



Neutral Citation Number [2023] EWFC 225 (B)

IN THE FAMILY COURT

Case Number: WD23C50025
Re B and G (Children)

Date: 30 November 2023

Before His Honour Judge Middleton-Roy

Between:

A Local Authority

Applicant

- and -

‘The Mother’

1st Respondent

**The children ‘G’ and ‘B’
Through their Children’s Guardian**

2nd and 3rd Respondents

Miss Kakonge, Counsel for the Local Authority

Miss Bath, Counsel for the First Respondent mother

Miss Carvalho-Gomes, Counsel for the Second and Third Respondent children

APPROVED JUDGMENT

This judgment was delivered in private. The Court has given permission for this version of the judgment to be published on condition that, irrespective of what is contained in the judgment, in any published version of the judgment, the anonymity of the children and members of their family must be strictly preserved. No person shall publish or reveal the name or address of the parties who are the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the parties or of any member of their family in connection with these proceedings. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court.

His Honour Judge Middleton-Roy:

Anonymity

1. In line with the Practice Guidance of the President of the Family Division issued in December 2018, the names of the children and the adult party 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, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of Court and may result in a sentence of imprisonment.

The Parties and Background

2. This Court remains concerned with two children. The oldest child, now 15 years old, will be referred to in this judgment as ‘G’. The youngest child, now 13 years old, will be referred to in this judgment as ‘B’. Both children are currently the subject of Interim Care Orders made by this Court on 20 March 2023. ‘G’ is living in a Friends and Family Foster Care placement, which is due to end imminently, the carers having given notice of termination of the placement with effect from 30 November 2023, as they do not feel they are experienced enough to continue to meet ‘G’s needs. ‘B’ is living with Local Authority foster carers, attending a specialist boarding school during the week.
3. The mother of the children will be referred to in this judgment as ‘the mother.’
4. The identity of the children’s fathers is not known. Both children were donor conceived.
5. This is the second set of Court proceedings relating to the children. The first proceedings, under case number WD22C50016, concluded on 16 December 2022 with this Court making a 12-month Supervision Order, both children living at home with their mother.
6. The children are parties to these proceedings through their Children's Guardian. The children have the benefit of the same Children's Guardian from the previous proceedings.
7. The Applicant is the Local Authority. This Local Authority first applied to the Court on 17 February 2022 seeking a Care Order with concerns that the children were both suffering or were at risk of suffering significant harm in the form of physical harm, emotional harm and neglect, arising from the mother’s poor mental health, including suicidal ideation, and the impact of the mother’s mental health on the children. Further, the Local Authority had concerns about ‘B’s complex behaviour at home. The Local Authority was concerned that the mother’s engagement during a Child in Need plan was very limited, not making herself available for appointments and that attempts by professionals to ascertain the wishes and feelings of the children was largely unsuccessful. On 9 February 2022, both children were placed under police protection and taken to their maternal grandparents. The children returned to the care of their mother during the proceedings. At final hearing, the Court, having the benefit of independent expert evidence from Dr Ratnam, Consultant Forensic Psychiatrist and Dr Willemsen, Clinical Psychologist, made a Supervision Order on 16 December 2022 for 12 months, with the plan that the children remained in the care of their mother. That outcome, advanced by the Local Authority, was supported by the Children's Guardian and by the mother, albeit that the mother took issue with the Local Authority’s support plan. Each of the professionals, and the Court, acknowledged that the plan was not without risk. A robust package of support was put in place.

8. These current proceeding began on 17 March 2023, three months after the first proceedings concluded. The Local Authority expressed concern that, despite the professional support in place, the mother was not able to meet the needs of the children consistently, with concerns around volatility in the relationship between the mother and the children. The Local Authority reported that on 17 February 2023, the mother told the ARC Rapid Response Team that she could not cope with 'B's behaviour and that she would leave the house and leave him there. On 24 February 2023, it was reported that an argument occurred between the mother and 'B', witnessed by 'G'. It was reported that the social worker was required to intervene as neither the mother nor 'B' were able to regulate themselves. The mother is said to have informed 'B's boarding school on 6 March 2023 that she could not cope with 'B' when he returned home at weekends. 'B' is reported to have become extremely dysregulated. The Local Authority was concerned that the mother struggled to manage the behaviours of both children and reported that she could not cope. The Local Authority was concerned that the mother was unwilling to put into practice strategies suggested by professionals working with her. Further, the mother was reported to continue to express suicidal ideation, including thoughts about harming the children.
9. It was reported that on 6 January 2023 the mother left both children at home alone. The mother did not respond to calls from the ARC rapid response team, necessitating a visit by the team to the home address. It is reported that the mother returned home under the influence of alcohol and took an overdose of medication in the presence of the ARC rapid response team. Paramedics were called. The mother is reported to have refused to attend hospital, against advice. Further, concerns were expressed by ARC about the amount of medication in the home.
10. During a session with a therapist on 6 February 2023, the mother is reported to have held a scalpel blade to her wrist and asked the therapist, "*what vein do you think I must cut to end it all.*"
11. On 8 February 2023, the mother is reported to have sent a message to the social worker reading, "*Life is not worth living. This is not a life. This is an existence – a hellish and lonely existence. I've had enough.*" The mother sent a further message to the therapist reiterating that she has, "*had enough.*"
12. On 9 February 2023, the mother is reported to have talked to her treating psychiatrist about ending her life following the school holidays and alluded to killing the children.
13. On 5 March 2023, the mother contacted the Adult Mental Health First Response Team indicating that she felt suicidal and spoke about having a stockpile of medication that she could use. The mother is reported also to have spoken about crashing her car and jumping in front of a train.
14. At this final hearing, the Local Authority applies for a Care Order with the care plan that both children remain in Local Authority foster care. The Local Authority expresses an aspiration of reunification of 'G' to her mother's care. The Guardian supports the making of a Care Order for both children. The mother does not oppose a Care Order in respect of 'B'. She opposes a Care Order in respect of 'G'. She seeks the immediate return of 'G' to her care. In the alternative, the mother sets out her own proposals for the phased return of 'G' to her care. The mother's plan is not supported by the Local Authority or the Guardian.
15. This final hearing took place in week 33 of the court timetable. The Court heard evidence from the allocated social worker, from the mother and from the Children's Guardian. Ground Rules were identified at the Issues Resolution Hearing and put into effect at the final hearing to enhance the mother's ability to engage effectively with the court process.
16. The first day of the final hearing was consumed by hearing and determining an application made by the mother on 7 November 2023 for separate representation of 'G' in the proceedings and for consequent adjournment of the final hearing. That application, opposed by the Local

Authority and opposed by the Guardian, was made extremely late in the proceedings. The application was unsuccessful, for reasons given by the Court in a full extempore oral judgment at the conclusion of the first day of the Final Hearing. In short summary, the Court was satisfied that 'G' had a solicitor appointed to represent her under Family Procedure Rule 16, who receives instructions from the Guardian. Whilst 'G's wishes to return to her mother's care immediately conflict with the Guardian's recommended welfare outcome for 'G', the Court found no reason to depart from the conclusion reached by the child's specialist, experienced solicitor that 'G' was not competent to give direct instructions, having regard to the child's understanding. The child's solicitor, in reaching that assessment, had the benefit of independent expert evidence from the recent previous proceedings, from Dr Willemsen, who had assessed the child as lacking competence. Further, the solicitor undertook her own competence assessment at the start of and towards the end of these proceedings.

17. In addressing the question of whether 'G' is able, having regard to her understanding, to instruct a solicitor, the Court approached the issue having in mind an acknowledgment of the autonomy of children and of the fact that it can at times be in the interests of children to play some direct part in the litigation about them. What is sufficient understanding in any given case will depend upon all the facts. The Court recognised that caution needed to be exercised before allowing a conclusion to deny a child of 'G's age (she will turn 16 years old in two months) her own solicitor on the basis that she lacks sufficient understanding. The Court took into consideration the checklist of factors derived from the authorities, including, (a) the level of intelligence of the child, (b) her emotional maturity, (c) factors which might undermine her understanding such as issues arising from her emotional, psychological, psychiatric or emotional state, (d) the child's reasons for wishing to instruct a solicitor directly or to act without a Guardian and the strength of feeling accompanying the wish to play a direct role, (e) her understanding of the issues in the case and her desired outcome, (f) any matter which sheds light on the extent to which those are authentically her own or are mere parroting of one parent's position and (g) her understanding of the process of litigation, including the function of their lawyer, the role of the Judge, the role they might play and the law that is applied and some of the consequences of involvement in litigation, with care taken not to impose too high a level of understanding in this regard. Further, the Court took into consideration the risk of harm to the child of direct participation, compared with the risk of harm arising from excluding her from direct participation and her appreciation of the risks of harm, noting that the child will obviously need to comprehend enough of what the case is about, without being expected to display too sophisticated an understanding and must have the capacity to give her own coherent instructions. The Court took into consideration the fact that the assessment will not be driven by welfare factors or by a theoretical comparison between protection and autonomy but by a practical assessment of the child's understanding in the particular context of the case, with care being taken not to over-value any particular feature.
18. The Court noted also that 'G' has expressed in the strongest terms her wish to return home to her mother. She has consistently shared those views over recent months. Those strongly held views have been shared with the Court through the Children's Guardian. Further, 'G' took the time to write a letter to me setting out her views and furthermore, prepared an audio recording reiterating her strongly held wish to return to her mother. The Court is grateful to 'G' for taking the time to express her views and for making her wishes and feelings very clear indeed. Her wishes, as expressed in that letter and audio recording to me, are entirely consistent with the wishes she expressed through her Children's Guardian. The Court notes with regret that, whilst 'G' also made a request to meet with me, it was not possible for such a meeting to be arranged. This Court always takes very seriously any request for a child to meet the Judge who is making important decisions in their lives in proceedings of this nature in the Family Court. This Court will strive to make time available to meet with children who express such a wish, in accordance with the guidelines for Judges Meeting Children who are subject to Family Proceedings, produced by the Family Justice Council and approved by the President of the Family Division, to enable children to feel more involved and connected with proceedings, to give them an opportunity to satisfy themselves that the Judge has understood their wishes and feelings and to understand the nature of the Judge's task. Regrettably, 'G's request to meet me was made very late in this case, only after the Issues Resolution Hearing. Even then, the Court

did not receive the information the Court was entitled to respect, as required under the guidelines, in a timely manner. The extreme and unrelenting pressures on the Family Court system presently are such that in this case, there was simply, and highly regrettably, no time available at all for suitable arrangements to be made to meet with 'G', either during or outside ordinary Court hours. This Court acknowledges the fundamental importance for children of having a voice in proceedings of this nature. Through her Children's Guardian, through her mother and through 'G's written and audio messages to me, this Court is entirely satisfied that, not only has 'G' been consulted in respect of the decisions the Court is required to make regarding her welfare, she has had the opportunity to be heard in these Court proceedings through her highly experienced Cafcass appointed Guardian in accordance with the Family Procedure Rules and has exercised her right to express those views freely in accordance with the United Nations Convention on the Rights of the Child. This Court has heard 'G's views, voiced in the strongest possible terms. Those views are perfectly clear to me.

19. It is regrettable that the late and ultimately unsuccessful, application made by the mother for 'G' to be separately represented in the proceedings was made without, it seems to this Court, consideration of the impact of what would have been a lengthy delay in the proceedings should the application have been granted, such delay being contrary to 'G's best interests. Moreover, the time taken to hear that preliminary application directly impacted on the ability of the Court to determine the final hearing within the three days set aside. As a consequence, the Court was not able to reach a final welfare determination on the last day of the hearing, namely 17 November 2023, meaning a further delay for the children in their case being determined. At the conclusion of the third day of the Final Hearing, there being insufficient time for oral submissions, the parties agreed, and the Court directed, written submissions by Wednesday 22 November 2023. This reserved written judgment was circulated to the parties in on Monday 27 November 2023 in advance of formal hand down on 30 November 2023. That is the day when 'G's current placement ends.
20. In reaching this decision, the Court has considered all the evidence read and heard and the comprehensive and helpful written submissions received from Counsel for each party, for which the Court is very grateful. The Court has considered a bundle of documents comprising over 800 pages, together with additional documents filed during the course of the final hearing. It is neither possible nor necessary in this judgment to refer to each piece of evidence read or heard. Nevertheless, the Court has given each piece of evidence careful consideration and anxious scrutiny.

The issues that must be decided

21. There being no agreement between the parties, the issues for the Court to adjudicate upon are:
 - a. whether 'G' can return safely to her mother's care now;
 - b. whether a Care Order should be made for 'G' with the aspiration of reunification into her mother's care on an indeterminate future date;
 - c. whether 'G' should be made the subject of a Care Order or a Supervision Order;
 - d. whether the mother's contingency plan for reunification in respect of 'G' is in the child's best interests;
 - e. contact.

The Relevant Law

22. Local Authorities owe a duty in law to safeguard and promote the welfare of all children within their area who are in need. In carrying out that duty in law, the Local Authority must promote the upbringing of children by their families and must provide services appropriate to the needs of children who are children in need. The purpose of the Family Court in proceedings of this nature is not to establish guilt or innocence or to punish or criticise parents but to establish the facts as far as they are relevant to inform welfare decisions about the child.
23. In any application for a Care Order or Supervision Order the Court must apply section 31 of the Children Act 1989 to each relevant child. A Court may only make either a Care Order or a Supervision Order if the 'threshold criteria' in s.31(2) Children Act 1989 are satisfied, namely,

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 to them if the order were not made, not being what it would be reasonable to expect a parent to give to them or the child being beyond parental control.

24. The Court may, on an application for a Care Order, make a Supervision Order and, vice versa, on an application for a Supervision Order, the Court may make a Care Order.
25. If the threshold criteria are met, the choice of whether to make any Order, and if so which, in care proceedings is to be determined by the Court affording paramount consideration to the child's welfare under s.1 Children Act 1989. The Court must have regard to the matters set out in the welfare checklist in s.1(3) Children Act 1989 and the non-intervention principle in s.1(5), namely that the Court in considering whether or not to make one or more Orders under this Act with respect to a child, shall not make the Order or any of the Orders unless it considers that doing so would be better for the child than making no Order at all.
26. By s.31(1)(a) Children Act 1989, a Care Order places a child with respect to whom the Order is made in the care of a designated Local Authority. The Local Authority shares Parental Responsibility for the child but has the power to determine how any other holders of Parental Responsibility may exercise their Parental Responsibility. Where a Care Order is made with respect to a child it shall be the duty of the Local Authority designated by the Order to receive the child into their care and to keep the child in their care while the Order remains in force. A child who is placed in the care of a designated Local Authority under Children Act 1989, s.31(1) is a child who is being 'looked after' by the Authority for the duration of the Care Order.
27. On an application by a Local Authority for a Care Order or Supervision Order, the Court may make a Supervision Order 'putting the child under the supervision of a designated Local Authority,' provided that the s.31 threshold criteria are satisfied. While a Supervision Order is in force, it shall be the duty of the Local Authority to advise, assist and befriend the supervised child and to take such steps as are reasonably necessary to give effect to the Order.
28. In contrast to a Care Order, a child under a Supervision Order is not being 'looked after' by the Local Authority and the Authority neither has Parental Responsibility for the child, nor the power to direct how those who do have Parental Responsibility may exercise it. A Supervision Order may require the child to comply with any directions given from time to time by the supervising officer. There is no express requirement for the supervising officer to visit the child during the life of the Order or to keep the plans for the child under review.
29. An essential difference between a Care Order and a Supervision Order is that under the latter, the Court's power to require a parent to discharge their Parental Responsibility in a particular manner is limited to the 'requirement' or 'direction' provisions in Children Act 1989, Schedule 3. There is no power to impose conditions upon a parent. A Supervision Order rests primarily upon the consent of the parent affected by it. Any provisions incorporated into a Supervision Order, either by direction of the supervisor or by requirements directly stated by the Judge, are incapable of being enforced directly through any of the ordinary processes by which courts of law enforce obedience to their directions. The only sanction, when any infringement of the terms of a Supervision Order, or of directions given under it, occurs is a return by the supervisor to Court. There the ultimate sanction will be the making of a Care Order under which the Local Authority will be given the necessary legal powers to enforce its will. This is in contrast to the position under a Care Order, where, under Children Act 1989, s.33(3), the Local Authority not only has Parental Responsibility but may determine how others may discharge their Parental Responsibility.
30. In care proceedings, the protection of the child is the decisive factor when the Court is deciding whether to make a Care Order or a Supervision Order. The Court should first make a careful assessment of the likelihood of future harm to the child and must then weigh that harm against

the harm that would follow from the child being removed from their parent under a Care Order. A Care Order rather than a Supervision Order should be made only if the stronger Order is necessary for the protection of the child (*Re D (Care or Supervision Order)* [1993] 2 FLR 423; *Re S (Care or Supervision Order)* [1996] 1 FLR 753; and *Re B (Care Order or Supervision Order)* [1996] 2 FLR 693).

31. Section 31(9) and section 105 of the Children Act 1989 define "harm" as meaning ill-treatment or the impairment of health and development including, for example, impairment suffered from seeing or hearing the ill-treatment of another. "Development" is defined as meaning physical, intellectual, emotional, social or behavioural development. "Health" is defined as meaning physical or mental health.
32. Most applications for a Care Order or Supervision Order require the Court to traverse three principal stages: (i) finding the relevant primary facts; (ii) determining whether the legal threshold for the making of a Care Order or Supervision Order has been crossed (section 31(2) (a) Children Act 1989); and, if so, then (iii) deciding the proper Order to make (the disposal or welfare stage). If satisfied that the threshold criteria are made out, the Court must proceed to consider section 1 of the Children Act 1989. At this stage, the welfare of each relevant child is the Court's paramount consideration. The Court must have regard to the factors set out in s1(3) Children Act 1989 ("the welfare checklist")
33. Further, the Court must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.
34. In *Re F (A Child: Placement Order: Proportionality)* [2018] EWCA Civ 2761 the Court of Appeal set out the questions that the Court should ask itself when assessing risk of future harm and setting it in context, such approach having equal utility to applications for a Care Order where no Placement Order is also sought:
 - (1) What is the type of harm that might arise?
 - (2) What is the likelihood of it arising?
 - (3) What consequences would there be for the child if it arose?
 - (4) What steps could be taken to reduce the likelihood of harm arising or to mitigate the effects on the child if it did?
 - (5) The answers are then placed alongside other factors in the welfare equation so that the court can ask itself, how do the overall welfare advantages and disadvantages of the realistic options compare, one with another?
 - (6) Ultimately, is the welfare option necessary and proportionate – are the risks bad enough to justify the remedy?
35. A core principle of the Children Act 1989 is the 'no Order' principle. This means that the Court must only make an Order for a child if this is better than not making an Order. The principle is predicated upon the view that children are best brought up by their families, unless they are at risk of significant harm. When drafting the Children Act 1989, the legislators specifically rejected the prospect of removing children from their family whenever it would be better for them than not doing so.
36. The Human Rights Act 1998 applies to these proceedings. Under Article 8, everyone has the right to respect for private and family life, home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society. Each individual family member in this case has that right, including the children and their mother. These rights must be balanced. Any interference with the right to private and family life must be a necessary interference and must be proportionate, having regard to the risks. The mother and the children are each afforded that protection.

Threshold

37. The relevant date for determining the threshold criteria for these children is 17 March 2023 when the Local Authority took protective measures by commencing these current proceedings.

The parties agree that as of 17 March 2023 the section 31 threshold criteria are met by reason of the following agreed facts:

1. The mother is unable to consistently meet the needs of her children as a result of her own mental health needs. The children are both impacted by their mother's continued volatility and the relationship between the mother and the children has started to break down. This caused the children significant emotional harm:
 - a) On Friday 17 February 2023, the mother told the ARC Rapid Response Team that she cannot cope with 'B's behaviour and would leave the house and leave him there. The mother did not leave the home on this occasion, but this is something that has happened previously. This impacts both children significantly, as they do not know where their mother is or when she is coming back;
 - b) On 24 February 2023, an argument occurred between the mother and 'B'. 'G' was present and witnessed the incident. The social worker was required to intervene. Neither 'B' nor the mother were able to regulate themselves;
 - c) On 6 March 2023 the mother advised 'B's residential school that she cannot cope with 'B' at the weekends anymore;
 - d) During a visit on 10 March 2023 'B' became extremely dysregulated and picked up an alarm clock radio and held it above his head to throw it. He did manage not to throw the item but was crying and shouting because the mother would not allow him to have all his devices back at once, after they had been confiscated;
 - e) The mother struggles to manage her children's behaviours and has reported that she cannot cope with 'G' and 'B's behaviours. 'B's behaviours have deteriorated over the last four weeks and arguments, including shouting, are happening each weekend.
2. The mother continues to express suicidal ideation. As a result, the children are suffering significant emotional harm:
 - a) On 6 January 2023 the mother went out with a friends, leaving both children at home alone. The mother did not respond to calls from the ARC rapid response team, necessitating a visit by the team to the home address. The mother returned home under the influence of alcohol and took her prescribed medication, and two paracetamol tablets. Paramedics were called. The mother refused to go to hospital, against advice. The children were at home when this occurred;
 - b) ARC expressed concern about the amount of medication in the home. The social worker took an inventory on 10 January 2023:
 - i. Venlafaxine 150mg x 126 tablets, 75mg x 14 tablet;
 - ii. Aripiprazole 10mg x 14 tablets, 5mg x 7 tablets;
 - iii. Quetiapine 25mg x 26 tablets;
 - iv. Diazepam 2mg x 102 tablets;
 - v. Zopclone 7.5mg x 33 tablets, 3.75mg x 36 tablets;
 - vi. Naproxine 500mg x 31 tablets ;
 - vii. Amitriptyline 10mg x 56 tablets ;
 - viii. Sertraline 50mg x 28 tablets ;
 - ix. Metazepine 15mg x 27 tablets;
 - x. Lamotrigine 25mg x 28 tablets.
 - c) During a session with the therapist on 6 February 2023, the mother at 2:45pm (15 minutes to the end of the session) opened one of the scalpels and placed her index finger on the blade and said, "look how easy it is to buy these" and asked the therapist what she would do if the mother cut herself;
 - d) On 8 February 2023 the mother sent a picture, of a handwritten note to the social worker via WhatsApp. The note read: "*I woke having had a terrible dream. Banging*

headache and tearful. Life is not worth living. This is not a life. This is an existence – a hellish and lonely existence. I’ve had enough”;

- e) On 5 March 2023 the mother called the Adult Mental Health First Response Team. She advised the team that she felt suicidal and spoke about having a stockpile of medication that she could use. The mother spoke also about crashing her car and jumping in front of a train but stated that she was not planning on acting on these feelings today. The mother told the practitioner from the First Response Team that she was struggling to manage the children and needed some respite from them. The mother was referred to the Crisis Team but refused to be assessed or work with them, as she was already under the care of the CMHT and had a named consultant, Dr College.
3. The mother’s presentation is significantly impacting upon ‘G’ and ‘B’s emotional needs, putting them at risk of significant emotional harm:
 - a) ‘B’ is a vulnerable child with significant neurodevelopmental and emotional needs. ‘B’s behaviours continue to deteriorate at home, contrasting with reports by the school that his behaviour there has settled. The mother asserts that this was because ‘B’ was masking his behaviour at school and exploding at weekends;
 - b) ‘G’ has been diagnosed with Autism Spectrum Disorder, generalised anxiety and depression, with a previous diagnosis of dyslexia;
 - c) ‘G’ reports that she is very unhappy about the current situation and is confused and concerned about the mother’s presentation;
 - d) ‘G’ presents as very low in mood and struggling with her home life.
 38. The mother, to her credit, made concessions to the Local Authority threshold statement. The above threshold facts are agreed between the parties. Having regard to all the evidence, the Court makes findings in accordance with those agreed facts.
 39. There are three elements to threshold. The harm must be actual or likely, it must be significant and it must be due to parenting that is not reasonable. The totality of the evidence in the case leads the Court to the firm conclusion that all three of these elements are satisfied. On all the evidence before the Court, the facts undoubtedly disclose a real risk of significant harm that cannot sensibly be ignored. Asking the question, whether the threshold was satisfied at the date proceedings were issued, there can only be one answer. In this case the threshold under section 31(2) of the Children Act 1989 is plainly met.
 40. Having made those findings and applying the threshold test to them, the Court proceeds to consider welfare and proportionality evaluations as a separate exercise.

Welfare

41. ‘B’ is a 13-year-old boy. He is noted to have a history of complex behavioural problems from a young age. There have been several referrals to the Child Development Centre and other child mental health teams. He has a diagnosis of Autism Spectrum Disorder (“ASD”), Attention Deficit Hyperactivity Disorder (“ADHD”), global developmental delay, Developmental Co-ordination Disorder, Dyslexia and Dyspraxia. He has been described as an extremely witty and likeable young person. At times he can present with challenging behaviour and emotional dysregulation as he struggles to understand and manage his feelings. He has struggled to regulate his emotions without support and has been aggressive when he is upset or frustrated. He attends a residential school from Monday to Friday each week, where he has begun building trusting relationships with staff. He is reported now to be more open about his feelings and will speak to staff if something is bothering him. He is noted to be growing in confidence

and to have made a positive group of friends. He is engaged with a therapist at his school. He engages in holistic play therapy, with regular reviews every 12 weeks.

42. 'B' was noted by the Children's Guardian to have developed a positive relationship with his foster carers. The Children's Guardian observed affectionate behaviours towards his carer.
43. 'B' expressed a wish to be reunified to the care of his mother. The unanimous professional conclusion is that 'B's best interests would be met by him remaining in his current residential school and remaining in long term foster care, staying with his foster carers at weekends and during school holidays. 'B's mother supports that plan, noting that 'B' has made much progress with his carers and that he is *"doing very well"* at school. It is his mother's hope that 'B' can return home before he is 18 years old.
44. The Children's Guardian told the Court that 'B' was made aware that his mother seeks 'G's return home immediately, because her placement with her current Friends and Family foster carers was not as stable, whereas 'B's placement with his foster care is stable. The Children's Guardian told the Court in her final report, *"['B'] began to cry; I consoled him and reassured him that he would continue to see his mother and ['G'] and that we were all very hopeful the family could be reunited in the future. ['B'] did not say anything and returned to his bedroom."*
45. The Court is told that 'B' is in good physical health. He remains under the care of a paediatrician. He is noted to have thoroughly settled into his residential school. The school is supporting his emotional and educational needs. He chose to engage in play therapy. The sessions focus on supporting 'B' to understand his anger, give him a safe space to explore social and emotional difficulties, and express himself.
46. In the recent previous proceedings, Dr Willemsen acknowledged 'B's complex set of needs, concluding that the aetiology of 'B's behaviour, *"is probably both neurotypical and environmental."* Dr Willemsen observed that when at home with his mother and sister, 'B' spent a lot of time in his room with the doors closed, *"so there is not much conversation at home"*. 'B' was noted, *"to see somebody at CAMHS but he does not like it."* Dr Willemsen reported, *"['B'] has a significant set of needs, as pointed out by the psychiatrist who saw him, which makes it difficult for him to anticipate other people's thoughts but concerning also are his unregulated emotions which appear to flare up as violent outbursts, which occur, I think, when he does not know how to relate to others, and to his mother and sister in particular. ['B's] outbursts relate to feeling unable to express himself to others and may be a consequence of possible ASD symptomatology which the psychiatrist thought needs further assessment. It is, I think, also related to not feeling he is attuned to."*
47. Dr Willemsen observed, *"It might be that ['B'] is able to relate to carers who are more emotionally available to him, which would make it possible for him to have the experience of living in a family while also seeing his mother and sister...he may still feel excluded from his mother and his sister, but perhaps less so, should he be placed in another family. Being placed in a family...would give him the possibility of developing a stronger attachment organisation, whereas a boarding environment would focus more on adaptation."*
48. Further, Dr Willemsen observed, *"If ['B'] would be placed out of [the mother's] care, thought could be given to the possibility of the provision of family therapy, to help ['G'] and [the mother] develop their relationship."*
49. The professionals agree that 'B' is being cared for in a comfortable home and is provided with a healthy diet. His foster carers have good routines and boundaries in place and 'B' has been able to adhere to these. The social worker noted that there have been, *"a couple of occasions"* when 'B' has been in his current placement where he has used derogatory language and expressed angry behaviour, *"but these incidents have been very isolated and for the most part, despite not really wanting to be looked after, ['B'] has settled really well with his foster carers."* The professionals all agree that 'B's emotional needs are being met by his foster carers. 'B' is learning to say if he

needs some space or feels angry rather than swearing and shouting. The professionals agree that this is working well and 'B' is receiving a lot of praise from his foster carers for the changes he is making.

50. The professionals all recognise that 'B' has suffered from significant emotional harm due to his exposure to his mother's mental health difficulties and the struggle she had parenting him when she was unwell, evidenced by his presentation when he was at home. He struggled to regulate his emotions, he was often rude, used derogatory language and presented as angry and upset. Since being looked after, there has been a significant change in his presentation, which the social worker described as being, "*almost instantaneous*." Despite being upset about becoming looked after, 'B' did not present in a rude aggressive or angry way to his carers and while there have been instances of this, the majority of the time 'B' is described as presenting as stable and settled. The Local Authority and Children's Guardian are both concerned that if 'B' was to return home without his mother having the opportunity to engage with an appropriate treatment plan, there is a risk that her mental health will deteriorate again, and the family will find themselves back to where they were before.
51. To her real credit, the mother has taken the difficult but child-focussed decision to support the making of a Care Order for 'B' and to support the Local Authority's care plan.
52. I have regard to 'B's ascertainable wishes and feelings in the light of his age and understanding. 'B' has expressed a clear wish to return to his mother's care. I very much respect those wishes and feelings. 'B' is at an age where his wishes carry weight. I take those wishes and feelings into consideration. The wishes and feelings of a mature child do not carry any presumption of precedence over any of the other factors in the welfare checklist. The child's preference is only one factor in the case and the Court is not bound to follow it. The weight to be attached to the child's wishes and feelings will depend on the particular circumstances of each case. In particular, having regard to the words of s 1(3)(a), it is important in every case that the question of the weight to be given to the child's wishes and feelings is evaluated by reference to the child's age and understanding. Within this context, and on the face of it, the older the child the more influential will be their views in the decision-making process. However, ultimately, the decision is that of the Court and not of the child. Once again, it is important to recall in this context that children's best interests are the Court's paramount consideration. On the specific facts of this case, 'B's specific needs are not capable of being met by his mother at this stage. That is so, whether 'B' was placed in his mother's care as the only child at home or whether 'B' and 'G' returned to their mother's care together. 'B' requires highly attuned parenting to meet his complex needs. His current foster carers are providing that level of care. The foster carers also have a positive working relationship with 'B's mother. In the context of the mother's own ongoing challenges with her mental health, it is plain that at this time, the weight of concerns now means that 'B's wishes are not capable of being realised, without causing him further significant harm, for the reasons articulated by the social worker and the Children's Guardian, which I respectfully endorse.
53. Within this context, in determining which of the competing options is in 'B's best interests, having identified his welfare needs and having undertaken an evaluation of each of the options available for 'B's future upbringing, in this Court's judgement, the evidence leads to the firm conclusion that a Care Order is the option that best meets the duty to afford paramount consideration to 'B's welfare and that such an Order is necessary.
54. Whilst the making of a Care Order is a clear interference with 'B's Article 8 rights, such Order is made in accordance with law and with the legitimate aim of promoting the welfare of the child. In this Court's judgement, that interference is necessary and is a proportionate response, having regard to the risks and having regard to the welfare evaluation.
55. For all the reasons advanced by the Local Authority and the Children's Guardian, this Court must conclude by reference to each of the factors under s.1(3) Children Act 1989 that 'B' requires reparative parenting, that a Care Order meets his best interests and that the Local Authority's care

plan of long term foster care is the proportionate response to the risks. The question of the Local Authority's care plan in respect of contact will be considered later in this judgment.

56. I turn to consider the contested application in so far as it relates to 'G', having regard first to her physical, emotional and educational needs, her age, sex, background and relevant characteristics under s.1(3)(b) and (d) Children Act 1989. 'G' is a 15-year-old girl, two months short of her sixteenth birthday. 'G' has a diagnosis of mild non-verbal learning difficulties. She is reported to struggle with low emotional mood. She has expressed suicidal ideation and has self-harmed in the form of cutting her arms. More recently 'G' has disclosed experimenting with illicit substances (cannabis) and a psychoactive substance believed to be Spice was found by her Friends and Family foster carers in her belongings.
57. 'G' underwent an autism assessment completed by Dr Rios, Consultant Clinical Psychologist, on 7 February 2023. 'G' was diagnosed with Autism Spectrum Disorder – without intellectual impairment – Level 1. 'G' was also diagnosed with Generalised Anxiety Disorder and depression and an existing diagnosis of Dyslexia.
58. Dr Rios observed that 'G' presents with, *“persistent differences and difficulties in social communication and social interaction across multiple contexts. There are differences in nonverbal communicative behaviours used for social interaction, and restricted and repetitive behaviours. These behavioural differences were present in the early developmental period and became more apparent as social demands increased and peers presented as better equipped to navigate the unwritten social rules of different environments. ['G's] less well-developed ability to intuit expected social transactions leaves her feeling anxious and distant. The functional impact of this experienced anxiety translates into ['G'] being passive and looking blank, possibly in an effort to manage the environmental demands. Her need for support and adaptations to be able to function is significant as she also presents with significant executive functions deficits: disorganisation, lateness, unkemptness and a general lack of planning ability.”*
59. Further, Dr Rios noted, *“At home she presents as rude and intolerant, in school as timid and lacking in confidence and in clinic as flat and disinterested. ['G'] is aware of some of her social difficulties and differences but is concerned about her autism turning into her brother's presentation...Distractibility and poor attention control were observed in clinic and has been reported by her teachers.”*
60. Dr Rios observed further that 'G's, *“neurodivergent profile includes at least average cognitive abilities, formally assessed when she was 9 years old and within the 'average' range, but lack of discipline and motivation to learn and do well. Her focus and organisational skills appear to be less well developed in the context of a busy classroom where she can feel overwhelmed. At home her untidy bedroom and inability to keep it clean tidy may well be part of her poor executive functions, low self-esteem and symptoms of depression.”*
61. *“Neurodiversity,”* Dr Rios explained, *“describes the idea that people experience and interact with the world around them in many different ways because there are variations in human brain and cognition. ASD, ADHD, Dyspraxia, Dyslexia, Dyscalculia, are all examples of neurodiversity.”*
62. The advantage of acknowledging and understanding the diagnosis of Autism Spectrum Disorder, Dr Rios considered, *“is that it provides an explanation to ['G'], her mum and friends that her neurodivergent profile brings differences in the ways she behaves, understands and perceives the world.”*
63. Dr Rios recommended:
- (a) that both 'G' and the mother would benefit from accessing psychoeducation to support with emotional recognition and literacy, social skills, routine and transition, special interests and social inclusion, to help understand the ASD diagnosis from 'G's specific profile, *“and celebrate her individual strengths and needs. By understanding areas of difficulty, mum, teachers and ['G'] can work to find solutions which will help build her self-confidence”;*

- (b) that ‘G’ will need access to local CAMHS to participate in an adapted Cognitive Behavioural Therapy to manage symptoms of anxiety and depression which have been impacting on her well-being and everyday functioning and to assist with emotional literacy, emotional regulation, anxiety and symptoms of depression;
 - (c) an ADHD assessment;
 - (d) contacting ADD-vance, *“a very helpful resource for families and their children with neurodivergent profiles”*;
 - (e) sharing Dr Rios’ report with ‘G’s GP to facilitate access to local services for Autism Spectrum Disorder, specifically that PALMS, an NHS facility is commissioned to assist;
 - (f) sharing Dr Rios’ report with education providers, *“so that teachers are aware of [‘G’s]diagnoses and can put in place appropriate reasonable adjustments to support for [‘G’] in the school setting.”*
64. ‘G’ is reported by her school to be on track to achieve at least level 5 or 6 in a full quota of GCSE’s. She is due to sit her mock examinations in January 2024 and her final examinations in the 2024 summer term. ‘G’ is reported to present with low self-esteem at school, *“partly due to how she is achieving academically with [‘G’] feeling that she does not match up to her mother’s expectations with her grades.”*
 65. In the recent previous proceedings, Dr Willemsen observed that when ‘B’ was at boarding school and ‘G’ and her mother remained together at home, the mother, *“had time for [‘G’],”* noting however that, *“they had not always capitalised on that, sometimes she did not want to. It was still difficult to engage and motivate her...[‘G’] resented [‘B’].”*
 66. ‘G’ considered that the main concerns were in relation to her mother, *“becoming extremely stressed”* with ‘B’ refusing to attend school and having support workers in the home. When ‘B’ transitioned to his residential provision, he would return at the weekends angry and annoyed. ‘G’ considers it would be in her best interest to be returned to the primary care of her mother first, with ‘B’ returning home at a later date. Those are views shared by the mother. None of the professionals suggest that ‘G’ has been influenced by her mother in forming those views.
 67. A report from June 2022 from the Learning Manager and Senior Mental Health Lead at ‘G’s school, who is part of the pastoral support team, observed that ‘G’ was, *“struggling to accept that she cannot return home into [her mother’s] care and talks a lot about wanting to be back at home...[‘G’] always shared how hard she found the home dynamics when the 3 of them were living together, particularly the volatile interactions between [‘B’] and mum. Her own relationship with [‘B’] went through various times where she felt physically threatened by him or upset for him when things were very difficult and she could see that he was really struggling...[‘G’] doesn’t often refer to mum’s own issues and usually only in the context of wanting to be at home again. That said she has experienced mum having a crisis, but when we talk about it, she still feels that if it’s just her and mum at home, they will be able to live together fine... [‘G’] on occasion will still present as being ‘hopeless’ about the future – will be monosyllabic at the start of a session but once she settles will talk freely and openly and seek support.”*
 68. The CAMHS practitioner working with ‘G’ reported on 2 November 2023 that ‘G’ has been attending CAMHS sessions since January 2023. The practitioner reported that when ‘G’ moved into her current foster placement she was optimistic but was still eager to return home, which preoccupied much of her thoughts and feelings for many months up until September 2023. As the date came closer, ‘G’ became more unsettled and in low in mood. The CAMHS practitioner observed that ‘G’ has, *“separation anxiety”* and *“fluctuating low mood.”* ‘G’ was assessed as *“low risk.”*
 69. Having regard to s.1(3)(a) Children Act 1989, ‘G’ informed the social worker that she enjoys the time that she spends with her mother and with ‘B’ and feels that the family relationships have improved.

70. 'G's wishes have been expressed very clearly and consistently to all the professionals and to this Court, namely that she, "*just wants to go home*". In her audio message to me, 'G' told me: "*I want to go home. I don't want a gradual reintegrating back to my mum. I just don't see the point. I'm 15, turning 16 in January. I think I am of an age where I can decide what I want and not have someone else to make the decision for me. I want to go home to my mum. I don't really like it at [the current placement] anymore. Obviously, I'm very grateful to them but they're not my parents and they're not my family and I don't want to go to another place because it will be exactly the same. I won't like anyone that isn't my mum and I think considering my mock results, I would not have got those result if I was at home and had a stable environment to do my revision and I know I can only blame myself for failing but I don't want that to happen with my Year 11 mocks because they're a lot more important and I think I will just do a lot better if I have the support from my mum because she is really the only person that supports me and encourages me...I just want to go home and it's as simple as that. Whenever the Court date is that you decide, I just think I should go home on that day and I don't think there will be any negative repercussions and I think that me and my mum have always had a good relationship and I think that anyone can tell you that and I don't see why I'm in care and I don't think I deserve it. It's been very unfair on me these past seven months...and that is a very long time for me. For once in my life can I please get what I want. Thank you.*"
71. Having regard to s.1(3) (e) Children Act 1989, 'G' is a young person who has suffered significant harm in the care of her mother in the form of emotional harm and neglect, through exposure to her mother's poor mental health. The Court found in the previous proceedings that this harm included a decline in 'G's emotional wellbeing and being exposed to the mother's inability to cope with 'B'. 'G' was also at risk of suffering significant physical harm consequent upon her mother's poor mental health. In the Court's judgement in the previous proceedings, the threshold findings, so far as they related to 'G' included findings that on 14 February 2022 the mother spoke about having thoughts, "*approximately three years ago to end her life and 'B' and 'G's lives. She said she would do this by crashing her car, however she decided this would not be the best method as there was no guarantee they would all die. The mother said this is why she then moved on to consider walking in front of train.*" No findings were sought, or made, in respect of 'G' suffering actual physical harm. In these current proceedings, the threshold findings sought and made include, so far as they relate to 'G', include findings of significant emotional harm to 'G' arising from the impact of the mother's mental health on her parenting ability, including an inability to cope with the behaviours of the children and a volatility in her relationship with her children. The threshold findings record that 'G' was present and witnessed incidents of volatility between the mother and 'B' and that the emotional needs of both children have been impacted significantly by their mother's presentation.
72. Having regard to s.1(3)(c) Children Act 1989, 'G' has experienced three interim placements during these proceedings. A fourth placement is proposed by the Local Authority, if the Court approves the Local Authority's care plan. Following the making of the Interim Care Order, 'G's placement by the Local Authority with approved interim foster carers was not satisfactory. 'G' disclosed to professionals, supported by audio recordings, that the foster carer was verbally abusive to another foster child. 'G's action in disclosing this information to professionals was entirely the right thing to do and was very brave. The Court approved 'G's immediate removal from that foster care placement. 'G' moved for a short period to live with her maternal grandparents. Regrettably, it was known that such placement could only be a short-term interim placement as the maternal grandmother had caring responsibilities for her ill husband. Family Friends were nominated by the mother to care for 'G'. I will refer to them as 'F&F'. They were approved by the Local Authority and the change of interim care plan for 'G' to move to their short-term care was approved by the Court. The placement was largely a positive one, albeit in recent weeks, 'G' has become unsettled. 'G' expressed initially that her current placement with 'F&F' was, "*okay as a plan B,*" but she quickly reiterated that she was not happy and expressed feeling that it was "*intrusive,*" when 'F&F' went through her belongings and discovered the drug 'Spice'. 'G' is said to have explained that she was holding the drug for a friend. 'G'

accepts using cannabis, despite her being aware that it is an illegal substance. 'F&F' have informed the Local Authority that they do not feel able to meet 'G's needs on a long-term basis.

73. At the start of this Final Hearing, the Court was informed of a potential long-term foster care placement available for 'G' with an approved pair of experienced foster carers. The Court was informed that, whilst the proposed foster carers have experience of caring for children, "*with significant mental health issues and anxiety disorders, learning disabilities and trauma and a lot of experience of children who have been under the care of CAMHS*", the proposed foster carers did not have specific experience of caring for any child with autism. The social worker considered, however, that the proposed foster carer, "*presented as having some insight into autism*".
74. Whereas the social worker and the Children's Guardian had completed their respective welfare analyses on the assumption that 'G's placement with 'F&F' could proceed on a long terms basis and provide 'G' with stability, that situation changed significantly at the start of this Final Hearing when it became clear that 'F&F' gave notice to the Local Authority of termination of the placement with effect from 30 November 2023, such that the current placement is no longer a viable, realistic option for 'G'. A change of placement for 'G' will now be necessary. The options before the Court are either a return home for 'G' to her mother's care, to an environment which is familiar to her or moving to another foster care placement with people who are not known to her and who she has not met, in an environment that is unfamiliar to her. The change in circumstances for 'G' must be considered also in the context of 'G' having been exposed to emotional harm in her first foster care placement, where she experienced an abusive Local Authority foster carer. Furthermore, such change of circumstances must also be considered in the context of 'G's diagnoses, including ASD. Relevant also to such change in circumstances is 'G's strongly held wish not to stay in foster care. Indeed, 'G' has expressed clearly an intention to leave any foster care placement as soon as she reaches the age of 16, in two months. Further, a change of circumstances for 'G' of the type proposed by the Local Authority and supported by the Children's Guardian is in the context of a Local Authority care plan which envisages an undefined point in time when 'G' would begin a managed transition back to her mother's care, the effect of which is that 'G' is not likely to invest emotionally in a change of placement. Furthermore, the change of circumstances for 'G' that will follow at the conclusion of these proceedings next week must be considered in the context of 'G's education, coming at a time when 'G' is preparing for her 'GCSE mock examinations in January 2024 and final examinations in the summer term of 2024. The disruption consequent upon a change of placement will impact 'G', again, in the context of her diagnoses including ASD. This must further be considered in the context of 'G' vocally expressing the wish to have educational support, in addition to emotional support, from her mother, who is a qualified teacher, working with children of 'G's age who have special educational needs.
75. I turn to consider s.1(3)(f) Children Act 1989, namely the capability of the mother of meeting 'G's needs. There is an acceptance on the part of the mother that she is not able to meet the needs of both children together, at this stage. There is also an acceptance from the mother that she is not able to meet 'B's complex needs at this stage. The mother's position is that she is able to meet 'G's needs.
76. In the recently concluded previous proceedings, Dr Willemsen observed, "*This is a complex case in which the needs of the mother and the children, of each of the three individuals, are significant...[the mother] spoke of feeling overwhelmed by the court process and particularly by ['B's] behaviour. She was at a loss as to how best deal with him. ['G's] withdrawn behaviour might relate to feeling she cannot fully express herself and perhaps to being critical of herself. I do not think her [G's] self-harm is something she copies from her mother, but rather that she expresses a level of self-loathing that is concerning and is expressed through harming herself. Her behaviour needs to be seen in her own right. Considering [the mother's] temperament, I*

think [‘G’] might find it difficult to express herself, in fear of a retaliation, and in fear of being criticised.”

77. In the course of those previous proceedings, the Court considered expert evidence in the form of an independent report from Dr Ratnam, Consultant Forensic Psychiatrist, dated 10 June 2022. Dr Ratnam confirmed the mother’s diagnoses of recurrent depression, generalised anxiety and trichotillomania, being a form of self-harm, consistent with ASD and Emotionally Unstable Personality Disorder. Dr Ratnam considered that, *“when depressed [the mother] could present as an emotionally remote figure to her children due to a preoccupation with negative thoughts.”* Dr Ratnam considered that it was impossible to quantify the risks of the mother acting on thoughts of extended suicide involving her children but considered that the mother’s impulsivity and emotional dysregulation heighten the risks. Dr Ratnam informed the Court that, *“a parent with emotionally unstable personality disorder can have difficulty making sense of a child’s feelings... The parent may experience self-loathing in response to a child’s behaviour or the child’s distress and in turn, this could be projected into the child by hostile denigrating behaviour.”* Dr Ratnam recommended that the mother continues with prescribed anti-depressant medication for at least six months following resolution of mood. In Dr Ratnam’s expert opinion, Dialectical Behaviour Therapy (“DBT”), Mentalisation Based Therapy (“MBT”) or Cognitive Analytic Therapy (“CAT”) were appropriate treatments for Emotionally Unstable Personality Disorder, on a long-term basis lasting at least 12 months. Dr Ratnam considered it crucial for the mother to have an ASD assessment, noting that, if the mother meets the diagnostic criteria, *“this could impact on her engagement with the initial steps before therapeutic intervention because she does not view this as the therapy she needs.”*
78. In the Court’s judgment at the conclusion of the previous proceedings, the Court noted that the Local Authority undertook a parenting assessment of the mother dated 6 July 2022. The judgment records that the parenting assessment was finely balanced but recommended that, with clear commitment from the mother to engage with recommended support and encourage the children to do the same, the children could safely remain in the primary care of their mother. The risk factors included the mother’s deteriorating mental health featuring self-harm and suicidal ideation, her psychological needs, a lack of insight and minimisation of professional’s concerns, the length of professional involvement and a lack of sustained positive changes, all being poor prognostic factors for change within the children’s timescales. The positive factors identified include the mother’s ability to be a forceful advocate for her children. The Local Authority identified a positive shift in the mother’s thinking and a further commitment to attending support services identified.
79. The Children’s Guardian told the Court, *“One of the main concerns I have is the mother’s critical stance to her children, which I think makes them withdraw from her. [The mother] has certain expectations of the kind of life she would like, and expectations she has of her children, and there is a hiatus between these expectations and the possibilities for her children. The current situation, which she describes as overwhelming, and which to some extent is also driven by [‘B’s] special needs, is a consequence of not feeling able she can relate fully to her children. It is difficult, I think, for [the mother] to ‘read’ her children’s minds. This affects the children who may be left with a feeling that they do not do the right thing and, in turn, they do not feel understood, emotionally. The mother thought her comments relating to her suicidal ideation were taken too concretely by social services. She considered she would not act on these fantasies, but as Dr Ratnam pointed out, there is the concern about her impulsivity and the concern that she feels at the end of her tether. She feels people and professionals are not hearing her and are not providing adequate support. It seems to me that, irrespective of the actual level of risk, the mother underestimates how anxious professionals become when they hear about her suicidal ideation, and that the detail of her ideation frightens them. On the one hand, she wants professionals to notice her, but when they do, she rejects them. In other words, perhaps [the mother] is not aware just how anxious she is herself, although she is aware of her anger. Professionals are concerned about her, which does not mean [she] may not criticize the route social services choose to take, but that does not take away their level of concern.”*

80. The Children's Guardian told the Court further, *"In terms of ['G'], the mother will need to engage in treatment, like DBT, or psychotherapy, that will help her think about her daughter's emotional development and emotional world, to help the mother differentiate her thoughts and feelings, from ['G's]. Although part of ['G's] behaviour is about being in an adolescent state of mind, with its accompanying challenges as belonging to this developmental stage, I think ['G'] is also withdrawn because she feels her mother is critical and not fully able to see what might be going on for her."*
81. In these current proceedings, the Court has the benefit of a report from Dr Harris, Psychologist, dated 14 June 2023. Dr Harris was jointly instructed to undertake an assessment of the mother as to any diagnosis of ASD. Dr Harris concludes that the mother meets the diagnostic criteria for ASD but not ADHD. Dr Harris recommended that the mother undergo DBT, parental coaching and long-term psychotherapy with the aim of increasing her understanding of parenting and adaptive coping, as well as giving the mother *"space"* for deliberate mentalisation of the children.
82. Dr Harris considered that the mother's presentation over her adolescence and adult life is consistent with the notion that she is more susceptible to stress. In this state she can experience levels that lead to her not knowing what to do and how to problem solve. She finds it particularly hard to express her emotions in appropriate and adaptive ways. She can become stuck in these moments, then behaving in ways that reveal a felt desperateness to others, which understandably causes significant concern and worry to those around her. Dr Harris observed that the mother, with support and clear direction, can generate and consider new ideas in relationship to her children. Dr Harris considered that the mother will need to be supported to develop a toolkit of stress management and problem-solving processes to make use of in times of stress. Learning calming and psychological grounding strategies will be useful as will a template of problem solving which involves the identification of the problem and review of all the possible responses/solutions.
83. Dr Harris told the Court, *"These processes continue to be part of [the mother's] autistic experience throughout her life. There is no cure for autism. The underlying thinking styles and skills remain part of her psychology. However, improved mastery can be achieved through maturation, self-reflection, targeted supports, and learnt coping strategies."*
84. Further, Dr Harris told the Court, *"It is my view that [the mother] underestimates the possible impact on her children of her mental health and parenting approaches. This is in part linked to her autistic experience of having to work harder and be supported to consider the inner experience of others, as well as to easily change/update her views when new information comes to light...[her] capability to prioritise the individual needs of her children is affected by a) her continued vulnerability to mental health crisis points, b) her perception of the demands of parenting ['B'] at weekends and holidays outweighing her current emotional resource, and c) her autistic experience involving a rigidity in thought and difficulty mentalising...Without support...[the mother's] autistic experience, compounding by other mental health challenges, will make it harder for her to prioritise the individual needs of both children. She must work harder in her emotional regulation, mentalising abilities, flexibility of thought, and ability to proactively connect with her children and their interests. As such, episodes of increased stress and demand will lead to these abilities and behaviours being further compromised."*
85. An addendum report from Dr Harris dated 17 October 2023 addressed the opinion of Dr Dean, Senior Clinical Psychologist from the mother's community mental health team, that the mother would likely benefit more from Cognitive Analytic Therapy. Dr Harris did not see any contraindications that CAT should be the preferred treatment plan.
86. Dr College, the mother's treating Consultant Psychiatrist of four years, provided a letter to the Court dated 14 July 2023. There is no evidence of the obsessional, methodical and meticulous daily self-harm reported by Dr College in November 2022. Dr College noted a significant change in the mother's approach to mental health services. Dr College told the Court in July 2023:
- "[The mother] presents differently since the children being taken in to care. She is more open to the support of services and is more reflective when she attends. The appointments are being used more appropriately and over the past 6 months or so have been less a case of managing risk and*

more about [the mother] wanting to have an understanding of why she finds certain things difficult as well as her wanting to find appropriate ways to manage her distress. A good example is that the need for an autism assessment has gone from something that she expressed anger towards and didn't want to complete, to something that would enable her to have an understanding of herself and has now become something that she is able to reflect on and see the positives in spending time to answer this question. I have found that [the mother] is taking more responsibility for her past and present actions. She continues to find the system frustrating and the rules that have been put in place for her. I am sure that her autism has some impact on this. Despite this she seems to be happier to go along with these suggestions and often sees that there is a point to this at a later date. She has been reflecting about things that she hasn't done well with regards her parenting. She has also been more accepting of things in her past which have and continue to impact on her presentation and behaviour. [The mother's] suicidal thoughts have now improved and there have not been any thoughts of her wanting to end the life of her or the children using the car over the past 4 months. She is much calmer and more reflective and her self-harming has almost disappeared. [The mother] is more able to speak about her past and the traumas that she has been subjected to in the past. It has understandably taken her a long time to build the trust to speak about these things but it seems that this has been increasingly easier for her to do. She has had a big reduction in her suicidal thoughts and has reflected on these, recognising that this behaviour has come from a place of her feeling overloaded with everything she has to contend with and perhaps these were a way of showing her distress and not her wanting to end her life. She has been able to reflect that these weren't helpful behaviours and can see that this led to the concerns that Children's Social Care had regarding her children's wellbeing and safety. [The mother] has also had a reduction in her self-harming thoughts. She has self-harmed once since the children have been removed. I have been surprised how well she has coped with the upheaval of losing access to her children and she has been able to use her time appropriately; filling this with activities that allow her to care for herself and improve her wellbeing and this is a very positive change. [The mother] has recently started work with one of our psychologists, Dr Dean, in order to complete an assessment of her need and willingness to work with psychology...she is engaging well."

87. An updated letter from Dr College dated 28 September 2023 recorded that the mother is making, "*slow and steady progress with regards to her mental health...her ability to recognise areas where she has made bad errors of judgement has increased. Her diagnosis of autism has allowed [the mother's] thought process and judgement to make more sense to others and herself which has led to her patterns of thinking seeming more logical. [She] is continuing to place the needs of her mental health and those of her children as a higher priority and appears to want to make positive changes. [She] continues to be increasingly open regarding her sessions with mental health professionals and is using her sessions appropriately.*"
88. The evidence before the Court is of the mother having completed therapy with her counsellor from April to July 2023, having attended all sessions required by Dr College and is now discharged from Dr College's psychiatric clinic, having attended all sessions for assessment with Dr Dean, having started CAT treatment, is compliant with her prescribed medication, has attended three courses on parenting autistic children and has attended a Circle of Security reflective parenting group provided by the Local Authority. The social worker told the Court in her oral evidence that the mother, "*has done wonderfully and we could not have asked any more of her.*" The Children's Guardian told the Court of, "*a huge shift in the mother's engagement in support services and a change in her presentation with her medication review.*" There is no suggestion in any of the evidence from the mental health specialists to suggest that the mother should complete the CAT work prior to 'G' returning to her care. Further, there is no expert evidence to support the Local Authority's assertion that the mother's mental health may get worse before it gets better.
89. A Local Authority parenting assessment of the mother was completed by the allocated social worker dated 31 July 2023. The assessment recognised that the mother has made positive changes in terms of her lifestyle and engaging with support services. The mother and 'G' have had unsupervised contact since April 2023 with no reported concerns. They communicate by telephone three times each day and by text up to twenty times each day. The assessment concluded that the mother's capacity to provide robust and consistent parenting to the children is dependent on her achieving

and maintaining good mental health. Whilst acknowledging that the mother has, “*made a good start on her recovery journey,*” the assessment concluded, “*it is too soon to return the children to her care. This is because [the mother] needs to maintain stability in her mental health and needs support to assist her to understand both her mental health and her Autism diagnosis, and what this means for her as an individual and as a parent. [The mother] also needs support to develop coping strategies so that she can manage difficult or potentially triggering situations in an appropriate way, without needing to refer to potentially harmful behaviours.*”

90. In her oral evidence, the social worker told the Court that the Local Authority’s care plan envisaged a ‘rehabilitation’ plan for ‘G’ to return to her mother’s care, “*but it is impossible to put a fixed date in the care plan, when many different factors will impact when that happens, including how the mother will respond to treatment and the stability of her mental health. When embarking on therapeutic treatment, that can impact on feeling worse before feeling better. There is still a risk the mother could relapse. I can’t put dates down until her progress is further along.*” The social worker told the Court that she envisaged support from the Building Bridges Team, an inhouse service within this Local Authority, “*to work intensively alongside the Child looked After Team, to work intensively with the mother, including a life coach allocated to her to hear her goals and support needs and to work consistently with her and the family throughout the rehabilitation process for six months, including after the young person has returned home...the focus is around reunification, rebuilding connections with family members and helping the parent think from the young person’s perspective with a review every two months.*”

91. When asked about the mother’s wish and ‘G’s wish for an immediate return home, the social worker told the Court, “*I think it’s too soon. There is a real risk that things could deteriorate and end up where we were before. Over the past two years, with the right support, the mother was not able to sustain her mental wellbeing. She is well at the moment. A period of stability has been maintained, without the caring responsibilities for the children being a stressor. There is a need for the mother to engage with appropriate package of support to increase her emotional wellbeing and develop coping strategies and stress management tools. She has just started that package with Dr Dean. There has not been enough time for her to embark on the support needed. Without the correct treatment, the mother would not consistently be a safe parent for the children.*”

92. The social worker acknowledged in her evidence that there has been a change in the mother’s presentation since the last proceedings concluded, in particular the social worker noting there has been, “*less talk of feeling suicidal, she is more able to reflect on the current situation and is more open to engage with support. Previously she was negative towards the support offered to her, she is more reflective...she has achieved some stability...she has done extremely well and engaged with everything offered to her. It’s been a really positive start that has enabled her to get to this position...she knows how to parent children. When her mental health is not stable, she struggles and can’t do those things. It’s been an extremely positive start...a slow, steady approach is needed...we need to have a slow and measured return for the children to have the best chance for them to remain at home and for home life to be stable.*”

93. The social worker told the Court further in her oral evidence, “*There is a recognition from the Local Authority that the risk has reduced.*” Further, the social worker acknowledged that ‘G’ is “*unhappy in care. The first placement was extremely difficult for her.*” The Court was told that, if ‘G’ is required to move to a further placement, that, “*will be harmful for her. It will be emotionally harmful for [‘G’] to move to another placement. That will manifest in her feeling sad, upset and angry. I balance that against a risk of going home too early and the placement breaking down. I can’t say with certainty that will not happen. It will be extremely hard for her if she does not settle in a new placement. On balance, it would be worse if she goes home too soon and the placement broke down.*” The social worker agreed with the suggestion in cross-examination on behalf of the Children’s Guardian that a failed move home for ‘G’ now would be catastrophic for G’s emotional wellbeing. When asked about a support plan for ‘G’ to return home at the conclusion of the proceedings under a Supervision Order, the social worker told the Court “*I would need time to think.*” When further explored in cross-examination, the social worker suggested that a robust package of support could be put in place by, “*providing a Life Coach, for the mother to continue*

engaging with Dr Deans, for her to continue to take her medication and to seek support if she felt unwell.”

94. In her oral evidence, the mother reminded the Court that she is employed as a teacher in a Secondary School, working with disadvantaged students and children with special educational needs in Year 11 up to GCSE level. She told the Court, *“I feel very well, mentally very strong compared with this time last year. I feel much calmer, more reflective on all sorts of situations in my work life and private life. The biggest shift was the diagnosis of ASD. I’d suspected it for a long time. Now it has been confirmed, the pieces of the jigsaw have been put in place. I have been too rigid. I can look out for those signs. I am on a different medication regime. The new medication has had quite a positive change...I’m able to see triggers when they come. I become quite vacant and speak quickly. I’m aware of the signs and I reach out to the mental health team when I need to. The hair pulling has stopped completely.”* The mother told the Court in respect of her ongoing therapy, *“I think it is crucial to have therapy while [‘G’] returns, to have that ongoing support when I need it.”*
95. The mother spoke of the good bond she has with ‘G’, who sends messages to the mother twenty times each day. She acknowledged that she found ‘G’s’ behaviours to be challenging at the start of these proceedings when ‘G’ was in her care and ‘B’ was in boarding school during the week. The mother told the Court that the challenges with ‘G’ were, *“in the context of [‘B’s’] behaviour. When he arrived home from school at weekends, [‘G’] would ignore him, slam doors and say detrimental things about him being at home. That would set off a pattern of discomfort. [‘B’] was tired and needed time to dysregulate. It was started by the fact that both children were home together.”* The mother explained that ‘G’ would be anxious in the days prior to ‘B’s’ return home from boarding school at the weekend, throughout the weekend and ‘G’ would need time to settle again after ‘B’s’ return to school in the week. She agreed that if ‘G’s’ return home was not successful it would be catastrophic for ‘G’, telling the Court, *“I would not do this if I had any doubt...last year, at the end of proceedings, I feared it would not work and I expressed it...I did not think it would work last year...I alerted people that I was worried about it. It broke down. I now know I’m in a much stronger place. Now I am not worried. There is a very significant difference to last year...I would not risk it if I had any doubt. I would not risk [‘G’s’] wellbeing...I don’t think I’ve had any unhealthy coping strategies for a long while...I’ve built up a toolkit to deal with stressors and triggers over eight months, including during the time when I had the huge trauma of the children being removed.”*
96. The Children's Guardian, in her oral evidence, agreed with the social worker that, in order for reunification to be successful, there should be a phased, gradual return with intensive support provided by the Building Bridges inhouse team, Looked After Children reviews and the mother continuing her therapy. The Children's Guardian told the Court in her oral evidence, that if ‘G’ returned home immediately, this could be under a Care Order, to enable the Local Authority to share parental responsibility for ‘G’ *“and to enable the Building Bridges Team to be involved, to provide greater protection should matters deteriorate.”*
97. The Children's Guardian told the Court, *“If therapeutic intervention was unsuccessful, it is highly likely the mother will suffer a relapse in terms of the stability of her mental health. She could again experience helplessness, feeling overwhelmed with day to day stressors and parenting and experience suicidal ideation, resulting in significant emotional harm to the children... I believe a Care Order at home would provide an additional safety net for the Local Authority to intervene and offer protection if things were to deteriorate...If [‘G’] returned home immediately the Local Authority would need to share parental responsibility. In the absence of detailed support being available there is a high risk of relapse...my own assessment is that the mother needs to be further along with CAT therapy because the high levels of support provided previously have not prevented relapse and being back in Court. In my assessment, against the background of years of instability, the mother needs to be nearing the end of completion of CAT to ensure the strategies are learned and embedded and so that she can draw on and utilise them in the day to day stressed of parenting.”*
98. The Children's Guardian acknowledged ‘G’s’ expressed intent to remove herself from foster care at the age of 16. The Children's Guardian told the Court, *“When I considered the balance of harm, I*

recognise [‘G’] being placed in foster care is not in accordance with her expressed wishes and feelings. She wants an immediate return home. I think it would be less harmful for [‘G’] to be placed in a foster care placement, not in accordance with her wishes, rather than reunification home without a gradual phased return and that breaking down.”

99. Further, the Children's Guardian acknowledged that the multiple placement moves for ‘G’ with a fourth move being supported by the professionals would impact on ‘G’s “*feelings of security, being able to settle and feelings of rejection.*” The Children's Guardian acknowledged that the multiplicity of primary carers for ‘G’ “*would mean that ‘G’ is likely to stop investing in a placement, because why invest if she is going to move again. That impacts on a sense of belonging. Input from so many professionals can be detrimental and intrusive for [‘G’]...it is very difficult for her to experience failed foster care in the way in which it failed with the foster carer displaying inappropriate behaviour towards another child. I commend [‘G’] for disclosing to professionals what her experience of care had been. That is not her fault and the foster carer should not have behaved towards anyone in that fashion. [‘G’] has not had a positive experience of Local Authority care. That does not mean the Local Authority can’t get it right this time.*” The Children's Guardian acknowledged that the harm ‘G’ experienced in Local Authority foster care at the outset of these proceedings was, “*significant emotional harm.*” Further, the Children's Guardian acknowledged that ‘G’s current placement being terminated by ‘F&F’ “*could be seen by [‘G’] as a further failed placement and result in [‘G’] feeling further rejection and internalising that rejection feeling it is her fault...the breakdown has been harmful to [‘G’]. It has been very difficult for her. Three placements in six months, now four. Each failed placement chips away at a young person. They feel somehow responsible. There is a degree of harm.*”
100. Both the social worker and the Children's Guardian told the Court that the matter was, “*very finely balanced.*”
101. Respectful as this Court is to the social worker and the Children's Guardian, both of whom have a wealth of experience, this Court does not consider that, when all factors are properly taken into consideration, the balance is a fine one. Had the social worker and the Children's Guardian adopted the approach identified by the Court of *F (A Child : Placement Order: Proportionality)* [2018] EWCA Civ 2761 (11 December 2018), it is respectfully concluded that neither the social worker nor the Children's Guardian should have reached the conclusions they ultimately reached in respect of ‘G’. In that case, Peter Jackson LJ proposed that when analysing the risks likely to arise if a child is, on the one hand, placed with the birth family or, on the other hand, placed for adoption, the Court should consider (1) the type of harm that might arise, (2) the likelihood of it arising, (3) the severity of the consequences if it did, and (4) what could be done to reduce or mitigate it. (5) The Court should then compare the overall welfare advantages and disadvantages of rehabilitation and (6) ask itself whether adoption is ultimately necessary and proportionate. In my judgement, the approach recommended by the Court of Appeal has the same utility in a non-adoption case where there are competing realistic welfare options for the child that fall to be considered.
102. This Court invited the social worker in her oral evidence to consider those questions recommended in *Re F*. First, the social worker was asked to consider *the type of harm* that might arise to ‘G’ if she returned home to her mother’s care now. The social worker told the Court, “*I would be worried that the mother would struggle to manage any difficult behaviours and potentially triggering a relapse for her. There is a risk that ‘G’ would be exposed to her mother’s mental health causing significant emotional harm.*”
103. When asked about the likelihood of that harm arising, the social worker told the Court in her oral evidence that it was, “*quite likely*”, adding “*I can’t say it wouldn’t happen.*” It is illuminating that the social worker did not express the likelihood of ‘G’ experiencing significant emotional harm in the care of her mother as being ‘high’ or even as there being a ‘moderate’ likelihood, simply “*quite likely.*” The social worker’s clarification that she, “*can’t say it wouldn’t happen*”, is, with respect, the wrong approach to a proper assessment of the likelihood of harm.

104. The social worker was asked what the *consequences would be to 'G'*, that is, what would be the likely severity of the harm to 'G' if it did come to pass? The social worker told the Court that if the placement with her mother broke down, the consequences for 'G' would be catastrophic.
105. The social worker was asked about *risk reduction or mitigation*, that is, would the chances of harm happening be reduced or mitigated by support services that are or could be made available? The social worker told the Court that parenting support services could be put in place but they would, "*not work open ended...no service could be provided consistently and stay involved. It would be a short intervention service.*" Respectfully, that is precisely the type of support that could and should have been considered by the Local Authority to bolster immediate reunification of 'G' to her mother's care, whilst the mother is receiving ongoing therapeutic support by way of CAT. Even on the Local Authority's own aspiration of future reunification on an indeterminate future date, the Local Authority is not recommending long term ongoing intervention. It is difficult to understand why the Local Authority did not address its mind to immediate support services being put in place now to bolster immediate reunification. Moreover, the social worker's evidence that the Local Authority's own inhouse support by way of a Life Coach through its Building Bridges Team could only be made available if a Care Order was made, was particularly troubling. Each of the professionals considers that a Life Coach is necessary to support the mother if 'G' returns to her care. The Local Authority has that resource in house. If that support is necessary and the resource is available as inhouse service, it would be wholly wrong for the Local Authority to require the carriage of a Care Order to put that resource into effect.
106. The social worker was asked next about the *comparative evaluation*: in light of the above, how do the welfare advantages and disadvantages of 'G' returning home to her mother now compare with those of moving to a new foster care placement? The social worker was taken by the Court to the welfare analysis in her final statement where the social worker set out her analysis of the strengths and weakness of a Supervision Order with 'G' returning home. The social worker identified strengths of such welfare outcome as including 'G' returning to her birth family, being able to continue to attend CAMHS, remaining at her same school and having a "*robust legal framework around the family that would ensure that if the family experience difficulties that places either child at risk, the matter could be returned to Court swiftly.*" The analysis appears to acknowledge that a Supervision Order would provide a "*robust legal framework.*" Respectfully, that analysis appears only to have considered the option of both children returning home. It did not take into consideration the mother's acceptance that 'B' should remain in Local Authority foster care and that only 'G' would return to her mother's care at this stage. Furthermore, the social worker's analysis of the advantages to 'G' of this option did not expressly take account of the fact that this would accord with 'G's strongly held wishes and feelings. The analysis of the advantages of this option did not include the benefits of 'G' being supported by her mother in her education during this crucial period leading to GCSE mocks and final exams, in the knowledge that 'G' seeks the support of her mother in her education and in the knowledge that her mother is a Secondary School teacher with specific current experience of teaching to GCSE level.
107. When considering in her analysis the weakness of the option of 'G' returning home under a Supervision Order, the social worker considered there to be, "*a significant risk*" that the mother would experience a relapse in her mental health. The social worker was asked what evidence she based that assessment on. The social worker was unable to point to any medical evidence, relying on her own conclusion, without the benefit of any mental health qualification, that the mother is, "*very early on in her recovery journey and she has not had the full benefit of work...there is still a risk her mental health might deteriorate.*"
108. Further, when considering her written analysis of the weaknesses of a return home for 'G' under a Supervision Order, the social worker told the Court, "*a Supervision Order was previously made and that was not effective in keeping ['G'] safe.*" Respectfully, that analysis fails to take into consideration the fact that at the conclusion of the previous proceedings under the Supervision Order, both children remained at home. The social worker acknowledged that fact in her oral evidence, telling the Court, "*I accept this is different now to the previous proceedings. I do think [the risk] would be less, because ['B'] will not be in the household. There is still the 'potential' for*

difficulty.” Respectfully, the ‘potential’ for difficulty is not a good enough reason to rule out reunification.

109. Further, when considering as part of her analysis the weakness of a Supervision Order, the social worker considered that a Supervision Order would not allow the Local Authority to share parental responsibility with the mother for, “*either child.*” Again, that fails to take account of the fact that the mother consents to a Care Order for ‘B’, meaning the Local Authority will share parental responsibility for him. The social worker told the Court in respect of ‘G’, under a Supervision Order the Local Authority, “*would not be able to act quickly if there was any deterioration in the mother’s mental health and give us a pathway to return to Court.*” It appears that the social worker’s analysis in this regard is not consistent with her earlier conclusion that a Supervision Order would provide a robust legal framework around the family. Furthermore, the social worker’s conclusion about the need to share parental responsibility is not consistent with the Local Authority’s final submission advocating against a Care Order being made if ‘G’ returned home.
110. Turning to the final question posed in *Re F* the social worker was asked about the question of *proportionality*: ultimately, is Local Authority’s care plan necessary and proportionate? The Court observed that there was no reference at all in any of the social worker’s statements, the Local Authority’s documents or the Children’s Guardian’s analysis to the word “*proportionate*” nor any reference to the rights of ‘G’, ‘B’ or their mother to respect for private and family life enshrined in law under Article 8 of the Human Rights Act 1998. The Court observed that the only reference in the entire Court bundle to the word ‘proportionality’ was in this Court’s judgment in the previous proceedings, in a report from Dr Willemsen and in the mother’s position statement. The social worker told the Court, “*I did consider it. The Local Authority always has an eye on the bigger picture and what gives the best chance of succeeding, weighed against where we are.*” Respectfully, it is not at all apparent from the Local Authority’s evidence that the question of proportionality has been considered by the Local Authority in its analysis of ‘G’s’ welfare options or that the question, ‘is the risk really bad enough to justify the remedy?’ was ever considered.
111. In *H-W (Children) (No.2)* [2022] UKSC 17, the Supreme Court reminded us that:

“The effect of a care order is to vest parental responsibility for the child in the Local Authority: section 33 Children Act 1989. Thereafter, the parents can exercise their parental responsibility only to the extent that the Local Authority determines. As this Court explained in re B, that intrusive power clearly engages the Article 8 rights of the parents and children. It follows that a Care Order can only be made, even if the statutory threshold criteria under section 31(2) are met, if such an Order is necessary in a democratic society for the protection of the child(ren)’s right to grow up free from harm. That means that the Order can be made only if it is proportionate to the needs of the situation. See especially Lord Wilson at paras 32-34, Lord Neuberger of Abbotsbury at paras 73-79 and Baroness Hale of Richmond at paras 194-198. And it follows also that, as Lord Wilson put it at para 45, a Judge considering a Care Order has an obligation not to act incompatibly with the Article 8 rights involved. In truth, the obligation under Article 8 ECHR, so clearly recognised in Re B does no more than restate the longstanding proposition of English childcare law that the aim must be to make the least interventionist possible Order, but the emphasis given to the issue in Re B was overdue.”

112. It is regrettable that neither the Local Authority nor the Children’s Guardian expressly addressed the important obligation to consider whether the intrusive power of a Care Order was necessary and proportionate to the needs of the situation so far as it relates to ‘G’. The need to make the least interventionist possible Order was not considered.
113. Whilst the social worker and the Children’s Guardian both considered that the balance was a very fine one, it is plain that the social worker did not include in her analysis those factors identified from paragraph 101 of this judgment. Taking into account those factors, including the significance of the need for yet a further change of placement for ‘G’ if a Care Order was granted and the considerable instability that would cause her, it is difficult to reach any conclusion other than that the balance falls firmly away from making a Care Order and in favour of ‘G’ returning to her mother’s care.
114. In this Court’s judgement, applying the approach in *Re F* and giving due consideration to the obligation not to act incompatibly with the Article 8 rights of family, the Court would reach the same welfare conclusions of the social worker and Children’s Guardian in respect of ‘B’.

However, the situation in respect of 'G' is wholly different. Applying that approach to 'G's circumstances as they are now, the Court must depart from the professional view of the social worker and Children's Guardian and reach the firm conclusion that a Care Order for 'G' is neither necessary nor proportionate to the current risks.

115. This Court acknowledges that the improvement in the mother's mental health has been at a time when the children have not been in her care. She has not had the daily pressures of caring for either or both of them, unlike in the previous proceedings. The mother has coped well during that period, including coping with the trauma of the children being removed from her care and the pressures of 'G' contacting her multiples time each day, expressing how unhappy she is with her current arrangements.
116. This Court is not blind to the risks. 'G' has exhibited some angry feelings whilst in foster care and it is likely she may direct those feelings towards her primary carer, her mother, when she returns home. As the Children's Guardian noted, the mother and 'G' will need to get used to living together again. Further, 'G' is not the same child who left her mother, due to her experiences in care including the losses she suffered being separated from her mother and 'B'. These are factors which will present some challenges to mother and underline the need for the mother to continue to engage in CAT to improve her resilience and coping strategies to deal with the stresses of parenting 'G'. As the professionals all acknowledge, however, the risks now are lower than they were at the conclusions of the previous proceedings, which concluded with a Supervision Order, those risks being reduced by the fact of the mother's engagement with all professionals tasked to support her with her mental health, her acceptance of the need for support, having embarked on the process of targeted, specific therapeutic intervention and having the day-to-day caring responsibilities for one child, whose own specific needs are lower than that of her sibling 'B'.
117. Within this context, in determining which of the competing options in respect of 'G' is in her best interests, having identified 'G's welfare needs and having undertaken an evaluation of each of the options available for 'G's future upbringing, in this Court's judgement, the evidence before the Court leads to the firm conclusion that 'G's welfare demands that she is returned to her mother's care. In this Court's judgement, a Supervision Order is the option that best meets the duty to afford paramount consideration to 'G's welfare and such an Order is necessary.
118. The Children's Guardian submits that, if the Court considers that 'G' should return to her mother's care now, a Care Order is necessary. The Local Authority submits that if the Court concludes that 'G should return home now, it would not accept a Care Order. The Local Authority submits that in such circumstances, a Supervision Order would be the appropriate Order.
119. The Court respectfully rejects the assertion by the Children's Guardian that a Care Order for 'G' at home is necessary. In this regard, the Court has regard to the recent guidance from President of the Family Division in the Court of Appeal in *JW (child at Home under Care Order)* [2023] EWCA Civ 944. The authorities establish that making a Care Order with a subject child placed at home in the care of their parent is plainly permissible within the statutory scheme and express provision is made for such circumstances in Children Act 1989, s.22C and in the placement regulations. Further, a care plan for placement at home was an appropriate outcome where the facts justified it, without the need for exceptional circumstances. Sharing of parental responsibility by the Local Authority with parents is an important element, but the fact that considerable help and advice may be needed over a prolonged period is not a reason, in itself, for making a Care Order. It is wrong to make a Care Order in order to impose duties on a Local Authority or use it to encourage the Local Authority to perform the duties that they have to a child in need. The protection of the child is the decisive factor, but proportionality is key when making the choice between a Care Order and a Supervision Order for a child who is placed at home. Supervision Orders should be made to work, where that is the proportionate form of Order to make.

120. Whilst the previous authorities highlighted that exceptional circumstances are not required to justify the need for a Care Order with the child placed at home, the President of the Family Division in *JW* highlighted the conclusions of the Public Law Working Group, identifying the need for ‘exceptional reasons’ to justify the making of a Care Order with a plan for the child to be living at home, noting that it will ‘be rare in the extreme that the risks of significant harm to the child are judged to be sufficient to merit the making of a Care Order but, nevertheless, the risks can be managed with a Care Order being made in favour of the Local Authority with the child remaining in the care of the parent.
121. Ultimately, having regard to ‘G’s welfare, this Court does not conclude that the risks of harm to ‘G’ are judged to be sufficient to merit the making of a Care Order. There are, in the specific circumstances of this case, no clear safeguarding features consequent upon a Care Order being made, over the protections afforded by and features of a Supervision Order. The existence of Care Order would not, in this Court’s judgement, place the Local Authority in a significantly different position with regard to removal in an emergency situation than would otherwise be the case.
122. Having regard to the duration of any Supervision Order, the Local Authority submitted that any such Order should be for a period of six months, having regard to the fact that the mother’s CAT will have concluded within that period and the child will have reached the age of sixteen. Whilst the making of a Supervision Order is a clear interference with the Article 8 rights of ‘G’ and her mother, in this Court’s judgement, a Supervision Order of six months’ duration is necessary and is made in accordance with law and with the legitimate aim of promoting ‘G’s welfare. In this Court’s judgement, that interference is necessary and is a proportionate response, having regard to the risks and having regard to the welfare evaluation. On the facts of the case, the interference in the Article 8 rights of ‘G’ and her mother that would result from a Supervision Order is a necessary interference and one that is proportionate to the essential end of promoting ‘G’s welfare, having regard to Article 8(2) of the European Convention.
123. A Supervision Support Plan has been provided by the Local Authority. It set out a plan of social work visits weekly for the first four weeks following ‘G’s return home, reducing to fortnightly visits and then monthly visits with a Child In Need review every 6 weeks. The plan envisages a referral to the Central Specialist Adolescent Service to work with families to address complex family dysfunction or separation, for 12-week support. Further, the plan envisages the mother’s continued engagement with CAT and support services recommended by the treating psychologist, support from ARC rapid response team, if difficulties are experienced with her relationship with ‘G’ if the mother feels she is unable to manage, support from family through the maternal grandmother and maternal aunt if respite support is required and for the mother to ensure ‘G’ attends all appointments offered to her through CAMHS.
124. The Court would expect the support to this family from the Local Authority to also include the provision of a Life Coach, which the professionals consider to be necessary. This Court is far from clear why the Local Authority has indicated it would be able to provide such support inhouse to families under a Care Order but not under a Supervision Order.
125. The mother agrees to the support proposed by the Local Authority in its support plan. The Court understands that the Children's Guardian has no additional proposals to be included in the support plan.
126. In expectation of the supervision support plan, it is envisaged that ‘G’ could return to the care of her mother following the handing down of judgment on 30 November 2023.
127. I turn to consider the contested issue of ‘B’s contact with his mother and sister. ‘B’s contact with his mother is taking place once each week. It takes place without any professional supervision, a situation that has persisted since June 2023. Contact ordinarily takes place on a Saturday. The Local Authority provides for up to four hours contact between ‘B’ and his mother.
128. The mother has attended contact consistently, without fail, each week. However, the full four hours of available time is not utilised by her. ‘B’ is generally returned to his foster carer by the

mother after two hours. The mother tells the Court that 'B' enjoys activity-based contact, including swimming or bowling. The mother tells the Court that contact takes place in a rural location where activities are limited. Presently, she is not permitted, by conditions imposed by the Local Authority, to drive 'B' in a car during the contact time, limiting her ability to travel to another activity. Further, having regard to 'B's particular needs, he does not like crowded places and does not like to travel by public transport, including by bus or train. The mother submits that 'B' would benefit from her being able to drive him to a second subsequent activity in another area, whereby she could spend longer time with him. She proposes spending a whole day with 'B'. She wishes to be able to take him to the family home.

129. The Local Authority does not support a longer period of contact for 'B' with his mother. The Local Authority does not support the mother driving 'B' in a car. Further, the Local Authority does not support contact for 'B' taking place in the family home.
130. The Children's Guardian submits that she would wish to see the mother utilise the full four hours of available contact before moving to a longer period of contact. The Children's Guardian agrees to the mother's proposal to remove of the restriction on the mother driving 'B' in her car, subject to the mother's mental health remaining stable. The Guardian considers that removing this restriction will allow the mother to spend her time appropriately with 'B' at more than one contact location. The Children's Guardian is clear that the mother should not take 'B' to the family home during contact. In this regard, the Guardian agrees with the Local Authority that it would be emotionally harmful for 'B', who will remain a 'looked after' child, to be taken to his former family home for the purposes of contact with his mother. The Guardian considered that it would be really difficult for 'B' at the end of contact to have to leave the family home and return to his foster care placement, having regard to his complex needs and the historical difficulties experienced by the mother in early 2023 in getting 'B' to leave home in order to attend school.
131. In this regard, I find no reason to disagree with the reasons expressed by the Children's Guardian. First, there would appear to be no solid evidenced-based reason to conclude that the current restrictions imposed by the Local Authority on prohibiting the mother from driving 'B' during contact should continue. Second, the existing permitted contact arrangements of four hours are consistently being brought to an end by the mother after two hours. There is no solid welfare-based reason to conclude that the mother could manage 'B's welfare needs for one full day, when presently she terminates contact early after two hours. If, with the benefit of being able to drive 'B' to another activity, the mother could consistently engage 'B' in four hours of contact, without it impacting negatively on his welfare, the Court would expect the Local Authority during its ongoing reviews, to consider an increase in the contact time 'B' spends with his mother, having regard also to the impact on 'G' of the mother spending longer periods of time with 'B' away from the family home. There are patently very strong welfare reasons for 'B's contact not to take place at the family home, for the reasons articulated by the Children's Guardian and by the social worker. Contact for 'B' at the family home would inevitably cause him distress, knowing that 'G' could remain in the home but he was required to leave to return to his foster care placement. The Local Authority would be expected to keep the matter under review as part of its ongoing Looked After Child review process. The Court invites the Local Authority to amend its care plan for 'B' in so far as the plan prohibits the mother from driving during contact. In other respect, the Court endorses the Local Authority's care plan for 'B'. A section 34 contact Order, as sought by the mother, is not necessary.

Conclusion

132. In summary, the Court makes the following Orders:
 - (a) A Care Order for 'B', endorsing the Local Authority's care plan in respect of contact, save that the Court invites the Local Authority to remove the prohibition in respect of driving; and

- (b) A Supervision Order for 'G', with the plan for 'G' to return to her mother's care forthwith, at the conclusion of these proceedings, endorsing the Local Authority's Supervision Order support plan, with the additional provision of the need for a life coach.

His Honour Judge Middleton-Roy
30 November 2023