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IN THE FAMILY COURT SITTING AT NOTTINGHAM

[2024] EWFC 399 (B)

Before Deputy District Judge Vickers

Hearing dates: 18th-20th November 2024

Re Q (Adoption vs Foster Care & Post-Placement Contact)

BETWEEN:

NOTTINGHAM CITY COUNCIL

Applicant

and

The Mother

1st Respondent

and

The Father

2nd Respondent

and

The Children

Respondents

JUDGMENT

1. This application concerns three children. I will not use their real names but I will refer to them as Annabelle, Thomas and Robbie. Annabelle and Thomas are infant school age and Robbie is a toddler. The children's interests are represented by their Children's Guardian Leah Crombie.
2. The parties are Nottingham City Council, the Applicant, represented at this hearing by Ms Bramley, Counsel. The parents are the Mother and Father, represented by Ms Thind and Mr Posner of Counsel respectively, and to whom I shall refer as "the Mother" and "the Father" throughout this judgment. The children have been represented by Counsel Ms Hodges.

APPLICATION

3. The applications before me are the Local Authority's application for care orders dated 26th April 2024 and for placement orders with respect to all three children dated 12th September 2024.

DECISION

4. I should say at the outset that, as a result of a recommendation from Communicourt regarding the Mother's cognitive needs, I have already orally informed the parties in simple terms that my decision is that I am

going to grant the Local Authority's applications and endorse a plan of adoption. Therefore, the structure of this judgment should be considered with that in mind and the order of my reasoning or decision making or any wording I use should not be taken to mean that I have either pre-determined the issues or approached them in a linear manner. Following my oral indication, the Mother – understandably – decided that she felt unable to remain at Court to hear the full judgment. I therefore took the decision to deliver my *ex-tempore* judgment in writing in order that the parents can have the opportunity to digest its contents with the assistance of their legal representatives as soon as possible – but in their own time and when they are ready – rather than awaiting a transcript or receiving only a summary of the reasons from their Counsel.

BACKGROUND

5. By way of brief background, there has been a history of low-level Local Authority involvement over several years as a result of reports that there was domestic abuse between the parents, the Mother – who was the children's main carer most of the time – having a drink problem and the children being neglected. The Mother suffered an acute psychotic episode in 2021 which led to intervention from the Crisis team and follow up care from the community mental health team, under which I understand she remains. Her GP letter notes a history of psychosis and depression. The children were subject to a Child Protection Plan, which was downgraded to Child in Need and I believe the Local Authority stepped back.

6. Matters escalated during 2023 and a Child in Need plan was implemented once again. There had been a number of reports of violent incidents between the parents. There continued to be concerns about Annabelle's low school attendance and the Mother not managing the children's health needs, in particular Annabelle's eczema which appears to have been quite severe and which was not regularly managed by the Mother.
7. The Local Authority continued to be concerned during the latter part of 2023 and there was a period when the Mother and children were homeless following the parents' separation and residing in temporary accommodation. In early 2024 there was an incident in March when the Mother engaged in risky behaviour with an associate which led to her being threatened in her home in the presence of the children. Shortly afterwards, the same associate – who lives in the same block of flats as the Mother and children – committed arson in his own home, requiring the Mother to vacate the property. She took the children to stay with the Father, in breach of the safety plan. Very shortly afterwards again, there was a serious incident when the Mother, under the influence of alcohol, left a plastic cup on a lit hob in the middle of the night causing a fire risk in her own home, requiring fire service attendance.
8. This was the precipitating incident which led the Local Authority to issue proceedings. At the first hearing, the children were removed into foster care, when they were placed together at an agency placement in the West Midlands, where they have remained ever since.

THRESHOLD

9. There is now an agreed document dated 18th November 2024 setting out a brief summary of the Local Authority's main concerns at the time of issuing the proceedings, distilled down to those issues which have been accepted by the parents. I have not been invited to hear any additional evidence on some disputed threshold points which had remained prior to the commencement of the hearing, so I adopt these findings.

10. In summary, those findings are as follows:

- (i) The Mother has misused alcohol to chronic excessive levels which has placed the children at risk of neglect, physical and emotional harm in her care;
- (ii) The Father has drunk alcohol to chronic excessive levels and used cannabis in high levels which places the children at risk of neglect, physical and emotional harm in his care;
- (iii) The above is evidenced by:
 - (a) The Mother was under the influence of alcohol when caring for the children in the early hours of 18th April 2024 and left a plastic cup on a hob that was turned on. The flat filled with smoke and the Mother was only woken by the dog barking at people knocking on the door. This placed the children at risk of physical harm;
 - (b) The Mother has allowed the Father to care for the children, including overnight, despite knowing that he is alcohol dependent in breach of the Contract of Expectations. The Father has used cannabis in the home when caring for the children. This has placed the children at risk of neglect and physical harm;

- (c) The Mother consumed alcohol during her pregnancy with Robbie which placed him at risk of physical and emotional harm.
- (iv) The Mother caused Annabelle physical and emotional harm on 25th October 2023 by washing her mouth out with soap to which she was already allergic, which exacerbated her eczema;
- (v) The parents have discussed inappropriate adult issues with Annabelle. The Mother has said that she does not want the children to be taken away by social care to Annabelle. This has caused Annabelle emotional harm;
- (vi) The children have suffered neglect as evidenced by the following:
 - (a) The home conditions were overcrowded and untidy;
 - (b) Annabelle has been seen with her eczema sore and inflamed on occasion, the Mother has not always been able to apply her cream should she refuse to let her;
 - (c) The children caused each other injuries through boundaries being put in place by the Mother not being enough to prevent it on occasions;
 - (d) Annabelle suffered neglect of her educational needs as a result of her poor attendance at school. Her attendance record was 63.7% in May 2024;
- (vii) The Mother has allowed the children to meet unknown risky adults without social care and police checks, in breach of the Contract of Expectations. The Mother has had threats to kill shouted at her which the children were exposed to, causing them fear and upset. The children have suffered emotional harm and been placed at risk of physical harm as a result;
- (viii) The children have suffered emotional and physical harm and are at risk of physical and emotional harm because of the incidents of

domestic abuse between the parents. The children have been present in the property when there have been arguments between the parents which they would have found frightening.

- (ix) The domestic abuse Annabelle has witnessed between her parents had a negative impact upon her behaviour, with her pinching and smacking other children at nursery and sticking two fingers up at them aged three;
- (x) The Mother has sworn frequently in front of Annabelle which Annabelle has copied causing her emotional harm;
- (xi) The children were exposed to sexually explicit material in the Mother's care on 12th January 2024, when Thomas showed a DVD with a very graphic picture on the front of the box of male and female genitalia to a worker.

PROCEEDINGS

11. During the course of the proceedings, both parents have undergone parenting assessments and drug testing for alcohol. These have revealed ongoing cannabis use by the Father and chronic excessive alcohol use by both parents throughout the proceedings to date. Both parents accept that they have not achieved abstinence. The parenting assessments conclude that the children cannot be returned to the care of either parent due to this substance misuse, which the Mother in particular is not honest about and does not understand how this impacts on the children, and the ongoing risk of domestic abuse which was not accepted by the Father. While the Mother seems to have a good enough theoretical knowledge of basic parenting skills, she does not implement them in practice. The Father's knowledge is less good and he presents as

hostile towards the Local Authority and not accepting of any need to change.

12. In the summer, the Father was also subject to a serious assault in his home by someone who was known to him, albeit which appeared to be unprovoked. The social worker evidence explains she has observed him associating with risky people in the community around the local area.

13. The paternal grandparents came forward to be assessed to care for the children. A positive initial viability assessment led to a special guardianship assessment which was negative. This is largely because the grandparents do not believe that the Father poses any risk to the children, they have significant health needs themselves, including the paternal grandmother suffering a stroke at family time during these proceedings, they do not prioritise their own health needs and because the paternal grandmother – whom the Mother alleged to be an alcoholic – having undergone hair strand testing which revealed that she also consumes alcohol at a chronic excessive rate. Like the parents, she had previously denied her level of use.

14. The Local Authority therefore assessed that the children could not be placed with either parent nor any family members and applied for care and placement orders for all of the children.

POSITIONS

15. The paternal grandparents are not challenging their assessment nor putting themselves forward to care for children and no party suggests the children should be placed with them.
16. The Local Authority's position is that the children cannot safely be returned to the care of either parent either now or in the near future due to ongoing difficulties with substance misuse and the risks arising out of the same.
17. The Local Authority proposes that the children, who cannot remain with their current foster carers long term, should be adopted. They intend to place the children together as a sibling group of three, but recognise that this may not be possible and therefore propose to conduct a search for a joint placement for eight months. Following that, the Local Authority suggests it will update its sibling assessment and will consider separating the children into separate adoptive placements. Their current evidence suggests that this should be Annabelle and Thomas together and Robbie separately, but this apparently may change. There is no end date on the placement searches. The contingency plan for the children will be foster care.
18. The Local Authority now suggests – although this was not clear from its care plans – that it is committed to direct contact between the children in the event that they are separated, whether some children remain in foster care or are adopted. They would not stand in the way of an order being made pursuant to s.26 ACA to ensure the contact takes place, but does not consider such an order to be necessary and suggests that it may limit the pool of adopters.

19. The Local Authority does not propose any post-adoption direct contact between the parents and the children. Its original care plans were clear that there would be annual letterbox contact and no direct contact following a “wish you well” visit when any adoptive placement is found. However, following evidence from the local adoption agency’s family finder Ms Johnson which explained the movement towards implementing “keeping in touch” provisions post adoption throughout children’s childhoods, it moved to amend the care plan to reflect future reviews of the possibility of contact between the children and their parents in light of the children’s needs and the parents’ circumstances.
20. The Children's Guardian supports the Local Authority’s position, in particular following discussions with the social worker regarding the timing of placement searches in advance of the hearing.
21. The Local Authority’s care plans have been refined and bolstered following the evidence I heard and now reflect the nuances of the Local Authority’s placement plans and contact proposals. These are important documents which follow the children throughout their minorities and it is important they properly reflect this kind of detail.
22. The Mother seeks the immediate return of the children to her care, under any form of order. In submissions, she raised for the first time that she does not consider her current accommodation to be safe for them. I was told she is presently staying with her Father, but she proposes that she and the children could move in with the paternal grandparents for the time being while her flat is renovated.

23. The Mother's secondary position is that I should refuse the applications for placement orders and instead endorse a plan of long term foster care. She says that if I do conclude that the children should be placed for adoption, I should make an order to ensure that the siblings spend time together if they are separated.

24. The Father accepts that he is not currently in a position to care for the children, although asserts that he is making positive changes to his lifestyle. He invites me to refuse the placement orders and endorse a plan of long term foster care in order that he may apply to have the children returned to his care in the near future, or otherwise continue to spend time with them. He also argues that long term foster care is the only realistic plan which will ensure the children remain together as a group, short of living with their parents.

25. If I do consider that the children should be adopted, the Father invites me to either "steer" the Local Authority or to make an order that there should be face to face post-adoption contact between the parents and the children. I assume he means an order pursuant to s.26 ACA as I cannot at this stage make an order pursuant to s.51A.

ISSUES

26. The issues for me to determine are therefore:

- (i) Can the children return to the care of either parent either now or in the near future and, if so, what orders should be in place to facilitate this?

- (ii) If the children cannot return to the care of the parents, should they remain in long term foster care or be adopted?
- (iii) If the children cannot be adopted together, should there be consideration of placing them separately or should the contingency plan be long term foster care with the children remaining as a sibling group?
- (iv) Should I make any orders for contact in the event that I approve a plan of adoption?

LAW

27. With regard to the law, I make it clear that all three children's welfare – taken together and individually - has been my paramount consideration. That means their welfare throughout their lives and I must take a short, medium and a long term view when considering my decision. The welfare checklists as set out in s.1(3) Children Act 1989 and s.1(4) Adoption and Children Act 2002 have been carefully considered and the competing welfare considerations have been balanced when reaching my conclusions. I will make no order unless it would be better for the child for me to do so and the Court must make the least interventionist order commensurate with the child's welfare. Delay is generally prejudicial to child's welfare unless it is purposeful.

28. As I have said, it is accepted by all parties that the "threshold" gateway to the making of public law orders is open pursuant to s.31(2) Children Act 1989, but of course the fact that I can make such an order does not necessarily mean that I should.

29. A placement order permitting the Local Authority to place the children for adoption is made pursuant to s.21 ACA 2002. I can only make such an order, absent the parents' consent, if I consider that the children's welfare requires the parents' consent to be dispensed with pursuant to s.52 ACA.

30. There is no doubt that the Article 6 and Article 8 rights of the child and of each of the parents are engaged, and that any interference with those rights must be necessary and proportionate. It is in that respect that I have carefully considered the guidance offered by the Court of Appeal in the case of *Re F (A Child) (Placement Order: Proportionality)* [2018] EWCA Civ 2761 that I must consider:

- (i) The type of harm that might arise.
- (ii) The likelihood of it arising.
- (iii) The consequences: what would be the likely severity of the harm to the child if it did come to pass?
- (iv) Risk reduction/mitigation: would the chances of harm happening be reduced or mitigated by the support services that are or could be made available?
- (v) The comparative evaluation: in light of the above, how do the welfare advantages and disadvantages of the child growing up with its parents compare with those of any alternative, including being raised in foster care?

- (vi) Proportionality: ultimately, is placement away from the parents a necessary and proportionate response to the risks identified in their care?

31. I have also been pointed to the famous dicta of Hedley J in *Re L (Care: Threshold Criteria)* [2007] 1 FLR 2050:

“...society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent. It follows too that children will inevitably have both very different experiences of parenting and very unequal consequences flowing from it. It means that some children will experience disadvantage and harm, while others will flourish in atmospheres of loving security and emotional stability. These are the consequences of our fallible humanity and it is not the provenance of the state to spare children all the consequences of defective parenting. In any event, it simply could not be done.”

32. I have reminded myself of the helpful summary of the principles relating to the making of placement orders approved by Peter Jackson LJ in *F-S (A Child: Placement Order)* [2021] EWCA Civ 1212, which incorporates the leading case law on the issue at [10]:

- (i) The children’s welfare is paramount and in considering the outcome I must have regard to the welfare checklist at section 1(3) Children Act 1989.
- (ii) The case of *Re C* [2013] EWCA Civ 1257 emphasises the need for the court to consider, in deciding whether to approve a care plan of adoption (before moving to consider the placement order), not only the welfare checklist at section 1(3) of the Children Act 1989

but also the enhanced welfare requirements in the Adoption and Children Act 2002 section 1 and section 52.

- (iii) Although the child's interests in an adoption case are paramount, the court must never lose sight of the fact that those interests include being brought up by the natural family, ideally by the natural parents, or at least one of them, unless the overriding requirements of the child's welfare make that not possible.
- (iv) Adoption is 'a very extreme thing', 'a last resort'. Placement orders should be made 'only in exceptional circumstances and where motivated by overriding requirements pertaining to the child's welfare, in short, where 'nothing else will do', where no other course is possible in the child's interest.
- (v) Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is engaged. The overarching principle remains as explained by Hale LJ, as she then was, in *Re C and B* [2001] 1 FLR 611, para 34:

"Intervention in the family may be appropriate, but the aim should be to reunite the family when the circumstances enable that, and the effort should be devoted towards that end. Cutting off all contact and the relationship between the child or children and their family is only justified by the overriding necessity of the interests of the child."

An order should only be made if it is necessary and proportionate.

- (vi) As set out at paragraph 23 of *Re B-S* the well-established principle derived from s1(5) of the Children Act 1989 read in conjunction with s 1(3)(g), and embodied in s 1(6) of the Adoption and Children Act 2002 Act is that the court should adopt the 'least interventionist' approach.

- (vii) It is the obligation of the local authority to make the order which the court has determined is proportionate work. The local authority cannot press for a more drastic form of order, least of all press for adoption, because it is unable or unwilling to support a less interventionist form of order.
- (viii) *Re B-S* also emphasises that there must be proper evidence from the local authority and the Guardian. The evidence must address all the options which are realistically possible and must contain an analysis of the arguments for and against each option. There needs to be a ‘global holistic evaluation’ by the court evaluating all the options, taking into account all the negatives and positives of each.
- (ix) Section 52(1)(b) of the Adoption and Children Act 2002 provides that the consent of a parent with capacity can be dispensed with only if the welfare of the child “requires” this.

33. Pursuant to s.26(2)(b) ACA 2002 I may make an order – of my own motion if appropriate – requiring any person with whom the child is placed to allow the child to have contact with any other person. I must consider the Local Authority’s proposals for contact before making any placement order pursuant to s.27(4).

34. I have considered the very recent case of *R and C (Adoption or Fostering)* [2024] EWCA Civ 1302 which gives some guidance to the approach the court ought to take to consideration of post-adoption and post-placement order contact in light of the changing landscape of adoption reform. In particular, the case considers the use of orders pursuant to s.26 ACA in circumstances where the court took the view that adoption was the right outcome for the children, but the sibling relationship

should be preserved. I note in particular paras 57 and 68 of the leading judgment of Baker LJ which read as follows:

“It was acknowledged by Counsel for the Local Authority that, under the current law, save for extremely unusual circumstances, no order will be made to compel adopters to accept contact arrangements with which they do not agree. It was submitted, however, that there is a critical difference between, on the one hand, imposing on adopters a contact regime that they had never bargained for in respect of a child previously placed with them for adoption and, on the other, crafting a contact regime at the placement order stage so that the eventual adopter accepts the adoptive placement with their eyes wide open to the court-directed imperative for long-term sibling contact. Within the latter regime, the Court will “set the tone” or define the template of future contact at a point well before the prospective adopter commits to the child’s placement, the use of s.26 in such circumstances would not be for the purpose of overriding an adopter’s fully formed views about sibling contact, but to shape those views before they are formed.”

35. While the above passage reflects the submissions made to the Court, it is clear from paragraph 68 that the Court adopted this approach:

“Under the current law, and the President said in *Re B*, “it will only be in an extremely unusual case that a Court will make an order stipulating contact arrangements to which the adopters do not agree.” But that does not obviate the Court’s responsibility to set the template for contact at the placement order stage. In this case, the Local Authority was committed to search only for adopters willing to accommodate sibling contact and invited the Court to make an order for contact under s.26,

both to meet the children’s short-term needs and to set the template. There was of course a possibility that the search for such adopters might be unsuccessful or that adopters might subsequently refuse to agree to contact. But in the circumstances of this case, that possibility was not a sufficient reason to refuse to make the placement order.”

36.I remind myself that the Children's Guardian’s evidence is very important, but that I can depart from her recommendations if I have cogent reasons for doing so.

EVIDENCE

37.I make it clear that I have considered all the evidence and have read the bundle in full. I have also considered all the submissions. I must limit this judgment to the evidence and points which were most important in coming to my conclusion, but the fact that I may not mention some part of the evidence here does not mean I have not taken it into account.

38.At the outset of the hearing, the parents’ advocates indicated that they did not intend to cross-examine the Local Authority witnesses and proposed that I should deal with the applications by hearing submissions only. I was concerned regarding the detail of the proposals for placement searches and said I would like to hear evidence on those issues. I have therefore heard evidence limited to the family finder Natalie Johnson, the allocated social worker Rebecca Wain and the Children's Guardian Leah Crombie on this particular issue.

Family finder Natalie Johnson

39. Ms Johnson is a family finder for Adoption East Midlands, the agency which incorporates several of the region's Local Authority adoption agencies, allowing for a larger pool of families and children waiting for placements. She has provided two statements. The first sets out the very limited availability of adopters nationally who are willing to accept a sibling group of three; at the time of her statement there was one family, yesterday she told me there were now two. There were 42 sets of three children awaiting placement; clearly the odds of all of them being placed are very slim indeed. The statement also explains the agency's recent experience of sibling groups, some of whom have been successfully adopted, some of whom have not or who have been separated into different placements. Her second statement explains that a requirement for post-adoption contact can significantly reduce the number of prospective adopters because people do not feel able to commit to such an arrangement. However, she also sets out the agency's efforts to continue to review keeping in touch plans between adopted children and members of their birth families during the course of their childhoods. This is a newer movement, reflecting the changing landscape of adoption particularly in line with the recent Public Law Working Group report, to which reference has been made during the evidence.

40. In her oral evidence, Ms Johnson largely reiterated her written statements. She said she did not have experience of an order for contact during the currency of a placement order, but her concern was that it *may* deter prospective adopters from what would already be a small pool. She was clear that an order for post-adoption direct contact with

the parents would put many adopters off, although she confirmed that the agency keeps an open mind to the prospect of parental contact following adoption and that there is a keeping in touch co-ordinator who checks in with all families annually to provide support with respect to contact arrangements if required. She noted that children's needs change over time and the circumstances of the birth parents can also change and improve with time. She felt it was important for a settling-in period to take place for the children and the adults before the relationship could be established and direct contact considered, but she accepted that sometimes direct contact may assist children to settle into their new placements. The birth family support team also provides guidance to birth families in this regard.

41. Ms Johnson accepted that it would be very difficult to find an adoptive placement for all of the children together, but said it was possible and she had recent experience of doing so for two similar aged groups of three. She felt eight months was an appropriate timescale for a realistic search without being too long.
42. My impression of Ms Johnson was that she was a measured, frank and direct witness. She was clear about the boundaries of her role and the extent to which she was able to assist the court. She was upfront about the challenges which are likely to be faced in implementing the Local Authority's plan and the likelihood of finding a placement for all of the children and I consider her to be realistic but cautiously optimistic in this regard. It seems she works hard for the families under her purview and is dedicated to achieving the best outcomes for them.

Social worker Rebecca Wain

43. Ms Wain has been the allocated social worker throughout the proceedings and has completed the Local Authority's initial and final evidence, prepared the care plans, conducted a sibling assessment and the SGO assessment of the paternal grandparents.

44. Regarding the Mother, the social worker sets out that several appointments and meetings with the local drug recovery service have been missed and that the Mother's engagement has been poor. The Mother has refused to complete a detox despite this having been offered and appears to justify and minimise her continued drinking. Unfortunately, the Mother has continued to consume alcohol to excess throughout the proceedings and seems to have made little if any progress in this area.

45. Ms Wain relies on the PAMs style parenting assessment completed by Susan O'Donnell, which does not recommend that the Mother is in a position to provide good enough parenting at present. In summary, this is due to her ongoing alcohol use, the continued potential for domestic abuse in the relationship with the Father, the Mother's association with risky people, her inability to understand the children's needs and the risk arising from these issues, as well as difficulty in implementing adequate guidance, boundaries and supervision for the children. The assessment recognised that support had been provided over the years, which had not led to improvement. Recent efforts to encourage Mother to participate in a parenting programme have been declined. Although the Mother seems to have a good theoretical parenting knowledge, she

does not implement this in practice. The assessment reflects that the Mother does provide the children with emotional warmth and is very loving towards them. She had also managed to make some improvements to the home conditions.

46. The social worker was concerned that the Mother may have attempted to undermine the foster placement by telling Annabelle that if she plays up, she can come home. She also alleged that Annabelle had been provided with a mobile phone to take back to the placement without consent, although I understand this is denied.

47. With respect to the Father, Ms Wain had completed his parenting assessment herself. She notes that he was somewhat of a reluctant participant and he did not appear to have been particularly forthcoming in terms of sharing information. The Father has two adult daughters from a previous relationship, with whom he said he has no contact at present despite them having a normal upbringing and him being an involved Father. This has been contradicted by one of his daughters more recently who has since told the social worker there was abuse in his relationship with her mother, leading to the girls choosing not to see him anymore. With respect to his basic care skills, he commendably provides good nutritious meals for the children and this is important to him, albeit there is not sufficient room for them to live in his one bed flat and he has not been proactive in trying to secure alternative accommodation. Similarly, the Father appeared unable to complete basic tasks for himself such as securing medical appointments when he suffered a significant head injury, or obtaining train tickets from a ticket machine. He did not prioritise his own health, leading the social worker

to be concerned as to whether he would prioritise the children's. His knowledge of child development was limited.

48. The Father clearly loves the children and does go to effort to provide them with gifts and treats in contact, sometimes unwisely. He plays with them and shows them affection, although can't always manage their competing demands.

49. Of most concern is the Father's ongoing association with risky adults, participating in a drinking culture in and around his home. This has resulted in him getting into fights in the past. The Father appears to hold a lot of anger and blame towards the Mother for the harm the children have suffered, calling her "evil and poisonous", deflecting from his own responsibility. At the time of the parenting assessment, he only accepted very limited domestic abuse, which he blamed on the Mother. He did not consider that he needed to complete any work in this regard. Despite his views about the Mother, the parents seem to have continued to spend time together and travel together for contact on occasions. The Father's frustration with the Local Authority seems to have been holding him back from engaging positively to make changes.

50. The Father continues to use cannabis daily and, while he has reduced his alcohol intake very slightly, he is still dependant on alcohol and is drinking significant amounts on what appears to be a daily basis.

51. The social worker's statement sets out the range of support services which the Local Authority could make available to the family and the reasons why the Local Authority does not consider they would be

effective to manage or mitigate the risks to the children if they were placed in the care of the parents, pursuant to any form of order. In summary, the services have either been ineffective or refused in the past, or would not address the pressing safety issues for the children, namely when in the unsupervised care of parents under the influence of alcohol or drugs.

52. The social worker therefore concludes that the parents are not in a position to provide safe or good enough care for the children at this present time, and that the prospects of change within their timescales is low.

53. Ms Wain's statement explores in detail the various placement options for the children and sets out her analysis of the pros and cons of the competing options. Her conclusion is that adoption is the only option which would offer permanency to the children.

54. Ms Wain also completed a sibling assessment which considers, again in detail, the children's respective personalities, needs and experiences. She concludes that the children should remain together if possible and that Annabelle and Thomas's relationship is a close one due to their shared experiences.

55. In her oral evidence Ms Wain told me that the Local Authority considers eight months to be an appropriate timeframe to search for a joint placement. During that period, she will also update the sibling assessment to consider afresh whether and how the siblings should be separated if required. At the conclusion of the eight month search, she

said that the Local Authority would go on to consider separate placements. She was of the view that being adopted separately or in two groups was still better for the children than remaining in foster care together due to the likelihood of placement moves and breakdowns as well as ongoing state intervention throughout their minorities. She accepted that the children have a strong bond, albeit this is complicated in some ways as highlighted in the sibling assessment, with them displaying some aggressive tendencies towards one another and Annabelle taking on a parenting role.

56. The social worker was not aware as to whether a foster placement would be sought alongside the searches for an adoptive placement, as this would be handled by the permanency team.

57. Ms Wain accepted that the parents love the children very much and the children love them back. In particular, she described Annabelle as being very astute and said that her expressed wishes and feelings were that she wanted to return to her Mother's care. She did not believe continued post-adoption contact would allow the children to adjust and settle, in fact she thought it would be unsettling for them and pointed to several difficulties which have arisen with regards the parents not supporting the current foster placement or giving the children the incorrect impression they will be coming home. She did not feel there was evidence that they would be able to support an adoptive placement, although she would not rule out the possibility of direct contact in the future and agreed that the care plans should be amended to reflect this. Ms Wain accepted and agreed with general points put to her from the recent PLWG report, although was clear that every case is fact specific

and said she has based her decisions on the needs of these particular children.

58. Helpfully, in my view, the social worker did not shy away from accepting that this will be a difficult decision for Annabelle to process and said that would be the case whether the outcome were adoption or fostering. As set out in the care plans, there is a detailed plan for her life story work and a hope for therapeutic input, which the social worker considered would need to be completed in any event before a placement move so that Annabelle could adjust to her new living situation and begin to accept the reduction in contact with her parents. The life story work has been compiled and the social worker intends to begin to undertake this as soon as a court decision is made. Annabelle has recently been resistant to the social worker's interventions but she hopes this will improve once a decision is made as Annabelle has been in limbo for a long time, being uncertain about her future.

59. Ms Wain accepted that any separation of the siblings would be very difficult for them and said the Local Authority was committed to promoting ongoing direct contact if the children were in separate placements, including if they were in adoptive and fostering placements. She said she did not disagree that a s.26 order could be made, but deferred to the concerns of Ms Johnson about the impact on placement finding.

60. The social worker reiterated that even a plan for the siblings to remain together in long term foster care did not mean this would be possible as they have not been found or matched with a placement yet, the pool is

small, and there would be a very high likelihood that they would need to move placements in the future. She felt one may be found but that it was unlikely to be able to commit long term and, even if they did, there were no guarantees.

61. My impression of Ms Wain is that she has worked hard on this case. She is child focussed. Her evidence was honest, although I didn't always agree with her conclusions about the parents, namely when she criticised them for appearing together – at the request of the foster carer - in a photo of a Halloween party they had arranged for the children. Clearly I have only heard limited evidence from her and I do not take the view that she has generally been unfair to the parents. Her assessments are very thorough and considered and she has got to know the parents well over a long period of time. Like Ms Johnson, she is sanguine and realistic about the likelihood of finding a joint adoptive placement, but felt this would be the best outcome so she owed it to the children to try. I accept her evidence.

Mother

62. The Mother did not give oral evidence but I have of course considered her statement. She tells me that she has always accepted that her drinking was a problem and that she is now only drinking at weekends, albeit about 4-6 cans each day. She says she could not always attend her alcohol recovery meetings as she had a lot on and could not remember the dates. She is now trying to come off alcohol. Mother says her mental health is now stable and she is on medication, seeing her CPN every two weeks and undergoing a course of CBT since the children

were removed. The Mother says she has been trying to keep her flat tidy and has had problems in trying to get the council to sort a leak and remove the mould (which the Children's Guardian tells me in her report is wholly unacceptable, rendering the flat unliveable through no fault of the Mother's). She is trying to bid on new properties and has rehomed her dog, and accepts she has made mistakes in the past.

63. In submissions, I was told that the Mother does not accept that she has been drinking at chronic excessive levels, notwithstanding the hair strand results. Ms Thind said that Mother has not had a drink since the beginning of October, but there is of course no direct evidence that this is the case. It was submitted that she is an honest drinker, which the Court has some considerable difficulty with because that has not always been the case and I note that the Mother's self reporting during the course of the proceedings has varied at times.

64. I noted that during the course of her Counsel's submissions, when I was told about the Mother preparing the children at the outset of the proceedings to enter foster care, the Mother became very emotional, as did the Father. I pause to note this reflects the strength of feeling the parents have for their children and the level of distress they are experiencing from being separated from them, which I do not underestimate.

Father

65. Like the Mother, the Father did not give evidence. In his statement he says that prior to the proceedings he was drinking eight cans of strong

beer daily, but he was not aware that was a problematic level of consumption. He has now engaged with an alcohol recovery service regularly and on their advice has reduced his drinking to four cans of normal strength beer a day. He hopes to become abstinent in the future. He accepts that he drank more earlier in the proceedings when his Mother had a stroke and his Father had a heart issue, which he found stressful. Since reducing his drinking he has felt less agitated and volatile. He does continue to smoke cannabis daily which he hopes to stop once he has addressed his alcohol use.

66. The Father says he would prioritise the children's health and meet their needs if they were in his care. He denies being in a relationship with the Mother although accepts they do communicate when needed about the children. He accepts that he has been physically and verbally abusive towards the Mother – and she towards him – when they were under the influence of alcohol. He cannot remember all the details and says he is ashamed that the children witnessed this abuse, which has impacted their behaviour. He also accepts there was abuse and alcohol misuse in his relationship with his older children's Mother. The Father says he would like some support in this regard. He would like to undertake a parenting course to better understand the children's needs and development. The Father says he has a family support network who could provide him with practical and emotional support to care for the children.

Children's Guardian Leah Crombie

67. The Children's Guardian has completed a very detailed final analysis report, running to over 30 pages. She has considered all of the evidence

and completed her own enquiries. Her report was supplemented by a position statement filed in response to the placement order applications.

68. Ms Crombie's report reflects and recognises many of the positives for the parents, in particular the clear love and pride that both parents feel for the children. She acknowledges the changes and improvements they have tried to make and feels that the shift in the Father's attitude towards his abusive behaviour is a positive one. The Children's Guardian also sets out her view that the parents have committed to contact and that contact has generally appeared to have been well-managed and a positive experience for the family.

69. I also commend the parents for their commitment to attending contact which takes place some distance away in the West Midlands and I know the Father in particular had some anxieties at the outset about travel. The parents may think it obvious that they would always attend contact because they are desperate to see their children, but in the Court's experience that is not always the case, particularly where parents have difficulties in their own lives and lifestyles to contend with, so it is very important that I reflect that these parents have been able to put those issues to one side to prioritise their children.

70. Nevertheless, the Children's Guardian does concur with the Local Authority's concerns regarding the care the parents could offer the children. She has her own concerns about the recent state of the Mother's mental health, including unpredictable behaviour such as attempting to shave her own head during family time. There is also a lack of consistency or boundaries during contact. The Children's

Guardian is of the view that the parents continue to minimise and deflect many of the concerns, being one of the reasons they have not addressed their drinking fully. In fact, the Mother told her that she feels she *should* have a drink because the Local Authority cannot tell her what to do. While the Father has made more effort to reduce his drinking, he remains dependant on alcohol and cannabis and it is too soon to be sure that he will continue to address this or achieve abstinence.

71. The Children's Guardian sets out in detail her assessment of the children and their wishes and feelings, which I will come to later. She also references the sibling assessment and expresses her own view of the importance of the sibling relationship in strong terms, namely as set out at paragraph 68:

“I do not support any proposal to separate these siblings. It would be naïve to overlook the devastating impact that long term separation from siblings has upon children. They have a shared identity and an invested interest in each other, the neglectful parenting and trauma the children have experienced forms part of their shared history, and the bond between them can and likely will provide a source of strength, support and emotional safety as they grow up. A sibling relationship is one of the most enduring relationships and a consistent feature in these children’s lives is that they have had each other. This relationship would be severed should the children be separated and the impact of this on all of the children, particularly Annabelle and Thomas (if separated from Robbie) would be catastrophic.”

72. She also adds, within paragraph 69: “The assessment notes if the children are separated, they each need carers who will promote their sibling bond. These recommendations need to be added to the care plans which are limited in detail at present.”

73. The Children's Guardian agrees with the social worker's analysis that there is no support which could mitigate the risks posed by the parents and therefore the children need to be placed outside of the family. She completes her own thorough analysis of the pros and cons of each placement option, which I will not repeat here, and concludes that adoption is the only option which will provide the security and permanency the children need into adulthood.

74. In her oral evidence, like those who had gone before her, Ms Crombie was very realistic about the prospects of finding an adoptive placement for all three children together, although she had also had recent experience of this being successful in other cases. She said she had thought long and hard about the right outcomes for these children and was clear that adoption would be best for them. She was anxious about their prospects in long term foster care due to the likelihood they would need to move several times during their minorities, potentially at short notice or in an unplanned way, which she did not think would be in their best interests. She agreed that eight months was an appropriate search period. I asked whether there should be an end date on the overall adoption search period; she said she did not think there should be because this may exclude some opportunities for the children and it was impossible at this stage to predict what the barriers to finding a placement may be.

75. Similarly, Ms Crombie said it was difficult to predict how the children would adjust to being placed outside of their birth family and what the issues may be at the time of placement, therefore it was not possible to say that direct post-adoption contact with their parents would be in their best interests, but she agreed that this could and should be considered over time in line with the agency's plans.

76. The Children's Guardian did not accept that her position represented a change of recommendation from that set out at paragraph 68 of her report because long term foster care did not guarantee that the children would stay together and she did not think it would be easy to find a suitable foster placement either. Like the social worker, she accepted that this may end up being the care plan for some or all of the children by default, but considered that it was in their best interests to be given the chance of adoption, either together or separately due to the benefits that would bring them. She said it was the only option to bring them emotional and relational permanence and felt that their right to family life should be preserved in this regard. She considered that the important sibling bond could be preserved through contact, which the Local Authority was committed to. She did not understate the likely impact on the children (Annabelle in particular) of a future separation, which she said would need to be handled very sensitively.

77. My impression of the Children's Guardian was that she has very carefully balanced all the competing options in this case, has considered the already detailed evidence of the Local Authority thoroughly, and completed her own independent enquiries. She has formed her own

view which is sound and evidence-based. In my view she has undertaken a holistic analysis and thought long and hard about the outcomes for the children, which was also clear when she was giving her oral evidence and the range of options and various permutations were explored with her.

ANALYSIS

78. I will now move to my analysis of the evidence and the issues, in light of the legal framework.

Welfare checklists

79. There is considerable overlap between the so-called welfare checklists which appear in s.1 CA and ACA respectively. I will take all of the separate criteria from both checklists in the order I consider most helpful.

Children's age, sex and background and relevant characteristics

80. The children are White British and they are young, being just of school age and a toddler. By the time they are placed for adoption, they may well each be a year older. Annabelle is the only girl.

81. I have read a great deal about the children across the sibling assessment, social worker statements and detailed Children's Guardian report and have had the pleasure of seeing their photos in the SGO assessment. They look like a sibling group and share many similar

features, although now I have seen the parents I would say Annabelle looks like Mum and the boys look like Dad. They look like very happy and lovable children.

82. Robbie is the youngest and in many ways probably the least impacted by his experiences in the parents' care, although there is some suggestion he had slight developmental delay when coming into foster care. That does not seem to be an issue now and he is making progress. He is described as a contented and relatively placid baby who does not get too concerned about what is going on around him. The Children's Guardian tells me he demonstrates love and affection for his parents during contact and enjoys his time with them. As far as I can see, there would be no real barriers to Robbie settling in a new placement, although I do note that he is reaching an age where he will be forming attachments with his foster carers in particular, because those are the people who look after him most of the time and on whom he relies for all of his needs to be met. It will be difficult for him to adjust away from that to new carers, whoever they may be.

83. Thomas is the middle child, who is also described as generally quiet and contented. His speech is delayed and he struggles to express himself verbally, although did manage to engage in some limited wishes and feeling work with the Children's Guardian around who is in his family. The social worker tells me that Thomas often appears to be taken over by Annabelle when speaking to adults and he can sometimes mirror her emotions rather than seeming to express his own independently. On occasion, he and Annabelle do fight, which seems to be linked to their experiences of domestic abuse, but this is manageable and is not causing

a significant problem in their placement. Again, Thomas appears to be an adaptable child and I suspect there are unlikely to be many immediate presenting difficulties to moving placement or reducing his contact with his parents, although he may well feed off any distress displayed by Annabelle. I also note that his feelings and any responses to trauma may show themselves further down the line in his behaviour, which would need to be managed sensitively.

84. Annabelle is the oldest child and the most obviously impacted by what she has observed in the home. She is said to be a perceptive and intelligent child who has good understanding and verbal expression. She has spoken about seeing violence at home and people being drunk, and sometimes she uses swear words and bad language. She is acutely aware that she is not living with her parents and the Children's Guardian describes her as worrying a lot and being highly attuned to the adults around her, as well as loyal to her parents. Sometimes Annabelle can misbehave, although this seems often to be in order to get attention or achieve something, and in fact she does behave well in school where she knows the boundaries. She therefore seems to be adaptable in many ways, but I share the realistic concerns of the professionals that it will be difficult for Annabelle to adjust to any change in her circumstances.

The children's ascertainable wishes and feelings considered in light of their age and understanding

85. Robbie is too young to express his wishes, but of course it is likely that any child would want to live with their birth family if that were safe.

86. Thomas has participated to some degree in sharing his feelings with the Children's Guardian. He said he is happy with Annabelle, his foster carers and his parents and that nothing makes him sad. It is difficult to ascertain his true wishes and feelings. I anticipate he felt scared at times in the care of his parents and unsettled when he had to move house several times. He would probably want to be able to go home if he could, as long as those problems did not happen again.

87. Annabelle has been keen to share her wishes with the professionals. She has said she wants to live with her family. I note that she is keen to share that she was happy at home and seems to avoid discussion about any worries, despite being aware of the reasons she has come into care. She even said that she was happy on the occasion she was awoken in the night due to the cup smoking on the hob. I suspect Annabelle has mixed feelings. She loves her parents but is clever enough to know that things have gone wrong and that she has had bad experiences with them. She is also clever enough to know that many problems have been caused by the parents drinking, which I suspect she would like them to stop. She looks after her brothers, Robbie in particular, and has always shared a bedroom with them. She feels protective over both them and her parents and any separation from them will be difficult for her to come to terms with, both now and into the future as she is likely to have clear memories of this time in her life, perhaps unlike her brothers.

The children's physical, emotional and educational needs

88. The children are all of an age where they require their care givers to meet their physical needs for safety, food, warmth etc. They continue to

require assistance in all areas and of course Robbie is wholly reliant as he is still a baby. They have educational needs for stimulation and intellectual development. Annabelle is now fortunately in school and I suspect she is excelling given what I know about her. The children have an emotional need to feel safe, secure, stable and loved, wherever they are. They need predictability and certainty about where they will live and whom they can rely on. They need to know that they are not going to experience frightening incidents or have to worry that their care givers are not available to provide for them safely. Throughout their lives, the children will need, both now and into the future, a good understanding of why they do not live with their parents and potentially their siblings. I find that they do need to be able to keep in touch with their siblings throughout their lives, to understand where they are and how they are doing and to maintain their loving bond. This is most important for Annabelle, but will also be very important for the boys as they get older. The children need an understanding of their birth family background and the people in that family, as well as being able to understand that their parents love them very much and hoped to be able to care for them. This should give them the best chance of being able to come to terms with their circumstances.

Any harm the children have suffered or are at risk of suffering

89. The harm the children have suffered is set out to some degree in the threshold document. In light of the unchallenged evidence, I find that, if the children were to return to the care of their parents, they would certainly be exposed to chaotic and unpredictable behaviour by both parents as a result of their continued alcohol dependency, which is

likely to endure for some time yet even if the parents do get additional support to achieve abstinence. It is simply too early to predict whether that is likely and in any event there would, it appears to me, be a high risk of future relapses as alcohol has been the parents' coping mechanism for many years. There is also the potential that the parents' mental health could deteriorate, although I note the Mother appears to have worked hard to keep some level of stability during these proceedings. I consider it likely that the parents will still run the risk of potential future conflict between themselves even if they remain separated, particularly in light of the highly negative views expressed by the Father in his parenting assessment. I do note that the parents appeared to be supportive of one another during this hearing, which is understandable and to their credit.

90. I do not consider that either parent has a sufficiently strong support network to ameliorate these worries, and the evidence suggests that they would struggle to cope with any identified professional support. The Mother has largely failed to do so thus far, save for mental health services, and while there is good evidence that the Father has engaged with the alcohol recovery service, he continues, it appears, to remain hostile towards the social worker and Local Authority involvement, which would be essential to secure the children's wellbeing. The parents continue to associate with people who may pose a risk to the children and the reality is that it is those friendships which form the parents' respective support networks. I was pointed to the handwritten notes from a recent family group conference which I was told demonstrated the strength of the paternal support network, but my reading of the plan that was formed was that, effectively, people would

be there at the end of the phone to help the Father and there could be some visits and babysitting when needed, rather than a wholesale plan which would scaffold his care of the children.

91. The paternal grandparents have their own issues which impact both on their ability to step in to assist the Father and their ability to understand the risks which may arise. They are hostile towards the Mother entirely, based on my reading of their assessment, so I was surprised to hear for the first time during submissions that they have agreed to accommodate the Mother and the children. The paternal grandparents have significant health problems, the paternal grandmother is dependent on alcohol and is therefore unlikely to be able to support the Mother to reduce her drinking, and their level of engagement and co-operation with the Local Authority – although they did complete their SGO assessment – does not give me confidence. They do not recognise risks and would not be safe to supervise or support the Mother in her care of the children. I anticipate there would be a high likelihood of conflict in such a living arrangement.

92. The children would be at risk of immediate physical and emotional harm and neglect in the parents' care, that being either one of them separately or them both together. This will impact on their long term developmental progress, their educational outcomes and their future relationships.

93. I do not, however, overlook the harm that will inevitably be occasioned if the children are separated from their parents, whether that be with ongoing direct contact or not. This will be lifelong. They are likely to

grow up with some sense of being different and of not belonging, even if they achieve a highly successful adoption. The feeling of missing their parents or their siblings is not likely to go away because it is a type of grief, albeit sometimes they may feel it more acutely than others. I also consider that there will be some element of emotional harm caused by the need to move again and the wait to find out what that move will be. However, to my mind, when balanced with the risk of serious physical and emotional harm and neglect which would be occasioned in the care of the parents, it is clear to me that this emotional harm is a necessary evil in order to protect them from the consequences of poor parental care.

The capability of the parents and any other relevant person of meeting the children's needs

94. I consider, in light of my findings above, that while the parents are capable of meeting some of the children's needs, namely love and affection and basic care at times when they are not impacted by their substance use or mental health, the parents are not capable of meeting the children's wide-ranging needs. There are no other family members who are capable of meeting the children's needs and therefore the children need to be placed outside of the family.

95. On behalf of the children, Ms Hodges submitted that there was no evidence to suggest that either parent was in reasonable touching distance of turning their lives around within the children's timescales, and I agree.

96. At present, the foster carers are capable of meeting many of the children's needs, namely safety, basic care, and security. They cannot realistically offer them true love, although I am sure they are appropriately affectionate with the children. It sounds as though the foster carers are working alongside the Local Authority to try to help the children to come to terms with their current circumstances and I hope they will be able to do so going forwards once the outcome is known.

97. In the future, I anticipate adopters who have been thoroughly assessed, trained and matched to the children would be able to meet almost all of their needs. They will never be able to meet the children's emotional needs in terms of longing for or missing their birth family, but there are ways they can support the children with this. This may include arranging direct contact, but that is impossible to say at this stage.

The likely effect on the children of any change in circumstances, including the likely effect of having ceased to be a member of the birth family and becoming an adopted person

98. I have addressed this for the most part above. There is both a legal and relational impact of legally ceasing to be part of the birth family, which the children may only come to understand over time. That would be part of their life journey and it is difficult to predict how that will impact them. They may feel sadness, betrayal or rejection. They may also feel gratitude and happiness that they had been given an opportunity to become part of a new family whom they have grown to love. For Annabelle, in reality this will be a difficult process, but her intelligence and perceptiveness may indeed help her in this regard because she may

be more open to and capable of accepting and understanding her life story.

The relationship the children have with relatives including the likelihood of the relationship continuing and the value to the children in doing so, the ability and willingness of any relative to provide the child with a secure environment within which to develop and to meet the children's needs and the wishes and feelings of the children's relatives regarding the children

99. The parents are willing to provide the children with a home, but I have found that they are unable to do so safely. I know that the parents and indeed the wider family do not wish for the children to be adopted or removed from their care at all. I know that their preference if they cannot care for the children is for them to remain in foster care for the time being.

100. The value to the children of continuing a relationship with their birth parents and potentially other members of the birth family such as the paternal grandparents is high. It would mean that they can understand and remember where they come from. If they have face to face contact, it would mean they could hopefully enjoy happy times and share experiences together. They could directly experience their parents' love through their words and physical affection. They may benefit from knowing that their parents are "ok" and that their parents know and understand that they are also safe and happy. There is also, however, a chance that spending time with their parents or family could trigger unhappy memories or cause confusion about where they are to live and what role their new family plays in their lives. There is

inevitable value to the children in continuing at least an indirect relationship with their birth family through letterbox contact, knowing who they are and where they came from.

101. In terms of the likelihood of the parental relationship continuing, it is impossible to predict at this stage what the children's needs will be at the time of placement for adoption or into the future. On behalf of the Father, Mr Posner urges me to indicate to the Local Authority that the only correct plan is to maintain direct contact post-adoption, but it is impossible for me to do so. At present, I would be concerned with such a plan because I accept the professional evidence that it may destabilise or undermine the placement, both in general terms and related to this specific case. Family time has been difficult and emotional for both the children and the parents on occasions. The children are not yet old enough to rationalise or cope with those sorts of feelings around seeing their parents or to understanding why it is limited as it is. In time, when they are settled in their adoptive homes, it may be that they are better equipped to cope with those feelings. It may be that the parents do grow in time to achieve a mindset in which they can actively support the children in their adoptive placements and there is no risk of emotional harm through direct contact. But that to my mind is some considerable way down the line and I cannot and do not indicate at this stage that such a plan would be the right one for these children. It appears that the Local Authority's care plans cover this issue adequately and I do not accept they have a closed mind to the possibility of future contact. I do also note that it remains good law that to impose a regime of contact on unwilling adopters would be exceptionally rare, notwithstanding the guidance in *R v C*. I note that the recent guidance from the PLWG

suggests that future decisions should be made in consultation with the prospective adopters, which is of course absent here.

102. The value to the children of continuing a relationship with each other throughout their lives is, to my mind, immeasurable. For a child, both now and into adulthood, it is possible to rationalise the court's decision that they cannot remain in the care of their parents because of something their parents did which meant it was not safe. In my view, it is not ever possible to rationalise a decision that means they cannot live with their siblings, because their siblings have never done anything wrong. In reality, the only rationale for separating these siblings will be because the Local Authority could not find anyone who was able to look after them all together. I suspect that sense of unfairness and injustice for the children would follow them through their lives. This can, in my view, only be mitigated by the children having the opportunity for ongoing direct contact with their siblings, however infrequently that is. They need to know that the door remains open to the possibility of seeing their siblings again no matter what, and I do not agree that we should rely on the good graces of any prospective adopters in that regard.

103. There is a difference between the position of the siblings and the position of the parents, because I do have sufficient evidence at this stage to determine this issue and to indicate the Court's expectation regarding sibling contact, whereas the issue of parental contact, as I have already set out, involves a number of other moving parts which will only become clear over time. In addition, the Local Authority indicates to me that it is committed to ensuring that prospective

adopters will support sibling contact in the future; this order to my mind simply formalises that commitment.

104. On behalf of the Mother, Ms Thind submitted that the children's relationship with each other should be protected, preserved, nourished and promoted at every stage of their lives, and I agree.

REALISTIC OPTIONS ANALYSIS

Parental care

105. Given what I have already found, the option of placing the children in the care of either parent is not a realistic one. The children would be at ongoing risk of serious harm in their parents' care. I do not consider that any form of order, whether a supervision order or a care order would provide the wrap-around support which would be required to ensure the children's safety on a daily basis with parents who are dependent on alcohol, particularly when that alcohol use has a direct impact on the parents' mental health and behaviour.

106. The benefits would of course be that the children would remain in their family of birth, with parents with whom they already have a loving bond and familial ties. They would grow up knowing their extended family members and having a biological connection to those around them, whom they would love and I am sure have many positive experiences. These benefits are however outweighed by the high likelihood of serious harm.

Foster care

107. Foster care is a realistic placement option in this case. There have been three rationales advanced to justify that proposal.

108. The first is because it would provide the parents with an opportunity to continue to make changes and seek the return of the children to their care in the future. In my judgment, it is far too early to predict whether the parents would be able to make and sustain sufficient changes to ever have the children returned to their care, let alone within a reasonable timeframe commensurate with the children's needs. If either parent does indeed make the necessary changes in the near future, they do of course have alternative legal options such as applying to discharge the care order, revoke the placement orders or for leave to oppose the adoption orders. However, there is not enough hope at present in this case to deliberately close the door to options for permanence for the children on this basis.

109. The second rationale, largely advanced on behalf of the Mother, is so that the children could continue to maintain their direct contact with their parents. While this has a number of potential benefits as I have already set out, the weight and value of these children's relationship with their birth parents is not a factor which tips the scales in favour of ruling out permanence by adoption, for the reasons that I will give.

110. The final rationale, and the one which has troubled the Court the most, is that it is submitted in particular on behalf of the Father that, due to the low likelihood of an adoptive placement being found for all of

the children together, endorsing a plan of foster care with a care plan that the children should not be separated is the only means by which their sibling relationship can be guaranteed. This has some weight and the advocates will probably have noted due to my questions and interventions during the evidence that I have considered this point very carefully indeed. I will come back to it shortly.

111. In terms of the potential benefits of foster care for this family, I accept as has been submitted that foster care can indeed provide a level of permanence. It is possible to find good, dedicated carers who would be committed to these children and who would work hard to meet their needs and provide them with love and affection. Even if that did not happen, in any placement the children would more than likely be physically and emotionally safe, free from concerns about substance misuse or abusive incidents. The children and their carers would be monitored regularly to ensure their welfare needs were being met and the children would have access to professionals to raise any issues of concern if they ever needed to do so. They would have a team around them who would make decisions for their care throughout their lives, and those decisions in theory would always be based on the children's best interests at the time. The children would also have access to priority services and additional services when they leave the care system.

112. If the children could remain with their current carers or if they had already been matched with suitable foster carers who were committed and about whom the Court had some relevant information, this may well be an attractive option in the circumstances.

113. That being said, being a looked after child does indeed mean they are part of a system. They would be subject to corporate parenting for the remainder of their minority. It is well known both through research and experience that it is almost vanishingly unusual for children to remain with one set of foster carers for any extended period of time, but for Robbie for example, for the next 16-17 years would be highly unlikely. The reality is that these children have been lucky to remain with one set of carers during these proceedings, and that is coming to an end as they are retiring from foster care. It must be recognised that being a foster carer is a job – no doubt one which people only choose to do because they have caring personalities and they want what is best for children – but a job nonetheless. As people’s circumstances change, so do their employment priorities. It is well known that even long term dedicated carers often use respite care when required. Placements can break down with little to no notice in a worst-case scenario, and the chances of this are likely to be higher with several children with competing needs in the placement. I must acknowledge that in general the educational outcomes for children in care are less favourable. Children can also feel let down and confused by changes to their social worker, it being virtually impossible to imagine a scenario in which they would have one stable or consistent social worker through their minorities; in reality they change very frequently. Social work monitoring is an interference in the children’s childhoods and their rights to a private life, which itself can only be justified if I think it is necessary and proportionate. Examples often pointed to are sleepovers, school trips and holidays etc, all of which require the Local Authority’s consent as the children get older.

114. Additionally, I consider it important to note that while it may be possible to find foster carers who would love the children and provide them with lots of care and affection, this is not always guaranteed. It is also important to note that with respect to a foster care relationship, while it is sometimes possible for this to endure into later life, there is again no guarantee that this would be the case. Children leaving care do sometimes sadly find themselves left to fend for themselves to a large degree when they reach adulthood. Often, they return to the care of their parents even where it is not safe for them to do so.

115. I need to look at all of those advantages and disadvantages in light of the evidence I have received about these three children and the chance of them being matched to suitable long term carers together. There are no such carers at present; if there were this might be a different outcome. The social worker told me that it is difficult to find any placement for three children, let alone a placement which is willing to commit to them long term, which I accept. I accept the evidence that there would be, even with the best will in the world, no guarantee that a plan which stated that the children should not be separated, would mean that they would not in fact be separated. The Children's Guardian pointed out the use of bridging and emergency placements from time to time and the high likelihood of the children needing to move at some point, which at any time could lead to them being separated. I therefore do not accept the Father's submission that this is the only plan which will realistically keep the children together.

Adoption

116. When considering the advantages and disadvantages of adoption, there are a number of clear advantages of this type of order. The children would become – both legally and emotionally – part of a new family with not only parents who are committed to them and who will grow to love and treat them as if they are their own children, but a whole wider family network who are invested in the children. That commitment extends beyond the children’s minority, all the way through their lives. This may require some support when needed, but in general the Local Authority will step away and allow the family to enjoy a private family life. The placement is much less likely to break down and in the event of difficulties, the adoptive parents’ dedication to resolving any issues and retaining the care of the children vastly exceeds any foster carers. The children would be enabled to lead what could as close as possible be a so-called normal family life.

117. There are of course potential disadvantages, many of which I have already set out in terms of the children’s emotional needs following an adoption. The potential sense of loss cannot be over-stated. Adoptions do also break down, the impact of which is likely to be far more devastating than for a foster placement breakdown, although they are much rarer. Adopters do sometimes struggle with a lack of support, particularly in managing the emotional needs of their children as they get older, especially into adolescence. Sometimes the impact of the children’s trauma and needs can be underestimated by carers who can be naïve about the challenges they are likely to face.

118. I can and must consider the likelihood of successful adoption in this case and whether it is likely that a placement for all three children will be found. I do accept this is, on the present evidence, very unlikely and will be a difficult process. However, if such a placement is found, it will provide the children with the permanency and stability which would never be achieved if they were together in foster care. That is the best outcome for the children and that is a magnetic factor in this case.

119. In the event that the children are adopted in some separate combination, I accept the evidence of the social worker and Children's Guardian that this would still be better for them than remaining in foster care, subject to the caveat that the siblings must be allowed to maintain a direct contact relationship with one another. If adopters are not willing to commit to this, they are not the right adopters and should not be approved.

PLACEMENT

120. In my judgment, I agree with the Local Authority and Children's Guardian in their analysis that nothing short of adoption will do in this case. For the reasons I have already given, weighing the pros and cons of the various options, I cannot accept that long term foster care is the option which the court should choose. The benefits of continued direct contact with their parents and legally remaining members of their birth family do not outweigh the benefits to the children which would be brought about by the stability of adoption. I acknowledge and fully accept that foster care may end up becoming the care plan for some or all of the children by default, but that would only be after a concerted

effort to find something better for them, namely an adoptive placement. To refuse the placement order would be to rule out that possibility for them and condemn them to the second best option, which in my judgment would not meet their welfare needs for the reasons I have given.

121. Ideally, the children should live together in an adoptive home. Everybody in this case wants the children to be able to spend all their time together, to be able to play together and enjoy positive experiences on a daily basis, and to grow up in the same household. That is also what I want for them. However, if that turns out not to be possible, while it will be very difficult for them to get used to living separately, which would have an immediate detrimental impact on them in terms of missing their siblings and becoming used to a new way of life which does not include those people whom they have loved, played with and seen every day before, I am of the view that so long as they can still spend time with their siblings reasonably regularly, the negative impact will be significantly lessened over time.

PROPORTIONALITY

122. I must of course conduct a cross-check of proportionality and only make the least interventionist order which is commensurate with the children's needs. Least interventionist does not mean that the Court must choose the less serious order in every case, or else no child would ever be adopted. The order must be commensurate with the children's welfare, which is my paramount consideration. For the reasons I have given, I do not think a care order alone would meet their needs,

therefore it is not the right option. A placement order is required in order to pursue the plan of adoption and in the circumstances, I am satisfied it is necessary and proportionate in light of the identified risks, notwithstanding that it is a very stark interference indeed in the lives of this family.

123. It follows that I consider that the children's welfare requires me to dispense with the consent of the parents to the making of a placement order and I do so.

DECISION AND REASONS

124. I have decided that I will make a care and placement order for each child, for all the reasons I have already given.

125. I cannot direct the Local Authority as to how to implement the placement order, nor could I direct them as to how to implement a care order and any future placement with foster carers, so there must in any case be an element of the Court "letting go". Nevertheless, the Local Authority is bound to accept any findings of the Court and to consider whether will amend its care plans accordingly.

126. Considering the care plans, I accept that an initial period of an eight month search for an appropriate joint adoptive placement is the correct timescale to allow Annabelle to complete the identified work and for there to be realistic consideration of a nationwide search. However, the search for a joint placement should not stop at that point; it should continue after eight months alongside searches for adoptive

placements for the children separately or in combinations of two and one. Additionally, in my judgment, a search for a joint long term foster placement should also start at that stage, so the case can be parallel planned and decisions can be taken with respect to family finding with all of the relevant information available. I will invite the Local Authority to amend its plan accordingly and to reflect in the contingency plan sections that the contingency plans in the event of no adoptive placements will be foster care with a commitment to trying to keep the siblings together.

127. I am also going to make an order pursuant to s.26 ACA 2002 to direct that whoever cares for the children subject to the placement order should permit them reasonable contact, to include spending time together face to face, with any of the siblings who may be placed elsewhere. This is not an order which directs any particular level of contact, because I cannot predict what that should be, but it reflects that these are children who need more than staying in touch by letters and they should be able to spend time together. Both the Local Authority and Children's Guardian questioned the benefit of such an order, although did not strongly oppose it. In my judgment, this is a case where the Court should indeed set the template for future decisions with respect to the children in this regard because I have the available evidence now to determine that this contact is in their best interests. I doubt it will significantly deter prospective adopters due to its wide and flexible nature and it can readily be explained to them.

128. It is important that, if there is to be a cultural shift with regards to adoption, that is driven in part by the Court where it can be and that

active steps are taken to ensure it happens, rather than merely by the payment of lip service.

129. In this regard I have departed from the views of the Children's Guardian, however I hope I have set out my cogent reasons for doing so.

130. I have already set out the reasons why, conversely, I will not make any order with respect to the contact between the parents and the children. I endorse the Local Authority's care plan regarding the parents' contact, save that I do not agree that it should include a caveat that any letterbox contact should exclude photographs. I have heard no evidence nor submissions on this but it appears to be a catch-all provision, not based on any actual risk assessment of these parents. No such risk assessment could have taken place, because adopters have not yet been found. If in future it is found that there *is* a *specific* risk of harm arising out from parents receiving photographs of the children as they grow older, so be it, but presently there is no such evidence of risk even taking the Local Authority's allegations about the parents undermining the foster placement at their highest. To my mind, a grieving parent's desire to see what their child looks like throughout their lives can almost be described as a primal urge and I am certainly not going to endorse a care plan which excludes that possibility, so I invite the Local Authority to make that amendment.

131. I understand that the parents were extremely distressed by my decision because this may appear like finality for them, but I do not want them to be discouraged. There may well be opportunities in the future to look again at the possibility of the children returning to their

care, or, if the children remain in foster care, for increasing any future direct contact with them. The children still need their birth parents to “be there” for them and the only prospect the parents have of improving their own situation is to continue to make positive progress and to try very hard to turn their lives around as they both tell me they know they need to. I hope that they are indeed able to do so and wish them both the best of luck. I know this will be a very difficult decision for them to come to terms with so I urge them to accept the assistance of the post adoption support team and to seek professional assistance for their grief.

DDJ VICKERS

20th November 2024

POST SCRIPT

The Local Authority agreed to amend its care plans as requested.