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IN THE FAMILY COURT

21st April 2021

Before His Honour Judge Middleton-Roy

Between:

A Local Authority	<u>Applicant</u>
- and -	
A Mother	<u>1st Respondent</u>
A Father	<u>2nd Respondent</u>
A Paternal Grandfather	<u>3rd Respondent</u>
A Paternal Grandmother	<u>4th Respondent</u>
C and P	<u>5th and 6th Respondents</u>
F and S (The Children through their Children's Guardian)	<u>7th and 8th Respondents</u>

Mr Ferguson, Counsel for the Local Authority

Mr Badejo, Counsel for the 1st Respondent

The 2nd Respondent did not attend and was not legally represented

Mr Basi, Counsel for the 3rd Respondent

The 4th Respondent did not attend and was not legally represented

Mr Wilkinson, Counsel for the 5th and 6th Respondents

Mr Wilson, Solicitor for the 7th and 8th Respondents

Hearing dates: 14th, 15th and 19th to 21st April 2021

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His Honour Judge Middleton-Roy:

Anonymity

This is an anonymised version of an ex tempore oral judgment given on 21st April 2021. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children, family members and the adult parties in this judgment have been anonymised having regard to the implications for the children of placing personal details and information in the public domain. The anonymity of the children and members of their family must be strictly preserved. All persons must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

The Parties and Applications

1. The Court is concerned with two children, 'F' and 'S' both under the age of 10 years.
2. Their mother is the First Respondent.
3. The children's father has played no part in these proceedings. He did not attend this hearing and was not legally represented.
4. Currently, the children are the subject of a Special Guardianship Order in favour of their paternal grandparents, who are the 3rd and 4th Respondents in this case. The paternal grandmother has played no role in these proceedings and she too is not legally represented. Both paternal grandparents continue to hold Parental Responsibility in respect of the subject children.
5. Although the existing Special Guardianship Order is held by the children's paternal grandparents, the children have in fact been living with other family members for at least two years, possibly four, namely 'C' and her partner 'P'. The children are living with 'C' and 'P' under a Child Arrangements Order made in the course of these proceedings, which confers Parental Responsibility on them, alongside an Interim Supervision Order. They are both parties to the proceedings as 5th and 6th Respondents.
6. The children are parties to the proceedings through their Children's Guardian.
7. The Applicant is the Local Authority, which owes a legal duty to children in its area who are in need.
8. At this Final Hearing, the Court has heard evidence from the former social worker, from the current allocated social worker, from the Special Guardianship report author, from the independent psychologist, from 'C' and 'P' and from the Children's Guardian. The paternal grandfather chose not to give evidence but advanced his case in respect of contact on submissions. The mother, who was present throughout, took the decision not to give evidence, a decision I respect. With the agreement of all parties and the Court, she helpfully addressed the Court directly, in respect of her decision to support the Local Authority's application and care plan.
9. The Court has considered all the documents, which amount to over 1700 pages and the oral evidence heard. Plainly, it is not possible nor necessary in the time available in this judgment, which I deliver orally on an ex tempore basis at the conclusion of this final hearing, to refer to each document or each piece of evidence I have read or heard. Nevertheless, I have carefully

considered all the information before me, in addition to the helpful submissions made by each of the advocates on behalf of each of the parties present.

10. Although the issues have narrowed in this case during this final hearing, there remain important issues to be determined by the Court. The remains also a care plan before the Court from the Local Authority, which has not been withdrawn. It is important for Court to address the matters that remain in dispute and to set out its findings, for the record, for the benefit of the family members and the professionals moving forward.
11. This has been a long and difficult process for all the family members involved. Their approach to this final hearing has been exemplary, assisted by highly skilled advocates, to whom I am very grateful. Having regard to the ongoing national public health emergency, the hearing proceeded remotely by video conference, save on the third day of the final hearing when the mother attending the Court building physically, with Counsel.
12. The application before the Court is the Local Authority's application for a Care Order for both children. The application was issued on 15th April 2020 and has reached its anniversary. The principle reason for delay was that, following a positive viability assessment but a negative Special Guardianship assessment of 'C' and 'P', the Local Authority indicated an intention for the children to remain with 'C' and 'P' as foster carers but that a Regulation 27 assessment was needed, which required further time to complete. Thankfully, the Regulation 27 assessment was positive.
13. After a lengthy litigation process, at the outset of this final hearing, the Local Authority proposed that the children both remain living full time with 'C' and 'P'. The Local Authority's case was advanced on the basis that the vulnerabilities of the children dictate that they require specialist help and support which is best met through the making of a Care Order, with 'C' and 'P' approved as Local Authority foster carers, under a care plan that envisages that 'C' and 'P' be assisted in making an application for Special Guardianship Order after around 12 months.
14. At outset of this final hearing, the mother sought for the children to be returned to her care. However, after hearing the oral expert evidence from the independent psychologist, the mother took the brave decision on the third day of the final hearing, to support the children remaining in the care of 'C' and 'P'. She supported the making of a Care Order and she supported the Local Authority care plan, a decision that was brave and child focused.
15. The paternal grandfather did not oppose the making of a Care Order. He did not oppose the discharge of the Special Guardianship Order he holds. His concern has been to ensure that the children have adequate contact with him moving forward.
16. 'C' and 'P' seek that the children remain in their care. They consider that a Care Order is not necessary. They seek the making of a Special Guardianship Order at the conclusion of these proceedings.
17. The Children's Guardian supports the position taken by 'C' and 'P'. She supports the making of a Special Guardianship Order in their favour now, alongside a 12-month Supervision Order (which 'C' and 'P' would not oppose). The Children's Guardian considers that a Care Order is not necessary.

18. The Court does not have the benefit of input from the children's father or their paternal grandmother.

Background and Previous Proceedings

19. It is necessary to say a little about the previous proceedings, as it is plainly relevant background when considering the issue of the welfare of the children in the current proceedings.
20. The previous proceedings took place in 2016 in relation to both children and their older siblings, which resulted in Special Guardianship Order being made for 'F' and 'S' in favour of their paternal grandparents in August 2016 and a Special Guardianship Order in favour of their maternal grandmother in respect of the siblings.
21. This followed Local Authority involvement with the family, both in this Local Authority area and another borough, between 2009 to March 2016, arising from concerns of parental domestic violence, drug and alcohol misuse, anti-social behaviour, family dysfunction and emotional abuse and neglect that the children had been exposed to. The father has a history of violence, drug and alcohol abuse and associated criminal offending behaviour for which he spent periods of time in prison. He was convicted on five counts of assault against the mother and against a police officer. The children were made subject to Child Protection plans and Child in Need Plans on four occasions, moving between the two Local Authority areas. The mother was involved in further relationships characterised by domestic violence, leaving the children feeling frightened. Contact between the mother and the children during that time had been inconsistent and she went several weeks without seeing them. She left the older two children in the care of their maternal grandmother. The mother took 'F' and 'S' to their paternal grandparents' home for an overnight stay but failed to collect them after two weeks.
22. Although Special Guardianship Orders were made to the paternal grandparents, it was known that the paternal grandmother had been diagnosed with a neurodegenerative disorder and she was under the care of Neurologists. Her condition was worsening by 2016. The mother did not engage with the 2016 final hearing. Although contact was recommended between the children and their mother on a monthly basis, the mother did not commit to consistent contact with the children. The father's contact was to be supervised by the paternal grandparents.
23. 'F' and 'S' came to the attention of Children's Services again in June 2019, when 'C' contacted the Local Authority asking for support, indicating that 'F' and 'S' were in her care and had been for several years. The paternal grandparents had separated and the paternal grandmother's health had further deteriorated. A private arrangement had been made between the paternal grandparents and 'C' for the children to live with her and her partner, 'P' during the weekdays and with the paternal grandfather at weekends. There were concerns that, when the father was released from prison, the paternal grandmother had allowed him to move into her property and he had unsupervised contact with the children, contrary to Local Authority advice. There were concerns that 'F' and 'S' had reported being physically chastised by their father and paternal grandmother, despite relinquishing her responsibilities under the Special Guardianship Order and concerns that the paternal grandmother continued to receive a Special Guardianship allowance. All the evidence led to a conclusion that the paternal grandmother's health was such that she was unable to care for the children. Further, there were concerns that

the 'shared care' arrangement between the paternal grandfather and 'C' did not last due to friction in the family dynamics, which resulted in the paternal grandfather placing the children into the full time care of 'C' and 'P'.

24. A further Child and Family assessment was completed, which raised concerns about the father's criminal offending. Further, the paternal grandfather was alleged to be dealing in class A drugs, he was found in the possession of or carrying of a blade or pointed article and he was suspected to be in possession of a handgun.
25. Police checks in respect of 'C' revealed that she had an historic conviction for the keeping / managing or assisting in the management of a brothel used for practices of prostitution and that both 'C' and 'P' were advertising escort services. 'C' denied being involved in running a brothel and claimed that she was exploited during a difficult period in her life where she "went off the rails" after she too was diagnosed with a neurodegenerative disorder, when she was also drinking heavily.
26. Police checks recorded that 'P' was also arrested on suspicion of managing a brothel but no further action was taken against him. He has one historic conviction for conspiracy to defraud and a caution for a domestic related common assault against his partner in the same year.
27. The children report being present during an altercation between the paternal grandfather and his current partner, when his partner is alleged to have physically assaulted him. Both children spoke about witnessing "fighting" between their father and their paternal grandfather. 'S' informed the social worker that the father had smacked them hard and that it felt, "as hot as the sun" and stung when they sat down. 'S' has also stated that the father screams his head off in the middle of the night and that it scares them. The paternal grandfather's partner is reported to be unstable in her own right, violent and dependant on alcohol.

The Relevant Law

28. A Court may only make a Care Order or a Supervision Order if it is satisfied that the child concerned is suffering, or is likely to suffer, significant harm and that the harm or likelihood of harm is attributable to the care given to the child or likely to be given if the Order were not made, not being what it would be reasonable to expect a parent to give or the child being beyond parental control. This latter category does not apply on the facts of this case.
29. If I find threshold proved, I must go on to consider the welfare of the children individually, as a discreet issue, having regard to section 1 of the Children Act 1989, the welfare of the children during their minorities being the Court's paramount consideration, having regard also to the list of factors relevant to their welfare contained in the welfare checklist under section 1(3) Children Act 1989.
30. The Court must not make any Order unless doing so would be better for the children than making no Order at all.
31. The children and the parents' and each of the adult family members' Article 8 rights under the European Convention on Human Rights are engaged. I must be satisfied that any Orders I make are proportionate to the risks.

32. The Court is mindful of the June 2020 Family Justice Council Public Law Working Group recommendations to achieve best practice in the child protection and family justice systems (Special Guardianship Orders), emphasising that Special Guardianship Orders are private law orders which are not usually intended to be accompanied by Supervision Orders. The need for Special Guardianship Orders to be accompanied by a high level of assistance under a Supervision Order is a “red flag” to indicate that a Special Guardianship Order is not likely to be the appropriate Order. The greater the assistance required, the more likely it is that a Special Guardianship Order is not appropriate.

33. This Court also takes note of the March 2021 final report of the President’s Public Law Working Group, entitled “Recommendations to achieve best practice in the child protection and family justice systems,” the contents of which were welcomed and endorsed by the President of the Family Division. The report sets out best practice guidance, which at paragraphs 159-162 states:

“The making of a Care Order should not be used as a vehicle to achieve the provision of support and services after the conclusion of proceedings. Unless a final Care Order is necessary for the protection of the child, an alternative means/route should be made available to provide this support and these services without the need to make a Care Order...The making of a final Care Order must be a necessary and proportionate interference in the life of the family.”

“A Care Order has a very intrusive effect of State intervention, with ongoing mandatory statutory interference not only in the lives of the carers but in the life of the child, who will have the status in law as a looked-after child and all that goes with this. It can only be justified if it is necessary and proportionate to the risk of harm to the child. Where such an order is made there will be a real prospect of further litigation in the future, because the responsible local authority should regularly review whether the care of the child is such that the Order is no longer necessary, and if so an application to discharge the Order should be made. In an appropriate case, consideration should be given to the making of a Supervision Order.”

34. In Re J, G and H (Children: Supervision Orders) [2021] EWHC 884 (Fam), a decision as recent as 29 March 2021, Mr Justice Pool sitting in the High Court endorsed the Guidance given in the President’s Public Law Working Group report as being significant.

35. The guidance set out in the March 2021 report is guidance only, albeit now with approval of the High Court. Each case, however, depends on its own facts and on the individual and unique needs of the children.

Threshold

36. Those parties present do not dispute that the relevant date for threshold is 15th April 2020, when the Local Authority began these proceedings.

37. The final threshold document is dated 4th January 2021, as amended on 21st April 2021. The amended threshold statement is not disputed by those parties present.

38. I find that the threshold criteria under s31 Children Act 1989 are met. I make findings in accordance with the threshold statement. I find that the children were each suffering and were likely to suffer significant physical and emotional harm through neglect, attributable to the care given or likely to be given to each child if the Order were not made, not being what it would be reasonable to expect a parent or carer to give to them.

Welfare

39. Happily, 'F' and 'S' are part of a large family who are keen to maintain relationships with them. That is a huge positive. 'C' and 'P' have evidently shown a huge commitment to the children. Both the paternal and maternal family have shown commitment in attending contact with the children and seeking to pursue contact.
40. An independent Chartered Clinical Psychologist prepared a report in respect of the children in July 2020. The Psychologist was of the opinion that 'F' and 'S' are both suffering symptoms of trauma as a result of their adverse childhood experiences. The Psychologist was of the professional expert opinion that 'F' and 'S' have disorganised attachments arising from their early experiences. As 'F' and 'S' settle, they will find it difficult to know whether they can trust others. 'F' and 'S' struggle with their anger and spend periods of time in a hypervigilant state which is likely to be as a result of what they have been exposed to. The Psychologist was of the opinion that that 'F' and 'S' have been on high alert in order to survive and that their responses at times may be disproportionate to a situation because it has triggered a traumatic memory.
41. A parenting assessment of the children's mother was completed in September 2020 but concluded that the children should not be reunified to their mother's care. The assessment concluded that 'F' and 'S' have the need for safe, predictable and attuned caregivers who can meet all their complex attachment needs, which is outside the mother's capacity. In particular, the assessment highlighted that the mother has not cared for 'F' and 'S' for five years and last saw them directly almost two years ago. A lot has happened for, and to, the children during that time. 'F' and 'S's needs have become more complex because of their age and experiences and the impact that years of unstable care arrangements and exposure to frightening adult behaviour has had on them.
42. Since that time, the children have been reintroduced to their mother via indirect contact by letter and recently by video. No direct contact has yet taken place. The Local Authority's care plan envisages a move to direct contact with their mother, six times a year, in the school holidays, supervised by the Local Authority, until such time as 'C' feels able to manage this contact.
43. The mother has taken the opportunity to start to rebuild her relationship with the children within these proceedings through letter box contact and more recently through video contact. Although she put herself forward to take on the full-time care of her children and take part in assessments, to her credit, she has reflected on the evidence, particularly the oral evidence of the Psychologist and she now accepts that the children's welfare is best met by them remaining in the care of 'C' and 'P'. She told the Court that she does not criticise the quality of care the children have received through 'C' and 'P' and she is extremely grateful for the help and support they have provided.

44. The mother supports the Local Authority being involved with the children under a Care Order to build on what 'C' and 'P' have achieved so far. She told the Court that she *does* want the children returned to her care, but she accepts that this is not the right time. She wants to continue to progress contact with the children first. She also acknowledges that 'C' and 'P' love the children very much.
45. I commended the mother for her decision taken during this final hearing not to seek the return of the children to her care. I agree with each of the professionals that safe reunification of the children to the mother's care at this stage is not a viable option.
46. The paternal grandparents are the existing Special Guardians for the children. All parties agree that the exiting Special Guardianship Orders should be discharged. The children have not lived in the care of their Special Guardians for over two years and the Special Guardians have not exercised Parental Responsibility for them during that time. Plainly, the welfare of the children demands that the existing Special Guardianship Orders should now be discharged.
47. A Special Guardianship report was prepared in respect of 'C' and 'P' dated 26.08.2020. During the assessment process, various strengths were identified. 'C' and 'P's commitment to care for the children, as well as their provision of good physical care to the children, was plainly evident. The assessment identified some concerns in terms of 'C' and 'P's honesty with professionals, their ability to meet the children's emotional needs now, and how they will meet those emotional needs in the future. In addition, it was identified that 'C' and 'P' may need support managing contact for the children.
48. The report acknowledges that 'C' and 'P' are committed to the care of the children. The Special Guardianship report, however, did not recommend the making of Special Guardianship Orders at this time. The report recommended that there be psychological assessment of 'C' to consider her ability to meet the emotional needs of the children.
49. I have seen a letter from 'C's treating Neurologist, of 18.11.2020, which concludes that in respect of her neurodegenerative disorder, 'C' is pre-clinical and asymptomatic. The treating Neurologist suggests that 'C' may not develop the neurodegenerative disorder for twenty or more years.
50. The independent Psychologist completed a psychological assessment of 'C'. The Psychologist concluded that 'C' is not presenting with symptoms of a diagnosable psychological disorder. In summary, the Psychologist commented that 'C' and her partner, 'P', are very knowledgeable and experienced in understanding C's neurodegenerative disorder and are well placed to recognise early signs that the disorder is becoming symptomatic.
51. The Local Authority prepared an addendum Special Guardianship assessment which again, did not recommended making Special Guardianship Order at this time.
52. The Local Authority prepared a Regulation 27 assessment of 'C' and 'P' in March 2021, which happily recommended that they be approved as foster carers for the children. The assessment highlighted the warm relationship between 'F', 'S', 'C' and 'P'. The assessment concluded that 'C' and 'P' ensure the children's basic needs are being met effectively. Some vulnerabilities were identified, including 'F' and 'S's high level of needs and a very likely

need of ongoing therapeutic support throughout their minority. A recommendation was made for 'C' and 'P' to be approved as Family and Friends foster carers.

53. The Local Authority's final care plans, approved by panel and ratified by the Agency Decision Maker on 11th April 2021, set conditions on the approval, which include fortnightly visits by social workers, that the carers be encouraged to continue to be open and honest with the professionals and to attend training and that the matter be returned to panel in six months.
54. The reasons behind the Local Authority plan include, the level of support needed by the children, the benefit to the children and 'C' and 'P' of being supported with the resources available under a Care Order compared to the resources available under a Special Guardianship Order and concerns that more time is needed for 'C' and 'P' to show their ability to work completely openly with professionals for the sake of the children.
55. The Local Authority's case was advanced on the basis that the contrast in the range of services available under a Special Guardianship Order and a Care Order is significant, set out in detail in the statement of the Allocated Social Worker, which I have taken very careful note of and taken into consideration.
56. The Local Authority's care plan concluded that the children should remain in the care of 'C' and 'P'. The Local Authority, as made clear in the live evidence to the Court, envisages a time in the future when the Local Authority will have confidence that a Special Guardianship Order is the right Order for the children. The Local Authority considers that it is premature to make a Special Guardianship Order at the conclusion of these proceedings but that after a review in twelve months, the Local Authority envisages supporting 'C' and 'P' in applying to the Court for a Special Guardianship Order and will provide assistance in funding that application.
57. The Social Worker sets out her analysis of the factors under s1(3) Children Act 1989 in her final statement, which, respectfully, I largely adopt and endorse in so far as they relate to the factors under subsections 1(3)(a)-(e). There is little dispute between the professionals as to the analysis of those factors.
58. In terms of s1(3)(f) and (g), particularly, the ability of 'C' and 'P' to meet the children's needs and the range of powers available to the Court, there is some divergence of professional opinion.
59. All the professionals acknowledge that 'C' and 'P' clearly understand the children and their individual needs. They are able to provide a positive routine. 'F' and 'S' are settled at school and are reported to be making progress. 'C' and 'P' ensure the children engage in after school clubs and outdoor activities. 'C' has been observed using the tools around body-based regulation provided by the Children's Practitioner, when the children become unsettled. They provide a good level of basic care.
60. The Local Authority is concerned as to the ability of 'C' and 'P' to work openly and honestly with the Local Authority. The Local Authority is concerned about information shared in respect of 'C' and 'P's relationship history and the problems they have encountered historically, a perceived lack of openness about 'C's mental health and past trauma, a perceived lack of openness about 'C's previous criminal conviction and a perceived lack of

openness about 'P's employment and use of an alias. I am not invited by any party to make any findings on those matters of disputed fact.

61. Additionally, the Local Authority is concerned that 'F' and 'S' will require ongoing emotional support due to their early experiences and that support will be needed around contact between the children and their mother and wider family. The social worker's final statement records, "There is a *possibility* that the children might get confused during face to face contact... How further contact between the children and their mother will impact on their presentation is still *unknown*. This *could* cause high emotions, confusion and impact their emotional wellbeing."
62. The Local Authority is worried that the couple's enthusiasm and the resources available under a Special Guardianship Order alone may not be enough to support 'F' and 'S's complex emotional needs. The Local Authority remains concerned that 'C' and 'P' do not recognise the need for ongoing support both for themselves and the children and that this increases the vulnerability of the placement. As a result, the Local Authority would be concerned if a Special Guardianship Order was made to 'C' and 'P' now, given they may not pursue the support that the children need, which *could* result in a placement breakdown.
63. As the Children's Guardian highlighted, there is no doubt that the information contained within the various reports highlight the vulnerability of the placement of 'F' and 'S' with 'C' and 'P'. Given the disruption that 'F' and 'S' have experienced in their young lives and having regard to their specific needs, it is important that any risk of further placement breakdown is minimised, both now and in the future.
64. The Children's Guardian recognises that, whilst there are risks in the placement, some of these relate to historical circumstances and some relate to mis-recorded information in relation to 'C's medical records.
65. The Children's Guardian highlights that:
 - (i) 'C' and 'P' both have a good knowledge of the support available for the neurodegenerative disorder and the resources available;
 - (ii) They present to the Children's Guardian as caring and capable individuals who recognise that things in their past have caused concern for the professionals;
 - (iii) They are regarded as having a strong and dedicated relationship, notwithstanding a previous physical 'scuffle';
 - (iv) They provide a happy, stable and loving home for their own child and for 'F' and 'S';
 - (v) They recognise that they require help to support 'F' and 'S' in their parenting;
 - (vi) They recognise that 'F' and 'S' will benefit from therapeutic input;
 - (vii) They are mindful of balancing the competing needs of their child with 'F' and 'S';
 - (viii) Although there have been some concerns about their child being at risk from 'F' and 'S's physical outbursts, these have improved and are not a current issue;
 - (ix) They have benefited from the knowledge and techniques they have gained about how to parent children who have experienced trauma;
 - (x) There are no concerns about their ability to provide safe day-to-day basic care for 'F' and 'S' over the past 2 years or more;
 - (xi) 'F' and 'S' have shown an improving picture of their behaviour and more regulated emotions whilst in 'C' and 'P's care;
 - (xii) They attend school regularly and are doing well academically;
 - (xiii) They have improved friendships at school.

66. In her oral evidence, the Children's Guardian told the Court that in respect of the care 'C' and 'P' have provided to the children during the course of these proceedings and prior, *"I'm struck there are no safeguarding concerns that should lead the Local Authority to require Parental Responsibility. There are vulnerabilities in their histories and there have been concerns in terms of openness and honesty. I am not blind to those vulnerabilities as presented but I am struggling to really understand why that means a Care Order is necessary."*
67. The Children's Guardian went on to tell the Court in her oral evidence, *"The support the carers need, I recognise, but I can't accept the only way to provide that is under Care Order."*
68. The Children's Guardian expressed her professional opinion very clearly that a Care Order is not proportionate to the risks. The Children's Guardian told the Court, *"The Local Authority should be considering the least interventionist approach. I'm struggling to join the dots in terms of the necessity of a Care Order. Surely there has to be the means for this support to be provided in another way."*
69. The Children's Guardian told the Court that the children have benefited from the security of the environment provided by 'C' and 'P' and from attending school, with provisions tailored to their needs. The Children's Guardian noted that the school has observed real improvements in their confidence and academic achievement since being with 'C' and 'P'. The children are accessing support services from within the school, including art therapy. 'C' and 'P' have had the benefit of input from the Special Guardianship assessor and from the Children's Practitioner. They have both engaged in self-learning, including reading and completing online courses. They have both already started to be able to provide the kind of care that has helped 'F' and 'S' to respond appropriately. The Local Authority has not had a Care Order in that time. The Children's Guardian told the Court, *"I struggle to grasp why a Care Order is needed going forward, as it has started to happen already without a Care Order."*
70. The Children's Guardian went on in her oral evidence to tell the Court, *"I'm not blind to the fact that the services and provision proposed by Local Authority would be helpful to this family but when looking at the presenting behaviours of 'F' and 'S' as they are now and balancing that with the resources available for looked after children in this Local Authority and the level of behaviours that trigger some of those services, I question whether the behaviours present in the children, as shown at school and observed by their carers, would in fact trigger those services. Within the Local Authority there are likely to be other looked after children competing for those services who present with a much greater need. I am not convinced that currently they would trigger the plethora of services the Local Authority say they would need to provide now."*
71. The Children's Guardian noted the Psychologist's evidence, that life story work for the children is important but in the Psychologist's opinion, this needs to be done at a point when the children have built up a level of resilience to manage the content of life story work. The Children's Guardian told the Court, *"this leaves me to consider the timing of that,"* noting principally that the next twelve months, being the period of time the Local Authority suggests, may not be the appropriate timeframe.
72. The Children's Guardian noted that 'C' and 'P' have accepted professional advice, they are committed to obtaining the support necessary for the children and for themselves, they are committed to paying for those resources privately, where necessary, to avoid lengthy waiting times for the children and they are open to professional advice regarding contact arrangements for the children.

73. The Children's Guardian went further in articulating in her oral evidence the many disadvantages for these children of becoming Looked After Children under a Care Order, including:
- (i) Being the subject of Local Authority reviews, the first after 28 days, then after three months and six months;
 - (ii) Further, ongoing, regular professional input and the intervention of additional Local Authority personnel;
 - (iii) Exposure of the children to a variety of different, and new, professionals;
 - (iv) The introduction of an Independent Reviewing Officer for the first time, who would seek to meet the children in overseeing the care plan;
 - (v) The interference in family life, even though the Local Authority have suggested they would delegate many aspects of Parental Responsibility to 'C' and 'P' as family and friends foster carers, whereas to date 'C' and 'P' have been exercising Parental Responsibility exclusively;
 - (vi) The likelihood of another set of Court proceedings, in circumstances where in twelve months, (a) the Local Authority supports 'C' and 'P' in applying for a Special Guardianship Order but this is opposed by the mother who would likely seek the return of the children to her care or (b) the Local Authority does not support a Special Guardianship Order and 'C' and 'P' and/or the mother apply of their own accord to discharge the Care Order.
74. The Children's Guardian told the Court, *"I've looked for the levels of concern that would warrant a Local Authority sharing Parental Responsibility. Having heard all the evidence, I still don't understand why that is necessary."* Further, in respect of the Local Authority proposal to support 'C' and 'P' to apply for a Special Guardianship Order after twelve months, without it being clear what criteria the Local Authority would be assessing them under, the Children's Guardian told the Court, *"I still have no understanding"*.
75. In conclusion, the Children's Guardian noted that the children have a right to a private and family life without unnecessary interference from the State. The Children's Guardian told the Court, having regard to the impact on the children of continued high-level involvement from the Local Authority, the balance is clear: *"A Care Order would be a step back for the children. The Local Authority does not need to share Parental Responsibility. A Care Order is not necessary and is not proportionate."*
76. In my judgement, the written analysis and oral evidence of the Children's Guardian was fair, balanced, clear and highly compelling and I find no reason to depart from that analysis.
77. 'F' and 'S' require parenting from carers who have an understanding of their early life experiences and can help them recover from the trauma they have experienced and develop secure attachments and emotional stability. They need stability and security in their home life, both in the short and long term. Given their experiences, any further disruption or breakdown will undo the beginnings of the repair which is evident from their improved wellbeing and functioning in school and at home.
78. I acknowledge that this Local Authority, in advancing its care plan, is seeking to provide an enhanced package of support to the children and to 'C' and 'P' which is commendable. In my judgement, that package of support should be provided. In my judgement, whilst acknowledging the professionals' concerns as to the need for ongoing therapeutic parenting and the benefits of professional support around managing the children's emotions in respect of contact and the safe reintroduction of direct contact with their mother, acknowledging the risks and vulnerabilities highlighted in the assessments and also acknowledging how much 'C' and 'P' have devoted themselves to provide and care for 'F' and 'S', with little or no support from other family members or relevant agencies and services, it is plain to me that the risks can be managed and the children's welfare needs best met by them remaining in the care of 'C' and 'P', with the

stability of the placement being achieved by the making of a Special Guardianship Order now. In my judgement, a Care Order is neither necessary nor proportionate.

79. A Supervision Order does not give the Local Authority Parental Responsibility. It is less restrictive than a Care Order and its essence is to advise, assist and befriend the children. It does not endure for the whole of the children's childhood. A twelve month Order would, in my judgement, provide the level of support necessary to best meet the needs of the children and would be a proportionate response to the risks, with the power for the Local Authority to apply to extend the Order for up to three years, on application to the Court, should it become necessary.
80. In my judgement, on the individual and specific facts of this case, the children would benefit from the Special Guardianship Order being bolstered by a Supervision Order running alongside it for a period of twelve months, for the reasons articulated by the Children's Guardian. In my judgement, a Supervision Order alongside a Special Guardianship Order is necessary, best meets the specific welfare needs of the children and is the proportionate response.
81. I make a Special Guardianship Order in favour of 'C' and 'P'.
82. I discharge the existing Special Guardianship Order made to the paternal grandparents.
83. I invite the Local Authority to accept the making of a Supervision Order.

Contact with the Mother

84. The mother has shown a commendable commitment to contact during these proceedings. It is yet to progress to direct contact. The mother plainly has much greater stability in her personal life than she had in 2015 and she appears to have made advances in her personal circumstances. I accept the unanimous view of the professionals that direct contact should progress in the manner proposed by the Local Authority.
85. For 'F' and 'S', establishing contact and developing their relationship with their mother is in its early stages and as such, it does require the support from social work professionals to help the mother, 'C' and 'P' support the children in this process. Additionally, the adults are likely to need some help in working through this and keeping a focus on what is in the best interests of 'F' and 'S', having regard to the children's emotional response to the reintroduction of direct contact.
86. On the making of a private law Special Guardianship Order, the issue of contact will fall to be determined by 'C' and 'P'. In exercising their Parental Responsibility conferred by the Special Guardianship Order, they would do well to follow the advice of the professionals under the proposed Supervision Order.
87. The Local Authority recommends contact between the children and their mother six times each year. The Children's Guardian agrees. I accept those professional recommendations as being in the best interests of the children at this stage, subject to ongoing review and professional recommendation.

Contact with the Father

88. There remain serious concerns about the risks the father poses to 'F' and 'S'.
89. Should the father wish to see the children, the Local Authority is concerned that this would require a risk assessment by the Local Authority and serious consideration as to whether direct contact was in 'F' and 'S's best interests. I accept that professional view. I encourage the new Special Guardians to follow the Local Authority recommendation.

Contact with the Paternal Grandparents

90. Currently, the children see their paternal grandfather monthly. The Local Authority proposes that contact takes place twice each year for the paternal grandfather and twice each year for the paternal grandmother.
91. The Children's Guardian recommends contact four times each year for both paternal grandparents, noting also the paternal grandmother's progressive illness.
92. I accept the Children's Guardian's recommendation. Given the benefits of the relationship the children have with their paternal grandfather, balanced with the difficult experiences the children have had in being exposed to the conflict in the relationship between the paternal grandparents and between the paternal grandfather and his current partner, and taking into consideration also the emotional impact on the children of progressing their relationship with their mother to direct contact, I accept the Guardian's recommendation that contact with the paternal grandfather should not be looked at in isolation. I endorse the recommendation of contact four times each year as a starting point.
93. There have been some very positive words from 'C' in respect of the familial relationships during this hearing and there is hope for the future. I accept that it may be the right thing for the children in the future, when they can manage all these relationships, to revert to monthly contact but is not in their best interests at this point for contact to take place at the frequency the paternal grandfather seeks. I endorse the Children's Guardian's recommendation in the hope that the duration, frequency and nature of contact can move forward in early course and with a view to contact moving to non-professionally supervised contact in due course, in the community. Again, that is a matter for the new Special Guardians, with the advice and support available from the Local Authority under the proposed Supervision Order.
94. No party seeks a contact order. There is benefit in a recital to the final Order recording the Court's expectation that contact should be at a frequency of at least those periods identified and that the issue will be kept under review, consistent with the best interests of the children as they grow and develop and their needs change.

Conclusion

95. I make a Special Guardianship Order in favour of 'C' and 'P'.
96. I discharge the existing Special Guardianship Order held by the paternal grandparents.
97. I invite the Local Authority to consider accepting a Supervision Order of twelve months' duration.
98. In my judgement, the Local Authority should provide the support for the children and for 'C' and 'P' proposed under the care plan, notwithstanding the Court's rejection of the need for a Care Order. The support should be provided in conjunction with the additional access to privately funded services 'C' noted in her evidence. I invite the Local Authority to do so.
99. Further, I invite the Local Authority to undertake a financial assessment of the new Special Guardians and for it to be recorded as a recital to the Order that the Local Authority will do so. In terms of the detail of support offered, it would be helpful for the Local Authority to collate that information and set it out in single document, including arranging, facilitating and supporting contact, noting that the support will be revised and updated in line with children's needs.
100. I find no benefit in postponing or adjourning the proceedings. I do not require the Local Authority to file an amended Special Guardianship support plan before making this final Order.

HHJ Middleton-Roy
21st April 2021

Postscript: Following delivery of this judgment, the Local Authority accepted the making of a Supervision Order for a period of 12 months, which was not opposed by the Respondents. The Local Authority agreed to set out its plans for the support to be offered to the Special Guardians under the Special Guardianship Order and the Supervision Order and to prepare a Special Guardian Financial Support, for which the Court is grateful.