioning.

66. Having regard to the mother's capacity to change, Dr Phibbs was of the opinion that, in the past, the mother had failed to engage in services that have been offered to her. Such therapeutic input can be quite stressful and the mother's tendency to avoid things she finds psychologically or

emotionally difficult would need to be tackled. Dr Phibbs told the Court, *“I think that without considerable support [the mother] would disengage from such therapeutic treatment.”* Dr Phibbs told the Court that the timescales for change with such therapeutic process are long term: *“One would expect treatment to continue for at least nine months to a year and at that time one would expect to see active and sustained changes in [the mother’s] mood and presentation. One would also expect to see better engagement with services and hopefully improvements in the children’s functioning. This being facilitated by better liaison between [the mother] and services. Therapeutic support would need to be coupled with ongoing Social Services support and clear parenting advice and guidance for [the mother]. [The mother] will need specialist provision because of her learning disabilities in order to sustain and make improvements. If improvement was ongoing one would expect to see improvements in the children’s presentation, [the mother] engaging in a meaningful basis with professionals and developing a more trusting relationship with key professionals.”*

67. Set against the background of that evidence, together with the other evidence then available, it was understandable that the Lay Justices were anxious for the mother to receive the therapeutic treatment recommended with a view to supporting the mother in continuing to parent the children.
68. The Supervision Order made by the Lay Justices in 2018 had that in mind. The Written Agreement entered into at the time of the Final Hearing in May 2018 set out the Local Authority’s expectations of the mother in engaging with professional services to enable the children to be safe from harm in her care. The Written Agreement included addressing the mother’s psychological and emotional issues, attending and engaging with recommended services, therapy and support and engaging with professionals.
69. This Court is told that the thirteen-point plan set out in the Written Agreement took two days to formulate and agree at Court at the conclusion of the proceedings before the Lay Justices. The amount of time involved demonstrates the level of care taken by all parties to formulate the precise wording of the agreement, having regard to the mother’s underlying cognitive and psychological profile identified by Dr Phibbs. It is of note that all parties, including the mother, were represented in those proceedings, by experienced Counsel and Solicitors.
70. It is an inescapable fact, based upon all the evidence now before the Court, that the mother did not comply effectively with the Written Agreement dated 15.05.2018. It is evident plainly from all the documentation that significant support was offered to the mother by the Local Authority and related services.
71. The totality of the evidence now before the Court can lead to only one proper conclusion, namely that the mother did not access the therapeutic intervention needed to address her own significant therapeutic needs. Further, the mother did not engage adequately with services to improve the children’s functioning and presentation and to address their specific therapeutic needs. Furthermore, the mother did not adequately or timeously make sure that the children received support from the Child and Adolescent Mental Health Service and remained resistant to support.
72. In her updated report dated 19<sup>th</sup> February 2019 prepared in the current proceedings, Dr Phibbs noted as follows:

*“In my original report I recommended [the mother] should engage in treatment in order to help increase her ability to reflect on her role in relationships. I suggested that treatment needed to be carried out by appropriately qualified psychotherapist or psychologist. I can see no evidence from the information that I have received that [the mother] has engaged in such psychotherapeutic work. She has not allowed my assessment to be made available to services that might be able to provide appropriate therapeutic support. I understand she may have*

*accessed some support through 'Mind' and through domestic violence work but in my opinion, this is unlikely to meet the significant therapeutic needs that [the mother] has. It is also the case that without access to my report, therapists or other professionals she might be engaging with may not be aware of aspects of this case and of [the mother's] functioning and what it is advised she should be focussing on resolving. The report from the last Core Group of 15.01.2019 suggests that [the mother] has not provided the current social worker with any significant information in order to assess the nature of any therapeutic work that may be being undertaken."*

73. Dr Phibbs went on to record in her report:

*"In my opinion although [the mother] has been given significant support to engage in therapy, she has not demonstrated a capacity to appreciate the need for such work and has not engaged in such work. Sadly, a significant amount of time has now passed since my original report of 6 April 2018. It is regrettable that no targeted therapeutic input has been started. If therapeutic work had been accessed after the last hearing then [the mother] would now be well into her therapeutic process and may have been benefitting from improved psychological functioning which in turn may have been helpful in her parenting of the children. Unfortunately [the mother] has not shown a capacity to engage seriously in work and therefore no change has been sustained. The factors that would indicate positive change would be improved capacity for [the mother] to reflect upon her relationship with the children and with professionals, and most importantly an improvement in her own psychological functioning. None of these have been evidenced in the information I have seen.... the concerns of professionals continue to be extremely high and the children's behaviour continues to cause high levels of concern such that O was excluded from her school in Summer 2018. A Child Protection Summary document, suggests that 'there is serious escalation in the children's behaviour at home particularly at school for O'. This is prior to her school exclusion. It also notes that a new social worker will be given to [the mother] in order to help support a better relationship between [the mother] and services. However, I note that despite this happening, relationships with Social Services have not improved. [The mother] has been extremely rude to the current social worker...Concerningly O is likely to have heard negative language with regard to Social Services. It appears to indicate that [the mother] may be delaying access to CAMHS for the children. It is then concerning that the CAMHS referral was closed in June because they weren't able to gain consent from [the mother]. In general, it would appear that [the mother] remains highly resistant to support and perhaps this again is part of her avoidance or anxiety especially about issues regarding consent. This appears to be something that is very important to her...I can see no evidence that [the mother] has been able to accept any of the concerns of the local authority. The fact that she did not inform [O's] new school that [O] was subject to a supervision order or indeed that the family had a social worker indicates that she may lack a true understanding of the seriousness of the concerns of the Local Authority."*

74. The Court regrettably reaches the conclusion on all the evidence that the mother continues to be resistant to and obstructive to the support services which were designed to ensure positive and meaningful change to the care she gave the children.

75. In the previous proceedings, the Court concluded that the children had suffered significant emotional harm and neglect. The evidence now before the Court leads this Court to the undesirable but unavoidable conclusion that there has been no meaningful change to the care given by the mother to the children, resulting in the children continuing to suffer significant emotional harm and neglect.

76. In reaching this conclusion, the Court has considered the comprehensive and detailed evidence of Dr Phibbs in relation to the mother and also the psychological evidence in relation to the children.

Psychological Assessment of the child, Y

77. In her psychological assessment of the children in April 2018, Dr Phibbs reported in respect of the child Y, that he has a diagnosis of global developmental delay experiencing difficulties with delayed attention, listening, concentration and understanding spoken language, learning, social skills and fine motor skills. He was noted to be functioning at half his chronological age.
78. Dr Phibbs reported, *“In my opinion [Y’s] behaviour is driven by his immediate emotional responses. It is also likely to be based on learnt or copied behaviour. I have seen Y behave in a highly anxious way when he thought he was having to engage with me about his internal world or his family. His behaviour would have become increasingly challenging if I had not ceased to ask him about things. I also saw Y behave in a relatively aggressive way to other children pulling them and pushing them. He did not seem to be aware that this behaviour was not always appropriate...I think this behaviour may be something he has learnt or witnessed.”*
79. Dr Phibbs reported further, *“It is [Y’s] emotional development that concerns me the most. In my opinion [Y] is a child who is carrying high levels of anxiety about the fact that people may ask him about his internal state or what is happening in his family. He is spending a lot of time actively avoiding issues about his family. He has developed a whole narrative about cats and the word ‘cat’, which he will in extremis use as an avoidance tactic when asked simple questions about his home life... A child who is having to act at this level of avoidance is under quite high amounts of stress and this would be particularly true in places where he normally feels safe in [Y’s] case this is school. Whilst [Y] is having to activate this level of avoidance he will be necessarily on high alert and this level of constant vigilance will impact on his ability to form relationships with trusting adults and may impact on his education. It will certainly impact his ability to let people know if he is in danger or unsafe. I would also be concerned that [Y] may start to develop a fantasy or fantastical ideas in order to avoid talking about his inner world or his home life.”*
80. Dr Phibbs continued, *“He engages in other anxious behaviours such as avoidance of emotionally difficult areas such as talking about his feelings or his family. But because of his cognitive difficulties I think he struggles to be able to avoid or contain these feelings in cognitive ways and so sometimes his behaviour has to take over. In my opinion [Y] exhibits behaviour indicative of insecure attachment patterns. I have seen his sister dominate [Y] and stop him from communicating and this has also been evidenced by Social Services. [Y] may see his sister as a protective force, she may make him feel secure to some extent but I also am concerned that she could be frightening to him. I have seen [Y] put distance between him and his sister and I think [Y] works hard to keep himself out of the way in terms of family interactions. To some extent this may have a protective function for [Y] in that he is protected from the more difficult complex relationship structure that his sister has with his mother. The flip side of this is that [Y’s] needs may not be met and that he may suffer from emotional and possible physical neglect.”*
81. In her assessment of the child Y in the current proceedings, having regard to the lack of any positive action on the part of the mother to assist the children in engaging with the interventions previously recommended, Dr Phibbs concluded as follows:
- “My original concerns with regard to [Y] remain the same. He is a child who in my opinion continues to be at significant risk of harm and it may be that this risk is increasing as his sister’s behaviour remains unchanged...He doesn’t like to reveal much of his home life at school, and I think this is because he sees school as a safe place and doesn’t want to think about or be asked about difficult things. Given this reluctance to talk about home I think the fact that [Y] did tell me that his sister hurts him and his sister hurts his mum, is particularly relevant information which needs to be taken seriously.”*

82. Dr Phibbs continued: “[Y] clearly has learning disabilities and is well supported within the special school environment. I noticed some idiosyncratic parts of [Y’s] learning...[Y’s] cognitive assessment score indicates that he would fall within the severe learning disability range however in my opinion having met [Y] over a number of occasions I think his ability is higher than this score suggests. In my opinion [Y] is more likely to fall within a moderate learning disability range...[Y’s] experience of life at home may also have had an impact for his capacity to learn. Children who benefit from an enriched home environment are likely to be able to make the most of their cognitive and adaptive capacity. I am concerned that [Y] at the current time may not be stimulated or supported enough to make the most of the talents that he has. In my opinion little has changed for [Y] at home since my initial assessment. I would be concerned that the situation may have got slightly worse.”

Psychological Assessment of the child, O

83. In respect of the child O, Dr Phibbs’ April 2018 report in the previous proceedings noted the following:

“[O’s] Full Scale IQ score is 70, giving her a percentile rank of 2. This indicates that out of 100 children only 2 would perform at the same or lower than [O]. [O] has particular difficulties in working memory and her scores here indicate she has particular weaknesses in these areas. This would be in line with her diagnosis of ADHD. [O’s] ability places her just within a Learning Disability range. In tests of general ability index, which is an estimate of general intellectual ability that is less reliant on working memory and processing speed [O] performs at a Borderline Learning Disability range. In addition to her learning disabilities [O] in my opinion has complex emotional and behavioural difficulties. It is highly likely that there is an interaction between [O’s] emotional state and her behaviour, this interaction should also be seen in a context of some of the limitations she has as a result of her learning disability.”

84. Further, Dr Phibbs recorded in April 2018, “I am concerned that [O] has been triangulated in the relationship between her mother and her father; her parent’s animosity towards each other was expressed through their relationship with their oldest child. [O’s] behaviour at home may have been the focus of arguments between her parents. It appears that over time [O] aligned herself strongly to her mother. The level of physical violence in the parental relationship is disputed by each parent. However, the impact of the relationship between [the father] and [the mother] will have had a significant maladaptive impact on [O]. [O’s] behaviour has been extremely challenging and concerning including the use of physical violence. This was most notable when she was at primary school where she physically assaulted members of the teaching staff. Since she has been at her secondary school there has been no physical violence however there has been considerable verbally inappropriate behaviour and [O] has created behavioural disturbance in other children and then not acknowledged her role in this.”

85. Dr Phibbs reported further: “[O] has a diagnosis of Oppositional Defiance Disorder. Children with such diagnosis are often characterised by their difficulties with persistent engagement in oppositional behaviour and difficulties with following instructions when asked to. Whilst this label can help describe some of a child’s behaviour it does little to indicate why a child might behave in such a way. In my opinion [O’s] oppositional behaviour has its roots in her learning disability and her childhood experiences. It is likely there is an interaction between her attachment behaviour and her learning needs and that as a result her behaviour now warrants a psychiatric label. [O] is at risk of increasing isolation as she gets older and this will have profound implications for her mental health.”

86. Having regard to the lack of engagement by the mother since the conclusion of those Court proceedings, Dr Phibbs prepared an updated report in January 2019 setting out her conclusions relating to O.



87. Dr Phibbs recorded: “[O’s] presentation at my assessment caused me a great deal of concern. [O’s] unwillingness to engage with me initially and her language about me suggests that she has clearly been in conversation with adults with regard to me and to the assessment. [O] had threatened to hurt people because I was coming to see her. [O] had told her teacher that I was going to come and ask her questions and make her sad and angry...I am concerned that [O] was particularly keen to know what her brother had said to me, and she also seemed to suggest that she would make her brother tell her. Given [Y’s] statement to me that his sister hurts him and that his sister hurts his mum, I am concerned that [O] may be threatening, domineering and physically aggressive towards her brother.”
88. Dr Phibbs went on to record, “[O] had only been at her current school for 3 weeks when I visited. I am extremely concerned that it appeared the school had very limited information about [O] prior to her arrival. Given the dangerous behaviour that [O] has exhibited and the allegations that she has made about staff at her previous school I feel that the school may be underprepared for [O’s] challenging behaviour should it occur...[O’s] behaviour at the assessment was highly indicative of complex psychological difficulties and learning disability. There are many aspects of her presentation which were about coercion. I saw her change her presentation depending on who she was with...appearing very vulnerable whilst at other times quite domineering.”
89. In respect of the children’s current situation, Dr Phibbs was of the opinion that the therapeutic needs of Y and O are very important, and the sooner they can access services the better this will be for their mental health. In Dr Phibbs’ professional opinion, the mother has not been able to support Y or O in accessing CAMHS and, if they were to be removed from their mother’s care, access to local services could then be facilitated. This would need to be in combination with ongoing therapeutic foster care or caring environments where the children could be supported to manage their emotions on a minute-by-minute day-to-day level. In Dr Phibbs’ professional opinion, the Court may now consider the need for alternative placements for these two highly vulnerable children outside of their mother’s care, having regard to her concern that there has been no meaningful change in their situations, “indeed the situation could be considered to have got worse.”
90. Dr Phibbs noted, “[O] has been out of education for some time and also experienced a further exclusion from school. [Y] told me that [O] had hurt him and that [O] had hurt his mum. I believe they are at risk of ongoing significant harm which could impact on their psychological development both now and into adulthood. Placements for these children may offer them a chance to experience more appropriate and balanced caregiving that was not overly influenced by the complex psychological difficulties of their mother...In my opinion [O] will need highly boundaried therapeutic placement with foster carers or in a residential unit. Carers would need to be specialised in working with children who have additional learning needs but also who can manage her complex behaviours. If the relationship between [O] and her mother is curtailed I would be highly concerned about [O’s] ability to manage her own behaviour. I think it is likely there may initially be negative consequences for [O] in terms of her ability to relate to others and possibly to her mental health. This will need to be balanced however with the ongoing and considerable risk that I believe [O] is under by remaining with her mother. Residential schooling for [O] may offer the educational support she needs but also social opportunities for [O] and the management of a team of people who may be able to deal with the complexities of her behaviour.”
91. Dr Phibbs concluded, “I think close attention will need to be paid as to whether, if alternative placements are found for these vulnerable children, [O] and [Y] may benefit from being apart from each other and in different placements. I am concerned about [O’s] dominance of her brother and her potential to continue this domineering behaviour should the children be outside of their mother’s care. I am concerned that in a new environment together with her brother she may focus her behaviour solely on her brother with her mother no longer directly available.”

92. In her oral evidence Dr Phibbs told the Court in plain and clear terms if O does not get help now, Dr Phibbs would have “grave concerns” about her mental health and the risk she may harm people and escalate her behaviour and may become involved in the criminal court system. Dr Phibbs told the Court, *“there is a risk of criminality within the pathway she is on the violence she has displayed towards people in authority. I don’t see any ability on the part of the mother to manage that behaviour. The parenting work has not been taken up. And I am concerned that [Y] said [O] has hit him and the mother but the mother says [Y] is not telling the truth. The mother is potentially concealing that.”*
93. Dr Phibbs went on to tell the Court in her oral evidence, that the mother’s lack of engagement since the last proceedings has caused harm to the children. She told the Court, *“opportunities have been missed. Her avoidance of working with professionals is how we got to this stage. The cumulative impact of that on the children over time, as their attachments strategies have formed, is significant and results in ongoing neglect and emotional abuse...the mother may agree to input and then avoid implementing it. She will agree and then disengage, a combination of her understanding and her avoidance...With all the help offered, there has been no movement in her capacity to change...her responses to social care have been extremely negative and her responses now, including her behaviour and language at school is unacceptable and difficult when people are trying to help and support her. She has been vitriolic in her language when people have tried to explain to her how they will support her with package.”*
94. Dr Phibbs’ evidence in respect of the mother and both children was comprehensive, detailed and impressive. I find no reason to depart from the professional opinions expressed by the independent expert.

#### Threshold Findings

95. On the totality of all the evidence available, including the expert psychological evidence, the Court makes findings on the pleaded threshold facts as follows:
1. On the relevant date, the mother failed to comply with the written agreement dated 15.05.2018 despite significant support and as a result there had been no meaningful change to the care given to the children, resulting in the children continuing to suffer significant emotional harm and neglect. In particular:
    - (a) the mother failed to access the therapeutic intervention needed to address her significant therapeutic needs and fails to appreciate the need for such work;
    - (b) the mother failed to engage with services to improve the children’s functioning and presentation and to address their therapeutic needs. In particular, the mother failed to ensure the children received support from CAMHS and remained resistant to support;
    - (c) the children witness the mother’s mood swings and unregulated emotional responses. The father has been present when the mother has displayed this behaviour in the presence of the children;
    - (d) the mother projects her negative views of professionals onto the child O; and
  2. The mother continues to be obstructive and resistant to support services to ensure positive and meaningful change to the care given to O and Y resulting in the children continuing to suffer significant emotional harm and neglect.
96. In respect of the statement contained in paragraph 1(d) of the Local Authority’s pleaded threshold document, namely that the children’s views about contact with their father have been

significantly negatively influenced by the mother, the issue is more complex. In this regard, I turn to consider the allegations made by the mother against the father.

### *Domestic Violence*

97. It is regrettable that despite the mother having consistently made allegations about domestic abuse perpetrated by the father, and the father consistently denying those allegations, the previous proceedings before the Lay Justices concluded without any findings being made on those disputed facts, save a finding that the children witnessed domestic violence between their parents and that in June 2017, the child, O, was kicked.
98. In these current proceedings, at the direction of the Court, the mother set out six specific allegations in a schedule. She asserts that the domestic abuse perpetrated by the father was not confined to those incidents alone but that they are illustrative of the domestic abuse in the family home. The Court has considered the evidence of both parents together with all the evidence available.
99. On the morning of the first day of the Final Hearing, the mother produced three short digital audio files, recording arguments in the family home. The Court permitted the evidence to be adduced, notwithstanding its very late production, as it was clearly relevant information to the facts in dispute. The father had the opportunity, albeit a limited one, to consider the evidence and to respond to it by way of a written statement prior to giving his oral evidence on the third day of the Final Hearing.
100. The audio recordings make for very disturbing listening. The father is heard plainly to speak in highly derogatory, insulting and offensive terms about both children in their presence. The father is heard threatening to assault the children.
101. In the first audio recording the mother is heard to tell the father forcefully on three occasions “don’t kick her [O] in the stomach.” When she asked the father, “why did you kick her in the stomach for?” the father replied, “because she’s being an arsehole.” The exchange continues with the mother telling the father to “Just leave the kids alone.” One child is heard to scream and cry. The mother tells the father that she will call the police and tells the father to get out and go to his mothers. The mother continues, “don’t kick her in the stomach. She’s only a child and don’t call me a fat bitch. You have no respect for me or the children. Get out or I’ll call the police. Just get out. I don’t want to know you. Don’t speak to me like that. Don’t hurt the kids. That’s assault.” The father responds, “I’m not having her kicking and swearing all the time,” and the mother replies, “but you do it to us. Please go. Please go. If you don’t go in half an hour I’ll phone the police.” The father responds, “I’ll tell the police about your father beating your mother up.” The mother replies, “You’re no better. Its mental abuse, calling me names and hurting the kids.”
102. The father continues in the exchange telling the child O to, “Shut up and go away, you’re being an arsehole.” The mother tells the father, “Don’t take it out on us...she [the child O] is only copying what you’re doing...we can’t live like this...you keep calling me names, swearing at me, hitting me, hitting the kids, controlling the money, my benefit money and the kids’ benefit money.” One of the children is heard to say, “Can I go to Granddads?” The father is recorded to say, “All I get from this lot is just swearing all the time,” wherein the mother responds, “Because you’re swearing at them and me. How are they supposed to respect you when you swear at them and me?”
103. In the second recording, the child O is heard to swear and the mother tells her not to swear. The father is heard to respond to the child, “I’ve got a [whip or stick] around the back. I’m going to ram it around your head and all your head’s going to be smashed.” He is heard to say about the children, “I’m not bothered with them. You can take them away... tell Social Services they can

have her...[O] has all the control.” The child O is heard to ask the father, “why you blaming at me?” and the father responds, “We’re on the verge of splitting up because of it.” He continues to address the mother telling her, “You’re taking her side, she’s the bullshitter”. The mother admonishes the father telling him, “Don’t talk to her like that,” and one of the children is heard to say, “I don’t like it.”

104. The mother is heard variously throughout the recordings to tell the father to stop his behaviour, to try to distract the children and to get them to their bedroom away from the argument.
105. I agree with the assessment of the Children's Guardian who, when commenting on the audio recordings, told the Court that this presented clear evidence that the children and the mother have suffered severe domestic abuse perpetrated by the father. The Children's Guardian told the Court, “the contents of the audio recordings are, in the father’s own words, disgusting. The words and language used towards the children will impact on their behaviour and cause them physical and emotional harm. It shows that mother’s accounts are entirely correct.”
106. The child, O, discussed some of the alleged incidents of physical abuse perpetrated against her by her father with the Children's Guardian. O recalled being ‘strangled’ by her father, of him hurting the pets and breaking Christmas toys by stamping on them. O expressed the very clear wish that she does not want to see her father and she does not want to receive letters, cards or gifts from him. O also told the Children's Guardian that she has overheard her mother's conversations about her father's abuse, which the Children's Guardian observed happening during a visit.
107. Save for the father’s acceptance that on one occasion in March 2016, he kicked the child O, in the context of these proceedings the father gave a firm denial of each of the other allegations made by the mother.
108. It seems that the previous Social Worker, Miss Wood, worked with the family on the basis that the father had kicked the child O on one occasion. The father was somewhat more open in his interview with Dr Phibbs when he accepted there was some abuse in the household, that the relationship was abusive and that the children had been harmed. Since the disclosure by the mother of the audio recordings, the father now accepts the allegations of ‘general abuse’ in paragraph 1 of the schedule but submits that the wording of that allegation is too generalised.
109. The Court heard both parents give evidence on the issue of domestic abuse.
110. The mother’s oral evidence was largely consistent. Her evidence in the witness box was given in a direct manner with little evasion. Further, her oral evidence was consistent with her lengthy written evidence, even under proper cross-examination.
111. By contrast, the father presented to me as being reluctant to answer questions directly. His evidence on the issue of domestic abuse was evasive and even in the face of the clear audio evidence, the father was largely unwilling to acknowledge the facts. Having regard to the audio recordings, the father told the Court, “I can’t deny the abuse on the tape but it was very much not one-sided...I could not get a word in edgeways. It was 50/50 possibly both of us.”
112. In his oral evidence, the father denied admitting to Dr Phibbs that he had kicked the child O. He told the Court, “it was the mother’s way or no way. If she was not happy with what I said, she would go into one.” Having initially only accepted one incident of kicking the child and denying all other domestic abuse, the father then altered his position to deny that there had been any other occasion when he was abusive to either of the children or to the mother, save for the incidents set out in the three audio recordings. However, under proper and thorough cross-examination by Mr Foster, the father then accepted that it was unlikely that these were the only three occasions when he had used this type of “extreme” language, towards the end of the

relationship, accepting that this was a general feature of the household in which he was involved. The father accepted under cross-examination that he had hurt the mother and the children emotionally. He accepted that his words would have made the children “feel horrible” and that as a result of his conduct towards the children, they have suffered serious harm. When asked whether he caused serious harm to the mother, he told the Court, “yes, but she done the same to me,” and “it works both ways.”

113. On the totality of the evidence now available, the Court could not reach any conclusion other than that the audio recordings evidence the father acting in a wholly abusive manner towards the children and the mother. Clearly those recordings have a depth and an immediacy not apparent from the papers. It is said on behalf of the father that he now recognises the harm caused to the children by his “disgusting” behaviour. It is said on his behalf that he does not now seek to say that the arguments were “all” the mother’s fault.
114. In my judgment, notwithstanding the father having attended a ‘Caring Dads’ programme to enlighten him as to the impact of his behaviour on his children, the father continues to have little insight. He continues to minimise both the extent of the abuse he perpetrated and the impact of that abuse. His assertion in his oral evidence that there had been no other incidents of him perpetrating abuse, save for the three incidents set out in the audio recordings, is wholly implausible.
115. The Children's Guardian observed in her oral evidence that it is concerning that the father is unable to link his behaviour and O mirroring that behaviour. As the Children's Guardian observed, the father’s contribution to O’s presentation caused by his domestic abuse is a very difficult issue, having regard to O’s various diagnoses of mild learning difficulty, Oppositional Defiance Disorder and Attention Deficit Hyperactivity Disorder: *“The interplay of those diagnoses and conditions as well as her experiences of being in a household witnessing severe domestic abuse made her behaviours extremely challenging.”*
116. Looking at all the evidence before me, on the contested issue of whether the father perpetrated acts of domestic abuse against the children and their mother, I prefer the clear evidence of the mother in respect of each of the allegations.
117. In my judgment, the evidence before the Court is of a pattern of incidents of threatening behaviour, verbal and emotional abuse perpetrated by the father against the children and the mother. Furthermore, the behaviour of the father falls plainly within the definition of coercive behaviour, having regard to the pattern of acts of threats, humiliation and intimidation used to harm, punish, or frighten the victim.
118. Having regard to the schedule of allegations and set against the background of those findings, I find on the balance of probabilities that:
  - (a) on 16<sup>th</sup> or 17<sup>th</sup> July 2016, the father was abusive towards the mother and/or the children; and
  - (b) in March 2016, the father kicked the child, O; and
  - (c) on 16<sup>th</sup> or 17<sup>th</sup> July 2017, the father punched the child O on the head; and
  - (d) on 25<sup>th</sup> December 2015 and/or 16<sup>th</sup> or 17<sup>th</sup> July 2016, the father broke the children’s toys; and
  - (e) On or about 16<sup>th</sup> July 2016 the father lashed out at the child, O; and
  - (f) On or before 16<sup>th</sup> July 2016, the father pushed the child, Y against a radiator and Y hurt his head.
119. Returning to the Local Authority’s pleaded threshold statement at 1(d), set against the background of those findings, in my judgment, the father’s own conduct and actions towards the children and the mother is likely to have caused the children, particularly the child O, to hold significant negative views towards their father. Both children now express extremely negative

views of their father and say they do not want to see him. I note also the evidence of the Allocated Social Worker, Miss Fourie, who told the Court that, if the mother has been the victim of domestic abuse, there might be justification in the mother not promoting the relationship between the children and their father.

120. Whilst I accept that the mother projects her negative views of the father onto the children and whilst I find on the evidence that the children's negative views about contact with their father have been reinforced by the mother, it is plainly the case that the father's abusive behaviour towards the children and towards the mother in the presence of the children will have been a hugely significant cause of the children holding negative views about him. Having regard to paragraph 1(d) of the Local Authority threshold statement, I do not find that the children's views about contact with their father have been negatively influenced by the mother *significantly*.
121. On the basis of the totality of the findings set out, plainly, however, the threshold under section 31(2) of the Children Act 1989 for the making of public law orders has been met in respect of each child individually.
122. I turn to consider the question of welfare.
123. This is now the second set of proceedings in relation to O and Y. Regrettably the same concerns apply now as they did at the conclusion of the previous proceedings almost exactly 12 months ago.
124. There has been a lengthy history of Local Authority involvement with O and Y since 2009. The family have received support via Child in Need plans, Child Protection plans, the PLO process and a Supervision Order. The mother has not meaningfully engaged with the Local Authority to make and sustain the necessary changes regarding her poor emotional regulation, unstable mental health, her ability to work in partnership with the Local Authority, support services or professionals to promote positive family change.
125. The mother wholly disagrees with Dr Phibbs' assessment of herself and the children. She denies that Y disclosed to Dr Phibbs that O hurts him and she denies Y's report that O hurts the mother. She believes the reports to have been fabricated. The Children's Guardian is concerned that Y's disclosures are not being acknowledged or acted upon by the mother, leaving the possibility of his need for protective parenting and safety to remain unmet.
126. The mother has stated that she has made herself available for each of the Social Worker's visits every four weeks, however, the sessions arranged on 4<sup>th</sup> February and 5<sup>th</sup> March 2019 were refused by the mother as she considered these to be additional visits, and she considered them to be outside of the monthly schedule. The mother has questioned why the social worker needed to see her alone. She saw no reason why the social worker wanted to meet with her outside of the Child In Need review meetings.
127. The mother was referred to a Practical Parenting Programme for a tailored service of support but she engaged in only one session. The mother told the Guardian that she did not attend as she felt disrespected by the assessor by the questions that he was asking.
128. The mother does not accept any of the concerns of the Local Authority and does not recognise the need to engage with support services to enhance her parenting capacity. I accept the analysis of the Children's Guardian when she told the Court that, as a result, there has been no sustained change for O and Y in terms of their relationship with their mother, each other and the professionals. This is despite a new social worker being allocated to the children and the mother, with a view to help support a better relationship between the mother and the Local Authority services and despite a new Children's Guardian being appointed for the children. The Children's Guardian observed that despite this happening, the mother's working relationships with both

agencies has not improved. Further, the mother's increased paranoia and mistrust of professionals and support services has continued to impact on her level of engagement, functioning and presentation and her ability to respond appropriately to O and Y's needs.

129. The Children's Guardian is of the professional opinion that, in light of the risks and deficiencies within the parenting capacity and psychological functioning of the mother and her lack of positive engagement with support services which could have mitigated the risks, change is beyond the children's timescales and that O and Y will remain at risk of significant harm in the mother's primary care.
130. In her oral evidence, the mother was asked what confidence the Court could have that the children would get the help they need if they remained in her care. She told the Court, "I will do what I can. I will seek help outside of social care."
131. The Court has regard to the mother's contention (a) that the professionals had failed to consider adequately her allegations of domestic violence perpetrated by the father on her and the children, in respect of which the Court has now made findings, (b) that this failure impacted on the extent of the mother's cooperation with the Local Authority and (c) that the prospects of her being able to work meaningfully with professionals in the future are improved, in light of the findings made by the Court that she had given a truthful account of the domestic violence. I acknowledge and accept the evidence of the Children's Guardian when she told the Court that in her professional opinion, there had been a tendency by those professionals working with the mother not to have taken her allegations of domestic abuse in the marriage sufficiently seriously. Like the Children's Guardian, I accept that the mother's mistrust of professionals may have acted as a barrier to those professionals fully assessing her circumstances and as a result, the mother has appeared closed to professionals in her interactions. However, I accept also the clear evidence of Children's Guardian when she told the Court that in her professional opinion, there were other significant difficulties that have directly impacted on the children, including amongst other things, the mother's disagreement with the parenting assessment, not engaging with tailor made support to assist her in engaging with the parenting plan and difficulties in her accessing therapeutic support for children, the combination of which meant that the children's needs were not being met. The combination of factors in the mother's complex psychological profile, as summarised in paragraph 63 of this judgment, has resulted in the mother finding it extremely difficult to trust or work with professionals. The thread of domestic violence cannot be isolated from the fabric that makes up that complex profile. The issue of domestic violence had been considered by the professionals, even if it had not been considered as fully as it could have been. Whilst that is likely to have had some impact on the extent of her cooperation with the Local Authority and whilst I have no doubt that the mother will have felt unhappy, angry and a sense of injustice that the extent of her allegations of domestic violence had not been fully acknowledged by the professionals, that does not explain adequately what has been almost a complete reluctance to assist the children in accessing the support they need nor does it explain adequately the failure to appreciate the need for the support services which were designed to ensure positive and meaningful change to the care she gave the children.
132. In my judgment, on the totality of the information available, I find there is no solid evidence-based reason to conclude that the mother is committed to making the changes identified by the professionals as necessary. There is no solid evidence-based reason to conclude that the mother is committed to accessing the professional support required for the children. Further, there is no solid evidence-based reason to conclude that the mother is committed to accessing the professional support she herself requires. Furthermore, there is no solid evidence-based reason to conclude that the mother will be able to maintain any such commitment. Yet further there is no solid evidence-based reason to conclude that the mother will be able to make the necessary changes and access professional support within the time scales of the children.
133. The Court has considered the welfare checklist in so far as it applies to the child, O:

(a) *the ascertainable wishes and feelings of the child concerned (considered in the light of her age and understanding):*

- (i) The child, O, has made clear to the Children's Guardian that she does not want to be taken away from her mother, brother and cats and she does not want "to go into care." The Children's Guardian noted that O has become more verbal and has become increasingly hostile with her comments. I am grateful to O for having written to the Court expressing her wishes and feelings very strongly, with the assistance of her teachers. Her letters make for powerful reading and I accept that the letters are a true reflection of her wishes and feelings. I accept that she very strongly does not want to leave her mother's care and does not want contact with her father. I very much respect those strong wishes and feelings O has expressed, particularly as she is at an age where her wishes carry weight. I take those wishes and feelings into consideration. When considering those strongly held wishes, I must also take into consideration the level of understanding of the child, having regard to the professional conclusions of the psychologist, Dr Phibbs. In my judgment, whilst very much respecting the child's wish not to want to leave the care of her mother and her wish not to be separated from her brother, the overwhelming weight of concerns mean that the child's wishes may not be capable of being realised, without causing her further significant harm;
- (ii) I note also that O expressed a wish in the letters handed to me during the Final Hearing to meet the Judge so that her words could be heard. On this occasion, the Children's Guardian considered that it would not be in O's best interests to come to Court to meet with the Judge;
- (iii) In most cases, a child or young person's wishes and feelings are expressed to the Court in written form and/or in oral evidence by the Children's Guardian, as they have here. Part of the important role of the Children's Guardian is to discuss with the child, in a manner appropriate to their developmental understanding, whether their participation in the process includes a wish to meet the Judge. This is not a case where the Children's Guardian considers that the child should be separately represented. In situations where a child does express a wish to meet the Judge, that wish should be conveyed to the Judge as quickly as possible. In this case, it was conveyed during the Final Hearing through the child's letter, leaving very little time to make suitable arrangements. I make no criticism of the child for that;
- (iv) In very many cases, this Court encourages children and young people to feel more involved and connected with the Court proceedings in which important decisions are made in their lives, to give them an opportunity to satisfy themselves that the Judge has understood their wishes and feelings and to understand the nature of the Judge's task. The main purpose of a meeting between a child and the Judge is to benefit the child;
- (v) In the particular circumstances of this case, I agree with the professional opinion of the Children's Guardian that a meeting between the child and the Judge would not accord with the child's welfare interests. I wish to make clear, however, that I have heard the child's very clear words expressed not only through the Children's Guardian but also through the child's heartfelt and powerful letters she has written assisted by her teachers. I wish her to be reassured that I have understood her wishes very clearly indeed.

(b) *the child's physical, emotional and educational needs:* As set out in detail earlier in this judgment, O, is reported to have several complex health concerns including moderate



learning difficulties, Attention Deficit Hyperactivity Disorder, moderate coordination difficulties, complex emotional and behavioural difficulties and Oppositional Defiance Disorder. O was permanently excluded from school in June 2018, she was absent from formal education for several months since then. In her current school she has been excluded twice in the few months since she started at that school. She has been permanently excluded from five previous educational provisions. She has an Education Health and Care Plan (EHCP) to support her additional learning needs. Dr Phibbs assessed her as demonstrating a significantly disordered attachment pattern, which impacts on her ability to form adaptive relationships with peers and adults because of her childhood experiences of inconsistent parenting she received in her formative early years. I accept the analysis of the Children's Guardian when she concludes that it is imperative that O is afforded the opportunity to be protected from exposure to further incidents of the mother's unregulated emotional responses and failure to meet the child's holistic needs by engaging with identified support services. It is necessary that O can thrive within a safe and nurturing environment where her psychological, physical, educational and emotional needs are prioritised and consistently met.

(c) *the likely effect on the child of any change in her circumstances:*

- (i) O has remained in the primary care of her mother and has not previously been removed from her care. O is of an age and stage of development where she has an understanding that her future will be determined through these Court proceedings. She has said that if she no longer remains in the care of her mother, "*she would be crying and she would not allow them to take her or her brother.*" O told the Children's Guardian that it would be, "*really, really upsetting.*" She told the Children's Guardian that she feels '*safe and happy at home*' with her mum and her brother. I have no doubt that a change of primary carer for the child and a change in her living arrangements, including separation would be highly upsetting for her;
- (ii) The professionals all recognise that it is probable that O will refuse to leave her mother's care. The Children's Guardian was of the opinion that O would benefit from preparation and narratives to assist her but recognised that O will become oppositional to removal because of the enmeshed relationship with her mother and the mother's own opposition to removal. Dr Phibbs frankly noted that things would get worse before they settled.

(d) *the child's age, sex, background and any characteristics of the child which the court considers relevant;* O is a 13-year-old girl, of White British heritage. Her very specific background and characteristics have been set out in detail in this judgment, having regard to Dr Phibbs' professional evidence.

(e) *any harm which the child has suffered or is at risk of suffering:*

- (i) O has been exposed to the mother's negative views about professionals, exposed to adult conversations and has suffered significant harm as a consequence of the mother's poor engagement with professionals. The mother projects her negative views of professionals onto the children. The mother has a deep mistrust of social care professionals, which has heightened the children's anxiety and emotions when meeting with and having to engage with new professionals;
- (ii) O has suffered significant emotional harm from witnessing domestic abuse perpetrated by her father against her mother and brother. Further, O has suffered significant

emotional harm by being directly subjected to domestic abuse perpetrated by her father. Furthermore, O suffered direct physical harm by being kicked by her father;

- (iii) Dr Phibbs concluded that O demonstrates a significantly disordered attachment pattern, which impacts on her ability to form adaptive relationships with peers and adults because of her childhood experiences of inconsistent parenting she received in her formative early years. Dr Phibbs further commented on the enmeshed, co-dependant relationship that exists between her and her mother;
  - (iv) In her oral evidence, Dr Phibbs told the Court that if O does not get help now, she would have grave concerns about O's mental health and there would be a risk O may harm people, escalate her behaviour and there is a risk of criminality having regard to the violence she has displayed towards people in authority;
  - (v) I agree with the Children's Guardian's analysis when she told the Court that the children's exposure to parental conflict, inconsistent parenting and a negative, mistrusting primary carer means that they have experienced times of uncertainty, fear, anxiety and stress. Their understanding of the world around them is that it can be an unsafe and unpredictable place to be in and that their parents cannot be consistently depended on to meet their needs;
  - (vi) The risk of harm of O remaining in the care of her mother has been set out in detail in this judgment. The professionals conclude unanimously that the risk of harm to O of removal is a lesser risk. The Children's Guardian acknowledges that removal will be extremely traumatic for both children, especially for O. Removal will be a significant, emotionally harmful experience and will take some time to overcome. The Children's Guardian acknowledged that removal is extremely harmful, "but with experienced good quality carers and access to therapeutic interventions and support it is hoped that some of that harm could be alleviated ...it is damage limitation;"
  - (vii) In my judgment, I find no reason to depart from the unanimous conclusions of the professionals, the Social Worker, Dr Phibbs and the Children's Guardian. Removal of O from her mother's care, contrary to O's firmly held wishes and vehemently opposed by her mother, will cause emotional harm. However, balancing the harm of remaining in her mother's care, in my judgment, the balance falls plainly in favour of removal. Whilst the harm caused by removal may be alleviated by therapeutic intervention and specialised support through experienced carers, it is highly unlikely that the harm caused by remaining in the mother's care would be addressed effectively, given the mother's opposition to professional support for the child and for herself.
- (f) *how capable each of her parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs:*
- (i) The father does not put himself forward to care for the children;
  - (ii) In respect of the mother, the professionals recognise that there are strengths in the family system. The mother dearly loves her children. She speaks extremely positively about them and their capabilities. The Children's Guardian has observed the mother demonstrating warm and loving behaviour towards both children. No concerns have been raised regarding the mother's ability to meet the children's basic physical needs. Despite the significant difficulties the mother suffers, including the barriers to her understanding and the difficulties she has overcome such as the breakdown of her marriage, the children's own specific health needs and the background of domestic abuse that she and the children have suffered, the mother has done some extraordinary things in raising the children. She feeds and clothes the children, she runs a busy household and she takes the children on positive activities. However, the children's

emotional needs remain the significant issue. In some of her answers given in her oral evidence, the mother demonstrated that she wants the children to receive the right mental health treatment and to receive the right treatment for herself but she remains entrenched in her view that the professionals, and in particular Dr Phibbs, are wrong and she does not wish to embark on treatment on a false prospectus;

- (iii) O has been permanently excluded from a number of schools as a result of being verbally and physically aggressive towards staff and other students. The mother was reported to have been obstructive and difficult in working with the Special Educational Needs Team to identify a school placement for O. The mother refused social care information being shared with a potential school, causing delay for O. There have been significant delays with the mother being highly obstructive to the children receiving necessary support and treatment. I accept the analysis of the Children's Guardian who told the Court that without such intervention, the children will remain in anxious and complex emotional states and at risk of the continued negative impact of the maladaptive and dysfunctional family dynamics;
- (iv) The Local Authority completed a parenting assessment of the mother in April 2018. The assessment concluded that the mother should engage in a bespoke package of parenting support to enhance her parenting capacity. I accept the evidence of the Children's Guardian who told the Court in her analysis that the confrontational relationship with the previous social worker and mistrust of other professionals has been used to deflect from the mother's non-engagement in the work identified in the parenting assessment and by Dr Phibbs: "*Sadly, there is little indication that [the mother] has changed in any substantial way that would suggest the gaps in her parenting have been satisfactorily addressed to ensure the children's needs are adequately met;*"
- (v) The mother has provided various accounts explaining why the Written Agreement was not complied with in its entirety. She has and continues to view the Local Authority's involvement as an unwanted interference with her family life. The mother has said that she wishes to concentrate on the children's needs, rather than progressing recommended therapy for herself. However, the services identified for the children have also been blocked by her. I accept the analysis of the Children's Guardian when she told the Court that the mother is unable to link the benefits of her receiving therapeutic intervention on her functioning and parenting capacity, which would ultimately enhance the care that the children receive. Further the mother cannot comprehend the benefits of the children accessing therapeutic interventions to assist with their day to day functioning or heightened emotional states.
- (vi) Whilst O has commenced a new school placement, there was a lengthy period of absence, when the mother was not proactive in working with the Special Educational Needs Department to identify an appropriate provision. The mother's lack of cooperation contributed to O not having a school place for a lengthy period;
- (vii) Since commencing her new school placement, O was excluded from school for one day on 15<sup>th</sup> February 2019 and for a further three days from 20<sup>th</sup> to 22<sup>nd</sup> March 2019. In respect of this most recent exclusion, O is reported to have stabbed at the faces of another student and a staff member with a pencil. When the student left the room, O is reported to have blocked the staff member from also leaving the room, requiring support from other staff members to be able to leave. O is reported to have punched another staff member in the stomach when they went to provide support to O. O is reported to have stamped repeatedly on the foot of the Passenger Assistant when boarding the taxi and to have threatened to stab the Passenger Assistant;
- (viii) Dr Phibbs concluded that the mother has complex difficulties resulting in the interaction between her personality traits (avoidant and dependent), clinical syndromes (anxiety, mood swings, Post-Traumatic Stress Disorder, Delusion Disorder) and learning disability. The mother disagrees with the conclusions of Dr Phibbs assessment of herself and the children. She has been obstructive to the report being disclosed to other professionals to inform a treatment plan for therapeutic intervention;

- (ix) In respect of the mother's ability to manage O's behaviour, Dr Phibbs told the Court, "*I don't see any evidence of that. The parenting work has not been taken up. I am concerned that Y said O has hit the mother. The mother says Y is not telling the truth. The mother is potentially concealing that...avoidance of working with professionals has got in the way, including avoiding therapy. The cumulative impact of that neglect and emotional abuse of the child over time is significant...The mother's responses to social care have been extremely negative, including her behaviour and language at school, which is unacceptable and difficult when people trying to help and support her. She is vitriolic in her language when people explain to her how they will support her with a package. O was often 'parroting' language coming from her mother. Any discipline or concerns raised by school, the mother deflected to the person criticising, saying the school is not giving the support. O is now doing the same thing at school, criticising others, rather than acknowledging her own behaviour. I have seen no evidence the mother has been able to instil boundaries. That is coming to a particular fore now that O is approaching adolescence;*"
  - (x) I find no reason to depart from the unanimous professional conclusion that regrettably, despite her clear love for the children and their clear love for her, there is substantial evidence of the mother not being capable of meeting the significant and complex emotional needs of the children.
- (g) *the range of powers available to the court under this Act in the proceedings in question:*  
This is addressed later in this judgment.

134. The Court has considered the welfare checklist also in so far as it applies to the child, Y. Many of the same factors apply to Y as they to O and need not be repeated.

- (a) *the ascertainable wishes and feelings of the child concerned (considered in the light of their age and understanding):* Y is not of an age or stage of development to fully understand the current proceedings or the wider implications for him. Y has struggled to express his wishes and feelings to the Children's Guardian during home visits and, despite non-intrusive questions, he would not respond or would answer with the word 'cat'. Y declined to complete Cafcass worksheets to aid those discussions. The Children's Guardian reports that the process was further obstructed by the mother not consenting to the Children's Guardian's visits with the child at school. Y has previously indicated that he wishes to remain in the primary care of his Mother, sister and pets.
- (b) *the child's physical, emotional and educational needs:* Y attends a primary school for children who have moderate learning difficulties, speech, language and communication difficulties and autism. Y is provided with transport and an escort to attend school. There are no concerns about his school attendance. He has been reported to be meeting his targets and has developed appropriate peer relationships. As with O, I accept the Children's Guardian's analysis that it is very important that the children are afforded the opportunity to be protected from exposure to further incidents of the mother's unregulated emotional responses and failure to meet the children's holistic needs by engaging with identified support services. As with his sister, it is necessary that Y can thrive within a safe and nurturing environment where their psychological, physical, educational and emotional needs are prioritised and consistently met.
- (c) *the likely effect on the child of any change in his circumstances:* very similar factors apply to Y as they do for O. Additionally, Y is reported to have said he, 'hates his dad and does not want to see him.' The Children's Guardian asked him about indirect contact with his father consisting of letters cards and gifts. Y responded that he would rip them up.

- (d) *the child's age, sex, background and any characteristics of the child which the court considers relevant:* Y is an 9-year-old boy, of White British heritage. He has been diagnosed with global developmental delay and is functioning at approximately half his chronological age. He has a diagnosis of asthma and is prescribed an inhaler. Dr Phibbs completed an assessment of Y and reported that he was showing signs of indicative of 'insecure attachment patterns.'
- (e) *any harm which the child has suffered or is at risk of suffering:* Similar factors apply to Y as they do in relation to O. Additionally, the Children's Guardian asked Y if he gets on with O. He is said to have replied, 'not all the time,' and that they argue and fight. When this happens, Y stated that he tells his mother, who responds by telling them both off. I accept the Children's Guardian's analysis that the Y's previous exposure to parental conflict, and his exposure to ongoing inconsistent parenting and a negative mistrusting primary carer means that he will have experienced times of uncertainty, fear, anxiety and stress. His understanding of the world around him is that it can be an unsafe and unpredictable place to be in and that his parents cannot be depended upon consistently to meet his needs. Y has become guarded and apprehensive during the Children's Guardian's visits and Y has refused to communicate, when asked simple questions such as, 'how was your day?' The Children's Guardian told the Court that she is extremely concerned that Y made disclosures to Dr Phibbs even in his highly anxious state, that O hurts him and hurts their mother. In the Children's Guardian's initial analysis, it was recorded that Y said he and O fight and argue sometimes but he went further with Dr Phibbs. The Children's Guardian is concerned that if his disclosures are not taken seriously, he will further retreat to his avoidance state. Dr Phibbs gave a stark description of what would happen to the children if they remain in their mother's care. The Children's Guardian concurs. I find no reason to depart from the unanimous professional conclusion.
- (f) *how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs:* Again, similar considerations apply to Y as they do in relation to O.
- (g) *the range of powers available to the court under this Act in the proceedings in question.* This is addressed below.

135. I find no reason to depart from the unanimous professional opinion in this case that it is imperative that both the children, O and Y, are afforded the opportunity to be protected from further incidents of emotional harm and neglect. Despite the mother's clear love for the children and despite it being plain that the mother strongly believes she is doing the right thing for her children, this Court cannot reach any conclusion other than that the children are not experiencing a safe and nurturing environment where their physical, emotional and development needs are prioritised and consistently met. Further, given that the mother has obstructed access to professional support and intervention the children need, set against the background of all the evidence and the findings made, there is no solid-evidence based reason to conclude that the children will have their needs met whilst in their mother's care.

136. The range of options before the Court in relation to both children are similar. In my judgment, safe reunification, or continued placement of the children with their mother under a Supervision Order or any other form of Court Order would not adequately safeguard the children, due to the mother's failure to comply with the support offered and detailed within the previous Written Agreement under the currency of the Supervision Order made in May 2018. Such placement would not meet O's need or Y's need for stability and would place them at significant risk of further harm due to the mother's inability to positively engage with support services to mitigate the risks. The previous Supervision Order proved to be unworkable, despite every proper effort

made by the professionals to try to make it work. The mother vehemently opposes the Local Authority plan for the children to be removed from her primary care and seeks for them to remain together with her in the family home. Although that would be in accordance with the wishes of the children and would allow them to remain in the household together, the risk of significant harm would remain and the outcome for the children would deteriorate further.

137. The evidence shows the mother to be a vulnerable person who has repeatedly let her own needs get in the way of her responsibilities towards her children, placing them both at clear risk of significant harm. Her decision not to comply with the Written Agreement, even if she feels that decision was justified and well-intentioned, was unwise and has caused further significant harm. The relationship between the mother and her children and the relationship between the siblings is a complex one and is a damaging one. The mother herself has significant mental health needs which are not being addressed. The children have significant mental health and emotional needs which are not being addressed.
138. I agree with the unanimous professional opinion that, sadly, the evidence within these proceedings does not support the mother's preferred outcome. Although the children would experience emotional harm caused by separation from their mother and from each other as siblings, the balance of harm falls strongly in favour of removal.
139. There are no applications before the Court for a "live with" Child Arrangements Order. The father's application for a Child Arrangements Order ("spend time with") is not pursued.
140. Neither parent has put forward any extended family members to be assessed as alternative carers for O and Y. No viability assessments have been completed throughout these proceedings. Similarly, no special guardianship assessments were completed throughout these proceedings.
141. Due to O and Y's ages and their existing relationship with their mother and each other, adoption is not considered by any party to be a permanency option for the children.
142. The Local Authority's final evidence and care plans recommend long term fostering for Y and placement of O in a separate placement. The Local Authority plan would enable the children to be cared for by experienced, professional specialist carers, trained in managing the complex needs that both O and Y present with. The carers will have the experience to understand that O and Y may present with challenges later in life and during their adolescence. The Local Authority plan would provide O and Y with the safety, stability and consistency they require and enable them each to have their emotional, psychological and therapeutic needs met through CAMHS and targeted, specialist intervention, which Dr Phibbs identifies they both require.
143. Long term fostering would mean that the children would experience life as 'looked after' children, with the Local Authority as their 'corporate parent.' This would expose the children to possible disruption, repeated losses of significant attachment relationships, potential placement breakdowns and separation from each other, which would be detrimental to their emotional wellbeing and developmental potential. Additionally, the children would be exposed to the intrusiveness of the looked after process. They would be allocated a social worker and an Independent Reviewing Officer and be subjected to continuous reviews and professional intervention and assessments. Nevertheless, in my judgment, I find no reason to depart from the unanimous opinion of the professionals that long-term foster care, and in the case of O, a specialist residential placement, is the option that would best meet their specific needs, whilst allowing them to maintain a relationship with their mother through direct contact. O's behaviour and emotional needs do suggest a specialist placement is required. Whilst I note the Children's Guardian's reservation about the placement identified for O, on the information before me, I am satisfied that the plan for focused therapeutic intervention proposed by the Local Authority at the placement is appropriate and is in her best interests.

144. The Children's Guardian's reservations about the proposed placement for O include amongst other concerns, that (a) the placement has a specialism in learning difficulties but may not have adequate specialism in providing the specific therapeutic intervention O requires, and (b) O's challenging behaviour at school has been escalating which could result in placement breakdown for O if her needs are not managed appropriately. I respectfully acknowledge those concerns expressed by the Children's Guardian. In her oral evidence, the Children's Guardian also acknowledged, however, that there are currently no therapeutic placements available in the local area, the only available placement being out of county, a considerable distance away, which would impact significantly on the ability of the Local Authority to promote inter-sibling contact and contact between O and her mother. Further, the Children's Guardian acknowledged in her oral evidence that the residential unit will outsource specialist expertise in line with O's profile, the Children's Guardian telling the Court in her oral evidence that the proposed minimum of 44 sessions of private specialist therapeutic support proposed would provide the Children's Guardian with reassurance. Furthermore, the Children's Guardian acknowledged in her oral evidence that there are considerable benefits to the residential placement implementing the 'positive behaviour model', which is consistent with the model being used to support O at school, thereby providing continuity for O's benefit. Yet further, the Children's Guardian acknowledged in her oral evidence that placement at the residential unit, in close geographical proximity to O's current school, where she is happy, would provide O with further continuity, which could not be achieved if O was placed out of county. I am conscious that the Guardian's reservations must be given weight and respect. The Children's Guardian is supportive of a residential placement for O. Her concern was in respect of this specific placement. Acknowledging as she did in her oral evidence, the benefits of the proposed placement, including the ability of O to maintain contact with her sibling and mother and receive continuity in the type of support she is receiving, together with the reassurance given by the Local Authority as to the outsourcing of specialist expertise, giving proper and due weight to those factors leads me to the conclusion that the placement, albeit not without risk but, on balance, is in O's best interests.
145. Further, as the Local Authority care plan is for the children to have separate placements, the Court has carefully considered the sibling assessment and the evidence as a whole. Cases involving the separation of siblings are never easy and this case is no exception. Sibling separation is not a decision that any of the professionals has taken lightly. What is clear from Dr Phibbs' evidence is that O needs a team around her to offer reparative parenting and for O to experience stability, whereas Y needs one-to-one reparative parenting with a carer who is consistent and attuned to his needs to help him with his extreme anxiety. I accept the professional evidence that the needs of the children are polar opposites and that is difficult to achieve in a single setting.
146. I respectfully agree with the unanimous conclusion of the Social Worker and Children's Guardian that, for the reasons given, a Care Order is the best option for O and Y individually, is in their best interests and there are no other options that could adequately safeguard them from the real risk of significant harm. A Care Order will ensure that the relationship they have with their mother and with each other as siblings will not be severed and can be maintained through direct contact. On balance, Care Orders for both children with the plan of separate placements remains the only realistic option that will meet the children's individual welfare needs now and throughout their minority.
147. The role of the Family Court is not to punish parents. The role of the Family Court is not to punish children. The Court's assessment of the parents' ability to discharge their responsibilities towards the child must take into account the assistance and support which the authorities would offer. Before making a Care Order, the Court must be satisfied that there is no practical way of the authorities or other services providing the requisite assistance and support. For the reasons already given, in my judgment, there is no combination of things that could be put in place by the Local Authority to mitigate against the risk to O and Y sufficiently.

148. In my judgment, the circumstances of this case, motivated by overriding requirements pertaining to the welfare of both children individually, means that no lesser interventionist Order when protecting their welfare short of a Care Order will do. In my judgment, the interests of the child O and the child Y render it necessary to make a Care Order for both.
149. A high degree of justification is necessary under Article 8 if a decision is to be made that a child should be removed from a parent against the wishes of the child's parent and against the wishes of the child. Article 8 protects the right to respect for the private and family life of the child, O and Y, and the private and family life of the mother, the father, and the wider family. No interference with the exercise of this right is permissible by a public authority, including the Local Authority and the Court, except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
150. Whilst the making of a Care Order is a clear interference with the Article 8 rights of the children, their mother, father and the wider family, such Orders are made in accordance with law and with the legitimate aim of promoting the welfare of the child. In my judgment, that interference is necessary and is a proportionate response, having regard to the risks and having regard to the welfare evaluation. Where there is a conflict between the welfare of the child and the rights of an adult, the child's interests will predominate. On the facts of the case, the interference in the Article 8 rights of the children and the relevant adults that would result from the Care Orders, would in my judgment, amount to a necessary interference or one that is proportionate to the essential end of promoting the welfare of each of the children.
151. I endorse the Local Authority amended Care Plans for both children in respect of contact with their mother, which provides for contact at six times each year, beginning at 1 ½ hours in a contact centre, reviewed after three months, with the Local Authority then looking to implement three-hour contact sessions in the community, depending on how the mother and the children react. This will enable contact in each of the main school holidays and provide scope to extend the sessions if they progress well. I take note of the Children's Guardian's observation that contact in a children centre is more suited to younger children, hence the scope to move into the community for longer sessions, if it remains in the best interests of the children.
152. Further, I approve the amended plan for sibling contact on a fortnightly basis. Sibling relationships are potentially the most enduring relationships of a lifetime and it is important for this relationship to be maintained, provided that it remains in their best interests individually. The plan is to provide the siblings with significant time of at least 4 hours duration to enable the carers to get together to plan activities involving quality time and with the aim of repairing some of the difficulties in their relationship.
153. In respect of the children's contact with their father, the father no longer seeks a Child Arrangements Order. Both children have expressed strong wishes not to have contact with him. Previous attempts at indirect contact have proved to be damaging. Set against the background of findings in relation to domestic abuse, the wishes and feelings of the children are entirely understandable. The professionals now accept there needs to be a high level of direct work with the children including around their mental health needs, their sibling relationship and dealing with the issue of separation from their primary carer prior to consideration of re-establishing any contact with their father. I accept the Children's Guardian's oral evidence when she told the Court, there will be a lot of "big shifts" now, the biggest change being that of living away from their mother. The father needs to allow the children time to do that and allow time for matters to settle and then think about his role. The insight the father has in respect of the impact on the children of domestic abuse he perpetrated is poor. He would benefit from completing more specialist domestic violence perpetrator work, over and above the 'Caring Dads' course



previously attended. Direct or indirect contact between the children and their father now is not in the best interests of the children. I accept the professional opinion that it would be appropriate for the issue to remain on the agenda at Looked After Child review meetings and for the professionals to keep the issue under review.

Conclusion

154. For the reasons given, the Court makes the following Orders:

- (a) The child O is placed in the care of Hertfordshire County Council under a Care Order;
- (b) The child Y is placed in the care of Hertfordshire County Council under a Care Order;
- (c) The father's application for a Child Arrangements Order is dismissed.