Case No: BH18C00085

IN THE FAMILY COURT SITTING AT BOURNEMOUTH

Courts of Justice
Deansleigh Road
Bournemouth
BH7 7DS
Date: 4 February 2019

Before:

HIS HONOUR JUDGE DANCEY

- -

Between:

A Mother	**Applicant**
- and -	
Dorset County Council	**1st Respondent**
-and-	
C and D	**2nd Respondents**
(by their children's guardian)	

Elizabeth Hepworth (instructed by **Battens**) for the **Applicant**
Roberta Holland (instructed by **Dorset Legal Services**) for the **1st Respondent**
Omar Malik (instructed by **AB Solicitors**) for the **2nd Respondents**

Hearing date: 2 January 2019

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JUDGMENT

His Honour Judge Dancey:

Introduction

1) This case concerns two children, a boy aged 8 years and 5 months, who I shall call C, and a girl aged just 5 years, who I shall call D. The question to be decided is whether Dorset County Council (the local authority) should have a time limited opportunity to find an adoptive placement for the children together or whether they should remain in long-term foster care.

2) C and D's father, who was black African, sadly died in 2015. Their mother is white British. The children therefore have mixed heritage. The mother has a constellation of mental and physical health and substance misuse problems, as a result of which C and D were removed to foster care in September 2015 under emergency protection and then interim care orders. They were made subject of final care orders in July 2016. C and D were returned to their mother's care in January 2017 under the Placement of Children with Parent Regulations. Sadly, further problems arose and the children were removed again in November 2017 and (with the support of the mother) placed with their current foster carers, where they have remained since.

3) At the end of January 2018 the mother applied to discharge the care orders with a view to the children being returned to her. Despite some improvement in her mental health condition, and recent de-toxification from methadone, the mother now realistically accepts that she is unable to care for the children and does not pursue discharge of the care orders. I therefore ruled the mother out as a carer for the children at a hearing on 29 November 2018, indicating that I would give my reasons for doing that within this judgment.

4) Alternative family carers have been assessed. The maternal uncle has been considered but is unable to put himself forward. A paternal aunt in Canada also put herself forward to adopt the children and was initially positively assessed and made party to the proceedings. But then the aunt did not come to the UK as she said she would for the purpose of assessment and to meet with the children, so I discharged her as a party. The result is that there is no option before the court that would enable C and D to be cared for by their family.

5) The children have two paternal half-siblings aged 16 and 15 who are in foster care in the London area. It is not clear that the children have a significant relationship with their half-siblings, although they have met from time to time. The children do have a good relationship with their paternal grandmother and maternal uncle which it is recognised should continue.

6) The local authority applies for placement orders in respect of both children. Their plan is to try and find an adoptive placement for both children together within the next six months, failing which they will revert to a plan for long-term fostering by the children's current foster carer.

7) The mother has had regular contact with the children which has been of good quality. Ideally the children would wish to live with their mother, failing which they would wish to stay with their current carer. The mother would wish to be

able to have the children live with her again at some point in the future. She therefore says the children should remain in foster care and opposes the making of placement orders. She would agree to the making of an order under section 91(14) of the Children Act 1989 restricting any further applications by her (without leave) for discharge of the care orders in order to give the children a chance to settle and to avoid them being involved in further litigation without good purpose.

8) The guardian at one point supported the making of placement orders, but has reflected and now supports long-term foster care and the making of a section 91(14) order.

9) These were the issues that came before me on 2 January 2019 when the local authority was represented by Ms Holland, the mother by Ms Hepworth and the children by Mr Malik, instructed by the guardian.

10) I heard evidence from the Team Manager (TM) of the Family Finding, Matching and Placement Team within the local adoption agency, the key social worker (SW) who is an advanced practitioner in the local authority's Care and Support 0 to 12 Team and the children's guardian, CG. The mother did not give evidence.

11) A number of issues arise:

    a) whether in practical terms the local authority are likely to find an adoptive placement for two mixed heritage children aged 8 and 5;

    b) the comparative risks of disruption of an adoptive placement and long-term fostering;

    c) the significance of the children's wishes not to go to a further stranger placement;

    d) the comparative benefits and disadvantages of an adoptive placement on the one hand and long-term fostering on the other.

A summary of my decision

12) I am going to set out now a short summary of my decision. I hope it will be helpful for the family and the children in due course. So I am writing this part of my decision in a way that I hope they will easily understand. It can be taken out of the judgment and provided to the family.

13) This is about two children who are 8 and 5. I am calling them C and D because it is important nobody is able to identify who they are. The children have been in foster care for the last year or so because of problems their mother has had looking after them.

14) The mother would want the children returned to her care. She loves the children very much and they love her. They see each other every week and that is going well and has real value for the children as well as for the mother. However, the mother accepts that she is not able to look after the children in the way they need. She has had a lot of difficulties in her life. Most of them haven't been of her making. That is not her fault. What matters though is that she accepts (and I agree) she cannot at the moment meet the children's needs.

15) Other family members have been considered, particularly the mother's brother and the children's aunt on their father's side (their father sadly died in 2015).

Unfortunately, there are no other family members who can look after the children either.

16) The foster carers are doing a really good job of bringing the children up. The children have suffered a great deal of loss and changes in their lives and the care of them when with their mother has been poor. Everyone agrees they are delightful children. But they are children who need a lot of emotional care. They are getting that from the foster carers. The foster carers will look after the children until they grow up. I am sure they would do a good job. If the children cannot go back to their mother (and they can't) they would want to stay with the foster carers.

17) The local authority thinks the children should have a chance to be adopted. They say that because adoption would mean the children having a new family for life that would go on beyond their 18th birthdays. That might give the children a sense of belonging to a normal family rather than being in foster care. It would also mean cutting all legal ties between the children and the rest of their family. And they would only see their mother (and possibly their uncle) about once a year. They would also keep in touch through what is called 'letterbox' contact.

18) If they stay in foster care the children will still be in the care system and, at 16 or 18, would be care leavers. Generally we don't want children staying in the care system longer than necessary.

19) The local authority cannot promise that they will find adopters able to take the children on. In fact there are many more children needing adoption than there are families available to adopt them. And the children are quite old to be adopted. And they need to be kept together. Also any adopters must be prepared to agree to contact between the children and the mother and possibly other family members. That will all make finding adopters very difficult. In fact I think it quite unlikely that it will happen. The local authority say they would only look for 6 months. If they could not find adopters in that time they would abandon the search and leave the children with their foster carers.

20) If I agreed to the local authority trying to find adopters, the children could not honestly be told they are staying where they are for their childhoods. That might unsettle them. And if they knew they might be adopted that might also unsettle them. And if they were told that and adopters couldn't be found in 6 months (which is the most likely outcome) the children might feel rejected.

21) Even if adopters could be found, trying to move the children from their carers could be difficult. The children (especially C) don't want to move. Their experience and losses so far, and being told they are not going home, may mean moving to adopters doesn't work. And if they go there and it doesn't work, they may not be able to go back to the foster carers. They may have taken on other foster children and not have room.

22) I have decided that adoption would be risky for the children. The risks are greater than the benefits they might get from adoption, such as a sense of belonging to a 'family for life'. So I have decided that the children should stay with their foster carers during their childhoods as their mother wants.

23) It is possible that the mother may again ask the court to say that the children should come back to her. That might also unsettle the children. So I will say that the mother cannot apply to the court to have the children returned to her unless a judge has looked at her application and thinks that she should be allowed to apply.

Legal principles

24) Because the local authority's primary plan is for adoption, section 1(2) of the Adoption and Children Act 2002 requires that the welfare of the children *throughout their lives* is the court's paramount concern. I must also consider the welfare checklist in section 1(4) of the 2002 Act, particularly in this case the children's wishes and feelings, their ages and relevant characteristics, the effect on them of ceasing to be members of their original family and becoming adopted persons, risk of harm and the likelihood and value of ongoing relationships with relatives.

25) Although the question is not whether the children could return to their mother now, the importance of family ties still underpins the court's considerations. This is not a case where the court is comparing care within the family and outside it, but that does not mean that the Article 8 rights of the children and the mother are not engaged. The fundamental distinction between the two available options is whether the legal ties between C and D and their birth family should be severed by adoption or whether the option of less interference, long-term fostering, would better meet the children's welfare needs throughout their lives.

26) And the distinction is not merely a legal one. The practical consequences are profound:

a) the children would be shut out from any prospect of reunification with their mother (as they would currently wish) in the future;

b) the proposal for direct contact with the children in foster care would be once every 6 weeks, in open adoption once a year (with letterbox contact in the intervening 6 months);

c) the children also have a good relationship with their maternal uncle whose contact would be similarly restricted;

d) the children would lose their relationship with their current carers with whom they are forming attachments, although it is proposed that contact with them could be maintained;

e) it is unlikely, as the social workers accepted in evidence, that local adoptive placements could be found and the children would probably therefore have to move area and schools and lose current friendships, all of which are important to them.

27) . So, even with the possibility of open adoption and some direct sibling contact, family life for the children would change in the most fundamental way for the rest of their lives. Thus, the court has to be satisfied by the local authority that nothing else short of adoption will do: *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33, R*e B-S (Children) (Adoption Order: Leave to Oppose)* [2013] EWCA Civ 1146, *Re R* [2014] EWCA Civ 1625.

28) As Baroness Hale said in Re B

> "the test for severing the relationship between parent and child is very strict: only in exceptional circumstances and where motivated by *overriding requirements* pertaining to the child's welfare, in short, where nothing else will do."

29) This reflected what the Strasbourg Court said in *Y v United Kingdom* (2012) 55 EHRR 33, [2012] 2 FLR 332, para 134:

> "family ties may only be severed in very exceptional circumstances and … everything must be done to preserve personal relations and, where appropriate, to 'rebuild' the family. It is not enough to show that a child could be placed in a more beneficial environment for his upbringing. However, where the maintenance of family ties would harm the child's health and development, a parent is not entitled under article 8 to insist that such ties be maintained."

30) These considerations apply, in my view, no less when the options do not include care within the family. The requirements of necessity and proportionality still apply, although in the context of options at one end of the range of potential outcomes (reunification being at the other end).

31) All that said, there is no legal presumption or right for a child to be brought up within her family. The only right is "for the arrangements for the child to be determined by affording paramount consideration to her welfare throughout her life (in an adoption case) in a manner which is proportionate and compatible with the need to respect any ECHR Art 8 rights which are engaged": *Re W (A Child)* [2016] EWCA Civ 793 (McFarlane LJ as he then was).

32) I would also need to be satisfied, before I could make a placement order, that the children's welfare required that the mother's consent be dispensed with: section 52(1) of the 20012 Act.

Long-term fostering or adoption

33) The question, long-term fostering or adoption, has been considered in a number of cases. Generally speaking, the cases reflect the research findings referred to later in this judgment about the benefits of adoption.

34) In *Re H (Adoption: Parental Agreement)* [1982] 3 FLR 386[1] a mother unsuccessfully appealed the making of an adoption order in relation to a boy of 8 who had been in care for most of his life. Ormrod LJ said:

> "The answer is always the same – and it is always a good one – adoption gives us total security and makes the child part of our family, and places us in parental control of the child; long-term fostering leaves us exposed to changes of view of the local authority, it leaves us exposed to applications and so on by the natural parent. That is a perfectly sensible and reasonable approach; it is far from being only an emotive one."

35) In *Re B (Adoption Order)* [2001] EWCA Civ 347 Hale LJ (as she then was) said that "the continued support of the local authority [through a care order] comes at the price of continued monitoring and insecurity".

36) In *Re F (Adoption: Welfare of Child: Financial Considerations)* [2003] EWHC 3448 (Fam) Black J (as she then was) acknowledged that, as a general principle, adoption has more to offer children, and particularly younger children, in all sorts of ways than long-term foster care; although in that case she decided it was not in the interests of the particular children to abandon the loving foster family they were living in and to step into the unknown in pursuit of as yet unidentified adopters.

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[1] Approved by Lord Ackner in *Re C (A Minor) (Adoption Order: Conditions)* [1988] 2 FLR 159

37) And in *Re V (Children)* [2013] EWCA Civ 913, a case involving children aged 9 and 5, Black LJ (as she had then become), while not seeking to embark on a comprehensive comparison, observed (at paragraph 96):

> "i) Adoption makes the child a permanent part of the adoptive family to which he or she fully belongs. To the child, it is likely therefore to "feel" different from fostering. Adoptions do, of course, fail but the commitment of the adoptive family is of a different nature to that of a local authority foster carer whose circumstances may change, however devoted he or she is, and who is free to determine the caring arrangement.
>
> ii) Whereas the parents may apply for the discharge of a care order with a view to getting the child back to live with them, once an adoption order is made, it is made for all time.
>
> iii) Contact in the adoption context is also a different matter from contact in the context of a fostering arrangement. Where a child is in the care of a local authority, the starting point is that the authority is obliged to allow the child reasonable contact with his parents (section 34(1) Children Act 1989). The contact position can, of course, be regulated by alternative orders under section 34 but the situation still contrasts markedly with that of an adoptive child. There are open adoptions, where the child sees his or her natural parents, but I think it would be fair to say that such arrangements tend not to be seen where the adoptive parents are not in full agreement. Once the adoption order has been made, the natural parents normally need leave before they can apply for contact.
>
> iv) Routine life is different for the adopted child in that once he or she is adopted, the local authority have no further role in his or her life (no local authority medicals, no local authority reviews, no need to consult the social worker over school trips abroad, for example)."

38) At paragraph 98 Black LJ said this, reflecting a difficulty in the present case:

> "There was complete agreement that the children should be placed together. It is always difficult to balance the differing needs of two children who are to remain together and it would be easy to concentrate on C, because she is older and more articulate, and to lose sight of V's needs. V is only 4 and has a very long time in foster care ahead of her. Adoption is likely to be easier for her to accommodate and its benefits are more obvious for a child of her age as are the potential disadvantages of spending the majority of her childhood in foster care, with contact with her parents only 6 times a year."

39) In that case the Court of Appeal decided that the judge was wrong to conclude that long term fostering would serve the interests of the children, their welfare requiring that they be adopted. Key to that decision was that the judge had wrongly assessed the nature of the mother's contact as beneficial whereas it was in fact potentially harmful.

40) In *Re A (Children: Adoption/Long Term Foster Care)* [2015] EWCA Civ 1021, the Court of Appeal upheld a decision not to place for adoption children aged 6, 5 and

3 but to leave them in long-term foster care. A significant consideration in that case, not relevant in the present, was the question of ongoing contact with older siblings who it was agreed should remain in foster care. That too was a case where the care plan was for a six-month time limited opportunity to find an adoptive placement. It was noted that there was little evidence to suggest the potential for success of an adoptive placement for children between 6 and 7 years old.

41) In *Re B-P (Adoption or Fostering)* [2018] EWCA Civ 2042 Peter Jackson LJ referred to the importance of giving appropriate weight in the balancing exercise to evident potential benefits of adoption in terms of commitment, security and permanence.

42) However, the courts do recognise the place that long-term fostering has as a permanence option in certain circumstances, again reflecting the research set out below. In *Re M (Adoption or Residence Order)* [1998] 1 FLR 570, Ward LJ said:

> "[In adoption] the child is treated in law as if she had been born a child of the marriage of the applicants. She ceases in law to be a child of her mother and the sister of her siblings. The old family link is destroyed and new family ties are created. The psychological effect is that the child loses one identity and gains another. Adoption is inconsistent with being a member of both old and new family at the same time. Long-term fostering does enable the child to have the best of both worlds by feeling she belongs to both families though she must reside with and will anyway usually choose to live with only one – the one who gives her the daily love and care."

43) In *Re F* (supra) similar considerations arose to those in the present case. Black J heard evidence that the children would be damaged by a move. Their early experiences would not go away. They would lose the loving, trusting relationship they had with their foster carers. A severe emotional impact was predicted. The local authority considered the children sufficiently resilient to move on with expert help through a bridging placement. Black J did not accept the optimism of the local authority about their chances of overcoming the hurdles of a move to adoption. There could be risk that the children would fail to transfer their attachments or produce problematic behaviour that would jeopardise the placement. And so the long-term foster placement was confirmed. Every case of course stands on its own particular circumstances, but the points made there resonate in the present case

44) Ms Hepworth refers me to another decision of Peter Jackson LJ in *Re F (A Child) (Placement Order: Proportionality)* [2018] EWCA Civ 276, where he stressed the importance of identifying risks and asking the question what the consequences of those risks for the child would be. The court also had to address the question whether risks could be reduced or the consequences mitigated through support services. What was required was a comparative evaluation of the welfare advantages and disadvantages to the child, in that case of growing up either in his mother's care or in adoption. Finally, is adoption necessary and proportionate? Although in that case the options were between return to the mother or placement for adoption the principles set out equally apply where the options do not include growing up in the birth family but where one of the options involves a far greater degree of interference in family life.

Section 91(14)

45) I raised the question whether a section 91(14) order should be made if the applications for placement orders are dismissed. The fact that the mother would agree to the making of an order does not mean that such a restriction on the mother's access to the court should be imposed unless it is both principled and in the welfare interests of the children. The exercise is discretionary but the starting point is that a restriction should be the exception rather than the rule, following a balance of the child's welfare and the right of unrestricted access to the court. If the child's welfare requires restriction there need be no history of unreasonable applications (and I would not characterise the mother's current application as unreasonable). The evidence needs to establish a need to go beyond merely a settling in phase and show that, without restriction, the children or their carers would be placed under unacceptable strain. Although a section 91(14) order does not have to be time-limited it would be exceptional to impose an order without limit of time. The degree of restriction should be proportionate to the harm it is intended to avoid: *Re P (Section 91(14) Guidelines) (Residence and Religious Heritage)* [1999] 2 FLR 573.

46) In *Re V* (supra) Black LJ considered (at paragraph 93) whether a section 91(14) order would adequately protect the children:

> "It appears to me that the judge did not sufficiently appreciate and factor into his conclusion the likelihood of a continuation of M's difficulties and the ramifications of that. The LA's submission that one could anticipate a cycle of contact being suspended and then renewed, with attendant litigation, seems to me to be realistic. A child of C's age would inevitably become involved in this as she would be aware of, and probably unsettled and upset by, the ups and downs in contact and in M's mental state and may also be consulted as to her wishes and feelings about contact. With time, the same would happen with V. I do not see a section 91(14) order as a complete answer to this. It may be some time before despair at the progress of contact led to an application for such an order and, if it followed the pattern of contact in 2011 and 2012, poor contact would have been damaging for the children meanwhile and no doubt also undermining of their placement. Furthermore, even when made, a section 91(14) order is not, of course, a bar to applications but a leave filter and it might not shield the children (C now and V as she got older) and their foster parents completely."

47) As Ms Holland points out in her submissions, the court may not impose conditions on a section 91(14) order, the effect of which would be to further restrict access to the court. Nor can the court impose an absolute bar on applications other than by exercise of the inherent jurisdiction of the court (and as I am sitting in the family court I do not have inherent jurisdiction powers). These points are made to emphasise the qualified protection afforded by section 91(14).

The mother's circumstances and the children's experience and characteristics

48) The impact on, and the risks for, the children of the two options need to be considered in the context both of their experience so far and their characteristics.

49) The mother, who is now 36, has had a number of difficulties that have impacted on her ability to care for the children:

a) she has had a lifetime physical condition, [*redacted*], which has required corrective surgery [*redacted*];

b) the effect of the condition is to inhibit the release of necessary hormones meaning that the body is less able to deal with stress, emotionally and physically – this is balanced by medication and should not affect day to day health, but there is an increased risk of susceptibility to the effects of severe infection;

c) the need for surgery affected her education (she has had over 100 hospital admissions over her lifetime);

d) she suffers from recurrent back pain;

e) she has described an abusive childhood including sexual abuse and there are references to her self-harming by cutting and overdosing and an eating disorder in her teenage years;

f) in a psychiatric report in December 2015 prepared for the original care proceedings, it was said that the mother has unstable personality traits;

g) it was believed that the relationship with the children's father had been physically, sexually and emotionally abusive;

h) all the other adult relationships the mother has had are described as abusive;

i) although not in a relationship with the father at the time of his death, she was nonetheless shocked by it;

j) she lost her mother suddenly in July 2017 following a fall downstairs (her father having died in 2011);

k) the mother has resorted to alcohol and drugs (cocaine and cannabis) although she is currently free of substances save prescribed medication (she recently de-toxed from methadone);

l) she has been sectioned under the provisions of the Mental Health Act;

m) her engagement with services has been sporadic, albeit better of late.

50) The mother started her relationship with the father in 2007 when she was 25. He was 7 years her senior. He had a history of drug use and dealing and had two children in the care system. The relationship was on-off. They did not live together. He was violent toward the mother. Between 2007 and C's birth in 2010 there were a number of incidents of the mother misusing drugs and alcohol and an admission to a local psychiatric hospital in 2009. The mother reported being abstinent during her pregnancies.

51) In October 2011 the mother moved with C to a refuge locally where they stayed until June 2012. During that time the mother had two admissions to hospital and C was cared for by friends. After that the mother lived with the children at local addresses save a period between January and May 2013 when they stayed with relatives out of the area.

52) In October 2014 a psychiatric report for what appear to have been criminal proceedings described the mother "as barely able to cope with living in the

community and I believe her mental and physical condition such that she is totally unable to stand trial".

53) During the times that C and D were in the care of their mother her care of them was described as neglectful.

54) C and D were removed to foster care in September 2015 and remained with the same carers until January 2017 when they were reunified with their mother.

55) Thereafter there were a number of concerns:

a) late arrivals at school/pre-school;

b) the mother not prioritising her own health needs and her health impacting on her care of the children;

c) parenting difficulties and not following through professional advice about care;

d) C undertaking inappropriate parenting tasks (eg changing D's nappy);

e) lack of parental supervision;

f) worries about the children's emotional behaviour with anxiety including, in D's case, bed-wetting and soiling;

g) neglect including untreated head-lice;

h) despite support by Home Start from July 2017, concerns about home conditions were being reported by September 2017;

i) failure to attend appointments (CADAS and psychiatric) – the mother was discharged from CMHT due to non-attendance in September 2017;

j) in May 2017 there was a reported morphine overdose;

k) the mother was unsurprisingly grieving the sudden loss of her mother from July 2017;

l) there were concerns about the mother's driving ability leading to the revocation of her licence (and she later said she had been transporting the children without car seats for some time);

m) in October 2017 D reported to the pre-school "mummy always slaps me all the time" and told the previous social worker that the mother also hit C.

56) A section 47 investigation was started as a result of what D had said and in November 2017 the mother was told that the children would be removed. When C was spoken to by the social worker he was described as 'frozen'.

57) The children were placed with their current carers. Within days D said she was happy to be with carers again. C took a little time to settle after some initial upset.

58) Both children would prefer to live with their mother or uncle. They have yet to be told that cannot happen, although preparatory work for that has started.

59) D was clear she wanted to live with C, although C did not express a view about this.

60) C was clear he wants to stop changing schools and leaving friends and places that he lives. Pre-school and friends were also important to D.

61) C clearly has an attachment with his mother that he does not want to end D's attachment with her mother is not as strong as C's and she does not look to her mother to meet her needs. That said, the mother is still a very important person and D wants to have contact with her.

62) C talked about the loss of his father and grandmother. Both children have suffered significant losses through death and moves.

63) C is described as a very sweet boy who is loving towards people and animals. He can be shy on first meeting people but is becoming more confident. He is popular at school and sees friendships as important. He enjoys team sports, particularly football. He has a good sense of humour and enjoys [*redacted*]. He has well developed age appropriate skills including self-care. He likes structure and routine. He is good at completing tasks and keeps his room tidy.

64) C is generally in good health. There have been concerns about his self-esteem, anxiety, poor resilience and delays in educational learning. He becomes upset easily, needs regular prompting and has difficulty controlling his emotions. Given C's experience of neglectful and inconsistent care this is perhaps to be expected and highlights the need for security and stability through consistent care in the future.

65) C shows anxiety around health professionals, hospitals and ill health, unsurprisingly given his experience of his mother's health and the loss of his father. He is anxious about his mother and asks after her. SW says he can appear anxious when faced with new experiences, although he appears to manage transitions well with support as reported in school and as observed when placed with his current carers. It has been noted by professionals that C's anxiety, particularly for his mother, has reduced over time through consistent reassurance from his foster carers.

66) D is a confident talkative girl when around familiar adults and children, otherwise she can act shy at times, but not usually for long. She has a happy smiley personality and a good sense of humour. She is described as lively, funny and curious. She is a quick learner and likes to chat about things she has learnt. She is loving towards people and animals. She loves outdoors and playing with C. She enjoys art. She eats anything and has good age-appropriate self-care skills.

67) D is described as very optimistic, clever and good at problem solving. Like her brother, she is popular in school. She can be cheeky and needs secure and consistent boundaries. She can appear anxious before and after contact with her mother (including wetting). It is suggested that she has an ambivalent attitude towards her mother and is less well attached than C. She is in good health.

Why the children cannot return to their mother's care

68) As the mother realistically accepts the children cannot return to her care at the moment, only a brief explanation is required. Of course, all the professionals and the court have had in mind that the children should be reunified with their mother if that were possible and placement outside the family is a matter of last resort. The only other two family options, the maternal uncle and the paternal aunt, have not been able to provide a viable plan of care.

69) It is important to stress that this mother has had a life of adversity. She has tried hard to beat her addictions. It remains to be seen whether her latest de-tox will result in sustainable abstinence. History would suggest not, but everybody would

hope that the mother has the resilience and clearer thinking now to bring some stability to her life.

70) The mother loves her children very much and they love her. Her inability to meet the children's needs is largely not of her making. However, it is clear, as the mother accepts, that she is not able to meet the children's physical and emotional needs at the moment and it would not be safe or in their interests for them to return to her care again, as was attempted at the start of 2017.

71) So the focus of this judgment has to be on the only realistic available options, long-term fostering or adoption.

The local authority's care plan

72) The common professional view within the local authority is that the children should be given the opportunity to be adopted. They recognise it may well not be possible. There is a shortage of available adopters nationally (at the end of September 2018, 1096 children registered on Adoption Match, the statutory national adoption register, against 406 active prospective adoptive families, according to TM). The search would be national and the chance of a local placement being found is low. This in all likelihood would mean therefore a change not only of carer but also area, school and friends. These are risks the social workers have in mind.

73) Further, TM told me that the local adoption agency currently has two sibling groups including children aged 7 who they have not yet been able to place. They have yet to place children of this combination of ages (although the local agency has only been in operation since July 2017).

74) The social workers also recognise that they need to place C and D together, that they are mixed race children, that they are relatively old for adoption and that open adoption would be necessary. This is likely to restrict the pool of available adopters further. The social workers accepted they could not say the prospects of matching were realistic.

75) However, SW in particular was very clear in her evidence about their view that adoption is possible and would carry significant benefits for C and D:

a) as TM said, there might be a shortage of prospective adopters but that is not to say that new adopters might not turn up for whom C and D would be a good match;

b) the children do not present with serious behavioural or attachment difficulties likely to present a further obstacle to matching;

c) if they remain in foster care it will be with carers who do not have parental responsibility for them and who will have to look to the local authority as holders of corporate parental responsibility for decision-making;

d) the children will remain looked after children, subject to regular statutory reviews and ongoing input by social workers;

e) adoption would bring a sense of belonging to a family that wants them forever, contrasting with foster carers who are being paid to care for them (and SW gave the example of getting Christmas presents from foster carers paid for by the local authority);

f) at 16 or 18 the foster placements would end and the children would be care leavers with the statutory support available under Part III of the 1989 Act but not with a family around them as they would have with adoption (given that the average age for children leaving home is said to be 24).

76) The balance the local authority reaches is a six-month opportunity to identify adopters (by which they mean getting as far as internal linking with prospective adopters prior to the matching panel). If they cannot achieve that within six months the local authority accepts that the children should remain in long-term foster care.

The current foster carers.

77) I did not know a great deal about the current foster carers from the papers and had to ask SW about them. They have not been married very long. The foster father is white British and the foster mother [*redacted*]. This SW accepted gave them the advantage of ready understanding of dual heritage, although she made the point that most white British adopters are keen to understand and meet the needs of dual heritage children.

78) The question of special guardianship has been discussed with the foster carers. SW said that special guardianship would have been the ideal outcome for the children. At present they do not wish to take on parental responsibility. They (the foster mother in particular) would welcome the support and decision-making of the local authority rather than having to deal with the mother direct. The foster mother is very keen to learn from professionals and has an excellent training record. In her statement SW said she had spoken to the foster carers' supervisor at the fostering agency and reported

> "the couple will make use of support available to them and act on advice. She thinks they will prove to adapt their parenting as [the children] grow in age and understanding. [The female foster carer] is currently completing a therapeutic parenting course … and has an excellent training record."

79) This is the second long-term foster care placement the carers have had. The first broke down following difficulties between siblings which required both to be moved. I understand this was not a reflection on the abilities of the carers. They have also undertaken short-term respite care.

80) Crucially, the foster carers are committed to the care of C and D long-term if that is the decided plan. Equally, if adoption is the outcome, they will support transition to the adoptive placement.

81) Although not covered specifically in evidence, in her written submissions Ms Hepworth referred me to the fostering agency's website showing a good Ofsted rating in 2017 and mentioning services the agency offers to care leavers. Ms Hepworth points out that the foster carers may well continue to provide support to the children once they have reached the age to leave formal care.

Bias towards adoption

82) The system has within it natural biases. I do not mean bias in the sense of prejudice but rather natural inclination. In care proceedings the courts start with a bias towards parents and families. That is, we try to keep children with their families if at all possible. But if that is not possible, there is a general acceptance, borne out by all the research, that adoption can bring real permanence benefits, particularly

when children are placed when very young. This creates a natural inclination in such cases, or bias, towards adoption as the preferred outcome.

83) This is underpinned by a number of factors:

a) a stated aim of the 2002 Act was to increase the number of children adopted from care;

b) the Government sets adoption targets which local authorities try to meet;

c) looked after children are expensive for local authorities when compared to adoption – there are foster carers fees to pay and social work involvement and regulatory review to resource; foster carers are also tied up long-term.

84) What is important is that we are aware of these biases and allow for them when we consider the welfare requirements of children. The research (and some of the cases) show there is a place for long-term fostering, particularly for older children. The risk, as I believe has happened here, is that sight is lost of fostering as an option in its own right and it risks not being fully weighed against adoption.

85) Where the comparison to be made is between placement within family and outside the family the bias is in favour of family unless welfare requirements dictate otherwise. Where family is not an option the court should still make a proportionate order, that is the one that interferes least with Article 8 rights to respect for family and private life. Usually the welfare requirements of an infant who has to be placed outside the family will require adoption (hence the inclination or bias towards it).

86) But there remains a tension when comparing the benefits of adoption (most interventionist) and fostering (less interventionist) where the welfare requirements of the child might be adequately met by fostering. It is at this point that we have to guard against bias and fully compare the options.

87) I raised this question with SW. She assured me that these bias factors have not influenced, and would not influence, any decision-making around care planning.

88) I was concerned, and raised with SW, that the child permanence reports for the children presented to the Agency Decision Maker (ADM), analysed three options for the children – (a) reunification with their mother (b) placement with their paternal aunt in Canada and (c) adoption. The CPRs did not address the possibility of long-term fostering as an option in its own right at all. At this point the guardian's position had been that long-term fostering would be an appropriate option but agreed the children should have the opportunity for adoption.

89) SW (who was not the author of these reports) accepted this was a significant omission but said that long-term fostering had featured in subsequent review discussions held with the ADM, suggesting that any omission had been rectified.

90) By the time of the ADM's decision (23 October 2018) I had ruled out the paternal aunt in Canada as a result of her non-engagement (and the mother herself opposed placement with the aunt). In the final section of the ADM's decision he considered reunification with the mother but concluded (correctly) that, despite recent de-toxes, there had not been sufficient change in her functioning. He then went on to say:

> "Therefore, I have concluded that adoption would be the best option for [C] and his sister to achieve permanence. Adoption may also offer the potential for parenting that considers the children's dual heritage and background. Regarding this however, I am aware of how settled the children are with

their current carers and how familiar they are with their current environment. Therefore, I am recommending that family finding takes place alongside a plan that the children may remain with their current carers who can be supported to provide permanence for [C] and his sister should the search for suitable and potential adopters be unsuccessful. I would time limit family finding for 6 months to avoid unnecessary delays in reaching permanence for [C] and his sister".

91) What this shows is a lack of analysis (or any consideration) of the option of long-term fostering in its own right. The decision-maker, presented with flawed CPRs, has undertaken a linear exercise of analysis with the only option left being adoption. There was no holistic analysis (in the *Re B-S* sense) of the pros and cons of the options of long-term fostering versus adoption. The decision to issue placement applications is in those circumstances unsurprising but flawed. I question whether any subsequent discussions could adequately remedy this omission.

92) It does seem to me that the local authority has allowed its natural bias towards adoption, which may be fully supportable in relation to younger children, to obscure proper analysis of long-term fostering as a permanence option in its own right rather than as a fall back. That said, I fully accept that the local authority has acted from a genuinely held professional view that adoption is the right outcome for these children.

What would the children be told?

93) When the local authority's plan became evident before the issues resolution hearing, I was concerned about what the children would be told about the plan for adoption in the event that placement orders were made. Following a settlement conference on 12 November 2018, HHJ Richards gave directions for evidence from the adoption agency dealing with their experience of placing children of this age and from the local authority about the foster carers' commitment, the impact of the children remaining in long-term foster care and, importantly, the impact of the children being told that placement orders had been made.

94) In her statement of 19 November 2018 SW said:

"3.2 It was agreed that [the children] would not be informed that prospective adopters are being sought for them. They would be told that the Court have decided that they cannot return to their mother's care and they will be remaining with [the foster carers] for as long as we can see into the future.

3.3 Direct work will be completed with the children to help them understand why they cannot return to their mother or [uncle's] care. [Named student social worker] will take responsibility for this work under supervision and will use practical activities such as time lines, games and interactive activities.

3.4 It is proposed that [the children] attend Activity Days as part of the family finding process. [The adoption agency] have confirmed that it is reasonable to inform the children that these are fun days out for foster carers and foster children where there will be adult helpers. [The adoption agency] would seek potential adopters, in the background, through Link Maker, Adoption Link and exchanges.

3.5 Any prospective adopters will not be introduced to the children until after [the adoption agency] ADM has approved the match. They will initially be introduced as friends of the foster carers who they may meet in neutral venues. A little later the children will be informed that the friends will [sic] like to adopt them. Introductions will take place over a long period to reassure the children and reduce anxiety for them.

3.6 [The foster carers] will support any transition and will work with this plan. They will remain in contact with any prospective adopters so that they can remain significant to the children."

95) TM was not asked to deal with this issue in his statement but was asked his view in evidence. He and SW were clear that the function of the adoption agency was to find prospective adopters and to match the children. Case management and decision-making remained the function of the local authority. However, the adoption agency does have two dedicated psychologists working with adopters and children. The social worker would do any life-story work but the adoption agency would also do direct work to explain the plan.

96) TM is involved in what he described as "play days" (the "activity days" as described by SW). He told me of the practice in place when he joined the adoption agency. Children are typically told that they are going to meet other children with similar backgrounds and the foster carers, the social worker and adult helpers would be there. Children of that age are not told they are going to meet prospective adopters and then risk feelings of rejection when they are not chosen. If they were chosen by prospective adopters, then the children would be asked if they remembered meeting them and told "they liked you so much they want you to go and live with them".

97) However, TM went on to say that he hoped C and D would be told the plan is for adoption once the placement orders were made. He believed in transparency. He said he would not agree with the children not being told before going on a play day.

98) What was apparent at the end of this evidence was a gap in understanding between the social work and adoption agency teams as to what the children would be told and when, the social worker preferring to wait and see, the adoption agency preferring transparency.

99) This is a real concern and is highlighted by Ms Hepworth in her submissions. It adds a level of uncertainty to an already uncertain plan for adoption.

100) TM told me that they would rely on advice from the two dedicated psychologists working with them. It was not clear from the evidence that advice had already been sought to inform the local authority's plan.

Comparing adoption and long-term fostering

101) Two main planks of the local authority's case are assumptions made (a) that long-term fostering carries a higher risk of placement disruption than adoption and (b) about the benefits of adoption in terms of 'belonging' to a family for life compared to the ambiguity and uncertainty of long-term fostering. In the course of this case I have referred and been referred to research in this area which in part supports and in part questions these assumptions. This is not the place for a comprehensive review of the available research; however, in making what all

parties regard as a finely balanced welfare decision, I have considered how the empirical research evidence can inform me.

102) An important preliminary point is that research can only deal in generalities. My consideration is about the specific circumstances of and outcomes for these children.

Placement disruption

103) In *Beyond the Adoption Order: challenges, intervention and adoption disruption* (DfE April 2014) Selwyn and others set out to calculate, for the first time, the national adoption disruption rate. Overall the proportion of disruptions post-adoption order was between 2% and 9% with an overall rate of 3.2%. Undoubtedly the overall rate is lower than the rate for long-term fostering.

104) This research however did not set out to compare disruption rates for adoption and long-term fostering and, as Wilkinson and others pointed out in their review of the available research about different placement types, *The impacts of abuse and neglect on children; and comparison of different placement options* (DfE 2017), there is limited data and research on outcomes for children who are placed in long-term foster care.

105) What I do draw from the research is that disruption rates, and therefore placement stability, are less about the type of placement and more about the age at which children are placed and their characteristics (and it is the question of characteristics that makes statistics unreliable). See, for example, *Long-term foster care or adoption? The evidence examined* (Triseliotis 2002).

106) It is an obvious point that infants are likely to have had less opportunity for exposure to harmful parenting before removal and are less likely therefore to have attachment difficulties and challenging behaviours at the point of placement. It is also obvious that for some children whose difficulties are just too extreme adoption is not an option. The later a child is placed, the more likely it is that he or she will have difficulties of one sort of another that are more developed and difficult to resolve.

107) Because adoption is normally the preferred option for infants and younger children, most children are placed for adoption below 4 – 71% compared to 27% for children placed when 4-11 and 1% at 11+ years (Selwyn 2014). Yet only 25% of adoption disruptions relate to the youngest age group. In 72% of disruptions the child was placed at 4 to 11 years. The remaining 3% for children placed at 11+ years reflects the very small number of children placed at that age.

108) And so the rate of disruption for children placed at 4+ is reckoned to be 13 times higher than for children placed in infancy.

109) The research also suggests that whereas disruptions of placements under special guardianship and what were residence orders tend to happen fairly quickly, adoption disruptions happen later, often over 5 years from placement and, typically and perhaps not surprisingly, around adolescence (with 12.7 and 14 years being cited as high risk ages for disruption).

110) The outcome appears to be that there is no reliable comparable research data for disruptions of children placed later in adoption and long-term foster care. I asked SW on what research she based her evidence that long-term fostering would carry a higher risk of disruption than adoption and she was unable to tell me.

111) SW referred in her statement to statistics from the Stability Index (started by the Children's Commissioner in 2017) about moves in foster care. The June 2018 index states:

> "over the longer term, most children in care experience a placement move. Less than half of children (among those in care in both 2014/15 and 2016/17) experienced no placement changes over three years; 3 in 10 children experienced two or more changes, and nearly 2,500 children (6%) experienced 5 or more changes. Looking over four years among children in care in both 2012/13 and 2016/17, we find that only 2 in 5 experienced no placement changes."

112) SW says that although long-term fostering is a permanence option, these statistics resonate with the anecdotal experience of most social workers working with looked after children that foster placements often breakdown, disrupting the child's attachment, relationships in general and education and leading to increased risk of further placement breakdown and disruption. SW then sought to rely on the figures from Selwyn of a 2 to 9% disruption rate and the overall rate of 3.2% to justify the conclusion that the likelihood of placement disruption is much greater within long-term fostering than adoption.

113) While this is a safe conclusion in relation to placement of infants, I am more cautious about relying on it in relation to older children. As SW confirmed in evidence, the Stability Index does not differentiate between types of placement of the ages (or characteristics) of children when placed. I am not satisfied it is safe to reach any firm conclusion about disruption risk for <u>older</u> children absent clear <u>empirical</u> evidence supporting such a conclusion. In any event, as is pointed out by Ms Holland in her submissions, it is important not to generalise when considering the particular needs and risks (including risks of placement breakdown) in relation to individual children. These are well settled children with nurturing carers who are committed to them. This should increase confidence in the sustainability of this placement.

114) Nor can research measure the <u>quality</u>, rather than <u>stability</u>, of placements. There are suggestions that adoptive parents may feel obliged (because of their commitment) to persevere with a placement but struggle to cope with it. That gives rise to a question whether such a placement is meeting the child's ongoing needs or whether in fact the child would have been better off in long-term foster care where a move to another more appropriate placement could be more readily considered.

Belonging

115) All the research I have considered recognises that adoption has benefits that cannot be matched by long-term fostering, reflected in the evidence of SW.

116) As Triseliotis recognised in 2002:

> "The intention of long-term fostering is invariably that the child will live in the household on a 'permanent' basis until they reach adulthood, and possibly beyond, forming a psychosocial base in their life. Because of this expectation long-term fostering is often referred to as 'permanent'. Yet the term 'permanent' cannot objectively be applied because parental responsibility often continues to be held either by the local authority or by the birth parent. Furthermore, the child can be removed at the instigation of any one of four parties."

117) Triseliotis stated the main defining difference between adoption and long-term fostering as higher levels of emotional security, sense of belonging and general well-being expressed by those growing up as adopted compared with those fostered long-term. Children and foster carers might be in a constant state of 'what might happen next', with foster parents being more prepared to let go (particularly where there were other children to consider) than adoptive parents who might persevere, often against the odds. Children in an ambiguous position may feel they belonged to nobody, their carers were not their parents and had different surnames and they could not by right call them "mum" and "dad".

118) That said, Triseliotis considered long-term fostering could still be the plan of choice, especially for children who are clear they don't want adoption, those closely attached to their carers for whom a move would not be in their interests and those for whom there is a high level of continuous birth family involvement. The dilemma is whether it is preferable to move a child to adoption, breaking existing attachments or leave them where they are with an unpredictable future, with the problem of finding an adoptive placement for a child whose foster carers give up when he or she is much older.

119) As Triseliotis says:

> "Finally, when deciding between these two forms of substitute parenting, account has to be taken of each child's individual needs and circumstances and those of their carers, including the range of available resources in terms of placements. In the same way that the same shoe cannot fit every foot, adoption is not the answer for every child who cannot return to their family. Long-term fostering still has a firm place in planning, as shown earlier. Furthermore, a significant number of those whose placements last find a family for life, albeit lacking some of the more intense qualities found with adoption. All decisions in child placement involve an element of risk. It is possible only to reduce it, rather than eliminate it, by balancing the child's age, levels of adjustment, current attachments, the child's wishes (where old enough), and the strength of their carer's commitment."

120) *Adoption for looked after children: messages from research* (Thomas: ARi and BAAF, 2013) brought together key findings from a number of significant research projects, particularly *Belonging and Permanence: Outcomes in long-term foster care and adoption* (Biehal and others: University of York, 2010). Most of the adopted children studied had been placed as infants (under one). They expressed their emotional security within their adopted families. However, children who were in <u>stable</u> long-term foster care (all of whom had lived with their foster carers for 7 years or more) were generally scored as well on the Strengths and Difficulties Questionnaire as those who were adopted. Most children settled in long-term foster care felt a strong sense of belonging to their foster families.

121) What seemed to make the difference for these children was the quality of their contact with birth parents. Where there was no contact, children were settled and fully assimilated into their placements (adoptive or long-term fostering). Fostered children having good quality contact appeared able to reconcile the fact that they belonged, in different ways, to both a birth family and a substitute family. A third group of children in stable foster care where contact was difficult were more obviously troubled by feelings of ambivalence, hurt and anger towards their birth

parents leading to complex feelings and a more qualified sense of belonging to their foster families.

122) Research also clearly identifies the postcode nature of post-placement support, with some local authorities and adoption agencies doing it well and others not. And the research suggests that a significant number of adopters (46%) do not take up support for fear of professional intrusion, preferring to 'get on with it' as a family, although the stigma of seeking help seems to have diminished over time.

123) The quality of support offered, and whether it is taken up by carers, seems to me an important consideration in looking at both stability and quality of placement.

124) Because in this case it is expressly agreed that there should be adoption post-contact I have nor considered in detail the more recent research on that subject.[2]

What support would be given?

125) I have looked to the care plans to see what support is proposed.

a) In the event that the children remain looked after children through fostering they will have allocated social workers who would work directly with the children who would also be able to access an Advocate. They would also have an independent reviewing officer and regular LAC reviews. They would have support and priority with health and education through LAC nursing.

b) The foster carers would be able to access support from their fostering agency and allocated social worker in managing the children's behaviours (should that be necessary). Social workers would visit the placement regularly. CAMHS and a child psychologist could offer advice and support.

c) In the event of adoption, prospective adopters would be able to access similar support to foster carers through their adoption agency and social worker down to the point of the adoption order. Thereafter the children would continue to have an allocated social worker to offer help, advice and practical support.

d) Having outlined that supervised contact would continue for the mother reducing to once every six weeks (if fostered) or to once a year direct and once a year letterbox (so some form of contact once every 6 months) This is all that is said about support for her:

> "Contact will continue to be facilitated and supported as outlined in this care plan either by Dorset Children's Social Care or Aspire Adoption Services.
>
> Birth family members can access independent adoption counselling".

e) The care plan proposes direct contact with the maternal uncle by attending the mother's contact, but letterbox indirect contact with the paternal grandmother, the paternal aunt in Canada and the half-siblings.

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[2] *The Role of the Social Worker in Adoption – Ethics and Human Rights: An Enquiry* (Featherstone et al: BASW, 2018) and *Contact after Adoption* (UEA, 2013)

126) As can be seen, the care plan sets out generic, non-specific, proposals for supporting the family and carers into the future. This does not give me confidence. Absent a clear focused plan addressing the particular needs of these children and birth family, as well as the carers, the sort of haphazard support reported in the research is more likely to result.

The guardian's evidence

127) The guardian noted the children have a positive experience of contact with their mother who prepares well for contact and engages them well, with resulting natural warmth and affection. The mother managed the children well in contact which currently takes place weekly, alternating between the contact centre and in the community. She is supportive and patient with them.

128) The guardian also noted the children had settled well in the care of the foster carers and observed a warm, natural and affectionate relationship between them. The mother is, importantly, supportive of the foster placement which the guardian felt had a positive influence on the children and had helped them to settle and open up about their time there.

129) It appeared to the guardian that the mother was better in mood of late and more stable in her presentation. Although she had recently completed a detox and reduced prescription medications, four previous detoxes had not been successful. The guardian stressed the importance of the mother engaging in aftercare while noting a significant history of non-compliance with medication and services in the past. The mother is now engaging with REACH services and felt that the "fog had cleared" so that she was able to think more clearly, including reaching the difficult decision that she is currently unable to meet the children's needs. As the guardian pointed out, however, it is likely that the mother will need to be engaged with REACH and mental health workers throughout her life in order to remain stable. Focussed support for the mother from the local authority to ensure stability so far as possible in the context of an ongoing contact plan would seem to me essential. As I identify in the preceding section, the care plan is largely silent on this crucial aspect. This is a matter that needs to be addressed by the local authority regardless whether the children are adopted or remain in long-term foster care. My view is that it is likely to be more robustly addressed if the local authority retain parental responsibility for the children.

130) The guardian pointed to instability in the children's lives. C has been cared for by his mother, his father, relatives, a neighbour and two foster carers. The longest time either child has spent in the care of their mother is two years. This will have been confusing for them around the time when they were making sense of the world around them and building attachments. Their sibling relationship, which will be their most enduring relationship, has been their only constant and has flourished in foster care. For D the most important thing was being with C, the guardian told me.

131) The guardian also noted the losses suffered by the children of their father and grandmother as well as separation from their mother on a number of occasions. C has had bereavement counselling but had struggled to open up about his father. In contact both children spoke with the mother about their father, which the guardian regarded as positive. The guardian noted that the impact of neglectful care on C

had been evident with anxiety and tearfulness at school and anxiety about his mother, easing over time through consistent reassurance from the foster carers.

132) When the guardian spent time with the children on 25 October 2018 she drew three houses – a 'forever home', 'mummy's home' and 'their foster carers' home'. C crossed out the forever home asking who these people would be. He indicated that if he couldn't return to his mum he wished to stay in his foster placement. He also indicated this during contact. These were the two options he knows. With any alternative option he would not know what to expect, with likely increased anxiety, the more so for C given his identified fear of unknown situations.

133) The guardian identified the need for the children to experience a sense of identity through exploring their heritage, including their two half-siblings and paternal grandmother. They also have positive relationships with their maternal uncle and cousins who they see during contact.

134) The guardian recognised the two available options to be finely balanced. She saw of course the benefit in adoption of a sense of belonging and freedom from professional involvement and the risk of the mother applying to revoke the placement, which would be unsettling. She also saw that the transition to adoption would be a lengthy and supported process, including the support of the foster carers.

135) The guardian was concerned at the potential for a detrimental emotional impact on the children if the truth about plans for them was withheld from them. The children might have a false sense of hope (of staying long term with the foster carers). At 8 or 9 it would be difficult and risky for C not to be told the truth about what activity or play days are. Trust in anybody supporting this plan, including the foster carers and the mother and alternative care-givers, could be damaged.

136) The guardian considered the severing of birth ties would be all the more significant for these children given the losses they have suffered in their lives already and having regard to their ages. Emotionally the guardian thought the children would find this very difficult to manage with a real risk of difficulty in adjusting to new parental figures and placement breakdown.

137) Although the guardian recognised the risk of breakdown of the foster placement, at least in that situation their links to birth family, area and schools will have been maintained. For the guardian the risk of breakdown is reduced by:

a) the commitment of the foster carers and the positive relationships built with the children over the last year or more;

b) the foster carers' nurturing, therapeutic approach with clear boundaries which have benefitted the children;

c) the foster carers' desire for local authority support;

d) the children's wish to remain there;

e) the mother's support for the placement; and

f) C's expressed wish to remain at his school with his friends (if he cannot return to his mother).

138) In some ways the guardian saw continuing professional involvement in the children's lives as a positive support, but acknowledged the children had not ever

experienced life free from ongoing local authority involvement, and would not during their childhoods if they remain in foster care.

139) While recognising the potential benefits of adoption the guardian considered there to be too many risks associated with it which, if they materialised, could have a detrimental and long-lasting impact upon the children's already fragile emotional well-being. The guardian considered the risk of adoption breakdown higher than if they remain in foster care. Refusing the placement applications would enable the children to be told about the permanent arrangements for them without further delay.

140) The guardian would in that situation support reduction of contact to once every six weeks and at school holidays.

141) The guardian also told me she would support a restriction on further applications by the mother, although said it was difficult to be clear about timescales for that. In his submissions Mr Malik suggested that the mother's acceptance of a section 91(14) order also seemed to point to an acknowledgement by her that the children would not be returning to her care anytime soon.

The parties' submissions

The local authority

142) Ms Holland puts the clear view of the local authority that these children deserve the opportunity for permanence outside the care system where outcomes for children are generally improved. This, she says, is particularly so for D who would have another 13 years in the care system. She stresses this is not a policy or financially influenced decision, but the child-focused professional view of a social worker experienced in adoption, supported by team management, the independent reviewing officer and the agency decision maker.

143) Ms Holland relies on the assumption that disruption rates are comparatively low for adoption and refers to SW's evidence about what the Stability Index tells us. Adoption, it is submitted, is the option that is more likely to provide permanence.

144) It is pointed out that these proceedings started with the mother's application to discharge the care orders and she has been consistent in expressing the hope that the children will one day be returned to her care. The children, C in particular, need reassurance to allay anxieties about the mother's well-being. There is a risk, it is submitted, that continued contact could reinforce these anxieties (although the evidence was that contact could reinforce or allay anxiety).

145) Ms Holland pointed to the long-term disadvantages to the children of remaining looked after children (set out in my analysis below) which, she says, do not constitute stability or permanence.

146) Section 91(14), not being a complete bar on proceedings and conditions not being permissible[3], could only afford limited protection to the children of challenges to their placement, it is submitted. Unless, exceptionally, the court were to make an order restricting applications during the children's minority (as happened in *Re J (A Child) (Restriction on Applications* [2007] EWCA Civ 906), a

[3] See *Re S (Children)* [2006] and *Stringer v Stringer* [2006]

time-limited section 91(14) order would be unlikely to protect the children into their adolescence, which would be a time of particular risk to their stability.

147) Referring to the guardian's change of position, Ms Holland said that, primarily, the guardian is concerned about C's ability to attach to adoptive parents rather than questions about availability of adoptive placements. Ms Holland suggested that it is premature to take C's currently expressed wishes and feelings as indicative of his wishes and feelings on the longer term. C has yet to understand that he cannot return to his mother and his wishes and feelings may develop with help.

148) If I were to be concerned about the viability of adoption and in particular C's expressed wishes and feelings, Ms Holland suggested I could adjourn for at least three months while life-story and preparatory permanence work is completed alongside a time limited adoption search. This suggestion of an adjournment was not raised in evidence.

The mother

149) Ms Hepworth asked me to acknowledge that this mother has had considerable hurdles not of her making. Insofar as she has had addiction to opiates this was a result of the physical pain she suffered as a result of her condition. The children may ask the question, says Ms Hepworth, if their mother was a victim of her own circumstances, why could they not live in alternative care that enabled a meaningful link with her to be maintained Ms Hepworth also asked me to note and give credit to the mother for the fact that these children are described as delightful.

150) Secondly, Ms Hepworth submitted that the local authority presents an aspirational case for adoption which even they cannot say is realistically achievable. They are asking for time to be given a chance to achieve an outcome which it is unlikely would be given to parents. Why, asked Ms Hepworth, should latitude be afforded to a local authority which would not be given to parents?

151) At first blush I was not sure this was a valid comparison. But considering it further I can see that a local authority faced with parents asking for time to demonstrate ability to care might argue about the need for early permanence and parents' proposals being outside the children's timescales. What this local authority proposes would delay permanence for the children (in the sense that they could not truthfully be told this is where you are going to stay for the rest of your childhood). So there is some force in the point.

152) In support of her argument that the local authority's plan is unrealistic, Ms Hepworth pointed me to

a) the deficiency in the evidence about disruption rates as relied on by the local authority;

b) the potential problems of children meeting prospective adopters at play days under the guise of 'adult helpers';

c) the unbalanced child permanence report which failed to consider long-term fostering and which led to defective decision-making;

d) TM's evidence that the adoption agency has not yet placed such a combination of children and the need to look nationally;

e) SW's own evidence that it is hard to comment whether the plan of adoption is realistic.

153) The removal of these children from their current carers (to whom they are attached), local area, schools (where they want to stay) and friends would, submitted Ms Hepworth, increase the risk of adoption disruption.

154) The mismatch in the evidence of the local authority and the adoption agency as to what and how the children would be told further shows, said Ms Hepworth, the lack of a cohesive plan. She submitted that the plan not to tell the children they are meeting prospective adopters (for fear they may feel let down if not chosen) may work for infants and very young children but, for children of 8/9 and 5 who know their mother, this would represent a fundamental error of approach giving rise to potential breach of trust.

155) Ms Hepworth stressed both the risk and consequences of adoption disruption for these children. The children are settled and happy and well looked after by their current carers committed to their long-term care. This had to be set against the unknown circumstances of unidentified potential adopters in respect of these particular children. What unmet needs might they be fulfilling? Would they seek guidance or training? These are, pointed out Ms Hepworth, unknowns which need to be set against the comparative certainty of care by these foster carers.

156) Ms Hepworth said it is known that C can become anxious when faced with new experiences, although SW did go on to say that he could manage transition well when supported.

157) Ms Hepworth said that the consequences of adoption disruption would be catastrophic, particularly if they have been re-located to another area and another local authority, with links to birth family all but severed and the risk of sibling separation. And the risk of disruption is not remote for children who are older when placed, according to the research (Selwyn).

The guardian

158) Mr Malik adopted Ms Hepworth's submissions on behalf of the mother. He particularly picked up the point that even the local authority evidence was that adoption could not be said to be realistic with a very low prospect for local placement. It was no more than a hope that somebody might "come out of the woodwork".

159) Mr Malik too was critical of the failure within the CPRs to consider fostering as an option, suggesting a "one size fits all" approach rather than consideration of the characteristics and needs of these particular children. The guardian could not see how, for children who have already suffered great losses, the further loss of their mother and other family, school, friends and locality could be said to be in their interests.

160) Although the local authority were clear that the children would not be lied to about what activity days were for and who was there, that would be how C would see it – and it would be difficult to see how he could be said to be wrong about that.

161) The suggestion of a three-month adjournment, made for the first time in Ms Holland's closing submissions, seemed to Mr Malik in reality to be just more delay for these children whose permanence has already been significantly delayed during their lives.

162) Mr Malik referred to Triseliotis' point that long-term can be an option in certain circumstances and those he identifies – children who don't want adoption and who

are closely attached to their carers and where there is a high level of continuous birth family involvement – all apply here. These are matters, said Mr Malik, which the guardian has considered in her balancing of the advantages and disadvantages of the two options.

The welfare checklist

163) Currently the children, especially, C, express a wish to be with their mother. C at least, at 8, has expressed a clear current view that if he cannot go back to his mother he would wish to stay where he is. I take SW's point that children of this age are more likely to favour the known than the unknown and work with the children may shift their views. However, there is risk attached to this, with the consequence being difficulty settling and transferring attachments.

164) The physical and educational needs of the children would be met by either option. The particular concern is around their emotional needs, particularly in light of the losses they have suffered already in their lives. This need will be accentuated by the loss (as they will see it) of their mother when told they cannot return to her care. This will require nurturing and attuned parenting. I do not say they would not get that in adoption. I do say that is what they are getting at the moment. I simply do not know whether prospective adopters (particularly given lack of supply) could be found who would be able to match that level of emotional care.

165) The children clearly have a need for an ongoing relationship with their mother (and other members of the family). I have serious doubts whether for C in particular that need could adequately be met through annual direct contact which may only serve to painfully remind the children of their mother's existence.

166) Adoption always has profound and life-long consequences. For these children that would particularly be so. These are children who know very well who their mother is and have an ongoing relationship. To change the legal nature of that relationship in the fundamental way that results from adoption and to reduce the experience of that relationship from regular, positive, beneficial, weekly contact to once a year (plus letterbox) would, for C especially, indeed have a profound and likely disturbing effect. D may be less impacted but her relationship with C is key. If C reacts badly that is likely to have a consequence for D, even to the point of disruption of the placement for C, leaving D alone. These are not short or even medium-term problems.

167) It is possible of course that the children could make the emotional transition to adoption and acquire that sense of belonging and emotional intensity it can bring with it. The question really is around risks and consequences. Get it right and there could be obvious benefits. Get it wrong and the consequences could be disastrous. If there were a really robust and realistic plan for adoption, especially if there were identified adopters, I might feel more confident that the risk was worth taking. As it is, the plan is far from robust and realistic.

168) The children's ages, sex and characteristics are also key here. Age is an important indicator of likely stability of adoptive placement. The children do not have the sorts of challenging behaviours or attachment difficulties that might also give poor prognosis for stability in a move; however, they are inevitably emotionally fragile as a result of their inconsistent and at times neglectful upbringings and the losses they have suffered.

169) The harm suffered by the children is described earlier. The question really is the harm they might suffer in relation to risks and consequences of placement, including drastic reduction in a valuable relationship with their mother and other family members. I agree with the guardian that the risks associated with adoption are very high and the consequences of those risks happened potentially disastrous. There are of course also risks in leaving the children where they are but, for the reasons that I have given, I regard both the level of risk and consequences as more manageable.

170) The relationships that the children have with their mother and the birth family will continue in some form or other depending on the type of placement. There is real value for the children in that continuing. The relatives wish that to happen. That value will be diminished by adoption but may be maintained through long-term foster care (albeit at less drastically reduced frequency).

Analysis of the advantages and disadvantages of long-term fostering and adoption

171) I hope my analysis will be made clearer both for the reader and in my own thinking if I set it out in the form of a table. I remind myself that the analysis must be holistic – that is a comparison internally of the pros and cons of each option as I find them and of the pros and cons of each option as against the other before standing back and forming a conclusion about which option will best serve the children's welfare interests *throughout their lives*.

Adoption	
Advantages	**Disadvantages**
The children are more likely to have a sense of belonging with greater emotional intensity of relationship. They would have a 'family for life' who had chosen the children and were fulfilling their role purely for reasons of parenting rather than because they are paid to do so.	Loss through effective severance of birth family links, particularly significant for these children who have already suffered the loss of their father and grandmother. Adoption would mean loss of a meaningful relationship with the mother and birth family with whom there is currently regular (weekly) good quality contact, especially valued by C. This includes C's ability to open up to his mother about his feelings of loss of his father.
Although no prospective adopters have been identified and the prospects of finding a family may be low, that is not to say that the right match might not be found. The children do not present with serious behavioural or attachment difficulties. Finding a match remains a possibility. However …	… the plan for adoption is not realistic. It amounts to no more than an opportunity to find an adoptive family which, given the children's ages, mixed heritage, need to be placed together and the requirement for open adoption can be described as no more than a "long shot". This is accepted by the local authority. Their plan is no more than aspirational. To operate a plan which is unrealistic, even for a limited period, will delay permanence for these children without

	good purpose and may be unsettling for them. It may also involve a lack of transparency for the children. They may become aware of the plan, either now or later, and become confused and have further feelings of rejection if they are not chosen. There may also be serious issues about trust of anybody they see as complicit in any lack of transparency around the planning. The local authority does not have a clear plan about this because they would be reactive to the children's responses. The local authority and the adoption agency do not have a clear mutual understanding what the children will be told and when.
	The plan for adoption is rendered less reliable by the failure within the CPRs to compare this option against long-term fostering in its own right. I do not consider the retrospective discussion described by SW adequately cures this vital omission in the local authority's duty to holistically analyse all realistic options. The local authority's natural bias towards adoption has, in this case, obscured proper analysis of the real and valid option of long-term fostering as an option in its own right.
If open adopters can be found birth links may be maintained.	It is not known at this stage whether prospective adopters will be found who would agree to open adoption. Prospective adopters may be found who are not prepared to agree in which case there will be a tension between pursuing closed adoption or leaving the children in long-term foster care. Even if open adoption is possible it would involve reduction of direct contact to once a year (+ letterbox contact) with the mother (and possibly the maternal uncle) with letterbox contact to other family members.
Reduction of contact to once a year may reduce, in particular, C's anxiety about his mother (out of sight, out of mind).	But the evidence about this is unclear. Long gaps in contact might increase C's anxiety about his mother. The lack of a clear view about this effectively neutralises this consideration.

Once adopted the children will be out of the care system, relatively free from professional involvement.	The children may lose essential support if their adopters choose not to seek advice or support for fear of professional intrusion. This could present a risk unless the adopters were well equipped to meet the children's particular emotional needs as they get older, particularly around adolescence. This could increase the risk of adoption disruption for either one or both of the children.
The children will continue as members of the adopted family throughout their lives and will not be care-leavers.	
The children may have greater stability in an adoptive placement. The children will be transitioned with support to an adoptive placement and their current views may not reflect their longer-term views.	Stability is contingent on a number of factors, including the willingness and ability of the children to adjust to new parenting figures after the loss (as they will see it) of their mother, as well as the qualities of unknown prospective adopters. Given • the children's ages and views at the present; • the "double-whammy" of the simultaneous loss of their mother and their carers to whom they are attached; • their emotional fragility in light of neglectful care and loss of important family members; • risks for the children in light of this of moving from the known to the unknown, with questions about how easily they would settle with and attach to new carers; • higher risk of disruption at adolescence; I would regard the risk of adoption disruption at least as high, if not immediately, later. In the event of disruption the children are will suffer very significant loss – now the 'forever family' which chose them has rejected them (again as they will see it). For these children that could be catastrophic (more so in my judgment than a move of foster placement).

	In the event of disruption the children may not be able to return to the foster carers and will experience another stranger move, probably as a bridging placement while a further permanent placement is found. This increases the risk of multiple moves.
	The mother does not currently support adoption. Unless she were able to come to terms with it, her lack of support may be apparent to the children causing them further anxiety and tension in contact. It is noted how the mother's support for their current placement has helped the children settle. That could easily be undone by a move to an adoptive placement and could increase the risk of disruption and/or the termination of contact.
The children would be able to maintain their sibling relationship, which is the most enduring they are likely to have and is of particular importance to D.	In the event of adoption disruption (a risk I judge to be at least a serious possibility) there is a risk of sibling separation which may not apply to long-term fostering. If, for example, adopters cannot cope with C at 13 or 14 because of challenging behaviours (which is a serious possibility) C may return to the care system while D remains with the adoptive family. Disruption in foster care is more likely to mean breakdown of the placement for both children together, increasing the likelihood of them remaining together (*unless it was considered that separation was in their interests – which it might have to be if disruption resulted from challenges posed by C (or D)*).
	Further, in the event of disruption, birth links will have effectively been severed and the children most likely displaced from area, school and friends.
	The plan for adoption is further weakened by a lack of focus within the care plan on specific support for the adopters, the children and the birth family around contact and for the mother around her need to maintain stable mental health and abstinence from substances. Loss of parental responsibility by the local authority through adoption makes its less likely that these support needs would be met

Long-term foster care	
Advantages	**Disadvantages**
The children would be able to maintain a meaningful relationship with their mother through regular contact which has been beneficial and of value to them. This may enable them to retain a sense of belonging to two families and reduce anxiety around loss.	Ongoing contact with the mother involves a risk of the children being unsettled if they continue their wish to return to her care (and she wishes for that too). This risk is reduced by the fact that the children have been settled in this placement in which they are supported by the mother. The mother's mental health stability will be an important factor in relation to this risk. The question whether more regular contact will increase or reduce C's anxiety is a neutral one in the sense that I cannot determine one is more likely than the other.
The children are attached to their current foster carers who provide nurturing and therapeutic care and are committed to their long-term care. They are a dual heritage couple well matched to the mixed heritage of these children.	The foster carers can at any stage change their minds and end the placement. At the moment they are committed to caring for the children throughout their minorities but that could change, especially in the event of challenging behaviours.
The risk of disruption is reduced by what we know about this placement – that the children are settled and attached to nurturing carers who are committed to their care. Disruption of long-term foster placement would be less catastrophic for the children than adoption disruption both in term of sense of rejection and risk to sibling relationship. I do not consider there to be an evidence base for saying the risk of long-term fostering disruption is any higher than for adoption (*this is therefore a neutral consideration*).	
If the mother's circumstances do realistically change for the better, long-term fostering at least leaves open the option for reunification if that is felt to be in the children's welfare interests.	Risk that the children may be unsettled by future challenges by the mother seeking reunification (or additional contact). The risk can be reduced by a section 91(14) order but, for the reasons given by Black LJ in *Re V*, is not a complete answer
Although the foster carers do not currently wish to apply for special guardianship, the possibility remains that they might, especially if, as I would expect, the special guardianship financial support matches	

foster carers allowances. The local authority would regard this as the ideal outcome. Long-term foster care would at least leave this open as an option for the future.	
The foster carers have, through consistent reassurance, been able reduce C's anxiety about his mother.	
The mother supports the placement which has helped the children to settle and be less anxious. She is less likely to support an adoptive placement.	
The fact that the local authority will retain parental responsibility under the care orders increases confidence that the children's carers will receive a higher level of support, as the foster carers expressly wish for.	The foster carers will not hold parental responsibility for the children and will have to revert to the local authority to exercise their corporate parental responsibility. This may cause delay and uncertainty.
It should be repeated that support for children who are looked after is likely to be at a higher level than would be provided through adoption services. However, I accept that it is generally better for children to come out of the care system where possible.	The children will remain looked after children within the care system (in D's case for 13 years), subject to statutory review and involvement of social workers and independent reviewing officers. There is a likelihood that social workers will change and continuity of relationship between the carers and the children and the allocated social worker cannot be assured (indeed is unlikely). This will require the carers, the children and social workers to build new relationships periodically. There is a risk (from experience) of poor transitions between social workers and information being missed or lost. There may also be decision-making by social workers with which the foster carers disagree.
The foster carers may continue to provide support for the children at the end of the placement to the extent of continuing to be 'family'. This would be consistent with the current ethos of the fostering agency. The children will have access to care leavers' support provided by the local authority. Further – the position of the children as cared for by foster carers and by special guardians is not so different in this respect, yet the local authority would have preferred special guardianship to adoption (describing it as the ideal outcome).	At 16 or 18 the children will be care leavers. The foster carers may or may not be prepared to continue to provide familial support to them as they go into adulthood.

There is an increasing understanding of the importance of supporting children leaving care which, by the time these children leave care, is likely to have been developed further.	

Conclusion

172) I have concluded that it would not be in the interests of these children to make placement orders. Although the considerations have been finely balanced, in the final analysis I decidedly conclude that the significant risks for these children associated with an aspirational plan which lacks reality or robustness, and the profound long-lasting consequences of those risks, clearly outweigh the potential benefits of adoption of belonging to a family.

173) Nor do I consider that it could be said that the children's welfare requires that the mother's consent to the making of placement orders should be dispensed with.

174) I do consider however that the future stability of the children's foster placement requires that they are not subjected to applications by the mother which risk undermining the children's sense of security, unless there is a clear evidential basis for doing so. This applies more to applications to discharge the care order than it does to matters of contact. The mother's recent contact has been consistent and the sort of harmful and inconsistent contact identified by the court in *Re V* (supra), suggesting the possibility of repeat contact applications, is not a concern here. What would be of concern would be a further application by the mother to discharge the care orders borne more out of hope than reality or real change of circumstances. As the mother accepts, she would hope to have the children returned to her care. There is a real risk that the mother may bring a further application which does not have a real prospect of success but which would have to be heard. That would, in my view, risk the stability of the children's placement. It may give them false hope. It would put an unacceptable strain on the carers and the children.

175) It does seem to me that there is a proper place here, as the mother accepts, for exercise of the power under section 91(14) to restrict any further applications by the mother to the discharge the care orders without leave. It is not a complete bar. If the mother is able to satisfy the court that there is a real basis for pursuing an application I would expect leave to be granted. If not, it would be refused.

176) Exceptionally I consider that the restriction should remain in place during the children's minorities and not be time limited. There are two essential reasons for this:

a) As Ms Hepworth observes, it is difficult to alight on the right term for restriction. If I imposed a restriction for the more conventional two or three years, that would expire when C is approaching adolescence, a particularly risky time for the mother to be applying to the court. In reality any time limit I impose is likely to expire at a stage of the children's development which is critical.

b) Any time limit I impose may be seen by the mother as a target date at which she can apply without leave. This would increase the risk of future application rather than reduce it.

177) So I am satisfied that a restriction during the children's minorities is, while exceptional, a requirement of their welfare and a necessary and proportionate interference with the mother's access to the court.

178) Accordingly:

a) I dismiss the mother's application to discharge the care orders;

b) I dismiss the local authority's applications for placement orders for the children.

c) I make an order under section 91(14) of the 1989 Act restricting any further applications by the mother to discharge the care orders without leave during the children's minorities.