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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 10/09/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

IN THE MATTER OF THE CHILDREN (NORTHERN IRELAND) ORDER 1995

BETWEEN:

A HEALTH AND SOCIAL CARE TRUST

Applicant;

-and-

MS TA

First Respondent;

MR K

Second Respondent;

MR C

Third Respondent;

MR AND MRS SB

Fourth and Fifth Respondents.

IN THE MATTER OF SAM AND LEAH:
CARE/RESIDENCE ORDER/CONTACT ORDER

KEEGAN J

As this case involves two children I have anonymised it with the agreement of all parties. Nothing must be published which would identify the children or their families. The names I have given to the children are not their real names.

Introduction

[1] This case is a dispute about where two children should live. The eldest child is aged 12 and I will call him Sam for the purposes of this judgment. The second child who is a half sibling is aged 9 and I will call her Leah. Ms TA is the mother of

both children. She has not attended these proceedings but she has been represented throughout. Ms TA currently lives in Northern Ireland although she was born in England. Mr and Mrs SB are the current carers of the children. Mrs SB is their maternal grandmother and Mr SB their step-grandfather. Mrs SB is from England, Mr SB from Northern Ireland. They live on a farm with the children and have been their carers since July 2015. Mr K is the father of Sam. He was born in England and now lives and works in Kuala Lumpur, Malaysia where he is married to a Malaysian woman and has two children with her. He attended for these proceedings and gave evidence to the court. Mr C is Leah's father. He is Scottish as is his partner. He lives in Scotland with his partner and her three children. He works away as a ship's engineer and so he is absent from home for weeks at a time. Both Mr C and his partner came to court and gave evidence.

[2] The primary application before the court is the Trust application for a care order in relation to both children. This is dated 10 June 2016. This was preceded by private law proceedings namely an application by Mr and Mrs SB for a residence order dated 26 February 2016. An *ex parte* residence order was made at that juncture. The mother brought an application to discharge that order but it appears that this was never determined. Pursuant to the private law proceedings there was an Article 56 investigation which resulted in the care order application. Subsequent to the care order application Mr C and Mr K both brought residence order applications dated 5 May 2017 and 9 June 2017 respectively.

[3] The care order application was therefore the focus before the court on the understanding that the court could also make private law orders. An interim care order has been in place since January 2018 which discharged the grandparents' *ex parte* residence order. In these proceedings the Trust sought an interim care order with a plan of removal of the children to a foster placement where both children would be together and would on the Trust's plan undertake assessment work by way of (i) a together and apart assessment, and (ii) therapeutic work with Dr Willie Coman of the Therapeutic LAC Team. The Trust plan was that the work would be prior to moving to permanent placements, the preferred option being placement with the respective fathers.

[4] The Guardian ad Litem ("the Guardian") supported this care plan but felt that it should be reframed to assessment of the children in care to see what the best long term option might be. The grandparents opposed the plan and asked that the children remain in their care. The two fathers wanted each child in their care but supported the Trust if that was not thought to be the best option in the short term. As the case progressed the Trust care plan was clarified and it was submitted that the period of assessment work whilst the children would be in a foster placement, would be 4 to 6 months. It was also confirmed that the Trust had identified a private placement for the children together which was described as therapeutic in nature and which was immediately available and could extend beyond the time limit of the assessment period if required.

[5] Mr Toner QC appeared with Ms Davidson BL on behalf the Trust. Ms Simpson QC appeared with Ms Rountree BL on behalf of the first respondent, Ms McGreenera QC appeared with Ms O'Connor BL on behalf of the second respondent. Mr Lavery QC appeared with Ms Ramsey BL on behalf of the third respondent. Ms O'Grady QC appeared with Ms Murray BL on behalf of the fourth and fifth respondents. Ms Smyth QC and Ms McCloskey BL appeared for the Guardian. I am grateful to all counsel for their oral and written submissions which have provided the court with great assistance.

Background

The early life of the children with their mother

[6] The children had an unsettled start in life in the care of their mother. This involved many house moves in England and Scotland, inconsistent schooling and many school moves, multiple partners, potential abuse of Sam by a partner and general neglect. A threshold document has been agreed between the Trust and the mother's representatives to this effect.

The Trust states that at the date of intervention, the statutory threshold was satisfied and the children were suffering and likely to suffer significant harm, and that the harm was attributable to the parenting being given to them, not being what it would be reasonable to expect. As the care arrangements have remained in place since the issue of proceedings the Trust relies upon events which have taken place since that date:

- (i) Scottish Social Services were involved with Ms TA due to issues around her parenting of the subject children. The case was eventually closed as the authorities had no active concerns at that time and no public law proceedings were ever initiated.
- (ii) Ms TA has had a history of instability in her relationships and in general life which has resulted in a number of house moves, change of school placement and moves between Northern Ireland, England and Scotland.
- (iii) Ms TA's relationships with previous partners have been volatile and resulted, on occasions, in her being the victim of domestic violence.
- (iv) The relationship between Ms TA, Mr and Mrs SB has been characterised by allegation and counter-allegation. This has resulted in acrimony and hostility which has negatively impacted upon the children and their emotional well-being.

- (v) The children were placed on the Child Protection Register from 16 May 2016 – in relation to Sam under the categories of confirmed emotional abuse and suspected neglect and in relation to Leah, under the category suspected emotional abuse and suspected neglect.

[7] Senior counsel for the mother informed me that her client accepted that the threshold criteria were met in the terms above however these are broad headings and it is important not to lose sight of the specific facts which ground these concessions. I have reviewed the papers again in this regard. The mother's transient lifestyle is illustrated in the papers perhaps most clearly in the Article 56 report and the protective parenting assessment reports from the Family Centre. These show how she moved around changing locations and partners. Various assessments were then undertaken and information was obtained from social services in England and Scotland. In particular I note the information which came from a Mr Rice, social worker, South Ayrshire Council, at page 255 of trial bundle 1 . This gives some flavour of what life was like for Sam in the care of his mother. Paragraph 4.6 reads as follows:

“Gary was the allocated social worker on three occasions for Sam and Leah. He first came to know Sam and Leah when there was a referral in 2013 when Ms TA reported a domestic abusive incident with her partner then, Mr C. Ms TA, when he became involved, withdrew her application and the case was subsequently closed after he found it difficult to get in touch with Ms TA.

There was a further referral to social services when Ms TA texted her friend in 2014 who was looking after Sam and Leah, saying that she had been kidnapped by EF. EF would be well known in the County Council as a “serial perpetrator of domestic violence against women.” Again, Ms TA withdrew this allegation when she was located by Scottish police. Mr Rice (social worker) continued to be involved because of Mr EF's involvement with Ms TA and her children.

He advised that Ms TA in an attempt to evade social services moved to town G but she continued to visit Mr EF whilst he was in prison in Scotland - she visited him on 18 occasions as reported by HMP services which involved a 400 mile trip, allegedly leaving her children with a number of different people. Indeed, there is evidence that Ms TA suggested to Mr EF that she was pregnant with his child whilst he was in prison. He further advised that he contacted Lanarkshire social

services when Ms TA moved to town G but they did not act on his referral sufficiently he would have felt.

He welcomed the Trust's involvement with the children as South Ayrshire had concerns about the emotional wellbeing of Sam and Leah and the instability they endured with the multiple house moves; multiple school moves, multiple partners (particularly Mr EF)."

[8] The protective parenting assessment also sets out some further details about the mother's chaotic life. I will not recite all of that as I understand some of the history is disputed by the fathers and it is indeed difficult to find a consistent thread. However, in terms of her background, the mother states that she lived with Mr K from 2003-2007 in South Ayrshire. She then states she met Mr C in a pub in Prestwick. On her account the couple moved to Ayr and had a turbulent relationship which ended when Leah was 1½. Mr C accepted two incidents when he had been involved with police. One was when the mother was pregnant with Leah when he had gone out for the night and could not get back into the house. The other was a dispute about a horsebox for which with Ms TA's father he was convicted of battery and damage to property and had to pay a fine. Ms TA also refers to the fact that Mr K was brought to trial and acquitted for an alleged offence of rape which occurred in 2003. The papers refer to Ms TA's criminal history, from 2013, in terms of offences against the person, offences against property, offences relating to police/courts, prisons and miscellaneous offences.

[9] The mother does not present as a primary carer at this time but she has some aspirations for the future. The mother did not attend court at any stage and save for requesting increased contact at the conclusion of proceedings, she adopted a passive position. I was told that she has a new baby who lives with her and she wants to avail of reparative work offered by the Trust. A report was filed by Ms Imelda McKenna, independent social worker, which refers to the need for further assessment.

[10] The hearing focussed upon whether or not the grandparents or the two fathers could care for these children and whether they should be placed into care to facilitate assessments.

The move to the grandparents' care

[11] The children's current care arrangement with their grandparents began in July 2015 when the mother effectively left the children with them. The grandparents thought that this was for a holiday but it ended up to be a longer term arrangement given the mother's instability. At this point it is important to note that the grandmother has a fractious and difficult relationship with her daughter. There have been many ups and downs to this. But in any event the grandparents picked

up the mantle of looking after these children at this time. Various descriptions of the children's presentation have been given in these proceedings when they arrived with the grandparents. They were clearly neglected children and certain concerning aspects of their presentation have been highlighted such as not being able to eat properly. This highlights the very deficient nature of the parenting the children had experienced.

[12] In September 2015 social services became aware of the children's situation when a Gateway referral was made due to concerns about the children's mother. This is set out in detail in the Article 56 report at pages 5 and 6. It is also reported that on the 18 February 2016 Mrs SB called social services to report concerns about the children's mother (page 6 and 7 Article 56 report) and to ask advice as to how to secure their welfare. She was advised to seek a residence order. In February 2016 proceedings were commenced in the Family Proceedings Court when the grandparents applied for a residence order on an *ex parte* basis. There was also some suggestion that the mother might leave the jurisdiction with the children and the grandparents were worried about their position. This interim residence order was supported by both fathers.

[13] On 26 February 2016 a second referral was forwarded to Gateway as a result of the interim residence order being obtained. On 26 February 2016 there is a third referral when the mother contacted social services in an apparently distressed state after learning of the residence order. In this referral the mother objected to Mr K staying in the grandmother's home as she said that he was previously charged with raping two children however the charges were dropped. The mother also made allegations against Mr C saying that he had a violent history. She made an allegation against the stepfather and alleged that the children had bruises. She made an allegation that the mother was abusing over the counter medication. The details of this are at page 8 of the Article 56 report. The mother also applied to discharge the interim residence order.

[14] At this stage, on Ms TA's prompting, an email was sent from Ms TA's step mother to the Trust setting out her opposition to the residence order and referring to a potential repossession of the grandparents' house. The mother also provided copies of texts sent to her from the grandmother which she said suggested that the grandmother was having difficulties in her relationship with the grandfather. Following from this various investigations were undertaken. Mr K's contact had been suspended due to the allegations made by the mother and he confirmed that he had been charged with raping two teenage girls aged 15 and 16 but was acquitted. He provided a copy of a newspaper article in relation to this (page 22 of the Article 56 report). There is also an e-mail from Mr C at this time dated 6 May 2016 raising primary care. A decision was reached to initiate child protection procedures and a child protection plan was put in place. Contact with the mother was then supervised and a decision was made to assess all of the adults. The recommendation was for an interim care order to allow the Trust to take control of care planning.

[15] A fourth referral to social services was made on 7 March 2016. This was from the grandmother who reported receiving threatening text messages from her daughter. From this history it is clear that this initial period was very much rooted in disputes between mother and daughter. During this time the children remained living with the grandmother after checks were made and then assessments took place as regards all of the parents. The Trust application of June 2016 was made on the basis of issues between the mother and grandmother. That accords with the evidence that initially relations were good between the fathers and the grandparents and contact was facilitated. I have heard quite extensive evidence and read some of the historical papers in relation to this. The contact involved the fathers coming to Northern Ireland, on occasions coming to the grandparents' home and availing of time there and also some holiday contact in their jurisdictions. This contact was not particularly frequent and in Mr C's case there were considerable gaps. At the same time there were no concerns raised about the children's day to day care with their grandparents. The initial aim of the fathers was to secure contact.

[16] I have also been taken by the grandparents' representatives to text messages in the early stages between the grandmother and the two fathers. These were positive and in the nature of facilitating contact arrangements and sharing information such as photographs about the children. I am not entirely sure when the relationship soured, but suffice to say that by the time this case came to me relationships had deteriorated and both fathers and all parties became entrenched in a bitter war of words against each other laid bare in a large volume of text and social media posts which were made available in this hearing.

[17] It must be borne in mind that these texts were first introduced in the case by the mother at the January hearing. In my view this was clearly out of spite. The parties did not expect these communications to be public. Also, by their very nature such communications are often sent without much thought. It is important not to lose sight of that context. However, the texts are now available and overall they present a worrying picture of how the adults all think and interact. In contrast to the communications in the early stages of this case the more recent texts and social media reflect badly on all of them but particularly the grandmother.

[18] The case was heard by me over the course of June 2018. I had previously dealt with an application for interim removal in April 2018 which was ultimately not pursued by the Trust due to the proximity to a final hearing. On that occasion I approved an agreement between the parties as to the way forward and notwithstanding the Guardian's concerns (who gave evidence), I agreed to maintain the status quo pending a full hearing.

[19] As part of this full hearing I also met both children, after all of the evidence was heard and with the agreement of all parties and on the basis of an agreed schedule of questions and issues to be discussed. A note of this meeting was

prepared by the Guardian's solicitor Ms Boyle and was made available to all parties. The meeting was attended by Ms Boyle and the Guardian and the two children.

[20] Prior to the delivery of this judgment I heard submissions from all parties as to how the summer holidays had gone. I was told that Sam had spent two weeks in Malaysia and Leah had two visits to Scotland. The consensus among the parties was that no further oral evidence needed to be heard however some submissions were made as follows. Mr Toner said that the parties had behaved well but the underlying problems remain. Ms McGreenera said that the visit was very positive, that Sam was asking about school in Malaysia and that he wanted to stay longer. Mr Lavery referred to Leah's contact as positive but he said that the underlying issues remained. Ms Murray stated that the grandparents did not take a holiday themselves to make sure this contact worked and that it went well save Leah requested more one to one time with her father. Ms Smyth outlined the Guardian's view that contact went well but that the children were not so enthusiastic when they got home. She explained that as Sam was asking questions about school she thought he could move and that there good supports in Malaysia. Ms Simpson simply asked for increased contact on behalf of her client.

Legal considerations

[21] There are a number of different applications in this case but as counsel agreed I treated the care order as the core application. During submissions there was consensus that the legal questions I need to determine are as follows:

- (i) Is the threshold criteria met to allow the court to consider a public law order?
- (ii) Should a public law order be made applying the welfare tests?
- (iii) Can the court approve the Trust's care plan?
- (iv) Should the court ask the Trust to reconsider its plan?
- (v) If not satisfied as to the making of any public law orders should private law orders be made?
- (vi) Should a final or interim order be made?

[22] Article 50 of the Children (Northern Ireland) Order 1995 ("the Children Order") requires me under Article 50(2) to be satisfied that the child concerned is suffering or likely to suffer significant harm and that the harm or likelihood of harm is attributable to:

- (i) The care given to the child, or likely to be given to him if the order were not made not being what it would be reasonable to expect a parent to give him; or

(ii) The child is beyond parental control.

[23] In deciding this issue I must apply some of the important tests in Article 3 of the Children Order namely the Article 3(1) test which is as follows:

“3.-(1) Where a court determines any question with respect to -

- (a) the upbringing of a child; or
- (b) the administration of a child’s property or the application of any income arising from it,

The child’s welfare shall be the court’s paramount consideration.”

[24] I must also consider Article 3(2) which is the no delay principle and Article 3(3) which is the welfare checklist.

[25] The ultimate test in deciding what the best option is the welfare of the children. I must assess what is best for each child. There should be no presumption in favour of any parent. I remind myself of the dicta of the Supreme Court in *Re B* [2009] UKSC 5 which reiterated the decision in *Re G* [2006] UKHL 43 and confirmed that:

“All consideration of the importance of parenthood in private law disputes about residence must be firmly rooted in an examination of what is in the child's best interests. This is the paramount consideration. It is only as a contributor to the child's welfare that parenthood assumes any significance. In common with all other factors bearing on what is in the best interests of the child, it must be examined for its potential to fulfil that aim. There are various ways in which it may do so, some of which were explored by Baroness Hale in *In re G*, but the essential task for the court is always the same.”

[26] I also gratefully adopt the dicta of Stephens J in *Re Luiz* [2009] NI Fam 16 which draws on these decisions and refers to the different categories of parenthood. Stephens J in quoting from *Clarke Hunt v Newcombe* [1982] 4 FLR 482 at 486 also referred to the importance of the status quo in a child’s life as emphasised by Ormrod LJ in *D v M (Minors: Custody Appeal)* [1983] Fam 33 at 41 in which he said:

“It is generally accepted by those who are professionally concerned with children that, particularly in the early years, continuity of care is a most important part of a child's sense of security and the disruption of established bonds is to be avoided whenever possible to do so. Where, as in this case, a child of two years has been brought up without interruption by the mother (or a mother substitute) it should not be removed from that care unless there are strong countervailing reasons for doing so. This is not only the professional view; it is commonly accepted in all walks of life.”

[27] In *Re E* [2005] NI Fam 12 at paragraph [24] (iii) Gillen J referred to the importance of hearing from the child in proceedings and drawing upon the United Nations Convention on the Rights of the Child, Article 12. This sentiment has gathered momentum since that case and is now well embedded in our jurisprudence and I pay it due respect in this case. Sir John Gillen highlights the issue in Chapter 16 of the Family Justice Review. See also *Fergus v Marcial* [2017] NICA 71. I bear in mind that a child is a person with human dignity and not merely the object of adult disputes. The child has a right to be heard and it is then for the court to determine what weight to give to those views taking into account age, maturity and other circumstances including whether or not the child has been influenced. I also adopt the words of Gillen J as follows:

“Moreover, the court must be mindful of the danger of being the instrument of further abuse to the child by laying on his or her inadequate and frail shoulders the burden of the ultimate decision in a case where they may already be emotionally torn, together with the ever present danger of a child being coached by one of the parties, most probably the resident party.”

[28] This case involves half siblings who have always lived together. This is another important consideration. In my view, wherever possible, siblings should be brought up together not least to support each other. However, there can be no absolute rule and the splitting of siblings may be justified in a particular case depending upon the facts. The decision on this depends upon a consideration of what is best in relation to each child.

[29] Finally, I have considered the fact that on the Trust case I am being asked to make an interim order only to allow for further assessment. The interim order is sought for immediate removal of the children and the test for that is high, described as one of immediate risk; see Hershman and McFarlane Volume C1416.

The evidence

[30] The first expert witness to give evidence was Ms Melanie Gill who is a clinical psychologist. She prepared a very comprehensive report which is dated March 2017. She gave evidence as to her methodology which is essentially to conduct objective testing of parental attitudes and also child attachment. This report is lengthy and so I will only summarise the main conclusions of Ms Gill in the following terms. Firstly, she made the point in her report and in her evidence that the grandparents, particularly the grandmother, have a difficult relationship with Ms TA. Ms Gill stated that Mrs SB engages in “triangulation behaviour” and that is very difficult for the third person involved in the triangulation to do anything about. She said this can be simple or complex but is always very damaging and it is also impossible for the children to do anything about it. Ms Gill stated that Mrs SB used this mode of communication extensively during her interview and she also opined that it was apparent in the text messages which were disclosed. As a result Ms Gill said that Mrs SB needed extensive therapy to change this mode of functioning.

[31] On the basis of her interviews Ms Gill recommended removal of the children from the care of Mr and Mrs SB. She was of the opinion that the attachment systems with the children are at present effectively directed towards what the adults want rather than towards the children. Ms Gill was of the view that children do not have attachment to each other unless there are extraordinary circumstances in her view. She was of the view that the children should be removed and that there should be no direct contact for 7 to 10 days with the grandparents. She said that therapy should only be put in place once the children are a lot more stable.

[32] Further expert evidence was called on behalf of Mr and Mrs SB from Ms Jackie McGarvey, an independent social worker. This witness has an extensive background in social work prior to becoming an independent social worker. She conducted a together or apart assessment over a number of sessions. Her report comprehensively sets out the pros and cons of each care option and she concludes that Sam and Leah should remain together. She also recounts the views of the children which she stated were clear that they want to live together. In her report Ms McGarvey refers to the fact that the children have consistently expressed this view and complained that they are not being listened to. There was some criticism of Ms McGarvey that she had not read the report of Ms Gill at the time of giving her evidence despite requesting this from her solicitor Wilson Nesbitt by e-mail of November 2017. I was concerned about this and so I required an explanation from the solicitor who stated that it was an oversight. This is very unfortunate and should not happen in children’s cases.

[33] In any event Ms McGarvey was given the report and she filed an addendum report in which she stated that her recommendation has not altered. Ms McGarvey gave evidence that from her assessment the children clearly wished to remain together. She stated that the toxic relationship, which is apparent in this case, could

be managed under a residence order. However, in her addendum written report she was of the opinion that a full care order was necessary to manage this situation.

[34] Mr Ken Wilson, independent social worker also gave evidence on behalf of Mr and Mrs SB. Again there was some deficit in terms of him only seeing Ms Gill's report very close to the hearing. He had not been sent any of the parenting assessments on the parents or the report by the Family Centre on Mr and Mrs SB. Again I raise my concern about this which is levelled at the representatives of the grandparents who instructed this expert. In any event Mr Wilson made the case in his evidence that the children should remain together with the grandparents, notwithstanding all of the difficulties. He was extremely concerned about various incidents including the "log pile" incident and the "enuresis" incident. I will explain my own view of these later on in this judgment.

[35] Mr Wilson frankly stated that if this case were about an assessment of the various carers now he would have raised some red flags about the grandparents. But he based his assessment on the fact that they have been caring for the children for three years, that the children are doing very well at school and that they are thriving health wise. Mr Wilson referred to two letters the children wrote for him which were submitted to the court. I have read the letters and in them the children clearly state that they wanted to stay with their grandparents and each other.

[36] In her evidence Ms Lisa Adams confirmed that she is the current social worker involved with the case. There were a number of important aspects of this evidence which I summarise as follows. Firstly, she explained that the children are pleasant, bright children who are doing very well at school. She accepted that they like living in the country in their current environment. She thought that they were well loved children. Ms Adams also accepted that there were some deficits in the handling of this case by the Trust. I welcome the frank and open way she conceded these points as follows. Firstly, Ms Adams did not try to explain away the incident in May 2017 when two social workers took the children out of their classes at school separately and told them that the Trust proposed taking them away from their grandparents and placing them in a foster home. Ms Adams accepted that this was not proper practice as no one had been put on notice of this and that it would have been upsetting to the children. Further, Ms Adams accepted that the incident in July 2017 where another social worker attempted to physically force Leah into his car to take her to contact with her father in Scotland was extremely traumatic. She accepted that this incident was inappropriate and potentially very frightening for Leah. However, she stated that Leah had no difficulty since then in getting into the car with her. Thirdly, Ms Adams accepted that after a ruling was made by the High Court on 31 January 2017 that information about Mr and Mrs SB's background should not be disseminated that it was put into a report. These matters are all serious matters which Ms Adams accepted would potentially have had an effect upon the children.

[37] Ms Adams also stated that whilst welcomed into the home of Mr and Mrs SB she found that they were difficult to work with. She did not accept that she was offered a full look at all of the files and social work evidence that they held. She said that they often veered off track when discussing matters, particularly Mrs SB. She thought that they had negatively influenced the children and also engaged in trying to alienate the children from the two fathers. Ms Adams gave evocative evidence of observing Leah having contact with her father in Scotland this year which she said was very relaxed and of no difficulty. She was of the view that the grandparents had frustrated the contact between the children and their fathers and that this was damaging. That is why she said that the Trust needed to remove the children to free them up to obtain their proper wishes and feelings and to allow therapeutic work to begin with Dr Willie Coman of the Therapeutic LAC Team. Ms Adams gave evidence that Dr Coman advised that the work could really only commence once the children were in a safe environment and she thought that was not in the care of the grandparents.

[38] Ms Adams stated that the grandparents had been more compliant and engaging following the Trust application for removal in 2018. Ms Adams also gave evidence that the children were unreactive when their mother told them about her new daughter Chloe. She made the case that there is a suspicion that Mrs SB had already told them and that the children put on a performance with Mrs SB when they returned from contact and the social worker asked them to tell their grandmother about the new baby. She highlighted this as an example of collusion between Mrs SB and Ms TA.

[39] In respect of care planning, Ms Adams referred to the complex case review on 7 December 2017. She said this meeting was 4 to 5 hours long. She explained that there was a large amount of experienced social work practitioners at the meeting who discussed the case with the use of whiteboards and went through all of the options to decide what was the best option for each child. This was in advance of the January 2018 court hearing. She explained that whilst there were reservations it was decided that the least worst option was to leave the children in the care of Mr and Mrs SB and she thought that this could lead to them becoming more compliant and cooperative with Social Services if they felt their position was not under challenge.

[40] Ms Adams explained that the Trust position changed following the disclosure of text messages by Ms TA in January 2018. In particular Ms Adams was concerned about the enuresis incident which in her view involved a mattress being moved to the front of the house to make it look as though Leah had enuresis. She also referred to the wood pile incident which involved the grandmother asking Leah to climb back up the pile to take a photograph as evidence of what happened when she did not want to go to contact. She also described the general vitriol between the grandparents and the mother. Ms Adams then explained that the care plan was reviewed in January 2018 and the plan changed to one of removal and she supported

that because she said the text messages tipped the balance that the children could not be safely in the grandparents care. Ms Adams also referred to the fact that on 19 January 2018 a senior social worker witnessed Mrs SB push Sam and Leah together as they walked into Social Services office and she made the case that the grandparents were trying to artificially demonstrate a strong sibling relationship to effectively bolster their case. She also referred to the fact that she was placed under police investigation given an allegation by the grandparents that she had dragged the child Leah across the road on one occasion.

[41] Mrs Alex Larson, the senior case manager also gave evidence about the care planning in this case. He referred to the fact that in advance of the January 2018 care planning meeting he had contacted a number of social workers and obtained their views. He denied that a decision had been made in advance of the meeting but in any event he said that there was a discussion about the text messages at that review which he said tipped the balance. He did not think that the Trust could work with the grandparents under a care order with the children remaining in their care and he gave evidence that the Trust plan was really all that could be contemplated in the current circumstances.

[42] The father Mr K gave evidence before me. He explained his arrangements in Kuala Lumpur where he is a company executive and where he lives with his wife and two other children. He gave evidence that he genuinely believes he can facilitate Sam moving to his care and that he will look after him and that he would have a good life in Malaysia. He said that Sam could attend a private school in Malaysia which teaches the English curriculum. He also has said that he had sourced a psychiatrist to provide therapy. This witness gave evidence that he had always provided financially for Sam. In his evidence he accepted that there were inappropriate text messages being sent both ways. He accepted some of the messages were inappropriate on his part in particular the message sent to the other father to "do a proper number on Leah" he stated was not meant to mean that he would try to influence Leah.

[43] Mr K also said that he had initially supported the grandparents in their application for a residence order. However, he pinpointed 2016 as a time when he had a falling out with the grandfather about indirect contact and he thought that was the point when his contact with Sam deteriorated. In his evidence Mr K accepted that he had not done enough to help when the children were being neglected by their mother and he regretted that. He also explained that contact in Malaysia had been good and he could not understand why the child subsequently indicated that there were problems. The witness gave evidence about a meeting that the child requested with his father which was, he thought, very negative and influenced by the grandparents whereby the child was effectively asking why his father had not stepped in to help him and making various negative comments about Malaysia. The witness said he would accept the care plan but he would prefer that his son came and lived with him and he felt that this could happen fairly immediately.

[44] The grandfather gave evidence and explained that he is 73 years of age. He accepted that he suffers from COPD and other associated health difficulties. He however explained that he has a very good relationship with the children. He also said that he had a good relationship with both fathers. He explained that he took on the children whenever no one else would look after them and the two fathers were not around and the mother was unable. He thought this was temporary. He gave some evidence that he thought that the children would be best with their mother and that he could see in a year or so that they might even go to their fathers. But he said that they were happy where they were particularly in the countryside. He accepted that the texts given were not appropriate, but that he does not have a mobile phone himself. This witness accepted that he could not care for the children on his own. He did not think he had done anything wrong in terms of the children's relationships with their father. The witness when pressed accepted that some of the evidence he gave about Mr K drink driving had never been raised before and only arose in oral evidence.

[45] The grandmother then gave evidence. She is 58 years of age. She is divorced from her first husband with whom she had two children, Ms TA and another girl who lives in France. Mr SB is her second husband. Prior to assuming full time care for the children she had a full time job with a commercial airline. At the outset she conceded that both of the fathers were good fathers and that she regretted some of the things that she had said. Throughout her evidence she apologised for the text messages. In her evidence the witness tended to detract the questioning of her by saying that she had effectively got embroiled in a "slagging match" and she had so many questions as to why the fathers turned against her and that she wanted those answered and they should all sit in a room and try to work the case out. It was clear that this witness blamed a lot of the problems in the case on Trust behaviour. Whenever challenged she said that she got confused but she admitted that she had asked Leah to run up the log pile so that she could take a photograph and she thought that was a mistake. She denied any issue with the mattress being put outside because she said she had to clean the room when the child wet herself.

[46] In relation to the issue of sharing information about Chloe, it was clear that Mrs SB had information about Chloe given that she sent an e-mail to the therapist Neil Foster. Her explanation in relation to this was totally unbelievable. During her evidence it was also clear that this witness had a better attitude towards Mr K than Mr C. It appeared that she took a particular umbrage with Mr C's partner because she thought that this woman was dictating events, she had never met her and she made some particularly vitriolic comments in her texts about this woman's personal appearance and such like which do not reflect well on her at all.

[47] I also heard from Neil Foster who is the therapist working with Sam. I was impressed by this witness who gave very straightforward evidence about the nature of the therapy and the benefits for Sam. In particular the part of his evidence that I

found most striking was when he said that Sam may be reacting negatively to his father because of the gaps in time between contact. He made the point, effectively in my view, that Sam is of an age where a physical relationship with his father is important and much may depend upon the frequency of contact. He did not think that the grandparents had influenced the child, but he made the point that this therapy was very important. He also referred to the fact that Sam had given some evidence through the therapy that he had been abused by an ex-partner of his mother. So he said it was a delicate time and he also said that Leah should be able in the future to join into the therapeutic process.

[48] I heard evidence from Mr Patrick O'Connor who had assessed the grandparents as carers. The report on them did not have a positive conclusion. Overall his report made the case that it was difficult to keep the grandparents focused on the work. The assessment was not positive and it was felt that educative work or work with the Trust would not work with the grandparents.

[49] I also heard evidence from Mr C. He explained his life in Scotland working on the ships which meant he was not at home very often. He accepted that he supported the grandparents at the outset. He also accepted that there were some significant gaps in time when he did not pick up contact with Leah. In particular it was put to him that he had irregular contact with Leah when he separated from the mother in 2010. He said that contact was kept up after that when his mother was alive but that problems arose when she died in 2014. There was then a gap in contact from July 2014 to March 2016. He said that he did not know where the mother was but the grandmother contacted him in January 2016. He accepted that there was a contact in March 2016 set up and facilitated by the grandparents when he came and stayed in the grandparents' house. Then there was a gap in contact between March 2016 and February 2017. Mr C accepted that contact has taken place since February 2017 but he said this is really being frustrated by the grandparents. He made the point that his contact was good whenever there was no interference and there was no reason why Leah could not live with his partner and her children in Scotland as they were building up their relationship.

[50] Whilst Mr C came across as quite a quiet individual his partner was much more confident. She explained that she was diagnosed with psoriatic arthritis at age 15 and has to take medication and that she takes a small dose of anti-depressants when in pain. She explained that she had three children aged 14, 11 and 8. She explained that her 11 year old has ADHD although that is controlled by medication and he is mainstream school. This witness raised issues about the child Leah being dirty and neglected in the grandparent's care. She also explained that she was in charge of the finances and arranging contact and it was clear that she took control as illustrated by the fact that she had signed a card to Leah rather than Mr C, a point emphasised by Mrs SB.

[51] The Guardian then gave evidence to me. I had heard from the Guardian before in the interim hearing in April. I am impressed by the thought that the Guardian has given to this case. She accepted that it was a difficult case and that her views have fluctuated. At the January 2018 hearing she had agreed that the children could remain with the grandparents. But she said that she changed her mind having considered the up-to-date evidence in particular the texts. She felt that the children were at a formative age where they needed freed up to really understand where the relationships with the adults should be. That is why the Guardian said that she supported the removal into care. The Guardian's position in relation to the care plan was slightly different however because she said that with work there may be a possibility that the children would move back to the grandparents or go to the fathers or stay in care. The Guardian therefore did not close her mind to a range of care planning options but relying on Ms Gill's report she said that there were issues of parental alienation in this case and that that the children needed freed up therapeutically and that now was the time to do that.

[52] In addition to the oral evidence I have considered the written evidence including positive assessment reports on both fathers. I have also had to consider a large volume of text and social media printouts which were provided by the parties. As part of this hearing the children came to see me to explain their wishes and feelings. A note of that meeting was prepared and shared with all parties.

Conclusions from the evidence

[53] I found Ms Gill's evidence of assistance as to the dysfunctional nature of the relationship between Mrs SB and her own daughter. She also presented a worrying picture of the grandmother's functioning and the potential impact of this upon the emotional health of the children. However, I do not agree with her ultimate conclusion due to the many factors which have to be balanced in reaching a decision in this case. I explain this in the subsequent paragraphs. Ms Gill's assessment forms only one part of the picture in this complex family dynamic. This was an assessment based on objective scoring of material. Ms Gill accepted that there is another aspect to a family case which involves direct observation and clinical assessment. I prefer the evidence of Ms McGarvey and Mr Wilson as regards this part of the assessment process. In particular these witnesses stressed the bond the children have with their grandparents and their happiness in the rural environment in which they live. Also whilst Ms Gill downplayed the sibling bond the other witnesses stressed its importance. In my view Ms Gill underestimated the importance of the sibling bond in her evidence.

[54] I was particularly impressed by Mr Wilson's evidence as regards the grandparents. He was frank enough to say that there were some red flags about them as carers but he based his assessment on the fact that they had looked after the children for three years and attended well to their physical and educational needs. In other words he based his conclusion on the consistency of care received by the

children. I also agree with Mr Wilson that the letters the children wrote were authentic.

[55] A further part of my analysis relates to the credibility of the adult parties. I start with the grandmother who gave evidence over a number of days. I appreciate that Mrs SB suffered some illness during the hearing and she has a hearing difficulty however every allowance was made for that. Despite that, she was evasive in answering questions. She tended to side track into other issues which I consider was probably to avoid answering questions which were being put by counsel. In particular during a very effective cross-examination by Ms McCloskey BL the witness could not dispute much of the case made about her conduct. It seems to me that the reason for this was because the grandmother had no real answer to some of the points put to her. For instance I believe there was an improper motive behind the log pile incident the enuresis incident and the DNA. I do not accept the grandmother's explanations in relation to these incidents.

[56] I am also satisfied that the children have been influenced against their fathers and this has often been by subtle means. I agree with the Guardian's assessment of this set out in her reports and summarised in paragraphs 36-44 of the closing submissions filed on her behalf. The most concerning aspect of this case is that the children have adopted more negative views of their fathers in recent times. I cannot see that that is related to anything the fathers have done and so it must in my view have come from negative influence by the primary carer primarily the grandmother. The problem is illustrated by the fact that when the children have contact with their fathers they appear to enjoy it but when home with the grandparents issues are raised. Ms Adams gave persuasive evidence of her observations of positive contact between Leah and her dad in Scotland. The fathers both describe good contact and I am prepared to believe them over the grandparents.

[57] I was concerned that the grandmother continually referred to all of her records which it appears amounts to 10 files of papers that she keeps in the house about the case. Her *modus operandi* seemed to be getting proof by way of presenting papers or taking photographs. I am afraid that this grandmother forgets about the best interests of the children when she is conducting her war against the other adults and social services.

[58] During her evidence it was also clear that this witness had a better attitude towards Mr K than Mr C. It appeared that she took a particular umbrage with Mr C's partner because she thought that this woman was dictating events, she had never met her and she made some particularly vitriolic comments in her texts about this woman's personal appearance such like which do not reflect well on her at all. Another concerning matter was that she did not appear to have any understanding or knowledge of recent letters sent by her solicitor seeking maintenance from all of the other adults.

[59] It was also apparent from the evidence that there is a complex dynamic between Mrs SB and her daughter. I am concerned that the mother may be in the background to a greater extent than is acknowledged. Mrs SB was totally caught out during cross examination about how the information about baby Chloe was shared. The texts also demonstrate an ebbing and flowing relationship between the grandmother and mother. The influence of the mother was seen in relation to Leah having to undergo DNA testing following from a conversation between the two.

[60] The grandfather presented as more of a peacemaker however I was not impressed with his firm assertion that neither he nor the grandmother had done anything wrong. It was clear to me that the grandfather stood back and let this all happen. He was also effectively cross-examined by Ms O'Connor BL in relation to his allegation against Mr K potentially driving under the influence which was not included in any statement. In my view that was an attempt to blacken Mr K's character and I do not accept that the grandfather's evidence was correct. Two other aspects of his evidence were particularly illuminating. Firstly, he said he thought that the children could go to their fathers but maybe in a year or so. From this I discern that the grandparents actually understand that the children may move at some stage. He also said that he thought the children were best placed with their mother. This is of concern to me given the neglect the children suffered in her care.

[61] In my view Mr K presented well in evidence. He is clearly committed to his son. He has a stable life in Malaysia, is financially secure and he was not challenged about the schooling and the therapy potential in Malaysia. I do think Mr K made a mistake with some of his texts and I do not accept his explanation for the "do a number on her" text. However, I also accept that he genuinely regrets this behaviour. He also has the benefit of a positive assessment report. This was not probed in the detail needed to found a relocation application however in Mr K's case I think there are positive signs.

[62] Mr C was quiet and more reserved in giving his evidence. On the whole I found him to be a straightforward witness save that I do not accept his explanation for the "do a number on her" text. As with Mr K I believe that he regrets his texts. He accepted the gaps in his contact with Leah. He also has a positive assessment report in his favour. Again, that was not probed to any great extent. However, his work patterns are a major concern which I think Mr C underestimates. At the moment I am told that he works 4 weeks at sea and then is only home for 4 weeks at a time. That is a considerable period when Leah would be cared for by Mr C's partner. She is clearly the more dominant person in the relationship. I am concerned about some of her evidence which was critical of Mrs SB as there was no objective basis for it. I consider that she was not well motivated in giving this evidence and consequently there is a concern in my mind about how she would conduct herself if caring for Leah. Also this woman has a lot on her hands at home managing her other children one of whom has special needs. I do not consider that a transition of Leah to this household would work on the evidence at present.

Fundamentally, given Leah's vulnerabilities she would need her father around her on a more regular basis. This accords with Leah's own views expressed after the summer holiday that she wanted to see more of her father on his own.

[63] The social work evidence in this case was concerning. There have been serious mistakes made which were accepted by Ms Adams. These have exacerbated the problems in this case and added to the grandparents' sense of injustice. However, I cannot accept that these mistakes have of themselves resulted in the difficulties with the children's relationship with their fathers. For instance the incident whereby Leah was pulled into the car did not prevent her having a good relationship with Ms Adams. The problematic aspects of the Trust's conduct do not detract from the efforts that have been made with this family. Mr Larsen gave evidence about the intensity of this and that is clear for all to see.

[64] The Trust review in January 2018 led to a change in care plan on the basis of texts. This was not as comprehensive a discussion as the complex case review in December 2017. There are also procedural issues. However it is with the substance of decision I am most concerned. I am hugely sympathetic to the Trust personnel having to deal with care planning in this case. I can totally understand the adverse reaction of personnel particularly to the log pile and enuresis texts. Yes a reassessment of the plan was needed but on balance I do not consider that it was proportionate to then look to removing the children into care on the basis of the texts alone. In particular, the risks associated with moving the children also remained the same.

[65] In her evidence the Guardian took a different view to the Trust in relation to the care plan because she said all options should be explored rather than simply a route to the fathers. That undoubtedly made more sense however I still have a problem with the plan when I apply the test of what is best for each of the children given their particular histories. I also consider that the Guardian's report dated 2 January 2018 sets out an excellent analysis of the pros and cons of each option. In particular I note paragraphs 11.5-11.7 which read as follows:

"11.5 I can understand the attraction of recommending placement with the fathers, which may seem to be the better option. The fathers do not currently, however, have a primary care relationship with their children. Whilst it is possible that such a relationship could be developed, by an immediate placement with them, it is unlikely to happen easily. The children would need to develop their relationships prior to any move to the respective fathers. The worry is, that both children have clearly said they do not want to be placed with their fathers and indeed the

contact between the children and their fathers has deteriorated.

11.6 To move the children to a bespoke foster placement is a similar leap of faith....I am of the opinion that it would be too traumatising for such a move that is built solely in aspirations and hope. Given the attachment history of Sam and Leah and in this context, a change for these children will be significantly traumatising as they will bring about a great sense of unsettlement.

11.7 There are issues with the current placement which do need to be addressed. It is very important for children to feel loved by as many adults as possible. It is therefore vital that the grandparents accept and actively facilitate as good a relationship with the parents as possible. I am of the view that if Sam and Leah felt safe in their current placement, they would be able to have a relationship with their respective fathers and mother, the question is why do they not?"

[66] I appreciate that since that report a bespoke placement was found however in my view the dangers identified by the Guardian remained live. In her final report dated April 2018 the Guardian refers to two realistic options namely the grandparents care and foster care. She states that:

"5.7. To remove children from a place that is familiar to them and from carers who they love and have been in for a significant period of time, is not an easy decision and cannot be taken lightly. However, I have had ongoing concerns regarding the emotional impact on the children in their current environment, mirrored with the lack of progress in terms of their relationship with their birth parents, the ongoing entrenched views of the children in respect of their fathers in particular, and am of the professional opinion that they are likely to continue to suffer emotional harm if they remain with their grandparents. This will impact negatively on the children emotional and psychological wellbeing on the longer term.

5.8 In light of the above, I am of the view that removing the children from the care of their grandparents is the only means by which professionals

will be able to make a more independent assessment of the children at this time. The Trust will be able to more robustly be in a better position to assess and support the relationships between the children and their parents. I do believe there is an opportunity to try to make a difference for Sam and Leah despite the trauma they will potentially experience if removed from the care of their grandparents.”

[67] I want to commend the Guardian for her thoughtful and diligent approach. However, my analysis is based on a balancing of risks. In that regard I bear in mind the Guardian’s assessment in her January 2018 report that it would be “significantly traumatising” for the children to move. I respect the Guardian’s change of view however I cannot agree with it on the basis of analysing the various options as I have done in the following paragraphs.

[68] I have met both children who were very pleasant, polite and engaging. The children are clear that they want to remain with their grandparents. They are articulate children. I have taken their voice into account. Any assessment must be in the light of the children’s age and understanding. I agree with the Guardian that Sam is not mature enough to fully understand the consequences or potential implications of his decisions. Leah is younger and again whilst she can speak for herself she is not mature enough to think through her decisions. It is clear to me that Sam takes on a protective role. I got the impression that they had a script that they wanted to tell me about. It is understandable that that would be influenced by their primary carers, but there was symmetry in terms of what they told me and what the grandparents had been saying in evidence about the relationship each child had with their father. I conclude that there has been some undue influence in this case. It follows that the views expressed by the children are not determinative.

[69] However, that is not the end of the matter. The children also spoke about their current situation. They said they were happy, that they loved their grandparents and that they wanted to stay together and that they would run away if moved. In my view these views are authentic and understandable given the past instability the children have suffered and the fact that they have been in their current placement for three years. I have given weight to these views.

Overall conclusion

[70] I consider the threshold criteria are met for the reasons I have set out above. This applies against the mother and grandparents. I approve the threshold against the mother on the basis that if further specific findings are required they may be made. In terms of the grandparents it is sufficient to say that they have been responsible for influencing the children against their fathers and have therefore caused emotional harm.

[71] The more difficult question is in relation to care planning. The submissions of the parties have been very helpful to me and have set out the varying positions. I can understand all of these because there are pros and cons with every option. There is indeed no easy option in this case and in a sense it comes down to what the least worst option is. I remind myself of the three main options canvassed at hearing. The first was a care order which would place the children in care for an assessment period of 4-6 months and allow the Trust to determine the ultimate placement. Alternatively, it was submitted that I could make an order allowing the children to remain with the grandparents. This could be a residence order/contact order or a shared residence order. Finally, it was argued that I could make residence orders for the fathers which would involve splitting the siblings. Before concluding this case I confirmed that there were no other options on the table such as one father taking both children. The complication in the case is that the two fathers live in different jurisdictions which are also a distance apart namely Malaysia and Scotland. The core principle is what is in the best interests of each child. That is easy to state but difficult to apply to the facts of this case.

[72] I have found this a particularly difficult dispute to resolve because of the numerous complicating factors I have mentioned. In my view a further difficulty is that there has been delay in getting the case to a hearing. It is not particularly productive to set out why this occurred but it undoubtedly has led to a hardening of attitudes and a difficulty for this court in finding the best solution. It has also led to a situation where the current status quo takes on particular significance. I am particularly concerned that an ex parte residence order remained in place for so long without a full hearing and that a C2 requesting therapeutic assessment for Sam was left in the ether.

[73] In reaching my conclusion I am influenced by the background facts as this is a case where the history is significant and stark. The mother's threshold statement summarises the position but to get a full flavour of the life she provided for these children the grounding reports need some examination. In my view the instability suffered by these children is at the high end of the scale. The children suffered serious neglect whilst in the care of their mother. The fathers did not play an extensive role until recent years. The fathers were content that the grandparents assume care. Contact went well for a period. The children have been settled in Northern Ireland and are doing well at school. In recent years it has proven difficult to sustain a pattern of good quality contact. The children have also displayed negativity towards their fathers. They want to stay with their grandparents. The fathers have new lives with new families in their own countries. They have both been assessed as appropriate carers.

[74] I apply the welfare checklist to each child as follows:

- (a) *The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding).*

Sam

Sam is 12; he wants to stay with his sister in his grandparents care. He is content to have some contact with his father in Malaysia but not live with him at the moment. He is happy with the current contact arrangements regarding his mother.

Leah

Leah is 9;- she wants to stay with her brother in her grandparents care. She is content to see her father but not live with him and wants more time on her own with him.

Both children want to stay together.

Both children's views carry weight but are not determinative given my view that they have been influenced by their grandparents against their fathers.

- (b) *His physical, emotional and educational needs.*

The physical needs of both children are well met as are their educational needs in their current placement. I have been particularly impressed that the children have done very well at school and are settled in school, particularly when in their earlier years their schooling was erratic. However, I am concerned about their emotional needs.

Against that I take into account the benefit of living with a parent in terms of identity and emotional wellbeing for each child. This applies equally to both children.

- (c) *The likely effect on him of any change in circumstances.*

The status quo argument is strong in this case. The children have led a settled life with their grandparents for three years. This part of the checklist works in favour of the grandparents because I consider that there would be an adverse effect if the children were moved from their grandparents. This is described by the Guardian as significant trauma. This applies equally to both children.

- (d) *His age, sex, background and any characteristics of his which the court considers relevant.*

Both children have experienced a very unsettled background which has clearly shaped them and left them vulnerable, particularly Leah. Sam is 12

and I bear in mind the point made by Neil Foster about his need for better contact with his father. Leah is 9 and clearly needs to build up one to one time with her father. The children have suffered severe neglect in their past. In my view the court must be careful not to occasion further harm to them by virtue of the steps that it takes.

- (e) *Any harm which he has suffered or is at risk suffering.*

While the children in this case have suffered harm in the past, they are also at risk of suffering emotional harm if the current situation continues with the toxic adults' relationship that has been described as a factor in this case.

There would be a risk if they were removed from their primary carers. The Guardian has described this as significant. There is also a risk to Leah if she is separated from her brother and a risk to Sam if he is separated from his sister. This is particularly so given that the children have survived severe neglect together. There is a risk if they stay but that risk is more quantifiable.

- (f) *How capable of meeting his needs is each of his parents and any other person in relation to whom the court considers the question to be relevant.*

In relation to this I do not consider the mother to be an appropriate primary carer. It seems to me that both fathers could look after the children but some preparation would need to be done in relation to that. There is a difference between the two fathers' situations.

The grandparents have also been able to offer consistent care for a significant period with the caveat that they have not properly met the children's emotional needs.

- (g) *The range of powers available to the court under this order in the proceedings in question.*

In this regard I take into account the fact that I have powers under Article 10 of the Children Order to make in any family proceedings an Article 8 order. I also have power under Article 50 of the Children Order on the application for a care order, to make a supervision order.

[75] Having considered the welfare checklist and bearing in mind the overriding best interest objective I turn to the three options.

- (i) With the care option the children would be removed from the potential of further emotional harm from the grandparents. They would also be placed together. They could stay at their current schools. However, they would be placed in public care against their wishes and subject to another period of

assessment. The children would be removed from their primary care givers and the settled environment they have been in for the last three years.

- (ii) With the grandparents option the children would remain in their current settled placement. They may however be prevented from developing relationships with their fathers and suffer further emotional harm.
- (iii) With the fathers option the children would be separated from each other, from their primary carers and from this jurisdiction to different countries. This would be against their wishes. The risks associated with that are unknown. But the children would be able to develop a better relationship with their fathers.

[76] I have thought long and hard about these options and I have come to the conclusion, that the least worst option is that the children stay in the grandparents care at the moment. This is not perfect at all and I am critical of the grandparents in this judgment but it comes down to a balancing of risks. The factors which sway me are (i) the consistency of care over the last three years, (ii) the fact that I do not think the siblings should be split and (iii) the imperfections with the other options. I will deal with these in turn.

Consistency of care

[77] In this case the status quo argument is strong and I place great store by the positive reports as relating to the children's health, schooling and the children's own views of their current situation which I consider are authentic.

The sibling bond

[78] I am not convinced that it would be best for either child to be split from the other at this time. I agree with Ms McGarvey's assessment of the sibling relationship which I think is on a sounder footing than Ms Gill. I cannot conceive of a situation where children do not have attachment to each other. With these children who have suffered such a bad start in life it is particularly important that they have each other for support. There was no convincing evidence that a split would be best for each child. I have considered the issue for each child and been careful not to sacrifice one child's welfare for the other. I do not consider that it is best for Sam to live apart from Leah at the moment. I am not attracted to the Guardian's most recent suggestion that Sam could go to his dad and Leah to foster care. That would cause significant harm to Sam in terms of the breaking of the sibling bond but I also consider that he would undoubtedly feel guilty if Leah was placed in care without him. In my view Leah is particularly vulnerable and would feel acute abandonment if this scenario were to play out. This would also apply if Leah remained with the grandparents on her own. There would be less harm if the children were being

separated to two paternal placements with extensive contact but that is not a realistic option on the evidence I have heard.

Imperfections with the other options

[79] Placement with the fathers is not realistic in the short term. The fathers have both gone through positive parenting assessments but it is clear to me that they both need to develop their relationships before they would assume full time care. In addition the evidence has also highlighted the fact that a placement of Leah with Mr C is unrealistic given his current work patterns. In my view Leah would need her father on a more consistent basis and having heard the evidence I do not consider that his partner could fill the gap. As regards Mr K there is more potential but the case being at present made under-estimates the effect on Sam of moving away from his sister permanently when he has only begun to build up a relationship through holiday contact.

I am also not attracted to public care with all of its uncertainties and the disadvantages it brings for children. I say this particularly as there are family members, flawed as they may be, who have offered a stable home for the last three years.

In addition, I am not convinced that a long therapeutic process is the right way to proceed in this case. Fundamentally, it puts the onus on the children to decide. These are already damaged and vulnerable children. In my view it is clear that they have been negatively influenced in their grandparents care. This has led to a situation where they have felt conflicted and to date have been unable to fully enjoy a relationship with their respective fathers.

I agree that they need some sort of accurate narrative about their lives but I am not convinced about the plan put forth for a prolonged therapeutic programme whilst in foster care. I do not see why some assistance cannot be offered whilst the children are in their current environment. I am concerned that there appears to be some absolute rule about this which potentially prejudices children staying at home with supports.

Overall, I cannot see the purpose of a care plan for further assessment. A together or apart assessment has been comprehensively completed by Ms McGarvey. The therapeutic intervention is well meaning but it puts the onus on the children. Placement with the fathers is also unrealistic in the short term for the reasons I have given. I do not believe that the high threshold for immediate interim removal is met or that the current care plan is proportionate.

[80] This view coincides with the complex case review of December 2017 which to me is a very good piece of work by many experienced social workers who came to the view that given the problem of moving the children the least worst option would

be that they remain with their grandparents for the time being. This was of course with the benefit of Ms Gill's report. The reasons for this are stated in the review minute and essentially relate to the status quo which has provided consistency of care, and keeps the siblings together.

[81] I expect that things may change in the next few years as the grandparents get older and the children get older and indeed as they have more contact with their fathers. That might lead to a natural realisation that a move should happen but that would be with the support of the adults which is infinitely preferable to an enforced scenario. It may be that the children could have a trial period in the fathers' jurisdiction in the future before a permanent move.

[82] I harbour some reservations about the grandparents' ability to abide by contact but at least that is a known risk. I also am influenced by the fact that contact has continued albeit there have been hurdles put in the way. The children have been allowed to have some relationship with their fathers; it has just not been the best it can be. The grandparents have been able to abide by arrangements particularly in the last number of months. That may be due to the spotlight of the court but nonetheless it shows that they are capable of putting aside their petty differences with the other adults when they have to. I am pleased that the summer went so well but much more contact needs to take place between the children and their fathers. This must involve longer periods of staying contact in the fathers' jurisdictions. I also consider that contact arrangements require some imagination going forward. This may be best achieved by the fathers having a conversation about the children having contact together in their respective households, introducing them both to the two jurisdictions and coming together in Northern Ireland.

[83] There is also a high price to pay if the situation deteriorates because the court will have no option but to place the two children in care. That is the obvious contingency plan at the moment. Mrs SB repeatedly told me in evidence that she was sorry for her behaviour. However, she would need to demonstrate that she means what she says. For a start she would need to stop bringing up adult gripes some of which go back years. She would need to put away the 10 files and open a new blank page. She would need to think before she texts or uses social media.

[84] I am going to give the grandparents a last chance to adhere to a plan along these lines and I am going to see if it works for a period of time. However, I should say that the grandparents are teetering on the edge of having these children removed from their care. The alternative of foster care would be a shocking result for these children given the number of adults available to them. The better alternative is paternal care which cannot be entirely ruled out but which is unrealistic at present due to the complications I have referred to above.

[85] I am open to other suggestions from the Trust and the Guardian as to what should happen under this regime. In particular I think the grandmother needs to be

educated about the effects of parental alienation upon children, probably by an outside agency. I have been impressed by Neil Foster's input and it would be useful if Leah had the same. I do not rule out CAMHS assistance if they are willing to offer it.

[86] The mother is clearly not a care option in the foreseeable future. In my view it is telling that she has not actively participated in court for some time. I consider the current contact arrangements are satisfactory and so I do not accede to the request for an increase at this time.

[87] I have considered under what legal auspices I should settle the arrangements. I had thought that this could be by way of private law order, perhaps shared residence. However, having heard the evidence it is my view that the Trust needs to remain involved. I hope the Trust will be receptive to this suggestion which I consider in the best interests of each child. This effectively involves a reconsideration of the care plan.

[88] Finally, I hope the adults will all bear in mind that this case is primarily concerned with the best interests of each child. This is not a situation of one party winning or losing. Whilst I may have decided that the children should stay with the grandparents their behaviour has been shameful on occasions. I know that the fathers will both be disappointed with my decision but I hope they will not lose heart in terms of strengthening their relationship with the children. I would have thought that the children will react well to being allowed to stay with their grandparents for the time being and hopefully that will free them up to have better contact. Going forward the adults will need to work together for the benefit of the children otherwise they may end up in foster care which is not an option anyone should wish for. I will direct that any future applications should be brought before me to ensure consistency of decision making.

[89] Within two weeks of this ruling I would like the terms of contact to be agreed for each father for the next year with a repeat pattern if possible. I will rule on any disputes in relation to this but I expect the grandparents to be generous given the findings I have made and I encourage agreement. I also think a memorandum of understanding as to how communications take place is required given the history of this case. There needs to be a programme of assistance for the children and grandparents. I will leave these matters to the legal representatives to work out.

[90] I will make a further interim care order whilst matters are attended to. I would also ask the Guardian to assist in sharing the substance of this decision with the children in an appropriate way. It should be her who does this rather than the grandparents so immediate thought needs to be applied to that. I will hear from counsel as to any other matters that arise.